

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 2361

DEROME SEALS

VERSUS

JEWEL JACKSON D/B/A JLJ
MANAGEMENT/MCDONALD'S

Judgment Rendered: May 2, 2008.

On Appeal from the
21st Judicial District Court,
in and for the Parish of Tangipahoa
State of Louisiana
District Court No. 2007-001433

The Honorable Douglas M. Hughes, Judge Presiding

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Jewel Jackson d/b/a
JLJ Management/ McDonald's

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Plaintiff/Appellant,
Appearing in Proper Person

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

got Pettigrew, J. concurs

CARTER, C.J.

At issue is the correctness of the district court judgment dismissing the plaintiff's suit after sustaining the defendant's peremptory exception raising the objection of res judicata and declinatory exception raising the objection of lack of subject matter jurisdiction. The defendant answered the appeal seeking amendment of the district court judgment to require the plaintiff to pay the costs, expenses, and legal fees incurred by the defendant in defending against the plaintiff's suit both in district court and on appeal. For the reasons that follow, we reverse the district court judgment and deny the answer to the appeal.

FACTS AND PROCEDURAL HISTORY

Plaintiff, DeRome Seals, appearing pro se, filed suit in the Twenty-first Judicial District Court, Parish of Tangipahoa, for damages allegedly sustained as the result of his termination from employment by the defendant, Jewel Jackson d/b/a JLJ Management/McDonald's.

The defendant responded to the suit by filing a peremptory exception raising the objection of res judicata and, in the alternative, a declinatory exception raising the objection of lack of subject matter jurisdiction. See La. Code Civ. P. arts. 927A(2), 925A(6). The defendant's objections were based on the existence of a January 15, 2007, judgment from the City Court of Hammond, Small Claims Division, which the defendant alleged determined the merits of plaintiff's claims. The defendant maintained the earlier city court judgment should be afforded res judicata effect, thereby precluding the present case. See La. R.S. 13:4231. In the alternative, the defendant offered that, if the plaintiff was seeking appellate review of the city court judgment, the district

court lacked subject matter jurisdiction. See La. R.S. 13:5209. The defendant filed a memorandum in support of its objections, attaching thereto copies of items purportedly found in the record of **Seals v. Jewel Jackson DBA JLJ Management/McDonald's**, docket number 2-06111-0065, City Court of Hammond.

Following a contradictory hearing in which no evidence was introduced, the district court signed a judgment sustaining both objections and dismissing the plaintiff's suit. This appeal follows.¹

DISCUSSION

Lack of Subject Matter Jurisdiction

We must first address whether the district court had subject matter jurisdiction over the present proceeding. Subject matter jurisdiction is a threshold issue because a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. La. Code Civ. P. art. 3; **Bordelon v. Dehnert**, 99-2625 (La. App. 1 Cir. 9/22/00), 770 So.2d 433, 435, writ denied, 2000-2923 (La. 3/19/01), 787 So.2d 995. Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings based upon the object of the demand, the amount in dispute, or the value of the right asserted. La. Code Civ. P. art. 2. Subject matter jurisdiction cannot be waived by the parties, and the lack thereof can be recognized by the court at any time, with or without formal exception. La. Code Civ. P. arts. 3, 925; **Bordelon**, 770 So.2d at 435.

¹ The defendant maintains the appeal should be deemed abandoned because the plaintiff failed to adequately brief the issues presented. Uniform Rules, Court of Appeal Rule 2-12.4 provides that an appellate court may consider as abandoned any specification or assignment of error which has not been briefed. The plaintiff's failure to abide by the Rules of Court makes review of his assignment of error difficult; however, in the interest of justice, we shall address the issues raised in this pro se brief.

The defendant is correct that there is no appeal from a judgment rendered by a small claims division of a city court, and a plaintiff who files a complaint in a small claims division shall be “deemed to have waived his right to appeal” unless the matter is removed or transferred from the small claims division docket. La. R.S. 13:5209A. However, the plaintiff’s petition makes no reference to an earlier ruling and cannot be construed as an appeal. The defendant’s challenge to the district court’s subject matter jurisdiction on the basis of La. R.S. 13:5209 is unfounded, and the district court erred in sustaining the objection.

Res Judicata

We turn to the correctness of the district court judgment sustaining the objection of res judicata. On the trial of the peremptory exception raising the objection of res judicata, the burden of proving the facts essential to sustaining the objection is on the party pleading the objection. **Union Planters Bank v. Commercial Capital Holding Corp.**, 2004-0871 (La. App. 1 Cir. 3/24/05), 907 So.2d 129, 130. When a party raises an objection of res judicata, the court must examine not only the pleadings but, also, the entire record in the first suit to determine whether the second suit is in fact barred by res judicata. **Union Planters Bank**, 907 So.2d at 130. The defendant attached to the memorandum filed in district court what appears to be a copy of the entire suit record in the city court suit. However, the memorandum and attached exhibits were not introduced into evidence at the hearing on the objection. An appellate court can not consider exhibits filed into the record as an attachment to a memorandum in determining the issues on appeal. **Union Planters Bank**, 907 So.2d at 130.

“They are not evidence and are not properly part of the record on appeal.”

Union Planters Bank, 907 So.2d at 130.

This court also is precluded from taking judicial notice of a suit record from another court. **Pinegar v. Harris**, 2006-2489 (La. App. 1 Cir. 5/4/07), 961 So.2d 1246, 1249. Louisiana Code of Evidence article 202 provides for mandatory judicial notice of federal and state laws and certain ordinances. Article 202 also provides for notice of various legal matters on request by a party and with proper documentation. Although a court may take judicial notice of its own proceedings, Article 202 does not allow courts to take judicial notice of other courts’ proceedings. Documentation of other courts’ proceedings must be offered into evidence in the usual manner. **Pinegar**, 961 So.2d at 1249.

The record contains no competent evidence showing that the present matter has been previously adjudicated. Without any evidence, the defendant could not meet its burden of proof on the objection. Accordingly, the district court judgment sustaining the defendant’s objection of res judicata must be reversed.

CONCLUSION

For the above stated reasons, the district court judgment is reversed, and this matter is remanded to district court for further proceedings consistent herewith. The relief requested in the answer to the appeal is denied. Costs of the appeal are assessed to the defendant, Jewel Jackson d/b/a JJJ Management/McDonalds.

REVERSED AND REMANDED; ANSWER TO APPEAL DENIED.