

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

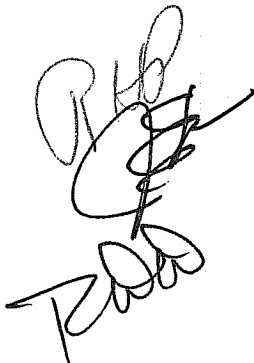
FIRST CIRCUIT

2007 CA 0502

PATRICIA SENN

VERSUS

ST. GEORGE FIRE PROTECTION DISTRICT

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**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 538,430 c/w 546,719, Division "I"
Honorable R. Michael Caldwell, Judge Presiding**

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BEFORE: PARRO, KUHN, AND DOWNING, JJ.

Judgment rendered DEC 21 2007

PARRO, J.

Plaintiff, Patricia Senn, appeals the judgment of the trial court sustaining a defendant's peremptory exception pleading the objection of *res judicata* and dismissing her claim against that defendant, with prejudice. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Ms. Senn was employed as a fire communication officer by the St. George Fire Protection District (SGFPD) on October 19, 1983. In August 1987, SGFPD began making retirement contributions on behalf of Ms. Senn into the City of Baton Rouge and Parish of East Baton Rouge Employees' Retirement System (CPERS), and Ms. Senn began making matching contributions. No contributions were made into CPERS on behalf of Ms. Senn prior to that time.

On November 30, 2005, Ms. Senn filed a petition against SGFPD and other defendants,¹ seeking a writ of mandamus ordering SGFPD to pay the employer's contributions allegedly owed for the period from October 19, 1983, to August 17, 1987. SGFPD filed a peremptory exception pleading the objection of no cause of action. The trial court sustained the exception and dismissed Ms. Senn's claim against SGFPD. No appeal was taken from this judgment, and the judgment became final.

Thereafter, Ms. Senn applied to the CPERS Board of Trustees (Board) for permission to purchase retirement creditable service for her service time with SGFPD prior to August 17, 1987. The Board ultimately approved her request; however, the Board advised Ms. Senn that she would have to pay both the employee and employer contributions, since SGFPD had not agreed to pay the employer contribution on her behalf. The Board further advised Ms. Senn that she may have to file suit against SGFPD if she sought reimbursement for these payments.

Ms. Senn paid all necessary contributions, plus interest. She then filed a petition against SGFPD, seeking reimbursement of the employer portion, as well as the interest

¹ Ms. Senn also named as defendants, the City of Baton Rouge/Parish of East Baton Rouge (City/Parish) and the Employees' Retirement System of the City of Baton Rouge/Parish of East Baton Rouge. This proceeding was assigned docket number 538,430.

she had paid on both the employer and employee portions.² SGFPD filed a motion to transfer and consolidate this suit with the earlier suit, which was granted. Thereafter, SGFPD filed a peremptory exception pleading the objections of *res judicata* and no cause of action. After a hearing, the trial court sustained the exception raising the objection of *res judicata* and dismissed Ms. Senn's claim against SGFPD, with prejudice. The trial court further dismissed, without prejudice, the objection of no cause of action as moot. This appeal by Ms. Senn followed.

RES JUDICATA

The doctrine of *res judicata* is defined by 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.

The party raising the objection of *res judicata* bears the burden of proving the essential facts to support the objection. **Diamond B. Const. Co., Inc. v. Dept. of Transp. and Development**, 02-0573 (La. App. 1st Cir. 2/14/03), 845 So.2d 429, 435. The doctrine of *res judicata* is not discretionary and mandates that valid and final judgments be given effect. **Id.**

DISCUSSION

The sole issue on appeal is whether Ms. Senn's second suit is barred under the doctrine of *res judicata*. In her first suit, Ms. Senn sought to compel SGFPD to pay the employer portion of the retirement contributions for the period of October 19, 1983,

² This proceeding was assigned docket number 546,719.

through August 1987. Specifically, Ms. Senn alleged in her petition, in pertinent part:

Plaintiff shows that, as an employee of [SGFPD] she is entitled to purchase the employee portion of retirement credits for the period October 19, 1983 through August, 1987 and that the [SGFPD] or the City of Baton Rouge/Parish of East Baton Rouge is liable for the employer portion of retirement credits for that time frame. Plaintiff shows that the Retirement System is required to compute the amount of contributions necessary and receive the funds and document the credits.

Ms. Senn further alleged that she had made a request of CPERS that it authorize her purchase of retirement credits for the relevant period and order SGFPD or the City/Parish to pay the employer portion; however, she stated that her request had been ignored.

In sustaining SGFPD's exception raising the objection of no cause of action and dismissing the suit against SGFPD, the trial court specifically found that SGFPD was a state agency during the relevant time period and that it was not a part of the City/Parish until ordinance 8580³ was adopted in January 1988. Thus, the court concluded that Ms. Senn was not a City/Parish employee entitled to participation in the retirement system until after the adoption of the ordinance. The court further concluded that the ordinance did not apply retroactively.

Rather than appeal this judgment in the first suit, Ms. Senn simply filed a second suit naming only SGFPD as a defendant. In her second suit, Ms. Senn again attempted to require SGFPD to make the employer contributions to the retirement system for the period from October 19, 1983, through August 1987. However, in this petition, Ms. Senn attempted to frame the issue as if she were filing suit for reimbursement of sums she had paid in response to the decision of the Board authorizing her to purchase retirement creditable service for the relevant time period. According to Ms. Senn, this cause of action is distinct from the cause of action raised in her first suit. Specifically, Ms. Senn contends on appeal that her second suit is not barred by *res judicata* because the cause of action she sought to enforce by the second suit did not exist at the time the first suit was filed or dismissed. We disagree.

Black's Law Dictionary defines a cause of action as:

³ This ordinance changed the definition of City/Parish to include "any fire protection district situated wholly within the Parish of East Baton Rouge."

A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person

Black's Law Dictionary 214 (7th ed. 1999). *Black's* further defines a "new cause of action" as a "claim not arising out of or relating to the conduct, occurrence, or transaction contained in the original pleading." **Id.** In addition, the revision comments to LSA-R.S. 13:4231 discuss the term, "cause of action," in the context of *res judicata*, stating that if a second action arises out of the same occurrence that was the subject matter of prior litigation, that action would be barred as *res judicata*, explaining:

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.... [B]y focusing on the transaction or occurrence which would be comparatively easy to determine, ... 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.

LSA-R.S. 13:4231, Comments-1990, comment (a); *see also* Frank L. Maraist & Harry T. Lemmon, Civil Procedure § 6.7, at 125-27, in *1 Louisiana Civil Law Treatise* (1999); **Spencer v. State ex. rel. Dept. of Transp. and Development**, 03-2849 (La. App. 1st Cir. 8/11/04), 887 So.2d 35, 37-38 , writ denied, 04-2276 (La. 11/19/04), 888 So.2d 204.

Based on the above concepts, it is clear that Ms. Senn's second suit arises out of the same transaction or occurrence as the first suit. In both suits, Ms. Senn has attempted to require SGFPD to pay the employer contributions to the retirement system on her behalf for the period from October 19, 1983, through August 1987. In dismissing her first suit against SGFPD, the trial court determined that Ms. Senn was not entitled to the relief she sought. Ms. Senn chose not to appeal that decision. Accordingly, Ms. Senn cannot now obtain what the trial court had already ruled she could not obtain directly, simply by paying both portions of the retirement contributions and then framing her claim as one for reimbursement.

We also note that Ms. Senn has alleged in her second suit that she was merely attempting to enforce the decision of the Board, which had authorized her to purchase

the retirement creditable service, "subject to her right to pursue defendant [SGFPD] for reimbursement of the employer portion with interest." Although the Board did authorize Ms. Senn to purchase the service time, we find nothing in the Board minutes that would indicate that the Board determined that SGFPD was required to pay the employer contribution. Rather, the minutes merely state that Ms. Senn would be required to pay both the employer and employee portions with interest before the Board would entertain the approval of her request. The Board did acknowledge that Ms. Senn may have to sue SGFPD to recover the employer portion, since SGFPD had not agreed to pay the employer portion; however, nothing in the minutes created an obligation on the part of SGFPD to reimburse Ms. Senn for those payments.

DECREE

For the foregoing reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to plaintiff, Patricia Senn.

AFFIRMED.