NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1821

JANICE L. BANKS

VERSUS

MARY BETH SHAW VICARI

Judgment rendered June 8, 2007.

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Appealed from the
32nd Judicial District Court
in and for the Parish of Terrebonne, Louisiana
Trial Court No. 139,245
Honorable John R. Walker, Judge

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

This is an appeal from the trial court's judgment granting defendant's exception raising the objection of res judicata. For the following reasons, we affirm.

According to the record, there was a previous matter between these same parties entitled Mary Beth Shaw Vicari v. Janice L. Banks and Hibernia National Bank, bearing Docket number 137,319 from the 32nd Judicial District Court, wherein the trial court confirmed a default judgment in favor of Ms. Vicari and ordered correction of the property description contained in an act of sale from Ms. Vicari to Ms. Banks. This court affirmed the trial court's judgment in an unpublished opinion (See **Vicari v. Banks**, 2003-2031 (La. App. 1 Cir. 9/17/04) ("**Vicari I**")).

In the matter currently before us, Ms. Banks filed a petition for damages against Ms. Vicari based on the same act of sale, alleging breach of contract and seeking damages for loss of value in property purchased but contracted to others, emotional anguish, humiliation, embarrassment, and abuse. Ms. Banks also requested that a fence be constructed at Ms. Vicari's expense and sought "[p]roper construction and reformation of the boundary lines and ownership limits of the properties of the parties." Ms. Vicari answered Ms. Banks' petition, generally denying the allegations contained therein and subsequently filed an exception raising the objection of res judicata. Ms. Vicari argued that the instant suit was based on the same cause of action, demanded the same thing, and was between the same parties as in **Vicari I**, and that the judgment rendered in said suit operated as a bar to the present suit. The trial court heard arguments on the res judicata objection and agreed, rendering judgment on December 21, 2005, in favor of Ms. Vicari, dismissing Ms. Banks' suit at her cost. This appeal by Ms. Banks followed.

Res judicata is an issue and claim preclusion device found in both federal law and state 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. **Terrebonne Fuel & Lube, Inc. v. Placid Refining Co.**, 95-0654, pp. 11-12 (La. 1/16/96), 666 So.2d 624, 631. A judgment determining the merits of a case, in whole or in part, is a final judgment. La. Code Civ. P. art. 1841. The preclusive

effect of a judgment attaches once a final judgment has been signed by the trial court and bars any action filed thereafter unless the judgment is reversed on appeal. La. R.S. 13:4231, comment (d).

The doctrine of res judicata has been codified in La. R.S. 13:4231 and 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.

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). **Mandalay Oil & Gas, L.L.C. v. Energy Development Corp.**, 2001-0993, p. 9 (La. App. 1 Cir. 8/4/04), 880 So.2d 129, 135, writ denied, 2004-2426 (La. 1/28/05), 893 So.2d 72. 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. **Five N Company, L.L.C. v. Stewart**, 2002-0181, p. 15 (La. App. 1 Cir. 7/2/03), 850 So.2d 51, 61.

Pursuant to La. R.S. 13:4231, as amended in 1990, effective January 1, 1991, 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. **Mandalay Oil & Gas, L.L.C.**, 2001-0993 at 9, 880 So.2d at 135. The doctrine of res judicata is not discretionary and mandates the effect to be given to final judgments. **Leon v. Moore**, 98-1792, p. 5 (La. App. 1 Cir. 4/1/99), 731 So.2d 502, 505, writ denied, 99-1294 (La. 7/2/99), 747 So.2d 20. When an exception raising the objection of res judicata is raised before the case is submitted and evidence is then received from both parties, the standard of review on appeal is manifest error. **Leray v. Nissan Motor Corp. in U.S.A.**, 2005-2051, p. 5 (La. App. 1 Cir. 11/3/06), 950 So.2d 707, 710.

We have thoroughly reviewed the record before us and find no error by the trial court in finding that Ms. Banks' petition was barred by res judicata based on **Vicari I**.[1] The parties are the same in both suits. Moreover, **Vicari I** presented Ms. Banks with an opportunity to litigate the matters that she now seeks to address. When Ms. Banks failed to appear and defend herself in **Vicari I**, there was a final judgment on the merits rendered against her that now precludes her from coming forward and attempting to relitigate matters that either were or could have been raised in that action. Thus, we affirm the trial court's judgment and assess all costs associated with this appeal against Ms. Banks. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.

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[1] We note that although it is apparent from the transcript that the trial court reviewed the entire suit record from **Vicari I**, nothing from the **Vicari I** record is contained in the record before us for review on appeal. As the appellant is charged with the responsibility of completeness of the record for review, we find the inadequacy of the record before us imputable to Ms. Banks. **Carter v. Barber Bros. Contracting Co., Inc.**, 623 So.2d 8, 10 (La. App. 1 Cir.), writ denied, 629 So.2d 1180 (La. 1993).