

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0562

ROBERT G. PIERCE

VERSUS

**FOSTER WHEELER CONSTRUCTORS, INC., DANIEL J. BOOTHE,
JOHNNY COWART AND WILLIAM COWART**

Judgment Rendered: December 28, 2006

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge,
State of Louisiana
Docket Number 502,420**

Honorable Timothy Kelley, Judge Presiding

**Michael L. Hebert
Baton Rouge, LA**

**Plaintiff/Appellant,
Robert G. Pierce**

**M. Shane Craighead
Monroe, LA**

**Defendant/Appellee,
Foster Wheeler Constructors, Inc.**

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

This matter is before us on appeal by plaintiff, Robert G. Pierce, from a judgment of the trial court sustaining a peremptory exception raising the objection of *res judicata* urged by defendant, Foster Wheeler Constructors, Inc. (“Foster Wheeler”). For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

On February 4, 2002, Pierce filed a disputed claim for workers' compensation benefits in the Office of Workers' Compensation (“OWC”), alleging that he had been injured on May 6, 2001, while working for Foster Wheeler at the Georgia-Pacific plant and seeking additional benefits. Foster Wheeler answered the claim, admitting that Pierce had been injured in the course and scope of his employment with Foster Wheeler, but denying his entitlement to any further benefits. Prior to trial of the matter, the parties settled the dispute and jointly filed a motion to dismiss the petition before the OWC. Accordingly, by order dated October 28, 2002, the OWC ordered that Pierce's workers' compensation claim be dismissed without prejudice.

Thereafter, on December 13, 2002, Pierce instituted the present suit in the district court for damages allegedly sustained as a result of the alleged work-related injury.¹ In his petition, Pierce contended that he was injured on May 7, 2001, due to the intentional and deliberate acts of his co-employees, Daniel Boothe, Johnny Cowart, and William Cowart, who had set off a “pipe bomb” at the work site. Pierce averred that Foster Wheeler was liable for the actions of his co-employees under the theory of respondeat superior. He further contended that the actions of Boothe and the Cowarts were intentional within the meaning of LSA-R.S. 23:1032(B), thus exempting his

¹We note that Pierce’s Petition for Damages lists the date of the alleged injury as May 7, 2001, while the disputed form for compensation lists the date of injury as May 6, 2001.

claim from the exclusivity provisions of the Workers' Compensation Act. Additionally, Pierce averred that he had filed a claim for workers' compensation benefits on February 4, 2002, which had interrupted prescription against all solidary obligors.

Thereafter, Foster Wheeler filed a peremptory exception raising the objection of prescription, contending that because the previously filed workers' compensation claim had been voluntarily dismissed pursuant to LSA-C.C. art. 3463, prescription was never interrupted. Accordingly, Foster Wheeler contended that the civil suit, filed more than one year after the accident, was untimely. Following a hearing on the matter, the trial court maintained the exception of prescription and dismissed Pierce's claims against Foster Wheeler with prejudice. Pierce appealed to this court. On appeal, we reversed the judgment of the trial court finding that the judgment of dismissal on the basis of the transaction or compromise between the parties did not constitute a "voluntary dismissal" within the meaning of LSA-C.C. art. 3463 for purposes of determining whether prescription had tolled. See Pierce v. Foster Wheeler Constructors, Inc., 2004-0333 (La. App. 1st Cir. 2/16/05), 906 So. 2d 605, 610, writ denied, 2005-0567 (La. 4/29/05), 901 So. 2d 1071.

Foster Wheeler then filed a peremptory exception raising the objection of *res judicata*. Following a hearing on the matter, the trial court rendered judgment on December 16, 2005, maintaining the exception of *res judicata* and dismissing Pierce's claims against Foster Wheeler with prejudice. From this judgment, Pierce appeals.

DISCUSSION

Res judicata is an issue and claim preclusion device found in both federal law and state law. The purpose of *res judicata* in both federal and state

law is essentially the same – to promote judicial efficiency and final resolution of disputes by preventing needless relitigation. Mandalay Oil & Gas, L.L.C. v. Energy Development Corporation, 2001-0993 (La. App. 1st Cir. 8/4/04), 880 So. 2d 129, 135, writ denied, 2004-2426 (La. 1/28/05), 893 So. 2d 72.

In Louisiana, the general principles governing *res judicata* are set forth in LSA-R.S. 13:4231, which provides 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.

Under LSA-R.S. 13:4231, *res judicata* bars relitigation of a subject matter arising from the same transaction or occurrence as a previous suit. Thus, the chief inquiry 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. Terrebonne Fuel & Lube, Inc. v. Placid Refining Company, 95-0654, 95-0671 (La. 1/16/96), 666 So. 2d 624, 632.

Louisiana Revised Statute 13:4231 embraces the broad usage of the phrase “*res judicata*” to include both claim preclusion (*res judicata*) and issue preclusion (collateral estoppel). Under claim preclusion, the *res judicata* effect of a final judgment on the merits precludes the parties from relitigating matters that were or could have been raised in that action. Under

issue preclusion or collateral estoppel, however, once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue in a different cause of action between the same parties. Thus, *res judicata* used in the broad sense has two different aspects: (1) foreclosure of relitigating matters that have never been litigated, but should have been advanced in the earlier suit; and (2) foreclosure of relitigating matters that have been previously litigated and decided. Mandalay Oil & Gas, L.L.C., 880 So. 2d at 135-136.

The burden of proof is on the pleader to establish the essential facts to sustain the plea of *res judicata*. Patin v. Patin, 2000-0969 (La. App. 1st Cir. 6/22/01), 808 So. 2d 673, 676. A valid compromise can form the basis for a plea of *res judicata*. See LSA-C.C. art. 3078; Brown v. Drillers, Inc., 93-1019 (La. 1/14/94), 630 So. 2d 741, 747. However, the concept of *res judicata* should be rejected when doubt exists as to whether a plaintiff's substantive rights actually have been previously addressed and finally resolved. Patin, 808 So. 2d at 676.

Pierce's disputed claim for workers' compensation benefits was filed on the basis of Foster Wheeler's failure to pay indemnity benefits and to provide medical reports. According to the motion to dismiss, the parties jointly agreed to dismissal of the OWC proceeding, without prejudice. The instant case was asserted as a suit in tort filed in the district court. In his petition for damages, Pierce named Foster Wheeler, Daniel J. Boothe, Johnny Cowart, and William Cowart as defendants. Pierce alleged that the actions of the three named co-workers, which ultimately caused Pierce's damages, constituted an intentional tort for which Foster Wheeler was ultimately liable under the theory of *respondeat superior*.

Generally, the Louisiana Workers' Compensation Act provides for compensation if an employee sustains personal injury as the result of an accident arising out of and in the course of employment. LSA-R.S. 23:1031. Ordinarily, the rights and remedies granted to an employee under the act are exclusive of all rights and remedies against the employer, any officer or principal of the employer, or any co-employee. LSA-R.S. 23:1032. However, an exception to this rule is liability from an intentional act. LSA-R.S. 23:1032(B); Allen v. Payne & Keller Company, Inc., 1996-2326 (La. App. 1st Cir. 4/8/98), 710 So. 2d 1138, 1140, writ denied, 1998-1821 (La. 10/16/98), 726 So. 2d 908, writ not considered, 1998-3124 (La. 2/5/99), 737 So. 2d 739. When a plaintiff sustains damages as a result of an intentional tort committed by a co-employee during the course and scope of his employment, the exclusivity provisions of the Louisiana Workers' Compensation Act do not apply. Cole v. State, Department of Public Safety and Corrections, 2001-2123 (La. 9/4/02), 825 So. 2d 1134, 1138-1139 (citing Quebedeaux v. Dow Chemical Company, 2001-2297 (La. 6/21/02), 820 So. 2d 542, 545)

Moreover, the workers' compensation judge is vested with original, exclusive jurisdiction over claims or disputes if they arise out of the Workers' Compensation Act. LSA-R.S. 23:1310.3(E). The jurisprudence clearly establishes that the mere involvement of the workers' compensation statute or a workers' compensation claim does not **automatically** subject the entire matter to the jurisdiction of the OWC. If an issue arises out of the Act, jurisdiction is vested in the OWC; if the issue merely relates to a workers' compensation claim, the OWC does not have subject matter jurisdiction. TIG Insurance Company v. Louisiana Workers' Compensation Corporation, 2004-2608 (La. App. 1st Cir. 6/10/05), 917 So. 2d 26, 28, writ

denied, 2005-1821 (La. 1/27/06), 922 So. 2d 553. A tort claim that relates to a compensation claim must be filed in district court. Weatherton v. Isle of Capri Casino, 36,677, 36,682 (La. App. 2nd Cir. 12/11/02), 833 So. 2d 1058, 1060-1061, writ denied, 2003-0365 (La. 4/21/03), 841 So. 2d 802.²

For *res judicata* purposes, to have any preclusive effect, a judgment must be valid, i.e. among other things, it must have been rendered by a court with jurisdiction over both the parties and the subject matter after proper notice was given. LSA-R.S. 13:4231, Comment (d); Wooley v. State Farm Fire and Casualty Insurance Company, 2004-882 (La. 1/19/05), 893 So. 2d 746, 771. A claim can not be said to be barred by *res judicata* if the court in which the first action was brought lacked subject matter jurisdiction to adjudicate that claim. Kelty v. Brumfield, 93-1142 (La. 2/25/94), 633 So. 2d 1210, 1215.

Herein, the OWC lacked subject matter jurisdiction to hear and adjudicate Pierce's intentional tort claims against his employer and co-workers. Because the OWC lacked subject matter jurisdiction to adjudicate those claims, Pierce's intentional tort claims are not barred by *res judicata*. Accordingly, the dismissal of the compensation proceedings, without prejudice, based upon a joint agreement to dismiss the OWC proceeding regarding payment of indemnity benefits does not bar Pierce from bringing his intentional tort claims against his employer and co-workers in district court. Thus, the trial court erred in maintaining Foster Wheeler's exception of *res judicata* on the basis of the earlier, dismissed proceedings before the OWC.

CONCLUSION

The December 16, 2005 judgment of the trial court is

²See also Stacy v. Minit Oil Change, Inc., 38,439 (La. App. 2nd Cir. 5/12/04), 874 So. 2d 384, 389, where the court observed that a judgment in a compensation trial is not *res judicata* or law of the case with respect to a tort claim.

reversed. This matter is remanded to the trial court for further proceedings.

Costs of this appeal are assessed to the appellee, Foster Wheeler.

REVERSED AND REMANDED.