

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2004 CA 1520

UNION PLANTERS BANK, NATIONAL ASSOCIATION

VERSUS

COMMERCIAL CAPITAL HOLDING CORPORATION,
PATRICK M. HANEY, MARK M. BYOUK,
NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA AND AMERICAN INTERNATIONAL
SPECIALTY LINES INSURANCE COMPANY

Judgment Rendered: March 24, 2005.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 488,057

Honorable Wilson Fields, Judge Presiding

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Phillip W. Preis,
Charles M. Gordon, Jr.,
Crystal D. Burkhalter
Baton Rouge, LA

Attorneys for Appellants,
Commercial Capital Holding
Corporation and Healthcare
Capital Management, Inc.

William E. Steffes
Gary K. McKenzie
Baton Rouge, LA

Attorneys for Appellees,
Allstate Insurance Company
and Allstate Indemnity Company

Brent B. Barriere
New Orleans, LA
and
H. Alston Johnson, III
Baton Rouge, LA

Attorneys for Appellees,
State Farm Indemnity Company and
State Farm Mutual Automobile
Insurance Company

JD Pettigrew, J. Caran and assign reasons

Mark D. Mese
Baton Rouge, LA

Attorney for Appellee,
Union Planters Bank, National
Association

George D. Fagan
Angelina Christina
New Orleans, LA

Attorneys for Appellees,
National Union Fire Insurance
Company of Pittsburgh, PA
and American International Specialty
Lines Insurance Company

David S. Rubin
Baton Rouge, LA

Attorney for Appellee,
Postlethwaite & Netterville (APAC)

Patrick W. Gray
Lafayette, LA

Attorney for Appellees,
Prudential Property & Casualty
Insurance Company and
The Prudential Property and
Casualty New Jersey Holdings, Inc.

Robert J. Young, III
Metairie, LA

Attorney for Appellees,
The Ohio Casualty Insurance
Company and Ohio Casualty
of New Jersey, Inc.

John B. Davis, II
Baton Rouge, LA

Attorney for Appellee,
New Jersey Manufacturers
Insurance Company

Russell L. Dornier
Baton Rouge, LA

Attorney for Appellee,
Mark M. Byouk

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BEFORE: CARTER, C.J., PETTIGREW, AND MCDONALD, JJ.

CARTER, C.J.

This is an appeal of a trial court judgment sustaining a peremptory exception raising the objection of *res judicata* in favor of Allstate Insurance Company and Allstate Indemnity Company (Allstate).

FACTS AND PROCEDURAL HISTORY

One of the defendants in this case, Commercial Capital Holding Corporation (CCHC), filed a third party demand against Allstate and, among others, State Farm Indemnity Company and State Farm Mutual Automobile Insurance Company (State Farm). Both Allstate and State Farm excepted to the third party demand. State Farm raised multiple objections, including one of *res judicata*, which the trial court sustained and which is the subject of a companion appeal bearing docket number 2004CA0871. Allstate raised objections of failure to plead fraud with particularity, failure to name necessary and indispensable parties, no right of action and no cause of action. Allstate did not raise an objection of *res judicata*.¹

Later, State Farm filed a summary brief that addressed its objections, including the objection of *res judicata*. Allstate also filed a summary brief, which stated:

[Allstate] . . . hereby adopt[s] the position and reasoning of [State Farm] asserted in the *Summary Brief of [State Farm]*, filed on November 17, 2003, regarding the Exceptions to the Third Party Demand of [CCHC].

Allstate asserts all arguments and reasoning therein on Allstate's behalf, with the exception of the arguments that relate to the declinatory exception of lack of personal jurisdiction asserted by State Farm.

The trial court held a hearing on the issue of *res judicata* on December 15, 2003. Several parties participated in the hearing; however,

¹ We note that the rule to show cause signed by the trial judge erroneously ordered CCHC to show cause why the objection of *res judicata* should not be granted.

State Farm and CCHC presented the majority of the argument on the issue. Counsel for Allstate did not present any argument. The trial court took the matter under advisement then issued written reasons for judgment and a judgment sustaining the peremptory exception raising the objection of *res judicata* urged by State Farm.

Allstate then filed with the trial court an *ex parte* motion for entry of judgment on its peremptory exception raising the objection of *res judicata*. In that motion, Allstate contended that it raised an objection of *res judicata* through its Summary Brief and that its exception was taken up along with State Farm's exception at the hearing held December 15, 2003. Allstate explained that at the hearing, its counsel waived oral argument and deferred to and adopted the argument presented by counsel for State Farm. Allstate urged the trial court to enter judgment on the issue of *res judicata* in its favor, as the trial court had done in State Farm's favor, stating:

Upon January 13, 2004, this Honorable Court entered a judgment granting the Exception of *Res Judicata* in favor of State Farm only. However, the written Reasons for Judgment issued by the Court upon that date specifically refers to all of the third party insurer defendants and not State Farm only and clearly appears to be intended to support judgment in favor of all of the insurers. For that reason Allstate believes that the failure to include it and the other third party insurer defendants in the judgment on the peremptory exceptions of *res judicata* was inadvertent.

The trial court subsequently entered a judgment in Allstate's favor, sustaining a peremptory exception of *res judicata* and dismissing CCHC's claims against Allstate.² CCHC now appeals.

² There is no indication in the record that the judgment was rendered after any type of hearing and thus, appears to have been rendered *ex parte*, as requested.

DISCUSSION

Like the objection of prescription, the objection of *res judicata* must be specially pleaded; a court cannot supply it. LSA-C.C.P. art. 927. The objection must be presented in a formal pleading and cannot be injected as an issue solely by brief or oral argument. Cf. Bergeron v. Houma Hospital Corporation of the Sisters of St. Joseph, 514 So.2d 1192, 1195 (La. App. 1 Cir. 1987), writs denied, 517 So.2d 812 (La. 1988). The fact that Allstate's status in this case is that of a third party defendant does not exempt it from these requirements. See LSA-C.C.P. art. 1111.

The record before us reflects that Allstate did not file any formal pleading raising the objection of *res judicata*. Rather, it attempted to raise the objection in a brief that adopted the *res judicata* arguments presented in the brief of another party. This does not satisfy LSA-C.C.P. art. 927's requirement that the objection of *res judicata* be specially pleaded.

As is the case with an objection of prescription, a trial court errs in deciding that a case is barred by *res judicata* where no plea of *res judicata* has been filed. See LSA-C.C.P. art. 927; Hayes v. Hayes, 607 So.2d 3, 5 (La. App. 2 Cir. 1992). Since Allstate did not properly plead the objection of *res judicata*, the trial court erred in rendering a judgment in its favor sustaining an objection of *res judicata*. Accordingly, the trial court's judgment of March 30, 2004, must be and hereby is reversed.

CONCLUSION

For the foregoing reasons, the trial court judgment sustaining the peremptory exception raising the objection of *res judicata* in favor of Allstate is reversed. Costs of this appeal are assessed to Allstate.

REVERSED.

UNION PLANTERS BANK,
NATIONAL ASSOCIATION

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PETTIGREW, J., CONCURS.

PETTIGREW, J., concurring.



I respectfully concur with the majority in their finding that Allstate must raise the issue of res judicata through a formal pleading. However, I also have serious concerns as to whether Commercial Capital Holding Corporation has a right of action against Allstate pursuant to LA. Code Civ. P. art. 927; but I will leave this issue for another day.