CAMBRIE CELESTE, LLC	*	**NO. 2018-C-0459**
VERSUS	*	**COURT OF APPEAL**
F.I.N.S. CONSTRUCTION, LLC, ET AL.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

CONSOLIDATED WITH: **CONSOLIDATED WITH:**

CAMBRIE CELESTE, LLC **NO. 2018-C-0543**

VERSUS

F.I.N.S. CONSTRUCTION,
LLC, ET AL.

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2013-10539, DIVISION "I-14"
Honorable Piper D. Griffin, Judge

* * * * * *

JUDGE SANDRA CABRINA JENKINS

* * * * * *

(Court composed of Judge Terri F. Love,
Judge Edwin A. Lombard, Judge Sandra Cabrina Jenkins)

LOVE, J., CONCURS IN THE RESULT
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WRIT GRANTED; JUDGMENT REVERSED

SEPTEMBER 26, 2018

Relators, Crum & Foster Specialty Insurance Company ("Crum & Foster") and General Star Indemnity Company ("General Star"), seek review of the trial court's May 14, 2018 judgment granting the motion for new trial filed by plaintiff, Cambrie Celeste, LLC ("Cambrie Celeste"), vacating the trial court's November 28, 2017[1] order dismissing the case on the grounds of abandonment, and reinstating the instant action. For the reasons that follow, we find that the trial court abused its discretion in granting Cambrie Celeste's motion for new trial. Accordingly, we grant relators' writ, reverse the trial court's May 14, 2018 judgment, and reinstate the order of dismissal of the case on the grounds of abandonment.

FACTS AND PROCEDURAL HISTORY

Steven Anderson, a property developer who specializes in developing properties using tax credits, and Robert Armbruster, a contractor, have been parties

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[1] Although the May 14, 2018 judgment indicates that the order dismissing the case on the grounds of abandonment was issued on November 28, 2017, that judgment was actually signed on November 29, 2017.

to multiple lawsuits and arbitrations, involving various issues and entities owned and/or controlled by them.

In the instant action filed on November 8, 2013, Cambrie Celeste, an entity owned and controlled by Mr. Anderson,[2] filed suit against the defendants: 1) Mr. Armbruster; 2) F.I.N.S. Construction, LLC ("F.I.N.S."), an entity owned and controlled by Mr. Armbruster;[3] 3) AIX Specialty Insurance Company ("AIX"); 4) Crum & Forster; and 5) General Star Indemnity Company ("General Star"), to recover alleged damages for construction defects to its building located at 621 Celeste Street in New Orleans, Louisiana. Specifically, Cambrie Celeste alleged that F.I.N.S. was responsible for the alleged construction defects, as well as water damage the property allegedly sustained during Tropical Storm Lee and Hurricane Isaac.

On November 27, 2017, Crum & Forster filed an *ex parte* motion for order of dismissal on the grounds of abandonment, pursuant to La.C.C.P. art. 561. In an order dated November 29, 2017, the trial court granted the motion for order of dismissal on the grounds of abandonment, thereby dismissing Cambrie Celeste's claims with prejudice. Cambrie Celeste filed a motion for new trial on December 8, 2017. General Star and Crum & Forster filed separate memorandums in opposition to the motion for new trial on or about January 11, 2018. Subsequently, Cambrie Celeste filed a supplemental memorandum in support of its motion for new trial; and Crum & Forster and General Star each filed an opposition to

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[2] Steven Anderson also has ownership interest in and/or control of the following entities regarding the lawsuits mentioned herein: 1) Community Capital Partners, LLC ("Community Capital"); 2) Specialized Response Group, LLC ("SRG"); and 3) Avalon R.E. Partners, LLC ("Avalon"). (See relator's writ application, Exhibit F, final settlement agreement, p. 1).

[3] Robert Armbruster also has ownership interest in and/or control of the following entities regarding the lawsuits mentioned herein: 1) Starboard Management, LLC ("Starboard"); and 2) SRG. Id.

Cambrie Celeste's supplemental memorandum in support of the motion for new trial.

A hearing on the motion for new trial was held on April 27, 2018, and on May 14, 2018, the trial court rendered a judgment granting Cambrie Celeste's motion for new trial, vacating the November 28, 2018 order dismissing the case on the grounds of abandonment, and reinstating the instant action. Both relators timely filed notice of intent to seek supervisory review.

Crum & Foster filed its application for supervisory writ on May 29, 2018. After being granted an extension of the return date by the trial court, General Star filed its application for supervisory writ on June 27, 2018. This Court ordered that the two writs be consolidated.

DISCUSSION

Relators argue that the trial court improperly granted Cambrie Celeste's motion for new trial because it looked outside the record of this case to find that action taken in the record of separate and unrelated cases or involving an individual who is not a party to this suit prevented abandonment.

The Louisiana Civil Code provides for both peremptory and discretionary grounds for granting a motion for new trial. *See* La. C.C.P. arts. 1972 and 1973. In a non-jury case, La. C.C.P. art. 1972 requires the trial court to grant a new trial, upon contradictory motion, in the following instances:

> (1) When the verdict or judgment appears clearly contrary to the law and the evidence.
>
> (2) When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.

Additionally, pursuant to La. C.C.P. art.1973, a judge has discretion to grant a new trial "in any case if there is good ground therefor, except as otherwise provided by law."

"The standard of review of a judgment on a motion for new trial, whether on peremptory or discretionary grounds, is that of abuse of discretion." *Pollard v. Schiff*, 13-1682, p. 21 (La. App. 4 Cir. 2/4/15), 161 So.3d 48, 61 (citing *Magee v. Pittman*, 98-1164, p. 19 (La. App. 1 Cir. 5/12/00), 761 So.2d 731, 746). "The breadth of the trial court's discretion to order a new trial varies with the facts and circumstances of each case." *Pollard*, 2013-1682, p. 21, 161 So.3d at 61 (citing *Horton v. Mayeaux*, 2005–1704, p. 11 (La.5/30/06), 931 So.2d 338, 344).

Here, Cambrie Celeste did not specifically assert the peremptory or discretionary grounds upon which it was seeking a new trial. Rather, Cambrie Celeste simply relied upon La. C.C.P. art. 1971, which provides:

> A new trial may be granted, upon contradictory motion of any party or by the court on its own motion, to all or any of the parties and on all or part of the issues, or for reargument only. If a new trial is granted as to less than all parties or issues, the judgment may be held in abeyance as to all parties and issues.

However, upon a review of the arguments presented in its memorandum in support of the motion for new trial, it appears that Cambrie Celeste asserts that a new trial is warranted on Crum & Forster's *ex parte* motion for order of dismissal on the grounds of abandonment because the judgment is contrary to the law and evidence.

Regarding the underlying *ex parte* motion for order of dismissal on the grounds of abandonment, this Court has held that "[w]hether an action has been abandoned is a question of law; thus the standard of review of the appellate court is simply to determine if the trial court's decision was correct." *Heirs of Simoneaux v. B-P Amoco*, 2013-0760, p. 3 (La. App. 4 Cir. 2/5/14), 131 So.3d 1128, 1130 (citing

Meyers ex rel. Meyers v. City of New Orleans, 2005–1142, p. 2 (La. App. 4 Cir. 5/17/06), 932 So.2d 719, 721). La. C.C.P. art. 561(A)(1) dictates that "an action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years." The Article further dictates that abandonment "shall be operative without formal order, but, on *ex parte* motion of any party or other interested person by affidavit which provides that no step has been timely taken in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment." La. C.C.P. art. 561(A)(3).

The *Heirs of Simoneaux* Court further outlined the three requirements imposed by La. C.C.P. art. 561 to avoid abandonment as follows:

> 1) a party must take a step toward the prosecution or defense of the action; 2) the step must be taken in the proceeding and, with the exception of formal discovery, must appear in the record; and 3) the step must be taken within three years of the last step taken by either party. *Dean v. Delacroix Corp.,* 12–0917, p. 6 (La. App. 4 Cir. 12/26/12), 106 So.3d 283, 287, writ denied, 13–0485 (La.4/26/13), 112 So.3d 844 (citing *La. Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C.,* 11–0912, pp. 4–5 (La.12/6/11)), 79 So.3d 978, 981. A "step" is a formal action before the court intended to hasten the suit towards judgment or is the taking of formal discovery. *Id*. at p. 7, 106 So.3d at 287; *Meyers*, 05–1142, p. 3, 932 So.2d 719, 721. There are two judicially recognized exceptions to the abandonment rule. The first exception is based on the doctrine of *contra non valentem*, and applies where the plaintiff is prevented by circumstances beyond his control from prosecuting a case. The second exception applies where the defendant has waived his right to assert abandonment by taking actions inconsistent with an intent to consider the case abandoned. *Meyers*, 05–1142, p. 3, 932 So.2d 719, 721–22; *Olavarrieta v. St. Pierre*, 04–1556, pp. 4–5 (La. App. 4 Cir. 5/11/05), 902 So.2d 566, 569.
>
> Additionally, "[t]he Louisiana Supreme Court has indicated that La. C.C.P. art. 561 is to be liberally construed in favor of maintaining a plaintiff's suit." *Delacruz v. Anadarko Petroleum Corp.*, 14-0433, p. 7 (La. App. 4 Cir. 12/3/14), 157 So. 3d 790, 794 (citing *Clark v. State Farm Mut. Auto. Ins. Co.,* 00–3010, p. 8 (La.5/15/01), 785 So.2d 779, 785). *See also Williams v. Abadie*, 03–0605, p. 4 (La. App. 4 Cir.

> 9/24/03), 857 So.2d 1118, 1121. "Indeed, our jurisprudence has uniformly followed this principle, recognizing that 'dismissal is the harshest of remedies.'" *Id.* (quoting *Prestenback v. Hearn*, 11–1380, p. 4 (La. App. 4 Cir. 2/22/12), 85 So.3d 256, 259); *Succession of Sigur v. Henritzy*, 13–0398, p. 9 (La. App. 4 Cir. 9/18/13), 126 So.3d 529, 536; *Brown v. Michaels Stores, Inc.,* 07–772, p. 5 (La. App. 5 Cir. 2/19/08), 980 So.2d 62, 65. "Our jurisprudence also indicates that 'any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and against dismissal for abandonment.'" *Id.* (quoting *Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C.,* 11–0912, p. 5 (La.12/6/11), 79 So.3d 978, 982. *See also, Clark*, 00–3010, p. 10, 785 So.2d at 787).

Heirs of Simoneaux, 2013-0760, pp. 3-4, 131 So.3d at 1130-31.

Here, Crum & Forster argued that the parties to the instant action have not taken a "step" or "formal action" action towards the prosecution or defense of this case since October 13, 2014, when defendant, General Star, filed its answer to Cambrie Celeste's original petition. Crum & Forster filed its *ex parte* motion for order of dismissal on the grounds of abandonment on November 27, 2017, which is more than the three-year period required by La. C.C.P. art. 561. Crum & Forster also indicated in its motion for order of dismissal that "[c]ounsel for Crum & Forster filed a motion to enroll additional counsel in this matter on May 12, 2017, and [c]ounsel for plaintiff filed a motion to substitute counsel of record on March 9, 2017." However, Crum & Forster asserted that such motions did not constitute "formal steps" toward the prosecution or defense of the action in accordance with La. C.C.P. art. 561. Based upon that evidence, on November 29, 2017, the trial court granted Crum & Forster's motion, ordering that all of Cambrie Celeste's claims were dismissed with prejudice.

In filing its motion for new trial, Cambrie Celeste argued that in liberally construing the provisions of La. C.C.P. art. 561, Louisiana courts have noted the

following two jurisprudential exceptions to the abandonment rule that are the only causes outside of the record permitted to interrupt abandonment:

> (1) a plaintiff-oriented exception based on contra non valentem, that applies when failure to prosecute is caused by circumstances beyond the plaintiff's control [the “Plaintiff–Oriented Exception”]; and
>
> (2) a defense-oriented exception based on acknowledgment, that applies when the defendant waives his right to assert abandonment by taking actions inconsistent with an intent to treat the case as abandoned [the “Defense–Oriented Exception”].

Juengain v. Tervalon, 2017-0155, p. 8 (La. App. 4 Cir. 7/26/17), 223 So.3d 1174, 1180–81, *reh'g denied* (Sept. 5, 2017), *writ denied*, 2017-1648 (La. 11/28/17), 229 So.3d 934, and *writ not considered*, 2017-1648 (La. 1/29/18), 233 So. 3d 607 (citing *Clark*, 2000–3010 at p. 7, 785 So.2d at 784–85).

Plaintiff-Oriented Exception

In its memorandum in support of the motion for new trial, Cambrie Celeste argued that on August 3, 2017, Nicole Armbruster filed for Chapter 13 bankruptcy, allegedly “staying all actions relating to her property, specifically including F.I.N.S.” Cambrie Celeste further argued that because of such filing, it was prevented from prosecuting the claims asserted in this case. However, in reviewing the evidence contained in the record, we find Cambrie Celeste’s argument is without merit.

It is noted in the Notice of Bankruptcy Case Filing that “in most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor’s property.” Notably, Cambrie Celeste provided no legal or jurisprudential support for its argument that the instant action was in fact stayed by the filing of bankruptcy by a non-party in a separate case. We also note that the notice of bankruptcy case filing does not provide any specific

details other than the name and address of the debtor, Nicole Armbruster, and the assigned case number: 17-12056. Furthermore, as noted by relators, the record is void of any evidence that a notice of bankruptcy stay was filed in this case.

Consequently, we find that without evidentiary support, the filing of Chapter 13 bankruptcy by Ms. Armbruster, a non-party, did not prevent Cambrie Celeste from prosecuting its claims against the defendants in this case, and the "plaintiff-oriented exception" to abandonment is inapplicable to the instant action.

Defendant-Oriented Exception

Cambrie Celeste argued that the defendants[4] waived their right to assert abandonment because defendant, Robert Armbruster, engaged in "formal" settlement negotiations via arbitration, and "expressly attempted to enforce the settlement of the above-captioned action in both the trial court and the Fourth Circuit." Cambrie Celeste further argued that Mr. Armbruster "judicially acknowledged that the automatic stay applied to F.I.N.S. when he filed his "Notice of Bankruptcy Case Filing and Automatic Stay" in *Armbruster v. Avalon RE: Partners, LLC & Steven Anderson*, Case No. 16-16327 on the docket of the U.S. District Court for the Eastern District, in which F.I.N.S. is a party, seeking to stay that case and claims relating to F.I.N.S."

Concerning the latter argument, we find that Cambrie Celeste's memorandum in support of its motion for new trial contains insufficient evidence to substantiate this argument. Particularly, Cambrie Celeste attached a one-page exhibit to its memorandum, "exhibit 2," but failed to provide any additional

[4] As noted by General Star in its supplemental opposition to the motion for new trial, Cambrie Celeste referred to "defendants," collectively, suggesting that all defendants in the instant action have been involved in settlement negotiations. However, Robert Armbruster is the only defendant in this case that has been involved in proposed settlement negotiations in a separate and wholly unrelated case, and therefore, we find Cambrie Celeste's generalized statements misleading.

information explaining how that document constituted judicial acknowledgement that the automatic stay in Ms. Armbruster's Chapter 13 bankruptcy proceeding extended to automatically stay all actions relative to F.I.N.S. As such, we reject Cambrie Celeste's argument based upon insufficiency of the evidence.

In opposition to the motion for new trial, relators argued that the proposed settlement agreement referenced in *Community Capital Partners, LLC v. Robert Armbruster, Specialized Response Group, LLC and Bank of New Orleans,* Case No. 2012–6629 c/w 2014–2136, was nothing more than informal settlement negotiations, which Louisiana courts have deemed insufficient to constitute steps in the prosecution of a case. *See Clark*, 2000-3010, p. 16, 785 So.2d at 790 ("'[e]xtrajudicial efforts,' such as informal settlement negotiations between the parties, have uniformly been held to be insufficient to constitute a step for purposes of interrupting abandonment.") (citing 1 Frank L. Maraist & Harry T. Lemmon, Louisiana Civil Law Treatise: Civil Procedure § 10.4 at 242 (1999). *See also Tasch, Inc. v. Horizon Grp.,* 2008-0635, pp. 2-3 (La. App. 4 Cir. 1/7/09), 3 So.3d 562, 564; *Madison v. Touro Infirmary, et. al.,* 2002–0799 (La. App. 4 Cir. 8/14/02), 826 So.2d 568; *Alexander v. Liberty Terrace Subdivision, Inc.*, 99–2171 (La. App. 4 Cir. 4/12/00), 761 So.2d 62.

Crum & Forster further argued that an action, whether considered "formal" or "informal," taken by a single defendant in a separate and unrelated case cannot serve as evidence that the parties to the instant action have waived their right to assert abandonment. In so arguing, Crum & Forster relied upon *Sassau v. Louisiana Workover Serv., Inc.,* 607 So.2d 809 (La. App. 1 Cir. 1992), wherein the First Circuit considered a similar issue.

In *Sassau*, the plaintiff filed suit against numerous defendants, asserting claims of worker's compensation and wrongful death. *Sassau*, 607 So.2d at 811. Prior to that suit, one of the defendants, a manufacturing corporation, filed Chapter 11 bankruptcy in federal court, and as a result, the proceedings before the trial court were automatically suspended pending bankruptcy. *Id*. Upon motion of the plaintiff, the bankruptcy court later modified the automatic stay, thereby allowing the plaintiff to proceed with the pending tort action in the trial court. *Id.* The *Sassau* court noted that while the defendant-manufacturing corporation filed several motions in the federal bankruptcy proceeding, no further steps were taken in the tort action in the trial court for a period of five years. *Id*. As such, two other defendants to the action filed a motion to dismiss the plaintiff's suit on the grounds of abandonment pursuant to La. C.C.P. art. 561. *Id*. The trial court granted the motion to dismiss and denied the plaintiff's subsequent motion for new trial. *Id*.

The sole issue on appeal was whether the actions taken before the bankruptcy court, by the defendant-manufacturing corporation, constituted actions in furtherance of the claim in the tort action sufficient to suspend the provisions of La. C.C.P. art. 561 as to the remaining defendants. *Id*. In affirming the trial court's judgments, the First Circuit reasoned:

> It is well settled that when any party to a lawsuit takes formal action in the trial court, it is effective as to all parties for the purpose of preventing abandonment. *Delta Development Company Inc. v. Jurgens*, 456 So.2d 145 (La.1984). However, the instant case presents the question of whether this rule can be extended to cover formal actions taken in a separate bankruptcy proceeding involving one of the defendants in the state court action.
>
> The plaintiff contends that the Louisiana courts have recognized that steps taken in the prosecution of a claim in one of two parallel actions will serve to preserve both actions. In support of its position, the plaintiff cites *Reed v. Pittman*, 257 La. 389, 242 So.2d 554 (1970), *Brumfield v. Varner*, 561 So.2d 1376 (La.1990), and *Home Indemnity*

> *Company v. Central Louisiana Electric Company*, 384 So.2d 455 (La. App. 3d Cir.), writ denied, 392 So.2d 664 (La.1980). We believe the plaintiff's reliance on the cited cases is misplaced. In *Reed* the court held that where separate suits are consolidated for trial, steps in the prosecution or defense of one suit would constitute formal action in both suits sufficient to prevent the dismissal of the nonactive suit for lack of prosecution. Similarly in *Brumfield*, where a consolidation motion was filed and subsequently misfiled, the court permitted the actions taken in one suit to prevent the dismissal of the consolidated suit. In *Home Indemnity*, the court held that the filing of an intervention by a third party constituted formal action which interrupted the five-year prescriptive period as to the original party's suit. We do not accept the plaintiff's attempt to equate consolidated state court proceedings, involving the same parties, with a state court proceeding and a federal bankruptcy proceeding involving only one of the state court defendants. Nor can we draw a parallel between the actions taken in the bankruptcy proceeding in the instant case and the intervention by a party to the state court proceeding. We believe that the cited cases are distinguishable from the instant case for obvious reasons, and we hold that the rationale of these cases should not be extended to the situation presented herein.
>
> We find further support for our position in the federal jurisprudence which holds that a stay in bankruptcy as to one defendant has no effect on claims pending against a co-defendant in the same suit. *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir.1983); *GATX Aircraft Corporation v. M/V Courtney Leigh*, 768 F.2d 711 (5th Cir.1985). Accordingly, the plaintiff was never precluded from proceeding in the state action against the remaining defendants. Moreover, the plaintiff requested and received a modification of the automatic stay for the purpose of proceeding against the debtor in the instant suit. Under the facts of the instant case we see no reason in law or equity to permit the actions taken by one defendant, Cooper, in a separate bankruptcy proceeding to constitute actions in furtherance of the claim in the instant suit sufficient to suspend the provisions of LSA-C.C.P. art. 561 as to the remaining defendants.

Sassau, 607 So. 2d at 812.

At the outset, this Court recognizes that *Sassau* involved the question of whether formal actions taken in a federal court case by one of the defendants in the state court action, is effective as to all parties in the state court case for the purpose of preventing abandonment. As stated in the above excerpt, the *Sassau* court rejected the plaintiff's attempt to "equate consolidated state court proceedings,

involving the same parties, with a state court proceeding and a federal bankruptcy proceeding involving only one of the state court defendants." *Sassau*, 607 So. 2d at 812.

Here, the *Sassau* court's reasoning is even more relevant because there are two state court proceedings which are not consolidated and involved different parties. Without considering whether the settlement negotiations and later-filed motion to enforce a proposed settlement agreement in another separate and unrelated case constitute "formal" or "informal" actions, the question here is whether those actions taken in state court case "A," by one of the defendants in a separate state court case "B", are effective as to all parties in state court case "B" for the purpose of preventing abandonment.

Applying the *Sassau* court's analysis, this Court finds that the acts of engaging in settlement negotiations and later filing a motion to enforce a proposed settlement agreement in separate and unrelated cases, involving only one of the defendants in this case, is not effective as to the remaining parties in this action for the purpose of preventing abandonment. Notwithstanding this fact, Cambrie Celeste asserted that, through arbitration, Mr. Anderson and Mr. Armbruster were negotiating an agreement to settle all claims and disputes between them and their respective companies, and such claims and disputes included those alleged in this case. As evidence, Cambrie Celeste highlighted the following excerpt from the proposed settlement agreement:

> 7. Steven Anderson *will file a motion to dismiss with prejudice* all claims pending in the case entitled *Cambrie Celeste, LLC v. F.I.N.S. Construction, LLC, et al*, Case No. 2013-10539, pending in the Civil District Court for the Parish of Orleans, State of Louisiana. Robert Armbruster or the Armbruster Entities shall not be responsible for remediation of the alleged construction defects at issue in this case. (emphasis added).

However, Cambrie Celeste's characterization of the settlement negotiations as "formal actions" is also incorrect because, by its own admission, the parties in *Community Capital* could not agree on a final settlement agreement. Essentially, this "proposed final settlement agreement" is an unexecuted document by parties in a separate and unrelated case. Nonetheless, even if the actions taken in *Community Capital* constituted "formal actions," based upon the *Sassau* court's analysis, such actions still would be insufficient to suspend the provisions of La. C.C.P. art. 561 in this case.

The record contains further evidence supporting relators' argument that the settlement negotiations and motion to enforce the proposed settlement agreement which occurred in *Community Capital* did not constitute a waiver of asserting abandonment. In F.I.N.S.' and Mr. Armbruster's opposition to Cambrie Celeste's supplemental memorandum in support of the motion for new trial, they relied upon *Cambrie Celeste LLC v. Starboard Mgmt., LLC*, 2016-1318 (La. App. 4 Cir. 11/6/17), 231 So.3d 79, *writ denied*, 2017-2041 (La. 2/2/18), 235 So.3d 1110, wherein this Court addressed whether the settlement negotiations referenced in *Community Capital* had any relevance to a separate and unrelated case.

The *Cambrie Celeste* court reasoned:

> Defendants [the Armbrusters' entitites] reference, on appellate review, a judgment which denied a "Motion to Enforce Settlement Agreement." A review of the record demonstrates that no such motion was ever filed, nor did the trial court issue a judgment denying such motion in this case. Plaintiffs [Mr. Anderson's entities] contend Defendants "play fast and loose with their wording" to cloud this Court's understanding of the events that transpired, what parties were involved, and in what cases.
>
> The record indicates that Mr. Anderson, the principal of the Plaintiff companies, and the Armbrusters, the principals of the Defendant companies, are also principals of other various entities that

> conducted business together and which ended in litigation and/or arbitration. One of those disputes, *Community Capital Partners, LLC v. Robert Armbruster, Specialized Response Group, LLC and Bank of New Orleans*, Case No. 2012–6629 c/w 2014–2136 ("Community Capital"), was allotted to the same division and trial judge as the instant matter, but was a completely separate and unrelated case with different parties and issues.
>
> The parties in *Community Capital* attempted to reach a settlement agreement, although unsuccessfully. Nevertheless, Mr. Armbruster sought to enforce what he believed was a settlement agreement. His request was denied by the arbitration panel, so Mr. Armbruster filed a "Motion to Enforce Settlement" in *Community Capital*, which was pending before the trial court. The trial court denied the motion, and Mr. Armbruster sought supervisory review. This Court denied writs on March 9, 2016. *However, in the above-captioned matter, the trial court did not consider any motion to enforce settlement or issue a judgment denying the motion.*
>
> *The fact that the same trial judge rendered judgment on a motion to enforce settlement in another unrelated case is irrelevant where the motion to enforce was never filed or made a part of the record herein. Therefore, this Court lacks subject matter jurisdiction to review, within the context of this appeal, the denial of a motion to enforce settlement agreement filed in a separate, unrelated matter.*

Cambrie Celeste, 2016-1318, pp. 13-14, 231 So.3d at 86–87 (emphasis added).

Applying the *Cambrie Celeste* court's analysis, we find that the proposed settlement negotiations that occurred in a separate and unrelated case involving different parties and issues, are irrelevant where those settlement negotiations never took place in this case, and a final settlement agreement was never filed or made a part of the record herein. Therefore, based upon *Sassau* and *Cambrie Celeste*, we find the "defense-oriented exception" to abandonment is inapplicable to the case at hand.

As previously stated, in the instant action, the parties have not engaged in any settlement negotiations nor has Cambrie Celeste ever filed a motion to dismiss this action with prejudice, as referenced in the proposed final settlement agreement in *Community Capital*. In fact, at the March 27, 2018 hearing on the motion for

new trial, the trial court acknowledged that while Mr. Anderson and Mr. Armbruster were part of settlement negotiations in a separate and unrelated case, none of the defendants present at the hearing were part of such negotiations and were unaware that such negotiations had occurred.

Nevertheless, the trial court granted the motion for new trial, reasoning:

> My biggest concern is this, and this is where I don't like playing games, and so my problem is, and, it sounds to me like there is a question regarding whether or not the intent at least was not as relates to the settlement to attempt to shut down all litigation that was pending. That being the case, despite the fact that you 4 people who are standing in front of me and 5th, somebody just stood up, 5 people that are standing in front of me have suggested that ya'll didn't have a part of it. I'm not inclined to, I'm inclined to grant a new trial and I'm inclined, ya'll can raise your hand all you want, but the remedy you're going to get is at the Fourth Circuit because I'm not inclined, you can stand up too.
>
> I'm not inclined with the quagmire in front of me and the questions in front of me, and I'm going to make sure I say this on record because, probably my law clerks know this, a lot of the cases dealing with abandonment probably have my name on it and the reason for that is because what an abandonment is intended to do, and I'm saying this for the record, it is intended that in those cases where a lawsuit is filed, and the lawyer and/or the client do absolutely nothing, there is no attempt to resolve, there is no attempt to engage, but in fact people are sitting on their hands and their file is collecting dust and no parties are making any effort, that's not what we see here. *What I see here is a quagmire that is wrapped up in multiple litigations where perhaps the lawyers sitting in front of me were not engaged but other people who had some conversation relative to the cause of action named in this litigation, those people were attempting somewhere else to end litigation such as this one.* I don't think the intent of abandonment is to abandon a case like this. And so I am going to grant a new trial.
>
> I am not going to have that abandonment sit on my docket, and so if ya'll think ya'll can get a different ruling in the Fourth Circuit you're more than welcome to go there, but *I am making sure I say for the record that I think it is very clear to me that there was an intent to, at least it's been suggested that there is an intent to wrap up all litigation* into one attempt so that there are no longer these 7 matters that are populated throughout this courthouse and there is perhaps the first litigation which began, apparently, and which is the one that where everybody took the lead in, so I'm granting the motion for new

> trial… and I'm, I guess I go to figure out if I'm going to let you – I am reversing the abandonment case as back lot [sic]. Thank you all so much. (emphasis added).

The trial court's reasoning further substantiates relators' argument that the November 28, 2017 order dismissing the instant action on the grounds of abandonment was clearly not contrary to the law and evidence. Contrary to the trial court's appreciation of the facts of this case, the numerous lawsuits filed by Steven Anderson, Robert Armbruster, and Nicole Armbruster involve different sets of facts and circumstances and assert different claims. More importantly, the trial court acknowledged that other people, not present at the March 27, 2018 hearing, "were attempting somewhere else to end litigation such as this one," and "at least it has been suggested that there was an attempt to wrap up litigation." Such acknowledgments are also contrary to the provisions of La. C.C.P. art. 561 and the applicable jurisprudence, which require the "step in the prosecution of the case" to be a "formal action," taken in the proceeding and appearing in the record. *See Heirs of Simoneaux, supra*. The record is void of any evidence that the parties in the instant action ever engaged in any settlement negotiations or attempted to execute a settlement agreement in this proceeding and/or that such actions ever appeared in the record.

Furthermore, Louisiana courts have held that a motion for new trial should be granted when the judgment appears clearly contrary to the law and evidence or if there is good ground for granting said motion. *See* La. C.C.P. arts. 1972 and 1973. Here, we find that Cambrie Celeste has not sufficiently demonstrated that the November 28, 2017 order dismissing the instant action on the grounds of abandonment was clearly contrary to the law and evidence nor has it shown that

there is good ground for obtaining a new trial. Consequently, we find that the trial court abused its discretion in granting Cambrie Celeste's motion for new trial.

CONCLUSION

For the foregoing reasons, we grant relators' writ, reverse the trial court's judgment granting Cambrie Celeste's motion for new trial, and reinstate the order of dismissal on the grounds of abandonment.

WRIT GRANTED; JUDGMENT REVERSED