United States Court of Appeals,

Fifth Circuit.

No. 93-3721

Summary Calendar.

Wesley JOHNSON, Plaintiff-Appellant,

v.

FRENCH MARKET CORPORATION, Defendant-Appellee.

Oct. 19, 1994.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before WISDOM, JOLLY and JONES, Circuit Judges.

WISDOM, Circuit Judge:

Appellant, Wesley Johnson, appeals from the district court's dismissal of his claim under the Privacy Act of 1974.[1] The district court determined that the appellant's claim had already been fully litigated in Louisiana state court and was, therefore, barred by the doctrine of res judicata. Because of insufficient information, however, we vacate and remand for the record to be supplemented.

I.

Wesley Johnson, the plaintiff/appellant, is a French Market vendor and the owner of a business called the African Harvest. In 1993, The French Market Corporation requested Johnson to provide certain personal information, including his social security number, to update his vendor's application. He refused and filed this action alleging a violation of the Privacy Act of 1974. He seeks an injunction to prevent the French Market Corporation from revoking his vendor's license and evicting him from his space in the French Market.

The district court initially granted a temporary restraining order (TRO) against the French Market Corporation. In September 1993, the district court conducted a hearing on the plaintiff's motion for preliminary injunction. At that hearing, the district judge recalled the TRO and ruled that the federal claim had already been fully litigated in Louisiana state court. Accordingly, the district

[1]The Privacy Act of 1974 is found at 5 U.S.C. sections 551 and 552.

court dismissed the action, refusing to interfere with a state court judgment.

II.

Johnson raises three issues on appeal. First, he claims that a dismissal on the grounds of res judicata was improper because the defendant, French Market Corporation, failed to serve the appellant personally with the documentation used to support the allegation that res judicata barred the action. Second, Johnson maintains that, even if there was a final state judgment, the Louisiana state courts were not competent to adjudicate his Privacy Act claim. Finally, he contends that the proper documentation of the state court proceedings evidencing the need for a dismissal was never entered into the record.

We find it unnecessary to address the first two contentions and instead focus on the lack of any authenticated documentation of the state court proceedings in the record before us.

III.

Under 28 U.S.C. section 1738, state court judgments are entitled to full faith and credit in federal courts. In determining what preclusive effect a state judgment has on subsequent litigation, we look to what effect a court of the rendering state would give it.[2] In the case before us, we would examine the plaintiff's state and federal claims under Louisiana preclusion law, as the state court judgment before us was issued by the state courts of Louisiana. 28 U.S.C. section 1738 provides in pertinent part:

> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper from.
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> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

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[2] *Migra v. Warren City School District Board of Education,* 465 U.S. 75, 80-81, 104 S.Ct. 892, 895-96, 79 L.Ed.2d 56 (1984); *Allen v. McCurry,* 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). For the application of this well-settled rule in this Court see, *Lewis v. East Feliciana Parish School Board,* 820 F.2d 143, 146-47 (5th Cir.1987); *Brister v. Parish of Jefferson,* 747 F.2d 1019, 1021-22 (5th Cir.), *cert. denied,* 471 U.S. 1101, 105 S.Ct. 2327, 85 L.Ed.2d 845 (1984); *Superior Oil Co. v. City of Port Arthur,* 726 F.2d 203, 206 (5th Cir.1984).

Thus, if the plaintiff is, as the defendant asserts, attempting to relitigate a claim that he voluntarily pursued previously in state court, we must defer to the state court adjudication and give the state judgment full preclusive effect under Louisiana law.

There is, however, a threshold requirement which must be met before we can undertake an examination of the two claims under Louisiana preclusion law. 28 U.S.C. section 1738 requires an authenticated copy of the state court judgment.[3] This is necessary, not only to meet the requirements of the statute, but also to allow a comparison of the adjudicated state claim with the claim asserted here.[4] This documentation is not in the record and, without it, the necessary analysis is impossible. Accordingly, we VACATE the district court's decision to dismiss this action and REMAND for the record to be supplemented.

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[3]28 U.S.C. section 1738 gives full faith and credit to judgments properly authenticated by the rendering court. *See Horwitz v. Board of Medical Examiners of State of Colorado,* 822 F.2d 1508, 1512 (10th Cir.1987) (rejecting an allegation of res judicata because, among other reasons, the record did not contain an "authenticated copy of the judgment of the Colorado Court of Appeals required under 28 U.S.C. section 1738 in order to have full faith and credit effect").

[4]Under Louisiana preclusion law a claim is barred by res judicata only if there is a final judgment and there is: "(1) an identity of the parties, (2) an identity of the cause, (3) an identity of the thing demanded." *Lewis,* 820 F.2d at 146 (citing La.Rev.Stat.Ann. art. 13:4231 (West Supp.1987)). Thus, a comparison of the state and federal complaints would be necessary to determine whether Louisiana law would, indeed, bar the appellant's federal action.