

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CA 1653**

**SARAH RICHARDS BUCK**

**VERSUS**

**DEUTSCHE BANK, AS TRUSTEE FOR LONG BEACH  
MORTGAGE LOAN TRUST 2003-2, WASHINGTON MUTUAL  
BANK, F.A., LONG BEACH MORTGAGE LOAN COMPANY,  
AND DEAN MORRIS, LLP**

Judgment Rendered: **NOV - 9 2011**

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On Appeal from the 22nd Judicial District Court  
In and for the Parish of Washington  
Docket No. 98,407

The Honorable Reginald T. Badeaux, III, Judge Presiding

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Sarah Richards Buck  
Covington, Louisiana

Plaintiff/Appellant  
Pro Se

Constance Charles Willems  
Angelina Christina  
New Orleans, Louisiana

Counsel for Defendant/Appellee  
Deutsche Bank, as Trustee for Long  
Beach Bank Mortgage Loan Trust  
2003-2

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

Handwritten signatures and initials in the left margin. At the top is a circled 'S' with a cross through it. Below it is a signature that appears to be 'SRB'. At the bottom is a signature that appears to be 'JMM'.

**HUGHES, J.**

This is an appeal of a judgment dismissing a suit on the basis of no cause of action and res judicata. For the reasons that follow, we amend the judgment and affirm as amended.

### **FACTS AND PROCEDURAL HISTORY**

This litigation arises out of Sarah Richards Buck's 2003 default on a promissory note, which was secured by a mortgage in favor of Long Beach Mortgage Loan Trust on immovable property owned by Ms. Buck in Franklinton, Louisiana. Deutsche Bank National Trust Company ("Deutsche Bank"), as Trustee for Long Beach Bank Mortgage Loan Trust 2003-2, filed a petition for executory process, naming Ms. Buck as the defendant. Ms. Buck's Franklinton property was seized and sold, with Deutsche Bank purchasing the property at the sheriff's auction in 2004. Ms. Buck sought no relief from the seizure and sale of her property prior to the sale.

Thereafter, eviction proceedings were instituted, and Ms. Buck then unsuccessfully sought injunctive relief in both the state and federal district courts. One of these suits was Suit Number 90,449, filed in the 22nd Judicial District Court, Washington Parish (hereinafter "Suit Number 90,449").<sup>1</sup> In Suit Number 90,449, the district court denied Ms. Buck's petition for injunctive relief, and she subsequently filed a "Motion for Voluntary Dismissal" in which she stated that her "Petitions for Injunctive Relief were denied . . . but other claims contained . . . were not dismissed." In the motion for dismissal, Ms. Buck further stated that she "wish[ed] to voluntarily dismiss the . . . claims in their entirety." The district court granted the motion, dismissing Ms. Buck's claims with prejudice on August 18, 2005.

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<sup>1</sup> It is important to note that the suit currently before this court was also filed in the 22nd Judicial District Court, Washington Parish, but as Suit Number 98,407 (hereinafter "Suit Number 98,407").

Thereafter, on March 7, 2006, Ms. Buck filed a "Petition to Annul Judgment of Dismissal as it Pertains to Long Beach Mortgage Company" in Suit Number 90,449, naming Deutsche Bank as a defendant. In seeking to have her prior voluntary dismissal annulled, Ms. Buck cited the following alleged bases in her petition and supporting memoranda: (1) the "Original Petition" was never served on "any Defendant," invalidating the action; (2) some of the defendants named in her petition for injunctive and other relief had not been served and made no "appearance" prior to their dismissal, invalidating the dismissal; (3) the loan represented by the promissory note and mortgage was fraudulent; (4) the appraisal of the mortgaged property was fraudulent; (5) the seizure and sale of her property was unlawful; and (6) the dismissal was drafted by the defendant's counsel, designated "with prejudice" without her cognizance,<sup>2</sup> and resulted in the dismissal of her federal action(s) on the basis of *res judicata*.<sup>3</sup>

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<sup>2</sup> On this point, Ms. Buck argued in Suit Number 90,449, with respect to the dismissal: "The Order page reads 'DISMISSED, with prejudice, ...' which, to the untrained eye, emphasizes the dismissal rather than HOW it is dismissed."

<sup>3</sup> The following excerpt, from a brief Ms. Buck filed in Suit Number 90,449, reflects a portion of her position, in seeking annulment of the dismissal:

The Federal Court found the Buck's [sic] claims to have no merit solely due to the *Res judicata* effect of the Final Judgment entered into the State Court record. Because of the Judgment, Buck cannot litigate the claims of fraud which were so obviously committed by the Defendants. All actions by Buck taken after the denial of the Preliminary Injunction on December 5, 2006, would be deemed futile. Buck was not given a chance to "authenticate" the evidence produced to her [sic] in the Executory Process. Buck did not know that, at the time of the auction of her home, Deutsche and/or Long Beach had committed this fraud. Yes, she allowed the home to go through the Executory Process because she did in fact default on the mortgage note. It was only when the questionable circumstances surrounding the appraisals of the home submitted at the auction, Deutsche's discovery responses in February of 2005, and the fact Buck received a totally fraudulent 1099 submitted to the IRS by Washington Mutual (a subsidiary of Long Beach Mortgage Company) with Buck's name on it, which sparked such arduous and frustrating litigation. The procedures instituted by Buck were confusing but excusable. She did not have access to an attorney, certainly one to submit himself or herself to the aspersions and assault of character she has suffered in State and Federal Courts! [Record references omitted.]

Ms. Buck's petition to annul the dismissal was denied by the district court in Suit Number 90,449. The district court ruling was affirmed on appeal to this appellate court, and both the Louisiana Supreme Court and the U.S. Supreme Court denied writs. See Deutsche Bank National Trust Company v. Buck, 2007-0351 (La. App. 1 Cir. 12/21/07) (unpublished), 973 So.2d 181 (table), 2007 WL 4480196 (text), writ denied, 2008-0177 (La. 3/14/08), 977 So.2d 936, cert. denied, 555 U.S. 869, 129 S.Ct. 163, 172 L.Ed.2d 118 (2008).

Thereafter, on December 30, 2008, Ms. Buck filed the instant suit (Suit Number 98,407), pro se, against Deutsche Bank,<sup>4</sup> with a petition entitled, "Petition to Annul the Judgment of Dismissal Pursuant to La CCP art 2002(A)(2) or, in the Alternative Petition to Void the Judgment of Dismissal Pursuant to La CCP art 3." In addition to reiterating some of the arguments made in Suit Number 90,449 in support of her contention that the August 18, 2005 judgment of dismissal rendered in Suit Number 90,449 should be annulled, Ms. Buck further asserted in Suit Number 98,407 the following additional bases for annulment: procedural anomalies,<sup>5</sup> abuse of process, malicious prosecution, and unfair trade practices.

After extensive litigation, which included removal to federal court and remand back to the 22nd Judicial District Court, the district court granted Deutsche Bank's exceptions of no cause of action and res judicata and dismissed the action. Ms. Buck now appeals this judgment.

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<sup>4</sup> Although Ms. Buck originally joined as defendants Washington Mutual Bank, FA, Long Beach Mortgage Loan Company, and Dean Morris, LLP, these parties were dismissed by the plaintiff on February 20, 2009.

<sup>5</sup> The gist of Ms. Buck's procedural arguments was that she was procedurally barred from raising, in the executory proceeding (which she asserts was the original petition filed as Suit Number 90,449), any right or claim for relief after failing to seek injunctive relief from and/or failing to appeal the seizure and sale of her home. Thus, Ms. Buck seems to argue, since she should not have been permitted to file her claims for relief after her property had been sold, her motion to dismiss those claims was likewise improperly filed and improperly granted by the trial court, and should be annulled.

On appeal, Ms. Buck asserts the district court erred: (1) in sustaining Deutsche Bank's exception of res judicata "by failing to exercise jurisdictional power to overturn a judgment previously confirmed by the appellate court," when the grounds for nullity did not appear in the record on appeal, the issues were not considered by the appellate court, Deutsche Bank did not enter into evidence the entire record of the former proceeding, and the facts that outlined new issues or causes of action were not considered; and (2) in sustaining the exception of no cause of action.

Further, Ms. Buck has filed a motion with this court requesting that the record on appeal be supplemented with certain exhibits, which she asserts were attached to pleadings filed in the district court but do not appear in the appellate record. Also, the defendant/appellee, Deutsche Bank, has filed a motion on appeal, asking this court to strike as untimely the reply brief filed by Ms. Buck.

## LAW AND ANALYSIS

### Res Judicata

The doctrine of res judicata is codified in LSA-R.S. 13:4231, which provides:

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.

[Emphasis added.]

Louisiana Revised Statute 13:4231 was substantially amended in 1990, and now embraces the broad usage of res judicata to include both claim preclusion (traditional res judicata) and issue preclusion (collateral estoppel). Under issue preclusion or collateral estoppel, resolution of an issue of fact or law essential to determination of the dispute precludes re-litigation of the same issue in a different action between the same parties. **Chaisson v. Central Crane Service**, 2010-0112, pp.5-6 (La. App. 1 Cir. 7/29/10), 44 So.3d 883, 886-87 (citing LSA-R.S. 13:4231, 1990 Revision Comment (b); **Mandalay Oil & Gas, L.L.C. v. Energy Development Corporation**, 2001-0993, p. 9 (La. App. 1 Cir. 8/4/04), 880 So.2d 129, 135-36, writ denied, 2004-2426 (La. 1/28/05), 893 So.2d 72).

Comment (a) of the 1990 Official Revision Comments to LSA-R.S. 13:4231 illustrates the distinction between the old law and the new law, as follows:

R.S. 13:4231 makes a substantial change in the law. Under the present law a second action would be barred by the defense of res judicata only when the plaintiff seeks the same relief based on the same cause or grounds. This interpretation of res judicata is too narrow to fully implement the purpose of res judicata which is to foster judicial efficiency and also to protect the defendant from multiple lawsuits. For example, in **Mitchell v. Bertolla**, 340 So. 2nd 287 (La.1976) the plaintiff sued unsuccessfully to rescind the lease for lesion beyond moiety and nonpayment of the rent, and then sued to rescind the same lease for fraud. The supreme court held that the second action was not barred by res judicata because it was based on a different cause (the legal principle upon which the demand is based).

Under new R.S. 13:4231 the 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. This prevents needless relitigation of the underlying facts and will free the defendant from vexatious litigation; and, by focusing on the transaction or occurrence which would be comparatively easy to determine, this proposal avoids the much more difficult problem of defining what constitutes "cause of action" is avoided. For purposes of res judicata it would not matter whether the cause of action asserted in the second action was the same as that asserted in the first or different as long as it arose out of the transaction or occurrence that was the subject matter of the first action.

Further, Comment (b) discusses the concept of issue preclusion:

R.S. 13:4231 also changes the law by adopting the principle of issue preclusion. This principle serves the interests of judicial economy by preventing relitigation of the same issue between the same parties. For example, if a plaintiff brings an action against a defendant to recover for injuries sustained in an automobile accident, the judgment rendered in that action would preclude relitigation of any issue raised in a subsequent action brought by defendant against plaintiff to recover for his injuries sustained in the same accident provided that the issue had been actually litigated and essential to the judgment, e.g., fault of either party. This proviso insures that the issue would have been fully developed by the parties in the first action and makes it fair to hold the parties bound to that initial determination. Because a judgment rendered in the plaintiff's action can also have preclusive effect on an action by the defendant, *Code of Civil Procedure Article 1061 has been amended to require the defendant to assert by reconventional demand all causes of action that he may have against the plaintiff that arise out of the transaction or occurrence that is the subject matter of the principal action.* [Emphasis added.]

Louisiana Code of Civil Procedure Article 1061(B) provides: "The defendant in the principal action . . . shall assert in a reconventional demand all causes of action that he may have against the plaintiff that arise out of the transaction or occurrence that is the subject matter of the principal action." The 1990 Official Revision Comments to Article 1061 further state: "Judicial efficiency is served by requiring the defendant through a compulsory reconventional demand to assert all causes of action he may have against the plaintiff that arise out of the transaction or occurrence that is the basis for the plaintiff's action." Furthermore, Article 1061 comments explain that "if the defendant has a cause of action arising out of the subject matter of the plaintiff's

action, then the defense of res judicata will prevent relitigation of issues common to both causes of action except as otherwise provided by law,” and “[t]he requirement of a compulsory reconventional demand therefore also serves the interest of fairness by giving the defendant notice that he must assert his related cause of action.”

According to the assertions of the parties, Deutsche Bank filed its executory proceeding, which resulted in the seizure and sale of Ms. Buck’s home, as Suit Number 90,449. After the home was sold at auction, Ms. Buck later filed a petition in that action for injunctive and other relief, which was ultimately denied by the district court. Thereafter, she filed a voluntary motion to dismiss the remainder of her claims in that suit, which was granted. She then afterwards attempted to have the dismissal annulled, but that petition was denied and affirmed on appeal. The instant case is a re-assertion by Ms. Buck of her petition to have the voluntary dismissal annulled.

The legal issue presented in this appeal is thus: whether Ms. Buck is entitled to have the courts entertain her application, styled as a new petition in Suit Number 98,407, to have the Suit Number 90,449 judgment of dismissal annulled, despite the fact that Ms. Buck previously made the same request, unsuccessfully, in Suit Number 90,449. After review of this matter, we conclude that, in accordance with the legal precepts set forth herein, Ms. Buck was required to present all of the arguments available to her, in support of her position that the Suit Number 90,449 dismissal should be annulled, in the prosecution of her first petition to annul filed in Suit Number 90,449, and in the reviewing courts that previously considered her appeal and applications for supervisory review.

In accordance with LSA-C.C.P. art. 1841, when a court renders a judgment that decides the merits of the case in whole or in part, the judgment is a final judgment. A final judgment is conclusive between the parties except on appeal or

direct review, as stated in LSA-R.S. 13:4231. A final judgment from which there can be no appeal acquires the authority of the thing adjudged (i.e. res judicata). Once a final judgment acquires the authority of the thing adjudged, no court has jurisdiction to change the judgment, regardless of the magnitude of the final judgment's error. See Williams v. City of Baton Rouge, 2002-0339, p. 8 (La. App. 1 Cir. 2/14/03), 848 So.2d 9, 14 (citing Avenue Plaza, L.L.C. v. Falgoust, 96-0173, p. 5 (La. 7/2/96), 676 So.2d 1077, 1079).

Since Ms. Buck exhausted her appellate remedies in Suit Number 90,449, upon the U.S. Supreme Court's denial of certiorari, she is entitled to no further review of her claim to have the dismissal annulled. The district court's denial of Ms. Buck's Suit Number 90,449 petition to annul the dismissal was rendered final and res judicata by the exhaustion of her rights to appellate review in that case. Therefore, we are unable to entertain Ms. Buck's further contentions seeking to have the Suit Number 90,449 dismissal annulled.

#### No Cause of Action

The function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. Pursuant to LSA-C.C.P. art. 931, no evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. The court reviews the petition and accepts well pleaded allegations of fact as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. See Everything on Wheels Subaru, Inc. v. Subaru South, Inc., 616 So.2d 1234, 1235 (La. 1993).

Because the manner in which Ms. Buck, who is not an attorney, set forth the issues in her Suit Number 98,407 petition, as amended, the extent of the relief sought was not entirely clear, so the defendant's exception of no cause of action

could not have been resolved on the face of the pleadings alone. Therefore, we amend the judgment to deny the exception of no cause of action.

Even though the defendant's exception of no cause of action was improperly sustained, we nevertheless conclude the district court correctly dismissed Ms. Buck's suit on the basis of res judicata.

#### Motions Filed on Appeal

With respect to Ms. Buck's motion to supplement the appellate record with exhibits filed in the district court, which do not appear in the appellate record, Ms. Buck's listing of these items reveals that they are relevant to her argument on the merits, advocating annulment of the Suit Number 90,449 dismissal. We have ruled herein that reconsideration of the validity of that dismissal cannot be undertaken in this suit due to the final and res judicata status of the Suit Number 90,449 denial of Ms. Buck's petition to annul the dismissal. Thus, we find it unnecessary to have the record supplemented with these documents, and hereby deny the motion.

As to Deutsche Bank's motion requesting this court strike, as untimely, the reply brief filed by Ms. Buck, we find merit in the motion. Rule 2-12.7 of the Uniform Rules of Louisiana Courts of Appeal requires that if an appellant desires to file a reply brief it "shall be filed not later than 10 calendar days after the appellee's brief is filed." In this case, the appellee's brief was filed on October 20, 2010, making Ms. Buck's reply brief due on October 30, 2010, but, since October 30, 2010 fell on a Saturday, Ms. Buck would have had until the following Monday, November 1, 2010, to file her brief. See LSA-C.C.P. art. 5059. However, Ms. Buck's reply brief was not filed until November 8, 2010; therefore, we will strike the brief as untimely.

## CONCLUSION

For the reasons assigned herein, the appellant's motion to supplement the appellate record is denied, and the appellee's motion to strike the appellant's reply brief, as untimely, is granted. Further, the judgment of the district court is amended to deny the exception of no cause of action and is affirmed in all other respects. The judgment, as amended, is affirmed. All costs of this appeal are to be borne by the plaintiff/appellant, Sarah Richards Buck.

**MOTION TO SUPPLEMENT RECORD DENIED; MOTION TO STRIKE APPELLANT'S REPLY BRIEF GRANTED; JUDGMENT AMENDED; AFFIRMED AS AMENDED.**