

**ST. CHARLES SURGICAL
HOSPITAL, LLC AND
CENTER FOR RESTORATIVE
BREAST SURGERY, LLC**

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**NO. 2018-C-0052

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA**

VERSUS

**LOUISIANA HEALTH
SERVICE & INDEMNITY
COMPANY D/B/A BLUE
CROSS AND BLUE SHIELD OF
LOUISIANA, BLUE CROSS &
BLUE SHIELD OF
LOUISIANA, INC., AND HMO
LOUISIANA, INC.**

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APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-01095, DIVISION "C"
Honorable Sidney H. Cates, Judge

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Judge Regina Bartholomew Woods

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(Court composed of Judge Daniel L. Dysart, Judge Regina Bartholomew Woods,
Judge Paula A. Brown)

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WRIT GRANTED
March 21, 2018

Defendants-Relators, Louisiana Health Service & Indemnity Company D/B/A Blue Cross and Blue Shield of Louisiana, Blue Cross & Blue Shield of Louisiana, Inc., and HMO Louisiana, Inc., (“Defendants-Relators”), seek supervisory review of the trial court’s December 19, 2017 judgment denying its exceptions of res judicata and no cause of action as to the second amended petition filed by Plaintiffs-Respondents, St. Charles Surgical Hospital, LLC and Center for Restorative Breast Surgery, LLC (“Plaintiffs-Respondents”). We find that the trial court erred; therefore, we grant the writ and reverse the trial court’s December 19, 2017 ruling.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs-Respondents asserted that they are out-of-network healthcare providers for Defendants-Relators, an insurer. Plaintiffs-Respondents alleged that they contacted Defendants-Relators either, *via* telephone or Defendants-Relators’ website to verify patients’ insurance benefits. Plaintiffs-Respondents further alleged that Defendants-Relators made representations about payment amounts for services rendered, but actually paid Plaintiffs-Respondents less after the services were provided and claims were submitted. Moreover, Plaintiffs-Respondents argued that the verifications created an oral contract, which Defendants-Relators breached. On April 6, 2010, Plaintiffs-Respondents filed suit in Orleans Parish Civil District Court asserting causes of action for breach of contract, negligent

misrepresentation, detrimental reliance, unjust enrichment, and fraud. On April 12, 2010, the suit was removed to federal district court.

On March 31, 2017, the federal district court dismissed, with prejudice, Plaintiffs-Respondents' claims. Plaintiffs-Respondents filed an appeal on April 21, 2017. Thereafter, Plaintiffs-Respondents dismissed, with prejudice, their claim for fraud.

On February 3, 2017, while the above-referenced lawsuit was pending, Plaintiffs-Respondents filed suit in Orleans Parish Civil District Court and asserted claims for breach of contract, detrimental reliance, negligent misrepresentation, and fraud. In response, Defendants-Relators filed, in federal district court, a petition pursuant to the Anti-Injunction Act to enjoin Plaintiffs-Respondents from pursuing claims previously litigated. Thereafter, the federal district court enjoined Plaintiffs-Respondents from pursuing claims for breach of contract, detrimental reliance, and negligent misrepresentation. Plaintiffs-Respondents then filed an amended and supplemental petition to remove the claims for breach of contract, detrimental reliance, and negligent misrepresentation, and to assert claims of abuse of process and fraud. Defendants-Relators then filed, in Orleans Parish Civil District Court, exceptions of res judicata and no cause of action. The trial court held a hearing on December 15, 2017, and on December 19, 2017, rendered judgment denying Defendants-Relators' exceptions. On January 16, 2018, Defendant-Relators sought supervisory review of the trial court's ruling from this Court.

DISCUSSION

Defendants-Relators argued that the trial court erred in denying their exceptions of res judicata and no cause of action because Plaintiffs-Respondents are attempting to relitigate claims in Orleans Parish Civil District Court that the federal district court has already disposed of in a final judgment, as well as permanently enjoined.

Res Judicata

In a case similar to the instant one, the Louisiana Supreme Court, opined that “[w]hen a state court is required to determine the preclusive effects of a judgment rendered by a federal court exercising federal question jurisdiction, it is the federal law of res judicata that must be applied.” *Reeder v. Succession of Palmer*, 623 So.2d 1268, 1271 (La.1993).

The United States Fifth Circuit Court of Appeals, in *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005), explained that “[t]he res judicata effect of a prior judgment is a question of law that this court reviews de novo.” The court further explained:

The rule of res judicata encompasses two separate but linked preclusive doctrines: (1) true res judicata or claim preclusion and (2) collateral estoppel or issue preclusion. *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 436 (5th Cir.2000) (internal citation omitted). Claim preclusion, or res judicata, bars the litigation of claims that either have been litigated or should have been raised in an earlier suit. *Petro-Hunt, L.L.C. v. United States*, 365 F.3d 385, 395 (5th Cir.2004) (quoting *In re Southmark Corp.*, 163 F.3d 925, 934 (5th Cir.1999)). The test for res judicata has four elements: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the

prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions. *Id.* (citation omitted). In order to determine whether both suits involve the same cause of action, this Court uses the transactional test. *Id.* Under the transactional test, a prior judgment's preclusive effect extends to all rights of the plaintiff with respect to all or any part of the transaction, or series of connected transactions, out of which the original action arose. *Id.* at 395-96 (quotation marks and citations omitted). What grouping of facts constitutes a "transaction" or a "series of transactions" must be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage. *Id.* at 396 (quoting Restatement (Second) of Judgments § 24(2) (1982)). If a party can only win the suit by convincing the court that the prior judgment was in error, the second suit is barred. *New York Life Insur. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir.2000). The critical issue is whether the two actions are based on the "same nucleus of operative facts." *Id.*; see also *Davis v. Dallas Area Rapid Transit*, 383 F.3d 309 (5th Cir.2004).

Test Masters Educ. Servs., Inc., 428 F.3d at 571.

Furthermore, the *Reeder* Court stated that

[I]f a set of facts gives rise to a claim based on both state and federal law, and the plaintiff brings the action in a federal court which had 'pendant' jurisdiction to hear the state cause of action, but the plaintiff fails or refuses to assert his state law claim, res judicata prevents him from subsequently asserting the state claim in a state court action, unless the federal court clearly would not have had jurisdiction to entertain the omitted state claim, or, having jurisdiction, clearly would have declined to exercise it as a matter of discretion.

Reeder, 623 So. 2d at 1272-73.

Here, Plaintiffs-Respondents' claims for fraud and abuse of process are barred by the doctrine of res judicata because the claims arose from the same set of facts and circumstances as the claims litigated and disposed of in the federal

proceeding. In the federal proceeding, Plaintiffs-Respondents alleged that Defendants-Relators created an expectation of payment through insurance verification, via telephone and website; and Defendants-Relators failed to satisfy these expectations by paying less than the amount anticipated. In a final judgment rendered on March 31, 2017, the federal district court dismissed, with prejudice, Plaintiffs-Respondents' suit. On October 22, 2015, Plaintiffs-Respondents voluntarily dismissed, with prejudice, their claim for fraud.¹ On February 3, 2017, Plaintiffs-Respondents filed suit in Orleans Parish Civil District Court asserting the same allegations set forth in the preceding federal suit; the only difference between the two (2) lawsuits is the claims asserted in the federal suit are alleged to have occurred from 2009 to April 2011, and the claims asserted in the present suit are alleged to have occurred after April 2011. However, the claims that are alleged to have occurred after April 2011 could have and should have been asserted in the federal proceeding; Plaintiffs-Respondents continued to amend their suit until 2015, and the federal district court did not render its final judgment in the matter until March 31, 2017.

Furthermore, Plaintiffs-Respondents' reliance on the Tolling Agreement executed between the parties is without merit because the agreement specifically provides that "[n]othing in this agreement shall effect [sic] any defense available to any party as of the effective date of this Agreement, and this Agreement shall not

¹ In *Tu Ngyuen v. Bank of America, N.A.*, 516 Fed. Appx. 332 (5th Cir. 2013), the United States Fifth Circuit Court of Appeals determined that voluntary dismissal, with prejudice, operates as a bar to subsequent litigation of the same claims.

be deemed to revive any claim that is or was already time barred as of the Effective Date of this Agreement.”

For the aforementioned reasons, we find that the trial court erred in denying Defendants-Relators’ exception of res judicata.

Exception of No Cause of Action

Defendants-Relators also argue that the trial court erred in denying their exception of no cause of action as to Plaintiffs-Respondents’ claim for abuse of process.

The Louisiana Supreme Court, in *Badeaux v. Sw. Computer Bureau, Inc.*, opined that:

[A]n exception of no cause of action questions whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. *Industrial Cos.*, [20]02-0665 at p. 6, 837 So.2d at 1213. The exception is triable on the face of the petition and, to determine the issues raised by the exception, each well-pleaded fact in the petition must be accepted as true. *Id.* In reviewing a district court’s ruling sustaining an exception of no cause of action, appellate courts conduct a de novo review because the exception raises a question of law and the district court’s decision is based only on the sufficiency of the petition. *Id.*

Badeaux, 2005-0612, p. 7 (La. 3/17/06), 929 So.2d 1211, 1217.

This Court, in *Insulation Techs., Inc. v. Indus. Labor & Equip. Servs., Inc.*, explained:

[T]he abuse of rights doctrine, which has been invoked sparingly in Louisiana, is a civilian concept that applies only in limited circumstances because its application renders unenforceable one’s otherwise judicially protected rights. *Lee v. Pennington*, 2002-0381, pp. 7-8 (La. App. 4 Cir. 10/16/02), 830 So.2d 1037, 1043. The principle is essentially that “fault” in the delictual sense can be imposed upon a party who

attempts to exercise a legal right with the primary intention of harming or imposing a detriment upon another. See *Lambert v. Maryland Cas. Co.*, 403 So.2d 739, 755 (La. App. 4th Cir.1981). Therefore, a cause of action for abuse of rights does not exist unless two conditions are met: (1) there is no benefit to the person exercising the legal right; and (2) there is damage or injury to the person against whom the legal right is asserted. *Id.* at 757.

Insulation Techs., Inc., 2013-0194, pp. 7-8 (La. App. 4 Cir. 8/14/13), 122 So.3d 1146, 1151. Here, Plaintiffs-Respondents alleged that they have been harmed by Defendants-Relators' failure to pay the amounts anticipated based on the verification of insurance benefits. Based on the bare allegations of the Petition, Plaintiffs-Respondents have alleged a cause of action for abuse of process, and the trial court correctly denied Defendants-Relators' exception of no cause of action. Notwithstanding that ruling, however, based on the aforementioned reasons, Plaintiffs-Respondents' claims are precluded by the doctrine of res judicata.

DECREE

For the aforementioned reasons, although we find that the trial court correctly denied Defendants-Relators' Exception of No Cause of Action, we find that that trial court erred in denying Defendants-Relators' Exception of Res Judicata. Therefore, we grant the writ, reverse the trial court's ruling with regard to the Exception of Res Judicata and dismiss Plaintiffs-Relators' action, with prejudice.

WRIT GRANTED