T M F HOTEL PROPERTIES, L.L.C.	*	**NO. 2018-CA-0079**
	*	
VERSUS		**COURT OF APPEAL**
	*	
CRESCENT CITY CONNECTIONS 501(C) 7 GRIS-GRIS PLEASURE AIDE & SOCIAL CLUB	*	**FOURTH CIRCUIT**
		STATE OF LOUISIANA
	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-07094, DIVISION "M"
Honorable Paulette R. Irons, Judge
* * * * * *

Judge Rosemary Ledet
* * * * * *

(Court composed of Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Regina Bartholomew-Woods)

JENKINS, J., CONCURS IN THE RESULT

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REVERSED AND REMANDED

NOVEMBER 28, 2018

This is a summary eviction proceeding. The plaintiff, T M F Hotel Properties, L.L.C. ("TMF"), is the lessor; the defendant, Crescent City Connections 501(C) 7 Gris-Gris Pleasure Aide & Social Club ("Crescent City"), is the lessee.[1] On October 19, 2017, the trial court denied a declinatory exception of *lis pendens* filed by Crescent City and granted a judgment of eviction in favor of TMF. Crescent City appealed. For the reasons that follow, we reverse the trial court's ruling on the exception of *lis pendens* and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

This matter involves two different, but interrelated, leases: (i) the lease of a commercial building, which is the subject of this eviction proceeding—the "Building Lease"; and (ii) the lease of lots adjacent to the commercial building—the "Lots Lease." Both leases were executed on January 5, 2017. Both leases were for the same five-year term.

[1] We note that the defendant's name is spelled differently in the caption and in the body of the Petition for Eviction. The correct spelling appears in the body of the petition, which reads as follows: "defendant herein is Crescent City Connection 501(C)7 Gris-Gris Pleasure Aide & Social Club ('Crescent City'), a Louisiana non-profit corporation domiciled in the Parish of Orleans, State of Louisiana."

In the Building Lease, the leased premises were identified as "all buildings and improvements thereon bearing municipal number 1377-1381 Annunciation Street [in New Orleans, Louisiana], comprising approximately 8,295 sq.ft. of building." In the Lots Lease, the leased premises were identified as "lots 1, 8, 7.6, and 5 of lot 115 on Annunciation adjacent to building located at 1377 Annunciation." Both leases identified the "Use" of the leased premises as follows: "solely for the purposes of office space, restaurant and bar with live music venue as permitted by the City of New Orleans."[2]

Both leases identified the lessor as TMF. The Building Lease identified the lessee as "Crescent City Connection 501(C)7 acting through its manager Edward Trent Robinson." The Lots Lease identified the lessee as "Edward Trent Robinson d/b/a Crescent City Connections (501C7)." Both leases included a virtually identical footer on the right hand, bottom corner of each page of the lease that read as follows:

- *Building Lease*: "Lease between TMF Hotel Properties, LLC And Crescent City Connections (501(c)7)";
- *Lots Lease*: "Lease between TMF Hotel Properties, LLC And Crescent City Connections (501C7)."

Neither lease refers to the business entity by its full, non-profit corporation name—Crescent City Connection 501(C)7 Gris-Gris Pleasure Aide & Social Club.

Litigation between the parties commenced on May 1, 2017, when "Edward Trent Robinson d/b/a Crescent City Connections 501(C)7" filed a petition for damages against TMF in Civil District Court for the Parish of Orleans ("CDC").

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[2] In the prior appeal regarding Mr. Robinson's application for a permit to use the leased premises for that purpose, it was noted that "Mr. Robinson leased the Property from Tim Bonura/TMF Hotel Properties." *Robinson v. City of New Orleans*, 18-0032 (La. App. 4 Cir. 5/16/18), 247 So.3d 791, 793, *writ denied*, 18-0998 (La. 10/8/18), ___ So.3d ___, 2018 WL 5004885.

Edward Trent Robinson d/b/a Crescent City Connection 501(C)7 v. TMF Hotel Properties, L.L.C., CDC No. 2017-4134 (the "Damages Suit"). In the Damages Suit, the relief sought was damages arising out of TMF's alleged violation of the Building Lease and the Civil Code articles on leases.

About three months after the Damages Suit was filed, and while the Damages Suit was still pending, TMF commenced this summary eviction proceeding against Crescent City, as the lessee under the Building Lease (the "Eviction Suit"). TMF alleged that Crescent City had failed to pay three months of rent—May, June, and July 2017[3]—as well as other items it was obligated to pay under the Building Lease. As a result, TMF asserted that Crescent City was in default and that TMF was entitled to a judgment of eviction.

In response, Crescent City filed an answer and a declinatory exception of *lis pendens.*[4] In its answer, Crescent City admitted that "TMF and Edward Trent Robinson, d/b/a and/or on behalf of Crescent City entered into two Lease agreements, effective January 5, 2017." In its exception of *lis pendens*, Crescent City contended that the Damages Suit constituted a pending prior suit between the same parties on the same transaction or occurrence.

Following a hearing, the trial court denied Crescent City's exception of *lis pendens* and granted TMF's petition for eviction.[5] This appeal followed.

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[3] Pursuant to the Building Lease, Crescent City's obligation to pay monthly rent of $15,000.00 commenced in April 2017.

[4] Although the exception of *lis pendens* was initially filed by Mr. Robinson doing business as Crescent City, Crescent City filed a subsequent exception of *lis pendens* in which it adopted Mr. Robinson's earlier-filed exception.

[5] Although the trial court denied the exception of *lis pendens*, the trial court, at the hearing, recognized that "[t]his [case] should have been [consolidated]—this should have been transferred because then we have all the parties here and we have multiple suits here." The record indicates

DISCUSSION

The sole issue presented in this case is whether the trial court erred in denying Crescent City's declinatory exception of *lis pendens*.[6] A trial court's ruling on an exception of *lis pendens*, pursuant to La. C.C.P. art. 531, presents a question of law; thus, it is reviewed *de novo*. *An Erny Girl, L.L.C. v. BCNO 4, L.L.C.*, 16-1011, 16-1012, p. 9 (La. App. 4 Cir. 3/30/17), 216 So.3d 833, 839, *writ denied*, 17-0815 (La. 6/29/17), 222 So.3d 48. Stated differently, "'the appellate court's standard of review is simply whether the trial court's interpretive decision is legally correct.'" *Parker v. Tulane-Loyola Fed. Credit Union*, 15-1362, p. 5 (La. App. 4 Cir. 5/25/16), 193 So.3d 441, 444-45 (quoting *First Bank & Trust v. Simmons*, 14-1210, p. 24 (La. App. 4 Cir. 4/22/15), 165 So.3d 1025, 1040).

Since a 1990 amendment, La. C.C.P. art. 531, the provision setting forth the exception of *lis pendens*, has provided as follows:

> When two or more suits are pending in a Louisiana court or courts on the same transaction or occurrence, between the same parties in the same capacities, the defendant may have all but the first suit dismissed by excepting thereto as provided in Article 925. When the defendant does not so except, the plaintiff may continue the prosecution of any of the suits, but the first final judgment rendered shall be conclusive of all.

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that there are other suits between the parties, some of which were consolidated; however, only the Damages Suit and Eviction Suit are before us on appeal.

[6] On appeal, Crescent City asserts the following two assignments of error:

1. The district court erred in denying Appellant's Exception of *Lis Pendens*, because the requirements of Louisiana Code of Civil Procedure article 531, which govern the Exception of *Lis Pendens*, had been satisfied.

2. The district court erred in granting the Eviction in favor of Appellee, because Appellee did not prove a justified legal basis for the eviction.

Because we find Crescent City's first assignment of error persuasive, we do not reach its second one.

The doctrine of *lis pendens* is closely related to the doctrine of *res judicata*. This close relationship is reflected in the Legislature's contemporaneous amendments to the *lis pendens* and *res judicata* statutory provisions in 1990. *See* Comments to La. C.C.P. art. 531 (noting that this article was amended in 1990 "to conform to the changes made in the defense of *res judicata* by La. Rev. Stat. Ann. §§ 13:4231, 423").

As the Louisiana Supreme Court has observed, "[t]he 'test' established to determine if an exception of *lis pendens* should be sustained is the same as that for *res judicata*; thus, an exception of *lis pendens* should be sustained if 'a final judgment in the first suit would be *res judicata* in the subsequently filed suit.'" *Aisola v. Louisiana Citizens Prop. Ins. Corp*., 14-1708, p. 4 (La. 10/14/15), 180 So.3d 266, 269 (quoting *United Gen. Title Ins. Co. v. Casey Title, Ltd*., 01-600, p. 8 (La. App. 5 Cir. 10/30/01), 800 So.2d 1061, 1065, and citing *Domingue v. ABC Corp*., 96-1224 (La. App. 4 Cir. 6/26/96), 682 So.2d 246, 248).[7]

Construing La. C.C.P. art. 531, the jurisprudence has required that an exception of *lis pendens* must satisfy the following three elements:

1. Two or more pending suits;
2. The pending suits involve the same transaction or occurrence; and
3. The pending suits involve the same parties in the same capacities.

Simmons, 14-1210, p. 26, 165 So.3d at 1041 (internal footnotes omitted).

[7] "In determining whether this requirement is met, the crucial inquiry is not whether the second suit is based on the same cause of action as the first suit, but whether the second suit asserts a cause of action that arises out of the same transaction or occurrence that was the subject matter of the first suit." *Citizens Sav. Bank v. G & C Dev., L.L.C*., 12-1034, p. 7 (La. App. 1 Cir. 2/15/13), 113 So.3d 1085, 1089. "Even before the 1990 amendment, this was referred to as a 'fair test' for determining *lis pendens*." *First Bank and Trust v. Simmons*, 14-1210, p. 25 (La. App. 4 Cir. 4/22/15), 165 So.3d 1025, 1040-41 (citing 1 Frank L. Maraist and Harry T. Lemmon, LOUISIANA CIVIL LAW TREATISE: CIVIL PROCEDURE § 6.5 (1999)).

Here, the first element is not disputed. At least two suits—the Damages Suit and the Eviction Suit—are pending in separate divisions of the Civil District Court for the Parish of Orleans. The second and third elements require further discussion. Although there is some overlap between these elements in this case, we analyze them separately for ease of discussion.

Same Transaction or Occurrence

One of the changes the Legislature made in 1990 to La. C.C.P. art. 531 was to replace the term "cause of action" with the term "transaction or occurrence."[8] Since the 1990 amendment, there is no longer a requirement that the pending suits share the same cause of action; instead, La. C.C.P. art. 531 requires only that the pending suits arise out of the same transaction or occurrence. *Pontchartrain Materials Corp. v. Quick Recovery Coatings Servs., Inc*., 10-1476, 10-1477, p. 10 (La. App. 4 Cir. 5/6/11), 68 So.3d 1113, 1119 (citing *Glass v. Alton Ochsner Med. Found.*, 02-0412, pp. 5-6 (La. App. 4 Cir. 11/6/02), 832 So.2d 403, 406-07).[9]

"No one test exists for determining what constitutes the same 'transaction or occurrence.' What constitutes a transaction or occurrence must be determined on a

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[8] Another change was to remove the requirement that the actions have the "same object." *An Erny Girl*, 16-1011, p. 12, n. 13, 216 So.3d at 841 (observing that "[t]he 1990 amendment removed not only the same cause of action requirement, but also the same object requirement"). Before the 1990 amendment, La. C.C.P. art. 531 read as follows: "[w]hen [i] two or more suits are pending in a Louisiana court or courts [ii] on the same cause of action, [iii] between the same parties in the same capacities, and [iv] having the same object, the defendant may have all but the first suit dismissed by excepting thereto as provided in Article 925." *Id.*

[9] Addressing this change, one commentator has noted that the Legislature's intention was to broaden the scope of the application of *lis pendens*; the commentator stated as follows:

> The purpose of the change in language was to broaden the scope of the lis pendens doctrine. The phrase "transaction or occurrence" has a much broader meaning than the phrase "cause of action." Generally, a "transaction or occurrence" consists of two or more connected acts and/or agreements. A "cause of action," on the other hand, involves a single theory of recovery or remedy.

1 Steven R. Plotkin and Mary Beth Akin, LA. PRAC. CIV. PROC., Article 531 (2016 ed.).

case-by-case basis." *Parker*, 15-1362, p. 7, 193 So.3d at 445-46 (internal citations omitted). Nevertheless, the jurisprudence has identified some definitions, including the following: "a group of facts so connected together as to be referred to by a single legal name; as . . . a contract"; or "[a]ll logically related events entitling a person to institute legal action against another generally are regarded as comprising a 'transaction or occurrence.'" *Hy-Octane Invs., Ltd. v. G & B Oil Prods., Inc*., 97-28, p. 6 (La. App. 3 Cir. 10/29/97), 702 So.2d 1057, 1060 (internal citations omitted).

In this case, Crescent City contends that the Damages Suit and the Eviction Suit involve the same transaction or occurrence because both suits arise from alleged breaches of the Building Lease. TMF counters that the earlier-filed Damages Suit seeks only damages and, thus, has a "different object" than the Eviction Action, which is "a summary action which involves the single issue of whether the owner is entitled to possession of the premises." *Capone v. Kenny*, 94-0888, p. 2 (La. App. 4 Cir. 11/30/94), 646 So.2d 510, 512; *see also Brignac v. Brignac*, 419 So.2d 1313, 1315 (La. App. 4th Cir. 1982). Thus, TMF contends that the trial court correctly concluded the Damages Suit involves "different causes and they're different demands."

TMF's argument that the two suits present different objects is misplaced. This same argument was rejected in *Spallino v. Monarch Sign Co*., 00-447, p. 5 (La. App. 3 Cir. 10/11/00), 771 So.2d 784, 786. Explaining why this argument is misplaced, we observed in *An Erny Girl* the following:

> In *Spallino*, the appellate court rejected the landlord's argument that a lis pendens exception was not applicable to a summary eviction proceeding filed after an ordinary suit. The appellate court noted that "[t]he critical point expressed in [the landlord's] argument is that the two types of suits are not subject to a claim of *lis pendens* because

> they have different objects, in that one suit seeks to obtain ownership and the other seeks an eviction." *Spallino*, 00-447 at p. 7, 771 So.2d at 788. Rejecting this argument, the appellate court noted that the requirement of identity of the objects of suits was expressly repealed by the 1990 amendment to the *lis pendens* article. *Id*. The appellate court thus held that "the fact that different types of relief are requested does not always exclude consideration of the exception of *lis pendens* when those suits involve the same issues." *Spallino*, 00-447 at p. 8, 771 So.2d at 788.

An Erny Girl, 16-1011, 16-1012, p. 15, n. 16, 216 So.3d at 843.

To determine whether the same transaction or occurrence element is met, we must determine whether the Damages Suit and the Eviction Suit involve the same issues. If, as Crescent City contends, both the Damages Suit and the Eviction Suit are based on an interpretation of the Building Lease, the second *lis pendens* element is met. *An Erny Girl*, 16-1011, 16-1012, p. 13, 216 So.3d at 841-42.[10] In *An Enry Girl*, we found the second element was not met because there was no overlap between the issues presented in the first-filed declaratory judgment action and the subsequently-filed eviction action. In reaching that result, we observed:

> The Second Eviction Action, as BCNO 4 contends, is not based on the effectiveness of Erny Girl's purported renewal of the Lease. Rather, it is based on Erny Girl's judicial admission in its Declaratory Action that the Lease terminated on June 9, 2016. As BCNO 4 points out, "[t]he thing demanded in the Declaratory Action (a declaration that the Lease was effective until June 9, 2016) is therefore clearly different than the thing demanded in the Second Eviction Action (eviction of Erny Girl based on its admission that the Lease terminated on June 9, 2016)." The Second Eviction Action seeks to adjudicate Erny Girl's entitlement to possession of the leased premises after June 9, 2016; whereas, the Declaratory Action, on the other hand, seeks to adjudicate Erny Girl's entitlement to possession of the leased premises until June 9, 2016. Thus, there is no overlap in the

[10] In *An Erny Girl*, *supra*, we cited two cases in supporting this principle—*Revel v. Charamie*, 05-0976, pp. 4-5 (La. App. 4 Cir. 2/15/06), 926 So.2d 582, 584-85 (holding that "both actions clearly arise out of the same occurrence, i.e., Ms. Cheramie's occupation of the property"); *Spallino v. Monarch Sign Co.*, 00-447, p. 5 (La. App. 3 Cir. 10/11/00), 771 So.2d 784, 786 (noting that "[a]t the center of both suits instituted by Mr. Spallino is the question of whether or not the lease agreement has been breached.")).

> operative period of time addressed by those two actions. Given the judicial admission, the two actions present two wholly distinct issues.

An Erny Girl, 16-1011, 16-1012, pp. 13-14, 216 So.3d at 842. Given the judicial admission, we found that "the two actions involve claims to entitlement of possession to the lease[d] premises for separate and distinct operative periods—before and after June 9, 2016" and that, thus, the second *lis pendens* element was not met. *Id.*, 16-1011, 16-1012, pp. 16-17, 216 So.3d at 843 (citing *Krecek v. Dick*, 13-0804, pp. 5-6 (La. App. 4 Cir. 2/19/14), 136 So.3d 261, 265) (finding that the second element was not met given that the two actions "involve separate and distinct occurrences, and a judgment in either suit would not constitute *res judicata* in the other.")).[11]

Attempting to analogize this case to *An Erny Girl*, TMF, in its memorandum in opposition to Crescent City's exception of *lis pendens*, argued as follows:

> Crescent City, the tenant, admits that in its earlier-filed suit it is seeking a determination that no valid lease for the building exists, and that the lease should therefore be rescinded. In contrast, in this action, TMF seeks to evict Crescent City for breach of the building lease by

[11] In *An Erny Girl*, we likewise noted that a similar result was reached by this court in *Sauer v. Johnson*, 12-0197 (La. App. 4 Cir. 12/13/12), 106 So.3d 724; we observed as follows:

> In *Sauer*, we found the two pending suits presented different issues based, in part, on a stipulation that the lease had a month-to-month term. In *Sauer*, the tenant first filed a discrimination suit against her landlord, asserting refusal to renew the month-to-month lease and subsequent attempts at eviction were violations of anti-discrimination provisions of the Fair Housing Act, 42 U.S.C. § 3604. The landlord then filed an eviction action. In response, the tenant filed an exception of *lis pendens*.
>
> Affirming the trial court's decision denying the exception, this court reasoned as follows: "even if [the tenant] Ms. Johnson were to receive judgment in her favor on the issue of discrimination, [the landlord] Ms. Sauer would still be able to evict [the tenant] Ms. Johnson without giving any reason because of the fact that the lease is on a month-to-month basis." 12–0197, p. 7, 106 So.3d at 728. Given the stipulation that the lease was on a month-to-month basis, we held that the trial court did not err in denying the exception since a final judgment in the first filed discrimination case would not be *res judicata* in the later filed eviction proceeding. *Id.*

An Erny Girl, 16-1011, 16-1012, p. 16, 216 So.3d at 843.

> its failure to pay rent. Although the object of both suits is different, one critical fact underlies both of them: even according to Crescent City, it has no lease, and therefore has no right to continue to occupy the building from which TMF seeks to evict it. After the eviction. Crescent City will be able to prosecute its alleged damages claims (and TMF will likewise be able to prosecute its damages claims against Crescent City for breach of the lease and non-payment of the rent and other financial obligations). But in the meantime, TMF is entitled to regain immediate possession of the building, and Crescent City raises no defense to that claim. Indeed, it has already conceded that it lacks any right to continue to occupy it.

TMF thus contended that, as in *An Erny Girl*, the requirements for granting an exception of *lis pendens* are not met here.

Contrary to TMF's contention, this case is not analogous to *An Erny Girl*. Crescent City has neither stipulated nor admitted that the five-year lease it signed with TMF terminated on any particular date. As in *Spallino*, at the center of both the Damages Suit and the Eviction Suit is the question of whether the Building Lease has been breached. The transaction or occurrence here is the Building Lease. Thus, the second *lis pendens* element—the same transaction or occurrence—is satisfied.

Same parties in the same capacities

The third, and last, *lis pendens* element—the same parties in the same capacity—has been equated with the "identity of parties" requirement for *res judicata*. *See Revel v. Charamie*, 05-0976, p. 5 (La. App. 4 Cir. 2/15/06), 926 So.2d 582, 585 (citing *Berrigan v. Deutsch, Kerrigan & Stiles, L.L.*P., 01-612, p. 6 (La. App. 4 Cir. 1/2/02), 806 So.2d 163, 167). The "identity of parties" requirement for *res judicata* does not require that the parties be the same physical or material parties "so long as they appear in the same quality or capacity." *Revel*, *supra*.; *Welch v. Crown Zellerbach Corp*., 359 So.2d 154, 156 (La. 1978) (observing that an identity of parties exists "whenever the same parties, their

successors, or others appear so long as they share the same 'quality' as parties"). "The only requirement is that the parties be the same 'in the legal sense of the word.'" *Id*. (quoting *Berrigan*, *supra*).

A person has the same "quality" when he or she appears in the same capacity in both suits or when he or she is privy to a party in the prior suit. *Burguieres v. Pollingue*, 02-1385, p. 8, n. 3 (La. 2/25/03), 843 So.2d 1049, 1054 (citing *Welch*, 359 So.2d at 156, and observing that "identity of parties" means that "the parties must appear in the same capacities in both suits" but that "[i]dentity of parties can also be satisfied when a privy of one of the parties is involved").[12] "Privy," in this context, has been defined as encompassing "representatives and successors, including any person having a legal right or interest in the subject matter of the prior suit derived through succession or assignment from the litigant who asserted the right; or any person whose legal right or interest in the subject matter of the prior suit was asserted by his legal representative." *Furie Petroleum*

[12] The federal court in *Ryals v. Home Indemnity Company* noted the following:

> In a law review article favorably cited in the *Welch* decision, the concept of identity of parties was discussed as follows:
>
> > Res judicata is a relative doctrine in that it only applies to the parties of the prior suit. This identity of parties refers not to physical identity but to identity of "quality". In a suit brought by a tutor or other representative, it is the ward or represented person who is the real party to the suit. In a subsequent suit based on the same cause and having the same object of the demand, the ward would be precluded from relitigating the same questions, but res judicata would not apply to the tutor's suing in his individual capacity. Similarly, when a person is a "successor" to a party in the prior litigation, res judicata properly applies to him because, in legal contemplation, he stands in the shoes of the original party.

576 F.Supp. 780, 788 (W.D. La. 1983) (citing John A. Dixon Jr., Robert W. Bookish Jr. and Paul L. Fimmering, *Res Judicata* in Louisiana since *Hope v. Madison*, 51 TUL.L.REV. 611, 618 (1977)).

Co., L.L.C. v. SWEPI, LP, 49,462, pp. 11-12 (La. App. 2 Cir. 11/19/14), 152 So.3d 255, 262.

Summarizing the federal rule on identity of parties, this court, in *Armbruster v. Anderson*, 18-0055, p. 11 (La. App. 4 Cir. 6/27/18), 250 So.3d 310, 318, recently observed:

> For purposes of federal res judicata, the contours of the requirement that the parties be the same have been defined as follows:
>
> > "[P]arties" for purposes of res judicata does not mean formal, paper parties only, but also includes "'parties in interest, that is, that persons whose interests are properly placed before the court by someone with standing to represent them are bound by the matters determined in the proceeding.' " (quoting 1B J. Moore, Moore's Federal Practice, P.O. 411[1] at 390–391 (2d ed. 1983)) (emphasis supplied). A non-party is in privity with a party for res judicata purposes in three instances. First, if he has succeeded to the party's interest in property, he is bound by prior judgments against the party. Second, if he controlled the prior litigation, he is bound by its result. Third, he is bound if the party adequately represented his interests in the prior proceeding.

Armbruster, *supra* (quoting *Latham v. Wells Fargo Bank, N.A.*, 896 F.2d 979, 983 (5th Cir. 1990)).

In arguing that the same parties element is not met here, TMF essentially asserts the following three arguments: (i) the captions of the petitions are different; (ii) the parties in interest are different; and (iii) Mr. Robinson lacks standing to bring a suit under the Building Lease. We separately address each of these arguments.

The Captions of the Petitions

Admittedly, the case captions of the petitions in the Damages Suit and the Eviction Suit are different. The plaintiff in the Damages Suit is Mr. Robinson, an

individual, doing business as "Crescent City Connections (501C7)"; the defendant in the Eviction suit is Crescent City, a separate juridical entity. *See* La. C.C. art. 24 (providing that "[a] juridical person is an entity to which the law attributes personality, such as a corporation" and that "[t]he personality of a juridical person is distinct from that of its members").

TMF's reliance on the difference between the captions of the petitions to defeat the application of *lis pendens* is misplaced. This court, as Crescent City contends, in *Simmons*, 14-10, p. 27, 165 So.3d at 1041-42, held that "[t]he caption of a pleading is not controlling; rather, courts look to the substance of the pleading." *Id.* (citing *Smith v. Cajun Insulation, Inc*., 392 So.2d 398, 402, n. 2 (La. 1980) (noting that it is well settled that courts look beyond the caption, style, and form of pleadings to determine from the substance of the pleadings the nature of the proceeding)). TMF's first argument is thus unpersuasive.

The Parties in Interest

Focusing on the substance of the petition in the Damages Suit, Crescent City contends that given both the Damages Suit and the Eviction Suit are based on the Building Lease, both cases, by definition, involve the same parties. We agree. Indeed, we reached a similar result in the *Armbruster* case. There, we held that the plaintiffs, the Armbrusters, were privies of the debtor, R&C, given that the Armbrusters were "the principals and the only members of the debtor, R&C; that Mr. Armbruster controlled the prior litigation; and that the Plaintiffs' interests were adequately represented in the Adversary Proceeding." *Armbruster*, 18-0055, pp. 12-13, 250 So.3d at 319. In so holding, we observed that the bankruptcy court, in its judgment, stated that "'[d]espite the many entities and the sometimes multiple interests in the limited liability companies, the basic conflict in case is

between Robert Armbruster as the real plaintiff in interest and Steven Anderson as the real defendant in interest.'" *Armbruster*, 18-0055, pp. 12-13, 250 So.3d at 319.

Here, the basic conflict is between the parties to the Building Lease. The real parties in interest in both the Damages Suit and the Eviction Suit are parties to the Building Lease—Crescent City and TMF. TMF's argument regarding the parties in interest to the two suits being different is unpersuasive.

Mr. Robinson's Lack of Standing

TMF's third, and final, argument is that although the Damages Suit mentions the Building Lease, Mr. Robinson lacked standing to file the Damage Suit on behalf of Crescent City, the lessee of the Building Lease. In support, TMF cites the fact that Mr. Robinson was not a party to the Building Lease and, thus, could not file a suit for breach of the Building Lease.

TMF's challenge to Mr. Robinson's standing to bring the Damages Suit lacks merit for two reasons. First, Mr. Robinson's privy to Crescent City defeats this argument. Second, even assuming there was no privy, the Eviction Suit is the wrong venue for TMF to challenge Mr. Robinson's standing to bring the Damages Suit.[13] Hence, we find this argument unpersuasive.

Summarizing, given the circumstances of this case, we find all three *lis pendens* elements are met. Accordingly, we reverse the judgment of the trial court denying Crescent City's declinatory exception of *lis pendens.* Because of our

[13] If TMF had asserted that challenge in the Damages Suit, the plaintiff could have established it was a correctable "misnomer." *See In re Greater Houston Orthopaedic Specialists, Inc*., 295 S.W.3d 323, 325-26 (Tex. 2009) (observing that a plaintiff misnaming himself is a misnomer and that "[i]n a case like this, in which the plaintiff misnames itself, the rationale for flexibility in the typical misnomer case—in which a plaintiff misnames the defendant—applies with even greater force"). Moreover, as Crescent City contends, "[w]here defendant is amply protected against being surprised or misled, a variance between pleadings and proof, not affecting gist of action, is immaterial." *Fidelity & Deposit Company of Maryland v. Rednour*, 44 So.2d 215, 217 (La. Ct. App. Orleans 1950).

disposition of the procedural question presented, we do not reach the merits of Crescent City's remaining assignment of error.

DECREE

For the foregoing reasons, the judgment of the trial court is reversed. This case is remanded to the trial court for further proceedings.

REVERSED AND REMANDED