

SHELDON L. HARTSTONE et al.

v.

FLEET BANK OF MAINE et al.

Submitted on Briefs April 9, 2003
Decided April 28, 2003

Panel: CLIFFORD, RUDMAN, DANA, ALEXANDER, and LEVY, JJ.

MEMORANDUM OF DECISION

Sheldon L. Hartstone, as individual and trustee of Northeast Equities Associates Trust, appeals a summary judgment entered in the Superior Court (Cumberland County, *Warren, J.*) in favor of defendants Fleet Bank of Maine and Recoll Management Corporation on his nine-count complaint. The court did not err in concluding that res judicata applied to bar Hartstone from prosecuting his complaint because Hartstone had already filed a civil complaint in November of 1992 naming Fleet and Recoll as parties, which the court dismissed pursuant to M.R. Civ. P. 41(b) with prejudice and from which Hartstone did not appeal. *See* 1 Field, McKusick & Wroth, *Maine Civil Practice* § 41.5 at 576 (2d ed. 1970) (“Unlike a voluntary dismissal, an involuntary dismissal is as a general rule *with*

prejudice; that is, it operates as an adjudication on the merits.”). That prior action arose out of the same aggregate of operative facts as the current suit. Contrary to Hartstone’s contention that he could not have litigated his present claims in the prior action, Hartstone learned of additional facts forming the basis of his current complaint prior to the Rule 41(b) admission, and, therefore, he could have amended his prior complaint upon learning of those facts and litigated them in the prior action. *See Kradoska v. Kipp*, 397 A.2d 562, 568 (Me. 1979) (noting the “justifiable ignorance of facts which, in retrospect, appear to give rise to a claim for relief will mitigate the res judicata effect of a prior judgment”). Because we affirm the Superior Court based on res judicata, we do not reach the court’s additional bases for entering summary judgment.

The entry is:

Judgment affirmed.

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