

NOT DESIGNATED FOR PUBLICATION

**FORD MOTOR CREDIT
COMPANY**

*

NO. 2001-CA-1039

VERSUS

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CONSOLIDATED WITH:

NATHANIEL DOWL, JR.

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NO. 2001-CA-1040

CONSOLIDATED WITH:

*

COURT OF APPEAL

NATHANIEL DOWL

*

FOURTH CIRCUIT

VERSUS

*

STATE OF LOUISIANA

**FORD MOTOR CREDIT
COMPANY**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 97-14105 C/W 99-13029, DIVISION "F"
HONORABLE YADA MAGEE, JUDGE**

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Chief Judge William H. Byrnes, III

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(Court composed of Chief Judge William H. Byrnes III, Judge Terri F. Love,
and Judge Max N. Tobias, Jr.)

Mr. Nathaniel Dowl, Jr.
8633 Zimple Street
New Orleans, La. 70118
In Proper Person, Appellant

AFFIRMED

Nathan Dowl, Jr. appeals the February 9, 2001 judgment that granted the exception of *res judicata* filed by Ford Motor Credit Company (“Ford”). The judgment dismissed Dowl’s petition with prejudice. We affirm.

In case number 97-14105, Ford Motor Credit Company filed a petition for executory process to seize and sell Dowl’s vehicle, which purchase had been financed by Ford Motor Credit Company. The vehicle was subsequently seized and sold at a sheriff’s sale. Ford Motor Credit Company then filed a supplemental petition for a deficiency judgment. When Dowl did not answer the petition, Ford obtained a preliminary default on April 20, 1998, and a default judgment on April 28, 1998. Dowl filed a motion to appeal the default judgment on June 3, 1998. However, on November 5, 1999, the trial court ordered the appeal dismissed due to Dowl’s failure to pay costs. Dowl subsequently filed a motion to annul the judgment and for injunction which was denied by the trial court on December 6, 1999.

In a second suit, Dowl filed a petition for damages in case number 99-13029 on August 12, 1999. Dowl alleged that his vehicle was illegally seized and sold by Ford. He averred in his petition that he and Ford entered

into a contract concerning the financing of the vehicle and that Ford breached its duties under the contract. Ford filed exceptions of *res judicata*, no right of action and prematurity. After a hearing on January 26, 2001, the trial court rendered judgment on February 9, 2001, granting Ford's exception of *res judicata* and dismissing Dowl's cause of action with prejudice. The trial court held that Ford's exceptions of no right of action and prematurity were moot. On March 13, 2001, the trial court granted plaintiff's motion to appeal the judgment of February 9, 2001.

On appeal Dowl contends that the trial court erred when it granted Ford's exception of *res judicata*.

La. R.S. 13:4231 states:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Under La. R.S. 13:4231 the second action is barred if it arises out of the transaction or occurrence that was the subject matter of the litigation. *Prudhomme v. Iberville Insulations*, 93-778 (La. App. 3 Cir. 3/2/94), 633 So.2d 380. However, a judgment does not bar another action by the plaintiff when, *inter alia*, exceptional circumstances justify relief from the *res judicata* effect of the judgment. La. R.S. 13:4232. This provision gives the court discretion to grant relief from the judgment for exceptional circumstances. This discretion is necessary to allow the court to balance the principle of *res judicata* with the interests of justice. This discretion must be exercised on a case by case basis and such relief should be granted only in truly exceptional cases, otherwise the purpose of *res judicata* would be defeated. It is not intended to apply in the case where the plaintiff has simply failed to assert a right or claim for damages through oversight or lack of proper preparation. Official Comment to Acts 1990, No. 521, La. R.S. 13:4232. It is designed to protect those drawn into error by an awkward factual or legal scenario, not those who can allude to no circumstance to justify their inaction below. *Centanni v. Ford Motor Co.*, 93-1133 (La. App.

3 Cir. 5/4/94), 636 So.2d 1153, writ denied 94-1949 (La. 10/28/94), 644 So.2d 656; *Spear v. Prudential Property and Cas. Ins. Co.*, 98-1663 (La. App. 4 Cir. 1/13/99), 727 So.2d 640.

In the present case, the trial court did not err when it granted Ford's exception of *res judicata*. Dowl's petition for damages filed in the second suit directly relates to and arises out of the financing agreement between Dowl and Ford and the seizure and sale of the vehicle. Dowl alleged in his petition that the seizure and sale of the vehicle violated the terms of the financing agreement between Dowl and Ford. Dowl should have filed a reconventional demand against Ford in the first suit in order to protect his interests. Dowl has not shown any exceptional circumstances which would justify relief from the *res judicata* effect of the judgment.

Accordingly, the trial court's judgment is affirmed.

AFFIRMED