

**NOT DESIGNATED FOR PUBLICATION**

**PATRICK J. SPEZIO** \* **NO. 2001-CA-1789**  
**VERSUS** \* **COURT OF APPEAL**  
**PHILLIP J. SPEZIO, JR.** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2000-13489, DIVISION "I"  
Honorable Kim M. Boyle, Judge Pro Tempore  
\* \* \* \* \*  
**Judge Patricia Rivet Murray**  
\* \* \* \* \*

(Court composed of Judge Miriam G. Waltzer, Judge Patricia Rivet Murray,  
Judge Michael E. Kirby)

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## **AFFIRMED**

The plaintiff, Patrick J. Spezio, appeals the trial court's ruling barring his claims on the grounds of prescription and *res judicata*. For the reasons set forth below, we affirm the trial court's dismissal of the plaintiff's case.

### **FACTS AND PROCEDURAL HISTORY**

Mr. Patrick Spezio, the plaintiff, and Mr. Philip Spezio, Jr. (Mr. Spezio, Jr.), the defendant, are half-brothers. Their father was Mr. Philip Spezio, Sr. ("Mr. Spezio, Sr."). On April 16, 1997, Mr. Spezio, Sr. established an irrevocable *inter vivos* trust for the benefit of Mr. Patrick Spezio ("Trust No. 1"). Mr. Spezio, Jr. was appointed trustee, Mr. Patrick Spezio was named the sole beneficiary of the trust, and the trust instrument was recorded in the Orleans Parish, Louisiana conveyance records on May 9, 1997. The trust corpus consisted solely of Mr. Spezio, Sr.'s three-fourths interest in his home at 1801

River Oaks Drive, New Orleans, Louisiana 70131 (the “family home”), where he continued to reside until his death on February 20, 1999.

On January 7, 1998, Mr. Spezio, Jr., as trustee of Trust No. 1, executed an act of revocation revoking Trust No. 1 and transferring the family home back to Mr. Spezio, Sr. The act of revocation was recorded in Orleans Parish, Louisiana on January 21, 1998. Subsequently, on October 28, 1998, Mr. Spezio, Sr. established an irrevocable *inter vivos* trust for the benefit of Mr. Spezio, Jr. (“Trust No. 2”), and the corpus of Trust No. 2 consisted solely of the family home, the same property that had comprised the corpus of Trust No. 1. The trust instrument establishing Trust No. 2 was recorded in the Orleans Parish, Louisiana conveyance records on February 18, 1999. On February 20, 1999, Mr. Spezio, Sr. died.

On September 7, 1999, Mr. Spezio Sr.’s succession was opened. The family home was included on the Sworn Descriptive List. A petition for possession was filed, and a

contradictory hearing on the petition was held. A judgment of possession was signed on March 20, 2000, placing Mr. Spezio, Sr.'s heirs in possession of the succession property. Mr. Patrick Spezio appeared at the hearing through counsel, and he did not dispute the inclusion of the family home in the judgment of possession. The judgment of possession recognized Mr. Patrick Spezio, Mr. Spezio, Jr., and two other children of Mr. Spezio, Sr. as "the sole and only testamentary heirs of the decedent" and sent each of them into possession of "all property owned by decedent at the time of his death of every kind and description and wherever located to share equally, and in the proportions of an undivided one-fourth (1/4<sup>th</sup>) interest each". The judgment of possession expressly included the family home and contained a legal description of the property comprising the family home. The judgment of possession became a final judgment and was never appealed by Mr. Patrick Spezio.

On August 31, 2000, Mr. Patrick Spezio instituted the instant lawsuit against Mr. Spezio, Jr. by filing a pleading

entitled, “Petition for Damages for Breach of Fiduciary Duty, Breach of Trust, and Rules for Accounting, and to Compel Trustee to Redress Breach of Trust under LSA-R.S. 9:2221(3)”. The pleading alleges that Mr. Spezio, Jr. committed a breach of trust by entering into the act revoking Trust No. 1 and “by attempting to acquire for no consideration the trust corpus that he was under a duty to administer for the benefit of the Trust and its beneficiary”. The pleading also alleges that the act of revocation was executed without Mr. Patrick Spezio’s knowledge or consent. Mr. Spezio, Jr. filed peremptory exceptions of *res judicata*, no cause or right of action, and prescription. A hearing on the peremptory exceptions was held on February 9, 2001, and on April 16, 2001, the trial court rendered a judgment denying Mr. Spezio Jr.’s exception of no cause or right of action but granting his exceptions of prescription and *res judicata*. The trial court issued written reasons for its judgment. Mr. Patrick Spezio is now appealing the trial court’s granting of the exceptions of prescription and

*res judicata* and the dismissal of his petition with prejudice.

## **DISCUSSION**

We will first consider whether the trial court properly granted Mr. Spezio Jr.'s exception of *res judicata*. The Louisiana law on the doctrine of *res judicata* is set forth 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.

In Terrebonne Fuel & Lube, Inc. v. Placid Refining Company, 95-0654, 95-0671, (La. 1/16/96), 666 So.2d 624, the Louisiana Supreme Court stated

the following in a discussion of the effect of the amendments that were made to La. R.S. 13:4231 effective January 1, 1991:

Res judicata is an issue preclusion device found both in federal law and in state law. Prior to the amendments to Louisiana res judicata law effective in 1991, Louisiana law on res judicata was substantially narrower than federal law. The purpose of both federal and state law on res judicata is essentially the same; to promote judicial efficiency and final resolution of disputes by preventing needless relitigation. As explained by former Chief Justice John A. Dixon, Jr.,

“It is implicit in the concept of a judicial system that controversies be finally resolved so that parties may enjoy their rights and so that conflicting legal obligations may not be imposed on an individual; litigation must end at some point. Precluding relitigation prevents inefficient use of the courts' resources, reduces the possibility of harassment through vexatious suits, and helps maintain respect for the judicial proceeds[sic] by guarding against inconsistent decisions.” *Id.* 95-0654 at 11-12; 666 So.2d at 631.

The supreme court further discussed the Louisiana doctrine of *res judicata* as follows:

Conversely, the original Louisiana doctrine of res judicata was based on a presumption of correctness rather than an extinguishment of the cause of action. *Id.* A decided case precluded a second suit only if it involved the same parties, the same cause and the same object of demand as the prior suit. *Id.* However, under La. R.S. 13:4231, as amended in 1990 effective January 1, 1991,

“a second action would be barred because it arises out of the occurrence which was the subject matter of the prior litigation. The central inquiry is not whether the second action is based on the same cause or cause of action (a concept which is

difficult to define) but whether the second action asserts a cause of action which arises out of the transaction or occurrence which was the subject matter of the first action. **This serves the purpose of judicial economy and fairness by requiring the plaintiff to seek all relief and to assert all rights which arise out of the same transaction or occurrence**”. *Id.* 95-0654 at 12; 666 So.2d at 632. (emphasis in the original)

See also Avenue Plaza, L.L.C. v. Falgoust, 96-0173 (La. 7/2/96), 676 So.2d 1077; Tate v. Prewitt, 33, 895 (La. App. 2 Cir. 9/27/00), 769 So.2d. 800, rehearing denied 10/26/00, cert. denied, 2000-3203 (La. 1/26/01), 781 So.2d 1265;

Giuffria v. Metro Bank, 99-0052 (La. App. 4 Cir. 6/2/99), 735 So.2d 943, rehearing denied 7/5/99, cert. denied, 99-2246 (La. 11/5/99), 750 So.2d 191, reconsideration denied, 99-2246 (12/10/99), 751 So.2d 860.

In Fine v. Regional Transit Authority, 95-2603 (La. App. 4 Cir. 6/26/96), 676 So.2d 1134, this court addressed the issue of whether the doctrine of *res judicata* applies to causes of action that were not asserted but that arose out of the same transaction as the cause of action in the prior litigation. Citing Comment (f) to La. R.S. 13:4231, this court concluded that “[c]auses of action that were not asserted by the plaintiff are extinguished and barred by the judgment.”. *Id.* 95-2603 at 3; 676 So.2d at 1136.

Leon v. Moore, 98 1972 (La. App. 1 Cir. 4/1/99), 731 So.2d 502,



cert. denied, 99-1294 (La. 7/2/99), 747 So.2d 20, involved a situation somewhat analogous to the one in the instant case. In that case, the defendant was sued by the daughters of the defendant's late husband. She was sued for damages from an alleged breach of her fiduciary duties as executrix of her husband's estate. The alleged breach of the defendant's fiduciary duties was based on the sale of some stock. The defendant filed an exception of *res judicata*, because prior to the filing of the petition for damages, the plaintiffs had filed a motion to remove the defendant as executrix and for a final accounting of their father's estate. An order dismissing the motion with prejudice was ultimately signed, and the order was the basis for the defendant's exception of *res judicata*. In an application for supervisory writs, the court held that *res judicata* barred the petition for damages.

In the Leon case, the court analyzed the applicability of *res judicata* as follows:

In the matter before us, both the motion to remove the executrix and the subsequent petition for damages arise out of the same transaction--the sale of the decedent's stock in RMI to Rhorer Mutual Industries, Inc. The basis for the relief sought in both actions was the same--Ms. Moore's alleged breach of her fiduciary duties in connection with that sale and her failure to act as a prudent administrator of the succession of the decedent....

Id. 98-1792 at 5; 731 So.2d at 505.

Applying the current law in Louisiana on the doctrine of *res judicata* in the instant case, we find that the case is barred by *res judicata*. The transaction or occurrence out of which the contradictory hearing on the judgment of possession arose in Mr. Spezio, Sr.'s succession was the revocation of Trust No. 1. In the instant case, the revocation of Trust No. 1 is the transaction or occurrence out of which the claim arose against Mr. Spezio, Jr. for his alleged breach of his fiduciary duty as trustee of Trust No. 1. Mr. Patrick Spezio raised no objection to the inclusion of the family home in the judgment of possession in his father's succession, but he now complains that Mr. Spezio, Jr.'s execution of the act of revocation revoking Trust No. 1 was a breach of trust by Mr. Spezio, Jr.

Had Mr. Patrick Spezio raised the issue of breach of trust in the contradictory hearing, the judgment of possession would not have been properly rendered until there had been a determination regarding the alleged breach of trust. Had there been a breach of trust, Trust No. 1 was improperly revoked, and the family home should not have been included in the judgment of possession. By remaining silent in the contradictory hearing regarding the inclusion of what Mr. Patrick Spezio now claims was, in fact, his property and not the property of

the succession, he is barred from bringing the issue before the court now. The purpose of judicial economy and fairness required that Mr. Spezio assert all rights arising out of the revocation of Trust No. 1 at the contradictory hearing on the judgment of possession in Mr. Spezio, Jr.'s succession. By failing to assert his claim that the family home should have been excluded from the judgment of possession, he is now precluded from relitigating any issues arising out of the revocation of Trust No. 1 in the instant case.

### **CONCLUSION**

The trial court properly granted Mr. Spezio, Jr.'s exception of *res judicata*. Because we find that the trial court properly granted this exception, we do not need to consider whether the trial court properly granted Mr. Spezio, Jr.'s exception of prescription. The judgment of the trial court dismissing Mr. Patrick Spezio's petition with prejudice is affirmed.

**AFFIRMED**