

1/17/01

SUPREME COURT OF LOUISIANA

No. 00-C-0926

GAYLE LOUISE SCHULTZ, ETC.

Versus

WAVY H. DOYLE ET AL.

LEMMON, J., Concurring

Upon initial service under the long-arm statute, defendants, through their attorney, challenged the personal jurisdiction of the Texas court by a special appearance. Because defendants, through their attorney, withdrew that challenge, the Texas court did not litigate the issue of personal jurisdiction before rendering the money judgment against defendants. Therefore, *res judicata* applies, not because the issue of jurisdiction was fully and fairly litigated, but because objections to jurisdiction were waived by the attorney of record,¹ and because the issue of the attorney's authority to waive objections to jurisdiction was tried on motion for new trial and was decided against defendants in a judgment that has now acquired the authority of the thing adjudged.

The Texas court ruled that defendants made a general appearance² and were

¹If defendants' attorney, upon being employed to represent them, had never filed a special appearance to question jurisdiction, but had simply answered plaintiff's petition, then objections to jurisdiction would have been waived. In the present case, the waiver occurred when the attorney withdrew the special appearance.

²Defendants, through their attorney, made a general appearance in the Texas litigation by filing a general denial and by affirmatively seeking sanctions for a groundless suit filed in bad faith for purpose of harassment. The wisdom of these pleadings is a matter between defendants and their former attorney, but defendants, for purposes of recognition of the Texas judgment, are bound by the on-the-record actions and decisions of the attorney who, according to defendants' admission, was their representative until the attorney withdrew from that representation.

therefore subject to the jurisdiction of that court. Defendants now contend that the general appearance, as well as the withdrawal of the special appearance, were not authorized by them. However, they raised these same contentions by motion for new trial in the Texas court, which held a hearing on the issue of the attorney's lack of authority. Apparently, the Texas court ruled that defendants did not bear their burden. See 1 Robert C. Casad & William B. Richman, Jurisdiction in Civil Actions §3-1(vi)(3d ed. 1998). That issue cannot be raised anew in Louisiana.