ALPINE MEADOWS, L.C. : NUMBER: 521,779-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

PETER WINKLER AND : CADDO PARISH, LOUISIANA

SARAH C. WINKLER

 CONSOLIDATED WITH

PETER M. WINKLER AND : NUM BER 536,482-C

SARAH C. WINKLER

VERSUS : FIRST JUDICIAL DISTRICT COURT

ALPINE MEADOWS, L.C., GARRY : CADDO PARISH, LOUISIANA

BLACK AND JAMES T. ADAMS

 **REASONS FOR JUDGMENT**

 **ON EXCEPTION OF RES JUDICATA**

Counsel for the Winklers has argued that Alpine’s cause of action to collect

the unpaid purchase price and “any other causes of action arising out of the 2001credit sale that could have been brought in the [initial suit] has been extinguished, and any action seeking to assert that claim is forever barred”. (Winkler’s brief, page 7). Counsel for the Winklers has also characterized certain aspects of the Second Circuit Court of Appeal’s opinion as advisory and “purely obiter dicta” and, as such, “should be ignored in its entirety”. Counsel also advances an “unclean hands” argument. The statements of the Second Circuit, whether dicta or not, are absolutely applicable to the res judicata exception and those words are adopted by this trial court:

Finally, regarding the trial court’s dismissal of the action with prejudice, we disagree with the implication at oral argument by the Winklers that such a dismissal would prevent Alpine Meadows from bringing suit again on this obligation. A judgment of dismissal with prejudice shall have the effect of a final judgment of absolute dismissal after trial. La. C.C.P. art. 1673. Such a dismissal does not mean that the Winklers are relieved of any payment to Alpine Meadows under the Allonge. Indeed, the primary effect of this dismissal with prejudice is that Alpine Meadows is barred from bringing suit against the Winklers arising from the same occurrence stated in this litigation. In other words, Alpine Meadows cannot make the same claims based on the same circumstances against the Winklers. However, we do not take it to mean that Alpine Meadows is forever barred from filing suit against the Winklers, even under the Allonge. The dismissal with prejudice only prevents Alpine Meadows from bringing suit against the Winklers raising these same claims on these same facts and circumstances. It does not relieve the Winklers of their obligations under the Allonge and credit sale, nor does it prevent Alpine Meadows from filing suit against the Winklers in the event they breach their obligations as to Alpine Meadows at some other time.

As stated by this Court in its rationale for denying Alpine’s motion for summary judgment, a full trial on the merits - in the light of day - is warranted and termination of the significant issues

in this case by way of summary judgment or res judicata is inappropriate. The exception of res judicata is overruled.

Signed this 17th day of January, 2012 in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

Joseph S. Woodley, Counsel for Alpine Meadows, L.C.

R. Joseph Naus, Counsel for Peter M.Winkler and Sarah C. Winkler

James R. Madison, Counsel for Peter M.Winkler and Sarah C. Winkler