

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 1829

CHARLES T. BRUCE AND MARY A. BRUCE

VERSUS

RHONDA LORRAINE

Judgment rendered May 2, 2014.

* * * * *

Appealed from the
17th Judicial District Court
in and for the Parish of Lafourche, Louisiana
Trial Court No. 122432
Honorable John E. LeBlanc, Judge

* * * * *

RENE' C. GAUTREAU
THIBODAUX, LA

ATTORNEY FOR
PLAINTIFFS-APPELLANTS
CHARLES T. BRUCE AND MARY A.
BRUCE

DANIEL A. CAVELL
THIBODAUX, LA

ATTORNEY FOR
DEFENDANT-APPELLEE
RHONDA LORRAINE

* * * * *

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J.

The issue in this appeal is whether the trial court erred in rendering judgment, signed on July 31, 2013, granting the defendant's exception of *res judicata* and dismissing plaintiffs' claims. It found that the plaintiffs' action for breach of contract (for the sale of furniture) was precluded, because it arose out of the same transaction or occurrence as the sale of a home between the parties and was litigated in a prior suit in redhibition. After a review of the record and the applicable law, we find the trial court erred, and reverse and remand.

BACKGROUND FACTS AND PROCEDURAL HISTORY

On March 21, 2003, Ray L. Rhymes and Rhonda Lorraine, as purchasers, entered into a cash sale with Charles T. and Mary A. Bruce, as sellers, to purchase immovable property and the home thereon, located at 261 E. 57th Street, Cut Off, in the Parish of Lafourche. The cash sale document reflects a purchase price of \$1,000.00, and a counter letter dated that same date reflects the real price of the property and that the amount received by the Bruces was \$460,000.00.

In addition to the above sale, on or about March 23, 2003, the parties verbally contracted that Mr. Rhymes and Dr. Lorraine would also purchase some of the furniture in the home from the Bruces for a total purchase price of \$24,000.00. The parties agreed that payment for the furniture would be made in two installments – one payment of \$12,000.00 on March 23, 2003 (the date of the verbal contract) and another payment of \$12,000.00 to be made six months later.

According to the briefs filed on appeal, shortly after the sale of the house, the roof began to leak. Also, according to the briefs, Mr. Rhymes and Dr. Lorraine withheld payment of the second installment on the purchase of the furniture, based on the alleged defect in the home. Apparently, the parties attempted to reach a compromise concerning the alleged defect in the house and the payment owed on the furniture, but were unsuccessful.

Prior Suit

Unable to successfully resolve their differences about the alleged defect in the house, Mr. Rhymes and Dr. Lorraine filed suit in redhibition against the Bruces in the 17th Judicial District Court, docket Number 99302.¹ The matter was set for trial in August 2012. Prior to trial, the Bruces raised an exception of *res judicata*, claiming that the action had been compromised prior to the suit in redhibition being filed. (The Bruces apparently asserted that the parties had agreed that the Bruces would forgive \$10,000.00 of the debt remaining on the verbal contract for the sale of the furniture in exchange for Mr. Rhymes and Dr. Lorraine not bringing an action in redhibition for the alleged roof defect.) The exception was heard on June 19, 2012, following which the trial court signed a judgment on August 7, 2012, denying the exception of *res judicata*, finding the Bruces failed to prove a compromise because it had not been memorialized in writing.

A trial on the merits in the redhibition suit was held on August 15 and 16, 2012, and continued for closing arguments on September 28, 2012. According to the Bruces in briefs filed in connection with this appeal, the trial judge in the redhibition suit did not allow them to raise the sale of the furniture as a defense. On October 16, 2012, a judgment was signed in favor of Dr. Lorraine and against the Bruces, ordering a reduction in the purchase price of the home of \$30,500.00, and awarding Dr. Lorraine \$5,000.00 for mental anguish and \$7,000.00 in attorney's fees.

Suit On Which This Appeal Is Based

On March 20, 2013, the Bruces filed a Petition for Breach of Contract in the 17th Judicial District Court, docket Number 122432 against Dr. Lorraine. The Bruces alleged that Dr. Lorraine was in receipt of furniture, which she had agreed to purchase for a sum of \$24,000.00. They further alleged that Dr. Lorraine had paid the first installment of \$12,000.00, but that the second installment of \$12,000.00 had never been paid and remained owing.

¹ During the course of that litigation, Mr. Rhymes and Dr. Lorraine were divorced, and Mr. Rhymes eventually withdrew from the lawsuit. All subsequent litigation involved only Dr. Lorraine.

Dr. Lorraine responded to the Petition with an exception of *res judicata*, referring to the prior suit in redhibition on the sale of the home, and asserting that the Bruces in that suit alleged a compromise in an exception of *res judicata*, which exception was denied. Dr. Lorraine further asserted that the Bruces failed to assert a reconventional demand (or any other pleading) alleging a cause of action for a breach of contract for the sale of the furniture, thus, entitling her to a grant of the exception of *res judicata*, and that the Bruces' claims be dismissed.

Dr. Lorraine's exception was heard on July 18, 2013, during which Dr. Lorraine asked the trial court to take judicial notice of the prior (redhibition) suit, docket Number 99302. In that suit, the Bruces had alleged a compromise, but the trial court found they failed to prove one. Dr. Lorraine argued that pursuant to La. C.C.P. art. 1061, the action for breach of contract regarding the sale of the furniture was a compulsory reconventional demand that must have been asserted and decided in the prior suit.

The Bruces, on the other hand, introduced into evidence the contract of cash sale and counter letter for the sale of the home, noting that both made no mention of any contract for the sale of furniture. The Bruces also introduced into evidence the portions of the transcript from the prior trial, including Dr. Lorraine's and Mary Bruce's testimony, concerning the separate verbal agreement regarding the sale of furniture, which the parties had verbally negotiated for a total price of \$24,000.00, to be paid in two separate installments of \$12,000.00 each. The Bruces further noted that the trial court's ruling in the prior suit was not on the merits of the verbal contract of the sale of furniture, but was limited to the court's finding that the Bruces had failed to prove a valid compromise. Thus, they claimed that the sale of the furniture was not raised nor adjudged in the prior suit. The Bruces maintained that the two contracts – one for the sale of the home, and the other, a verbal agreement for the sale of furniture, were two wholly separate agreements, such that the causes of action – the one in redhibition on the sale of the home and the other for the sale of the furniture – did not arise out of the same transaction or occurrence, such that the compulsory reconventional demand provision of La. C.C.P. art. 1061 does not apply.

The trial court found that the sale of the furniture was all part of the same transaction or occurrence as the sale of the house, and pursuant to La. R.S. 13:4231, the final judgment in the redhibition suit was *res judicata* to the claims raised by the Bruces in this action. It granted the exception, and dismissed the Bruces' claims, by judgment signed July 31, 2013.

This appeal by the Bruces followed. They assign error to the trial court's finding that the action for breach of contract for the sale of furniture arose out of the same transaction or occurrence as the action for redhibition, particularly in light of the fact that no evidence was produced at the hearing on the exception of *res judicata*.

APPLICABLE LAW

Res judicata bars relitigation of a subject matter arising from the same transaction or occurrence of a previous suit. It promotes judicial efficiency and final resolution of disputes. **Pierrotti v. Johnson**, 2011-1317 (La. App. 1 Cir. 3/19/12), 91 So.3d 1056, 1063. The doctrine of *res judicata* is codified in La. R.S. 13:4231, as follows:

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.

The chief inquiry is whether the second suit asserts a cause of action that arises out of the transaction or occurrence that was the subject of the first action. *Id.*

The Louisiana Supreme Court has also emphasized that all of the following elements must be satisfied in order for *res judicata* to preclude a second action: (1) the

first judgment is valid and final; (2) the parties are the same; (3) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (4) the cause or causes of action asserted in the second suit arose out of the same transaction or occurrence that was the subject of the first litigation. **Burguieres v. Pollingue**, 2002-1385 (La. 2/25/03), 843 So.2d 1049, 1053.

The burden of proving the facts essential to sustaining the objection of *res judicata* is on the party pleading the objection. **Pierrotti**, 91 So.3d at 1063. If any doubt exists as to its application, the exception must be overruled and the second suit maintained. *Id.* *The concept should be rejected when doubt exists as to whether a plaintiff's substantive rights actually have been previously addressed and finally resolved.* *Id.* (Emphasis added.) A prior judgment has the authority of a thing adjudged only as to the matters put at issue by the pleadings and *actually decided by the court or found to be a necessary consequence of the judgment rendered.* **Thibodaux v. Burns**, 340 So.2d 335, 338 (La. App. 1 Cir. 1976). (Emphasis added.) Finally, the *res judicata* effect of a prior judgment is a question of law that is reviewed *de novo*. **Pierrotti**, 91 So.3d at 1063.

Louisiana Code of Civil Procedure Article 1061(B) states that the defendant in the principal action, except in an action for divorce, *shall* assert in a reconventional demand all causes of action that he may have against a plaintiff that arise out of the transaction or occurrence that is the subject matter of the principal action. **Classen v. Hofmann**, 2006-560 (La. App. 5 Cir. 11/28/06), 947 So.2d 76, 78. Louisiana Code of Civil Procedure Article 1061 and La. R.S. 13:4231 must be read *in pari materia*. *Id.* at p. 80.

APPLICATION OF LAW/ANALYSIS

In this case, there are two separate contracts: one for the sale of the Bruces' home, immovable property; and another, for the sale of furniture, movable property. The trial court in this matter noted the differences in the two contracts in its oral reasons for judgment: the contract for the sale of the house must be in writing and recorded, the contract for the sale of the furniture, does not, and was not. We further note that the contract for the sale of the house included in the record before us

contains no mention of the furniture or of the parties' verbal agreement for the sale of that furniture.

Although the parties are the same, the objects of the two contracts are wholly different and separate. We also note that in this matter, no evidence was presented at the hearing of the exception of *res judicata*; the trial court simply took judicial notice of the prior suit, as it concluded with a final judgment. No transcript of those proceedings was entered into evidence, and is not included in the record before us. The parties do not dispute that no evidence was presented in the prior suit concerning the verbal agreement for the sale of furniture; only evidence was presented in attempts to prove the compromise. Indeed, the existence of that contract was only considered insofar as the Bruces asserted that it constituted a compromise effectuated prior to the suit in redhibition being filed. As noted earlier, the trial court simply found that the Bruces failed to prove a valid compromise, and on that basis, denied their exception of *res judicata*. We find no proof in the record before us that the merits of the contract for the sale of furniture were considered, much less adjudged in the prior suit. The record before us confirms that only the merits of Dr. Lorraine's claims in redhibition were considered and adjudged, as reflected by the final judgment in that suit, awarding her a reduction in the purchase price, together with damages for mental anguish and attorney's fees.

On *de novo* review of the record before us, which contains no evidence, we find that Dr. Lorraine, who bore the burden of proof, clearly did not meet her burden of proving that the two contracts arose out of the same transaction or occurrence, or that the merits of the sale of the furniture and the alleged nonpayment of that contract were litigated and adjudged in the prior suit. Indeed, the record before us reflects that the opposite is the case; that cause of action was not raised, no evidence was presented, and the issues related thereto were not adjudged.

For these same reasons, we reject the argument that the sale of the furniture was a compulsory reconventional demand that had to be raised in the prior suit in redhibition pursuant to La. C.C.P. art. 1061(B).

CONCLUSION

Accordingly, we conclude the trial court erred as a matter of law in granting Dr. Lorraine's exception of *res judicata* and in dismissing the plaintiffs' claims. The judgment of the trial court is hereby reversed, and this matter is remanded to the trial court for further proceedings consistent herewith. Costs of this appeal are assessed to the appellee, Dr. Rhonda Lorraine.

REVERSED AND REMANDED.