

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0618

KEY OFFICE EQUIPMENT, INC.

VERSUS

KYOCERA MITA AMERICA, INC.

DATE OF JUDGMENT: FEB 13 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 600,486, SECTION 22, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TIMOTHY E. KELLEY, JUDGE

Steven E. Adams
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellant
Key Office Equipment, Inc.

Thomas J. Lutkewitte
Brad P. Scott
New Orleans, Louisiana

Counsel for Defendant-Appellee
Kyocera Mita America, Inc.

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: REVERSED AND RENDERED.

McDonald, J. concurs.

KUHN, J.,

Plaintiff-appellant, Key Office Equipment, Inc. (Key Office), appeals a district court judgment dismissing its claims, with prejudice, pursuant to a peremptory exception raising the objection of res judicata. For the following reasons, we reverse the trial court's judgment and render judgment overruling the exception.

FACTUAL AND PROCEDURAL BACKGROUND

In 2003, a contractual dispute arose between defendant-appellee, Kyocera Mita America, Inc. (Kyocera) and one of its dealers, Key Office, concerning equipment that Key Office asserted it could not sell due to technical problems. As a result, Kyocera filed suit on open account against Key Office. The matter subsequently was submitted to arbitration by joint stipulation of the parties.

In January 2008, the arbitrator rendered an award in favor of Kyocera and against Key Office in the amount of \$36,489.65, plus costs. Thereafter, Kyocera filed a motion to confirm the arbitration award in the 19th Judicial District Court and Key Office filed an opposing motion to vacate the award. The district court refused to consider the motion to vacate on the ground it was untimely and rendered judgment confirming the arbitration award. This court reversed the confirmation judgment on appeal, finding that the district court erred both in finding Key Office's motion to vacate to be untimely and in not considering the objections it raised to Kyocera's motion to confirm the arbitration award. See *Kyocera Mita America, Inc. v. Key Office Equipment, Inc.*, 08-2332 (La. App. 1st Cir. 6/30/09) (unpublished). Upon remand, the district court conducted a second hearing on the opposing motions and again granted Kyocera's motion to confirm the arbitration award and denied Key Office's motion to vacate. That

judgment was affirmed by this court. See *Kyocera Mita America, Inc. v. Key Office Equipment*, 10-1205 (La. App. 1st Cir. 2/11/11) (unpublished).

Following the finality of the judgment confirming the arbitration award, Key Office filed suit in district court against Kyocera alleging that in an effort “to mitigate losses and/or receive credit for the still-unsold equipment,” it had returned the subject equipment to a Kyocera facility in Houston, Texas, where delivery was accepted on April 7, 2008. Key Office further alleged that, although it invoiced Kyocera for \$66,435.00 for the returned equipment, Kyocera had neither paid that amount nor returned the equipment to Key Office. Accordingly, Key Office alleged it was entitled to judgment for the invoiced amount, less a credit for the amount owed to Kyocera under the arbitration award, since the disputed equipment had been returned to Kyocera’s possession.

In response, Kyocera filed an exception of res judicata, asserting that the instant matter stemmed from the same contractual dispute and suit in open account it had initiated against Key Office in 2004, which eventually was resolved by the arbitration award confirmed by the district court. The district court sustained the exception and dismissed Key Office’s claims, with prejudice. Key Office now appeals, arguing that the district court erred in applying res judicata when the events giving rise to its claims, i.e., the return and acceptance of the equipment by Kyocera, occurred after the arbitration proceedings.

RES JUDICATA

In order for a matter to be considered res judicata due to a prior judgment, the prior judgment must be valid and final¹, the parties must be the same, the cause or causes of action asserted in the second suit must have existed at the time of

¹ A confirmed arbitration award is considered to be a valid and final judgment for purposes of res judicata. See *In re Interdiction of Wright*, 10-1826 (La. 10/25/11), 75 So.3d 893, 897.

final judgment in the first litigation, and the cause or causes of action asserted in the second suit must have arisen out of the transaction or occurrence that was the subject matter of the first litigation. La. R.S. 13:4231; *Burguieres v. Pollingue*, 02-1385 (La. 2/25/03), 843 So.2d 1049, 1053. The chief inquiry in considering an exception of res judicata is whether the second action asserts a cause of action that arises out of the transaction or occurrence that was the subject matter of the first action. *Pierrotti v. Johnson*, 11-1317 (La. App. 1st Cir. 3/19/12), 91 So.3d 1056, 1063.

The doctrine of res judicata is *stricti juris* and should be rejected when doubt exists as to whether a party's substantive rights have actually been previously addressed and finally resolved. *Middleton v. Livingston Timber, Inc.*, 11-2215 (La. App. 1st Cir. 6/8/12), 94 So.3d 153, 155. When an objection of res judicata is raised before the case is submitted and evidence is received on the objection, the standard of review on appeal is traditionally manifest error. However, the res judicata effect of a prior judgment is a question of law that is reviewed de novo. *Pierrotti*, 91 So.3d at 1063.

Applying this criteria to the instant case, we agree with Key Office that the district court erred in finding that the claims raised in the instant matter were res judicata as a result of the prior judgment confirming the arbitration award. Kyocera asserts in brief that the issue of Key Office's right to return the equipment for credit on its open account was an issue raised and rejected in the arbitration proceedings. However, even if that assertion is correct, whether Key Office had a right of return is not the issue presented in the instant matter. The undisputed fact is that Key Office did return the equipment and Kyocera accepted the shipment. Thus, the transaction or occurrence giving rise to Key Office's present claims is not the original sale and open account dispute at issue in the arbitration, but the

actual return of the equipment to Kyocera and any consequences resulting therefrom. Clearly, no claims arising from or related to that return could have been considered in the arbitration proceedings, because the events giving rise to the claims had not yet occurred. While the facts and circumstances at issue in the arbitration proceedings are related, the present claims are based on a different set of circumstances that arose after the arbitration. The factual basis of Key Office's current claims simply did not exist at the time of the arbitration proceedings; nor did any cause of action based on the actual return exist at that time. A final judgment has the authority of a thing adjudged only as to those issues presented in the pleadings and conclusively adjudicated by the court. *Middleton*, 94 So.3d at 155. Since the claims presently made by Key Office did not arise from the same transaction or occurrence as the earlier open account dispute, the district court erred in sustaining the exception of res judicata.

CONCLUSION

For the reasons stated, the judgment of the district court sustaining the exception raising the objection of res judicata filed by Kyocera Mita America, Inc., and dismissing the claims of Key Office Equipment, Inc., with prejudice, is reversed and judgment is hereby entered overruling the exception. All costs of this appeal are to be paid by Kyocera.

REVERSED AND RENDERED.