

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2004 CA 1521

UNION PLANTERS BANK, NATIONAL ASSOCIATION

VERSUS

COMMERCIAL CAPITAL HOLDING CORPORATION,
PATRICK M. HANEY, MARK M. BYOUK,
NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA AND AMERICAN INTERNATIONAL
SPECIALTY LINES INSURANCE COMPANY

Judgment Rendered: March 24, 2005.

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 488,057

Honorable Wilson Fields, Judge Presiding

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BEFORE: CARTER, C.J., PETTIGREW, AND MCDONALD, JJ.

CARTER, C.J.

This is an appeal of a trial court judgment sustaining a peremptory exception raising the objection of *res judicata* in favor of Prudential Property and Casualty Insurance Company and The Prudential Property and Casualty New Jersey Holdings, Inc. (Prudential).

FACTS AND PROCEDURAL HISTORY

One of the defendants in this case, Commercial Capital Holding Corporation (CCHC), filed a third party demand against Prudential and, among others, State Farm Indemnity Company and State Farm Mutual Automobile Insurance Company (State Farm). Both Prudential and State Farm excepted to the third party demand. State Farm raised multiple objections, including one of *res judicata*, which the trial court sustained and which is the subject of a companion appeal bearing docket number 2004CA0871. Prudential raised objections of lack of personal jurisdiction, vagueness, failure to properly plead fraud, failure to name necessary and indispensable parties, no right of action and no cause of action. Prudential did not raise an objection of *res judicata*, although it did address that issue in the memorandum it submitted in support of its exceptions. We also note that the rule to show cause setting the exceptions for hearing ordered CCHC to show cause why the objection of *res judicata* should not be granted.

The trial court held a hearing on the issue of *res judicata* on December 15, 2003. Several parties, including Prudential, participated in the hearing. The trial court took the matter under advisement then issued written reasons for judgment and a judgment sustaining the peremptory exception raising the objection of *res judicata* urged by State Farm.

Prudential then filed with the trial court an *ex parte* motion for entry of judgment on its peremptory exception raising the objection of *res judicata*. In that motion, Prudential contended that it raised an objection of *res judicata* when it raised its other objections. Prudential explained that its objection was set for hearing along with the objections of other third party defendants on December 15, 2003. Prudential also stated that, “[a]t that hearing, the parties stipulated that the issues were the same regarding all third party insurer defendants and that the Court’s ruling would apply to all such similarly situated defendants.” Prudential urged the trial court to enter judgment on the issue of *res judicata* in its favor, as the trial court had done in State Farm’s favor, stating:

Upon January 13, 2004, this Honorable Court entered a judgment granting the Exception of *Res Judicata* in favor of State Farm only. However, the written Reasons for Judgment issued by the Court upon that date specifically refers to all of the third party insurer defendants and not State Farm only and clearly appears to be intended to support judgment in favor of all of the insurers. For that reason [Prudential] believe[s] that the failure to include [it] and the other third party insurer defendants in the judgment on the peremptory exceptions of *res judicata* was inadvertent.

The trial court subsequently entered a judgment in Prudential’s favor, sustaining a peremptory exception of *res judicata* and dismissing CCHC’s claims against Prudential.¹ CCHC now appeals.

DISCUSSION

Like the objection of prescription, the objection of *res judicata* must be specially pleaded; a court cannot supply it. LSA-C.C.P. art. 927. The objection must be presented in a formal pleading and cannot be injected as an issue solely by brief or oral argument. Cf. Bergeron v. Houma Hospital

¹ There is no indication in the record that the judgment was rendered after any type of hearing and thus, appears to have been rendered *ex parte*, as requested.

Corporation of the Sisters of St. Joseph, 514 So.2d 1192, 1195 (La. App. 1 Cir. 1987), writs denied, 517 So.2d 812 (La. 1988). The fact that Prudential's status in this case is that of a third party defendant does not exempt it from these requirements. See LSA-C.C.P. art. 1111.

The record before us reflects that Prudential did file a formal pleading raising various objections. However, the objection of *res judicata* was not included among the objections raised. This appears to have been inadvertent since the objection of *res judicata* was addressed in the memorandum that Prudential submitted in support of its objections. Nonetheless, an objection of *res judicata* was not raised in any *pleading*.

Prudential did address the issue of *res judicata* in a memorandum and the parties allegedly stipulated that the Court's ruling on the issue of *res judicata* would apply equally to the third party insurer defendants. But, without raising the objection of *res judicata* in a pleading, Prudential did not properly plead the objection. Consequently, the trial court erred in rendering a judgment in Prudential's favor sustaining an objection of *res judicata*. See LSA-C.C.P. art. 927; Cf. **Hayes v. Hayes**, 607 So.2d 3, 5 (La. App. 2 Cir. 1992). Accordingly, the trial court's judgment of May 4, 2004, must be and hereby is reversed.

CONCLUSION

For the foregoing reasons, the trial court judgment sustaining the peremptory exception raising the objection of *res judicata* in favor of Prudential is reversed. Costs of this appeal are assessed to Prudential.

REVERSED.

UNION PLANTERS BANK,
NATIONAL ASSOCIATION

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PETTIGREW, J., CONCURS.

PETTIGREW, J., concurring.

I respectfully concur with the majority in their finding that Prudential must raise the issue of res judicata through a formal pleading. However, I also have serious concerns as to whether Commercial Capital Holding Corporation has a right of action against Prudential pursuant to LA. Code Civ. P. art. 927; but I will leave that for another day.

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