

SUPREME COURT OF LOUISIANA

No. 96-C-0173

AVENUE PLAZA, L.L.C.

Versus

SANDRA B. FALGOUST AND CARL CHASTANT
D/B/A CASAN SALON

LEMMON, J., Concurring

Under La. Rev. Stat. 13:4231(3), a judgment is conclusive in any subsequent action between the same parties "with respect to any issue actually litigated and determined if its determination was essential to that judgment." In the eviction action, the parties actually litigated the issue of whether plaintiff was bound by the unrecorded lease renewal, and defendant resisted eviction on the basis that plaintiff's purchase was subject to the leases assigned by the previous owner. The judgment against defendant in the eviction action precludes defendant's asserting the same issue in defense of the declaratory judgment action.

The court of appeal erred first in declining to address the res judicata issue, which was squarely presented, and then in misapplying the law of the case doctrine. That doctrine only applies when the same issue is presented to the same court that has previously decided that issue in the same case which has not become res judicata. The appellate decision under review involved an issue previously presented to the same court in a different case that has become res judicata.