

**RONALD WEBER AND LINDA
WEBER**

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NO. 2011-CA-0852

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**CANAL INDEMNITY
COMPANY, SEARS,
ROEBUCK AND CO., ELITE
A/C SERVICE LLC AND
CLAYTON BOURGEOIS**

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STATE OF LOUISIANA

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BONIN, J., CONCURS WITH REASONS.

I join in the majority’s reversal of the summary judgment rendered in favor of Sears because there are genuine issues of material fact which preclude summary judgment either for Sears or for Mr. Weber. But I disagree with the majority’s statement that we cannot consider the correctness of the trial court’s judgment denying Mr. Weber’s motion for summary judgment. While it is true that the denial of a summary judgment is a non-appealable interlocutory judgment, it may be considered on assignments of error raised on appeal of a final appealable summary judgment under La. C.C.P. art. 1915 A. “When an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory rulings prejudicial to him, in addition to the review of the final judgment.” Roger A. Stetter, *Louisiana Civil Appellate Procedure*, §3:32 (2010-2011 ed.). *See also id.*, §3:35 (“Denial of a motion for summary judgment may be reviewed on appeal of a final judgment in the suit... However, the issue must have been argued and passed on by the court in its ruling denying plaintiffs’ motion for summary judgment in order to be reviewed on appeal.”) Of course, had we considered the interlocutory judgment, we would have found it to be correct for the same reason we found the final judgment incorrect: a genuine issues of material fact exist precluding summary judgment.