STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 1723

JOSEPH RAY ALFRED

VERSUS

RPM PIZZA, LLC AND ABC INSURANCE COMPANY

Judgment Rendered: MAY 31 2019

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 668198

Honorable R. Michael Caldwell, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

WHIPPLE, C.J.

Plaintiff, Joseph Ray Alfred, appeals a judgment of the district court maintaining the exception of res judicata filed by RPM Pizza, LLC ("RPM Pizza"), and dismissing all claims against RPM Pizza and its insurers with prejudice. For the following reasons, we reverse the judgment of the district court and remand this matter to the district court for further proceedings.

FACTS AND PROCEDURAL HISTORY

On April 12, 2018, Mr. Alfred filed a petition for damages, naming as defendants, RPM Pizza and its insurer, ABC Insurance Company. In his petition, Mr. Alfred alleged that on June 7, 2017, he was operating his 1999 Dodge truck in a northerly direction on Verot School Road, in Lafayette, Louisiana when suddenly and without warning, he was struck by a 2017 Hyundai Elantra operated by Breydon Romero. Mr. Alfred further alleged that Mr. Romero, who was pulling out from the Domino's Pizza restaurant on Verot School Road, was in the course and scope of his employment with RPM Pizza at the time of the accident, and that accordingly, RPM Pizza was liable under the principles of respondeat superior.

In response to the petition, RPM Pizza filed an exception of res judicata, contending that the claims asserted therein had already been compromised in full by Mr. Alfred. Mr. Alfred executed a release, dated January 9, 2017,[1] releasing Mr. Romero and his parents Kenneth and Rachael along with their automobile insurer, State Farm Mutual, in exchange for fifteen thousand dollars. The release further released "all other persons, firms or corporations liable or, who might be claimed to be liable" from "any and all claims, demands, damages, actions, causes of action or suits of any kind or nature" which "have resulted or may in the future

[1]The original "Release" is dated January 9, 2017, however, it is clear this date is erroneous, and the release was actually executed on or around January 9, 2018, *after* the occurrence of the accident.

develop from" the accident which occurred on or about June 7, 2017 on Verot School Road. The release concluded with the following paragraph:

> Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

RPM Pizza contended that the broadly drafted compromise and release entered into by Mr. Alfred, without a reservation of rights to proceed against additional parties, was conclusive as to all parties, including RPM Pizza and its insurers for any alleged vicarious liability above the settlement amount. RPM Pizza prayed that the district court grant its exception and dismiss Mr. Alfred's claims against it with prejudice. Attached in support of the exception was the release signed by Mr. Alfred.

Mr. Alfred opposed RPM Pizza's exception, asserting several alternative arguments. First, Mr. Alfred contended that RPM Pizza was not a party to any release, and therefore was not entitled to plead res judicata, or otherwise benefit from the release. Mr. Alfred further asserted that in the event that RPM Pizza could plead res judicata, there was no evidence that he intended to release RPM Pizza. Mr. Alfred also contended that because the scope of the release was under review, extrinsic evidence could be considered to determine the differences the parties to the compromise intended to settle. Pursuant to this argument, Mr. Alfred executed and attached an affidavit to his opposition, asserting therein that: (1) it was his intention to only release Mr. Romero, his parents, Kenneth and Rachael, and their insurer State Farm, for their personal liability insurance; (2) he never intended to release Mr. Romero in his capacity as an employee of Domino's Pizza and/or RPM Pizza, or to release RPM Pizza, nor any of its insurers; and (3) to his knowledge, RPM Pizza did not contribute anything to the settlement with the

Romeros and their personal liability insurer, State Farm. Finally, Mr. Alfred contended that there were questions as to the validity of the release itself due to the discrepancy between the date of the release, January 9, 2017, and the date of the accident, June 7, 2017. In an effort to cure that defect, and clarify the intent of his original release, Mr. Alfred submitted a revised release to the Romeros and State Farm, and also attached it as an exhibit to his opposition. The most notable change in the amended release was the addition of a reservation of rights "against RPM Pizza, LLC and his uninsured motorist carrier."

Thereafter, RPM Pizza filed a reply memorandum in support of its exception. First, RPM Pizza objected to the introduction of Mr. Alfred's affidavit as hearsay. Next, RPM Pizza urged that Mr. Alfred's allegation that the original release was not genuine because it was mis-dated was meritless. Finally, RPM Pizza contended that Louisiana jurisprudence was clear that without a reservation of rights, the broad language found in the release was sufficient to release a potentially vicariously liable employer.

A hearing on the exception was held on August 6, 2018, during which the district court sustained RPM Pizza's objection to Mr. Alfred's affidavit in support of his opposition. After hearing the arguments of the parties, the district court also sustained RPM Pizza's exception of res judicata and ordered the parties to prepare a judgment. A judgment was signed in accordance with the district court's ruling on September 6, 2018.[2] Mr. Alfred then filed the instant appeal.

[2]Based on the record before us, we note that the dismissal of the insurers of RPM Pizza was erroneous as neither RPM Pizza nor its insurers ever sought or prayed for this relief.

Res Judicata and Compromise

The doctrine of res judicata is codified in LSA-R.S. 13:4231.[3] The chief inquiry with regard to this exception 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. Davis v. J.R. Logging, Inc., 2013-0568 (La. App. 1st Cir. 11/8/13), 136 So. 3d 828, 830, writ denied, 2014-0860 (La. 6/20/14), 141 So. 3d 812. However, the Louisiana Supreme Court has also emphasized that the following elements must be satisfied in order for res judicata to preclude a second action: the first judgment is valid and final; the parties are the same; the cause or causes of action asserted in the second suit existed at the time of the final judgment in the first litigation; and the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter 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 support the objection of res judicata is on the party pleading the objection. If any doubt exists as to the application of res judicata, the objection must be overruled and the second lawsuit maintained. Landry v. Town of Livingston Police Dept., 2010-0673 (La. App. 1st Cir. 12/22/10), 54 So. 3d 772, 776. When, as here, an objection of res judicata is raised before the case is submitted and evidence is received on the objection, the

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[3] Louisiana Revised Statute 13:4231 provides:

> 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:
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> (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.
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> (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.

standard of review on appeal is traditionally manifest error. Leray v. Nissan Motor Corp. in U.S.A., 2005-2051 (La. App. 1st Cir. 11/3/06), 950 So. 2d 707, 710. However, the res judicata effect of a prior judgment is a question of law that is reviewed de novo. Pierrotti v. Johnson, 2011-1317 (La. App. 1st Cir. 3/19/12), 91 So. 3d 1056, 1063. At issue in this appeal is the district court's legal conclusion regarding the effect of the release rather than any factual findings. Therefore, we will conduct a de novo review to determine if the district court was legally correct in sustaining the res judicata exception.

While res judicata is ordinarily premised on a final judgment on the merits, it has also been applied where there is a transaction or settlement of a disputed or compromised matter that has been entered into by the parties. Ortego v. State, Department of Transportation and Development, 96-1322 (La. 2/25/97), 689 So. 2d 1358, 1363. A release of a claim, when given in exchange for consideration, is a compromise and constitutes the basis for a plea of res judicata. Labiche v. Louisiana Patients' Compensation Fund Oversight Board, 98-2880 (La. App. 1st Cir. 2/18/00), 753 So. 2d 376, 380, citing Matthew v. Melton Truck Lines, Inc., 310 So. 2d 691, 693 (La. App. 1st Cir. 1975). A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship. LSA-C.C. art. 3071. A compromise shall be made in writing. LSA-C.C. art. 3072. A compromise settles only those differences that the parties clearly intended to settle, including the necessary consequences of what they express. LSA-C.C. art. 3076. A compromise precludes the parties from bringing a subsequent action based upon the matter that was compromised. LSA-C.C. art. 3080.

It is well established that a claim of res judicata based on a compromise agreement must be brought by a party to the compromise agreement. *See* Ortego, 689 So. 2d at 1363; Garrison v. James Const. Group, LLC, 2014-0761 (La. App. 1st

Cir. 5/6/15), 174 So. 3d 15, 20, (*en banc*), writ denied, 2015-1112 (La. 9/18/15), 178 So. 3d 146; Dukes v. Declouette, 2010-0045 (La. App. 1st Cir. 6/11/10), 40 So. 3d 1231, 1234, writ denied, 2010-1623 (La. 10/8/10), 46 So. 3d 1270. In the instant matter, there is nothing before us to show that RPM Pizza was a party to the release upon which it bases its exception of res judicata. Accordingly, because RPM Pizza was not a party to the original release signed by Mr. Alfred, it cannot raise or prevail on an exception of res judicata based on the compromise in this case.

CONCLUSION

For the above and foregoing reasons, the district court's September 6, 2018 judgment, granting RPM Pizza, LLC's peremptory exception of res judicata and dismissing the claims of Mr. Alfred against RPM Pizza and its insurers with prejudice, is hereby reversed. This matter is remanded to the district court for further proceedings consistent with this opinion. Costs of the appeal are assessed to RPM Pizza, LLC.

REVERSED AND REMANDED.