Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of September, 2022** are as follows:

BY Weimer, C.J.:

2021-C-01670 CARLO CAROLLO, JR., AND FRANK CAROLLO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CARLO CAROLLO, SR. AND THE ESTATE OF ANGELINA CAROLLO VS. STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT (Parish of St. Bernard)

AFFIRMED. SEE OPINION.

Hughes, J., concurs and assigns reasons.
Genovese, J., dissents and assigns reasons.
McCallum, J., dissents for the reasons assigned by Genovese, J.

SUPREME COURT OF LOUISIANA

No. 2021-C-01670

CARLO CAROLLO, JR., AND FRANK CAROLLO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CARLO CAROLLO, SR. AND THE ESTATE OF ANGELINA CAROLLO

VS.

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of St. Bernard

WEIMER, Chief Justice

Certiorari was granted in this case to resolve a split in the decisions of the courts of appeal regarding the relationship between La. C.C.P. art. 425 and the *res judicata* statutes, La. R.S. 13:4231 and 13:4232. Particularly, this court will resolve whether Article 425 is an independent claim preclusion provision apart from *res judicata* such that identity of parties is not required to preclude a subsequent suit or whether Article 425 merely references the requirements of *res judicata* and thus a claim cannot be precluded unless it is between the same parties as a prior suit.

After reviewing the law and the arguments of the parties, we find, consistent with the conclusion of the court of appeal below, that Article 425 functions simply as a measure that puts litigants on notice at the outset and, during the course of litigation, that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be asserted. Rather than have independent enforcement effect, Article 425 operates in tandem with and is enforced through the

exception of *res judicata*. Because Article 425 is enforced through *res judicata*, all elements of *res judicata*–including identity of parties–must be satisfied for a second suit to be precluded.

Applying the requirements of *res judicata* in the present case, this court finds, as did the court of appeal, that the requirement of identity of parties is lacking and, thus, the exception of no right of action asserted in this case cannot be sustained. As a result, the judgment of the court of appeal is affirmed.

FACTS AND PROCEDURAL HISTORY

On the evening of November 9, 2017, Dr. Carlo Carollo, Sr., and his wife, Angelina Carollo, were in their vehicle traveling home from visiting their son when Dr. Carollo attempted to make a left turn onto Louisiana Highway 46 from Volpe Drive in Chalmette, Louisiana. As it entered the intersection, the Carollos' vehicle was struck broadside by an 18 wheel tractor-trailer operated by Kevin Owens. Both Dr. and Mrs. Carollo died as a result of injuries sustained in the accident.

On November 7, 2018, a petition was filed in the 34th Judicial District Court for the Parish of St. Bernard by plaintiffs, Carlo Carollo, Jr., and Frank Carollo, individually and on behalf of the estates of Dr. Carlo Carollo, Sr., and Angelina Carollo. The petition sought wrongful death and survival damages resulting from the accident. Named defendants in the suit were Kevin Owens, the driver of the 18-wheeler, Langer Transportation Company, the owner of the truck and the employer of Mr. Owens, ACE American Insurance Company, the liability insurer of Langer Transportation, and XYZ Insurance Company. Because none of the named defendants resided in Louisiana, the defendants removed the case to federal court pursuant to 28 U.S.C. 1332 (diversity jurisdiction). Thereafter, the federal district

court issued a scheduling order setting various pretrial deadlines, including a March 4, 2019 deadline by which to file amendments to pleadings.

Consistent with the March 4th deadline, plaintiffs filed a first supplemental and amended complaint, asserting additional allegations of negligence against the named defendants. Over four months later, on July 25, 2019, plaintiffs filed a motion for leave to file a second supplemental and amended complaint, seeking, for the first time, to add the Louisiana Department of Transportation and Development (DOTD) as a defendant. Defendants opposed the motion, arguing that plaintiffs had not demonstrated good cause for modifying the scheduling order to allow the untimely amendment, and that the amendment was an improper attempt to divest the federal court of its diversity jurisdiction by adding a Louisiana defendant.

The motion for leave was referred to the magistrate, who denied the motion, finding that plaintiffs had failed to meet their burden of proving that good cause existed for modifying the scheduling order to allow the untimely amendment. In addition, after analyzing the four factors set forth in **Hensgens v. Deere & Co.**, 833 F.2d 1179 (5th Cir. 1987), the magistrate determined that all factors weighed against allowing the proposed amendment to join a non-diverse defendant.[1]

Plaintiffs sought review of the magistrate's ruling with the federal district court, which denied relief, finding no error in the magistrate's determination that plaintiffs failed to show good cause for modifying the scheduling order to allow the untimely amendment. In so ruling, the district court opined that plaintiffs should

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[1] The **Hensgens** decision instructs that, when faced with an amended pleading naming a new nondiverse defendant in a removed case, the federal district court should consider, and weigh, a number of factors: (1) the extent to which the purpose of the amendment is to defeat federal jurisdiction; (2) whether plaintiff has been dilatory in asking for the amendment; (3) whether plaintiff will be significantly injured if amendment is not allowed; and (4) any other factors bearing on the equities. **Hensgens**, 833 F.2d at 1182.

have been alerted to the potential liability of the DOTD when they received the defendants' accident reconstruction report in August 2018, three months before filing suit in state court. Further, the district court determined that the magistrate's analysis of the four **Hensgens** factors in determining whether to allow a post-removal amendment to join a non-diverse defendant was neither clearly erroneous nor contrary to law.

Following the denial of their motion for review by the federal district court, plaintiffs reached a settlement with the original defendants. In that settlement, plaintiffs expressly reserved their rights "against all other parties unrelated to the Released Parties, whether named or unnamed, in connection with all claims arising out of the incident which forms the basis of the subject litigation." An order dismissing the federal suit with prejudice was signed by the district court on December 26, 2019.

On November 8, 2019, one day following the denial of their motion for review, plaintiffs filed the instant proceeding in the 34th Judicial District Court. The petition names DOTD as the sole defendant.

DOTD filed exceptions to the petition; among them an exception of no right of action based on La. C.C.P. art. 425. DOTD argued that plaintiffs violated Article 425 because they split their cause of action by filing a separate suit against DOTD that arose out of the same transaction or occurrence as the proceeding in federal court, resulting in "preclusion by judgment" pursuant to Article 425. Plaintiffs opposed the exception, arguing that the procedural rule of Article 425 requiring joinder of claims is not absolute and "will yield to the interests of justice." **Craig v. Adams Interiors, Inc.**, 34,591, pp. 5-6 (La.App. 2 Cir. 4/6/01), 785 So.2d 997, 1002. Plaintiffs further argued that Article 425 should not preclude the present action because plaintiffs did

not have knowledge of facts sufficient to implicate DOTD before filing their original suit; DOTD was not amenable to suit in federal court, where plaintiffs were forced to litigate; the federal magistrate concluded that plaintiffs would not suffer prejudice by the denial of their motion to amend their pleadings in federal court because plaintiffs could seek relief by filing suit in state court; and, plaintiffs reserved their rights to proceed against DOTD in the settlement agreement.

Following a hearing, the district court issued judgment granting DOTD's exception of no right of action and dismissing plaintiffs' claims with prejudice. In written reasons, the district court found that plaintiffs' settlement of the federal suit prior to proceeding against DOTD created "extreme prejudice" to DOTD, which "would be required to independently establish the potential fault of the now dismissed defendants from the Federal Litigation." According to the court, Article 425 requires plaintiffs to assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation (here, the accident) in one proceeding, and the failure of plaintiffs to timely amend their pleadings in federal court does not excuse them from the requirements of Article 425.

Plaintiffs devolutively appealed the adverse ruling. Following briefing and argument, the court of appeal issued an opinion reversing the district court's ruling sustaining the exception of no right of action. **Carollo v. D.O.T.D.**, 21-0114 (La.App. 4 Cir. 10/14/21), ___ So.3d ___.

The court of appeal acknowledged that it was being tasked with exploring the relationship between Article 425 and the *res judicata* statutes, La. R.S. 13:4231 and 13:4232. Specifically, the court pointed to the existence of a disagreement among the circuit courts of appeal as to whether Article 425 operates as a stand alone claim preclusion provision that does not require identity of parties for a claim to be

precluded or whether Article 425 is merely a reference to the requirements of *res judicata* and, thus, all elements of *res judicata*, including identity of parties, must be satisfied for a subsequent suit to be barred. The court noted that it had previously been presented with, but did not reach, the precise issue in **Breaux v. Avondale Industries, Inc.**, 02-1713 (La.App. 4 Cir. 3/12/03), 842 So.2d 1115.[2]

Ultimately, after reviewing the official comments to Article 425 and the relevant jurisprudence, the court was "persuaded" by the jurisprudence recognizing that Article 425 is an integral part of the *res judicata* statutes and concluded that "all the elements of *res judicata* must be met to preclude a claim or action under La. C.C.P. art. 425." **Carollo**, 21-0114 at 17-18, __ So.3d at ___. The court of appeal explained that strictly construing Article 425 as its own claim preclusion provision that only requires one element of *res judicata*–that the claim arise out of the same transaction or occurrence–would effectively abrogate the *res judicata* statutes. ***Id***., 21-0114 at 18, __So.3d at__.

Applying this holding to the case before it, the court of appeal found that four of the five elements of *res judicata* were satisfied in this case, but that the "identity of the parties" element was absent. Therefore, the court ruled that the exception of no right of action based on Article 425 could not be maintained. ***Id***., 21-0114 at 19, ___ So.3d at ___. The court further determined that, even assuming all elements of *res judicata* are not required to be met to trigger preclusion under Article 425, the

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[2] In **Breaux**, in reversing a district court judgment sustaining an exception of no right of action based on splitting a cause of action under Article 425, the court of appeal did not reach the issue of whether the identity of parties element of *res judicata* was required to be met for preclusion to operate, but rather relied on the "interest of justice" exception to *res judicata* found in La. R.S. 13:4232(A)(1). **Breaux**, 02-1713 at 15; 842 So.2d at 1123.

exceptional circumstances of this case weighed against sustaining the exception of no right of action.[3] ***Id***., 21-0114 at 19-20, ___ So.3d at ___.

Upon DOTD's application, certiorari was granted to examine the relationship between Article 425 and the *res judicata* statutes and, in the process, to resolve the apparent split among the circuits as to whether Article 425 is a stand alone preclusion provision or whether the article simply operates in tandem with the *res judicata* statutes to put a plaintiff on notice at the outset of litigation that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be asserted. **Carollo v. D.O.T.D.**, 21-01670 (La. 2/8/22), 332 So.3d 630.

LAW AND ANALYSIS

Louisiana Code of Civil Procedure art. 425(A), entitled "Preclusion by judgment," instructs: "A party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation."

The principles of *res judicata*, the primary basis for judgment preclusion in Louisiana, are set forth in La. R.S. 13:4231, which provides:

> Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are

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[3] Those circumstances include the fact that: (1) plaintiffs expressly reserved their rights to proceed against other parties who might be liable in the settlement agreement: (2) the prior suit was removed to federal court by the defendants; (3) DOTD could not be sued in federal court; (4) the federal court refused to allow plaintiffs to amend the federal suit to add DOTD as a defendant; and, (5) in denying the amendment, the federal magistrate concluded that plaintiffs could nonetheless be afforded complete relief because they were free to proceed against DOTD through other avenues. **Carollo**, 21-0114 at 20, ___ So.3d at ___.

> extinguished and the judgment bars a subsequent action on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Reduced to its simplest terms, the question presented for resolution is whether Article 425 creates a separate and distinct preclusion remedy apart from *res judicata*. As the court of appeal opinion in this case points out, a divergence of opinion has developed among the circuit courts of appeal as to the proper answer to this question.

Two circuits – the First and the Fifth–have taken the position that Article 425 should be applied as written, and that it is a related but separate preclusion provision, standing apart from *res judicata*. In **Westerman v. State Farm Mut. Auto. Ins. Co.**, 01-2159 (La.App. 1 Cir. 9/27/02), 834 So.2d 445, for example, the First Circuit affirmed a district court judgment granting an exception of "preclusion by judgment" under Article 425. The exception was filed by the plaintiff's uninsured motorist (UM) insurer in response to a suit filed against the UM carrier after the plaintiff had settled and dismissed a previous suit against the driver of the vehicle that rear-ended plaintiff, the vehicle's owner, and the vehicle owner's insurer. In addressing the exception, the First Circuit reviewed the jurisprudence interpreting Article 425 prior to its amendment in 1990 and concluded that the focus of that jurisprudence was on preventing a litigant from dividing an obligation for the purpose of bringing separate actions. **Westerman**, 01-2159 at 5, 834 So.2d at 447-448. Noting that the 1990 Comment to amended Article 425 indicates that the amendment "expands the scope of this article to reflect the changes made in the defense of res judicata and puts the parties on notice that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be raised," the First Circuit held that

under the current version of Article 425, "although a plaintiff's claims may constitute separate causes of action, if they arise out of the same transaction or occurrence, they must be asserted in the same action." ***Id***., 01-2159 at 5, 834 So.2d at 448. Thus, despite that fact that the claims against the UM insurer were based on separate causes of action and were asserted against different parties, the First Circuit found that plaintiff's failure to assert the UM claim in the first action amounted to a waiver of that claim under Article 425. ***Id***., 01-2159 at 6, 834 So.2d at 448.

Likewise, in **Handy v. Parish of Jefferson**, 20-122 (La.App. 5 Cir. 6/1/20), 298 So.3d 380, the Fifth Circuit reversed a district court's determination that Article 425 is to be read *in pari materia* with the *res judicata* statutes and instead held that Article 425 is a distinct claim preclusion provision that only requires that two actions arise out of the same transaction or occurrence for the second action to be barred. In its analysis, the Fifth Circuit relied on the plain language of Article 425 to conclude that the article is distinct from *res judicata*. ***Id***., 20-122 at 11, 298 So.3d at 390. Noting that, unlike *res judicata*, Article 425 contains no language requiring identity of parties, the court declined to read such language into the article, reasoning that to do so would render Article 425 superfluous. ***Id***. Rather, citing with approval the First Circuit's analysis in **Westerman** that construed Article 425 in conjunction with, but not as identical or synonymous with, *res judicata*, the Fifth Circuit opined that giving effect to the article as written is consistent with the purpose of the article, which is to prevent "relitigation of issues already dealt with by the courts to maximize judicial economy and minimize conflicting judgments and to prevent harassment, delay and unnecessary expense to a defendant." ***Id***. Deferring to the role of the court as one confined to interpreting legislation and not creating it, the Fifth Circuit

declined to "rewrite" Article 425 to incorporate the identity of parties requirement of *res judicata*. ***Id***., 20-122 at 11, 298 So.3d at 390-391.

In contrast to the First and Fifth Circuits, the Second, Third, and Fourth Circuit Courts of Appeal have adopted a different interpretation of Article 425. These courts hold that Article 425 is not an independent claim preclusion provision, but rather simply references the requirements of *res judicata*, all elements of which must be satisfied for preclusion to operate.

The first court to reach this conclusion was the Third Circuit. In **Spires v. State Farm Mut. Auto. Ins. Co.**, 08-573 (La.App. 3 Cir. 11/5/08), 996 So.2d 697, State Farm, the UM insurer of plaintiffs, filed an exception of "Preclusion by Judgment" based on Article 425 in response to a suit filed by plaintiffs (who had been involved in a car accident) after they settled and dismissed a previous suit against the tortfeasor and her insurer. The district court granted the exception, relying on **Westerman**. The court of appeal reversed, expressly disagreeing with the First Circuit's analysis in **Westerman**. **Spires**, 08-573 at 3, 996 So.2d at 699. The Third Circuit found that because Article 425 was amended in 1990 at the same time changes were made to the *res judicata* statutes, these provisions must be read *in pari materia*. ***Id***. Noting that Article 425 contains no penalty provision, the court concluded that Article 425 is not an independent preclusion device, but merely functions as a reference to the principles of *res judicata*. ***Id***., 08-573 at 3, 996 So.2d at 700. Thus, the court analyzed State Farm's exceptions pursuant to the rules of *res judicata*, and, finding no identity of parties, denied State Farm's exception. ***Id***., 08-573 at 4, 996 So.2d at 700.

The **Spires** decision was quickly followed by the decision of the Second Circuit in **Ward v. State, Dept. Of Transp. & Dev. (Office of Highways)**, 43,948

(La.App. 2 Cir. 1/28/09), 2 So.3d 1231. In **Ward**, plaintiffs filed two suits for the same damages arising from the same automobile accident: the first suit set forth a claim against DOTD for improper road maintenance; the second was a suit against the driver of the other vehicle involved in the accident and that driver's liability insurer. The liability insurer in turn invoked a concursus proceeding (to which DOTD was not a party) and deposited its policy limits into the registry of the court. After a consent judgment was entered in the concursus proceeding, the second suit–the suit against the other driver–was dismissed. DOTD then filed an exception of no cause of action in the sole remaining suit, alleging that plaintiffs had improperly split their cause of action pursuant to Article 425.

In reversing the district court decision granting DOTD's exception, the Second Circuit reviewed the jurisprudence, the 1990 amendments to Article 425, and the *res judicata* statutes and the revision comments thereto to conclude that Article 425 "operates in tandem with the *res judicata* statutes and they must be read *in pari materia*." **Ward**, 43,948 at 4, 2 So.3d at 1234. Agreeing with the Third Circuit that Article 425 contains no penalty provision and instead merely references *res judicata*, the Second Circuit held that an exception of *res judicata* is the proper procedural vehicle to enforce Article 425's mandate of asserting all causes of action arising out of the same transaction or occurrence in one lawsuit. ***Id***. Applying the rules of *res judicata* to DOTD's exception, the Second Circuit found that the plaintiffs' second lawsuit against the other driver did not preclude the initial action against the DOTD because there was no identity of parties. ***Id***., 43,948 at 5-6, 2 So.3d at 1235.

In the instant case, after reviewing the jurisprudence and the official comments to Article 425, the Fourth Circuit found itself persuaded by the Third Circuit's approach in **Spires** which recognizes that Article 425 is an integral part of the *res*

judicata statutes. **Carollo**, 21-0114 at 17-18, ___ So.3d at ___. The Fourth Circuit therefore joined with the Third and Second Circuits in concluding that all elements of *res judicata* must be met to preclude a claim or action under Article 425. ***Id***. 21-0114 at 18, __So.3d at__. To hold otherwise, *i.e.*, to recognize Article 425 as a stand alone preclusion provision, would, the Fourth Circuit reasoned, "result in abrogating the *res judicata* statutes and its supporting jurisprudence." ***Id***.

Given the foregoing, the immediate task that presents itself for this court is to determine which of the two competing interpretations of Article 425 outlined above is the correct one. Because the question presented is one of statutory interpretation, and therefore a question of law, our review is *de novo.* **Red Stick Studio Development, L.L.C. v. State ex rel Dept. of Economic Development**, 10-0193, p. 9 (La. 1/19/11), 56 So.3d 181, 187.

Mindful that the fundamental question in all cases of statutory interpretation is legislative intent and that the rules of statutory construction are designed to ascertain and enforce that intent, attention is turned to those well-settled rules in an effort to discern the legislative intent behind the enactment of Article 425. **M.J. Farms, Ltd. v. Exxon Mobil Corp.**, 07-2371, p. 13 (La. 7/1/08), 998 So.2d 16, 26-27.

The starting point in the interpretation of any statute is the language of the statute itself. ***Id***. Thus, "[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La. C.C. art. 9; La. R.S. 1:4. However, "[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law." La. C.C. art. 10. Moreover, "[w]hen the words of a law

are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole." La. C.C. art. 12.

In construing statutory language, it is presumed that the legislature enacts each statute with deliberation and with full knowledge of all existing laws on the same subject; therefore, legislative language will be interpreted on the assumption that the legislature was aware of existing statutes, the rules of statutory construction, and with knowledge of the effect of their acts and with a purpose in view. **M.J. Farms**, 07-2371 at 13-14, 998 So.2d at 27. As a result, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter. La. C.C. art. 13; **M.J. Farms**, 07-2371 at 14; 998 So.2d at 27.

With these principles in mind, attention is turned to an examination of the language of Article 425(A), which, as previously stated, recites: "A party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation."

As explained above, the courts of appeal have arrived at two different interpretations of this language and both interpretations spring from the *absence* (rather than the presence) of certain language in the article. For example, because Article 425 contains no language requiring the parties in two suits to be the same, the First and Fifth Circuits have found that Article 425 is an independent claim preclusion provision that only requires that claims arise out of the same transaction or occurrence for the second suit to be precluded. The Second, Third, and Fourth Circuits, on the other hand, have focused on the lack of any penalty provision in the article to conclude that Article 425 is merely a reference to the requirements of *res judicata*, and that a claim cannot be precluded unless it is between the same parties

to a prior suit. Based strictly on the express language of Article 425(A), both interpretations adopted by the courts of appeal are found to be plausible. Therefore, to correctly interpret Article 425(A), the legislative intent behind the codal provision must be examined.

Louisiana C.C.P. art. 425, in its present form, was enacted in 1990 in conjunction with a legislative revision of the rules of *res judicata*. See, 1990 La. Acts 521, § 1. Since Article 425 and the *res judicata* statutes were revised in the same Act and are obviously related, it is appropriate to consider them *in pari materia.* See, La. C.C. art. 13.

As explained in **Burguieres v. Pollingue**, 02-1385, p. 6 (La. 2/25/03), 843 So.2d 1049, 1052, the 1990 Act effected a substantial change in the law of *res judicata*:

> Historically, the Louisiana doctrine of res judicata was civilian in origin. Prior to its amendment in 1990, Louisiana's res judicata legislation was derived directly from Article 1351 of the Code Napoleon. The source of Article 1351 in the Code Napoleon was Pothier, Obligations, No. 889, with Pothier's work being synthesized from the Roman jurisconsults.
>
> The civilian concept of res judicata is based upon a presumption of correctness. Under this concept, the prior legislation established that a decided case precluded a second suit only if the second suit involved the same parties, the same cause, and the same object of demand as the prior suit. In contrast to the civil law, the common law doctrine of res judicata is based on a concept of extinguishment of the cause of action. Under the federal res judicata law, a judgment bars a subsequent suit if both cases involve the same parties, the prior judgment was rendered by a court of competent jurisdiction, the prior decision was a final judgment on the merits, and the same cause of action is at issue in both cases. Thus, as a result of our civilian heritage, Louisiana's res judicata law, at least prior to the 1990 amendment, was much narrower in scope than its common law counterpart. [Internal citations omitted]

Burguieres, 02-1385 at 6-7, 843 So.2d at 1052-53.

The 1990 Act significantly expanded the civilian concept of *res judicata* to make it more akin to its common law counterpart. **Bd. of Sup'rs of Louisiana State Univ. v. Dixie Brewing Co., Inc.**, 14-0641, p. 6 (La.App. 4 Cir. 11/19/14), 154 So.3d 683, 688; M. David Kurz and Mark W. Frilot, *Res Judicata in Louisiana: A Synthesis of Competing Interests*, 53 La. B.J. 445 (2006). With the amendment, the chief inquiry "is not whether the second action is based on the same cause or cause of action (a concept which is difficult to define), but whether the second action asserts a cause of action which arises out of the transaction or occurrence which was the subject matter of the first action." La. R.S. 13:4231, Comments--1990 (a); **Burguieres**, 02-1385 at 7-8, 843 So.2d at 1053.

The revision of the *res judicata* rules necessitated the revision, in the same Act, of several related procedural provisions. Olivia Guidry, Comment, *Res Judica-duh! The Impermissible Expansion of Claim Preclusion Through Louisiana Code of Civil Procedure Article 425*, 82 La.L.Rev. 1181, 1183 (2022). Among those amended provisions was Article 425. See, 1990 La. Acts 521, § 1.

Prior to its amendment, Article 425, entitled "Division of cause of action, effect," provided:

> An obligee cannot divide an obligation due him for the purpose of bringing separate actions on different portions thereof. If he brings an action to enforce only a portion of the obligation, and does not amend his pleading to demand the enforcement of the full obligation, he shall lose his right to enforce the remaining portion.

This version of Article 425 was generally regarded as a codification of the jurisprudentially developed claim preclusion rule commonly referred to as "splitting a cause of action," and was most commonly used to prohibit plaintiffs from filing multiple suits against the same defendant for the same harm, but seeking different relief. Guidry, 82 La.L.Rev. at 1193; see, e.g., **Richard v. Travelers Insurance Co.**,

323 So.2d 176 (La.App. 3 Cir. 1975) (holding that plaintiff split his cause of action by filing suit in city court for recovery of property damages arising from an automobile accident, and then subsequently filing suit in district court for medical expenses incurred as a result of the same accident, waiving his right to sue for the medical expenses pursuant to Article 425).

Under the pre-1990 version of Article 425, a plaintiff who improperly split his or her cause of action faced a penalty: waiver, or loss of the right to enforce the remaining portion of the obligation due. The current version of Article 425, as amended in 1990, does not contain a penalty provision. Indeed, the article does not provide any consequences for noncompliance with its mandate. As noted by the Second, Third, and Fourth Circuit Courts of Appeal, this omission is significant. The omission indicates a legislative intent that Article 425 not have its own enforcement power.[4] See, La. R.S. 24:177(C); **Brown v. Texas-LA Cartage, Inc.**, 98-1063, p. 7 (La. 12/1/98), 721 So.2d 885, 889 (where a new statute is worded differently from a preceding statute, the legislature is presumed to have intended to change the law).

That Article 425 was not intended to have independent enforcement effect is underscored by the revision comments to the article. While these comments are not the law, they may be and, in this case, are helpful in discerning legislative intent. **Tracie F. v. Francisco D.**, 15-1812, p. 8 (La. 3/15/16), 188 So.3d 231, 238 (quoting **Arabie v. CITGO Petroleum Corp.**, 10-2605, pp. 4-5 (La. 3/13/12), 89 So.3d 307, 312). The 1990 revision comment to Article 425 explains: "This amendment expands

[4] Prior to its amendment, Article 425 was primarily invoked in matters where *res judicata* did not apply. Guidry, 82 La. L.Rev. at 1199. When the *res judicata* statutes were expanded in the 1990 Act, *res judicata* extended to situations in which Article 425 had traditionally been used. ***Id***. Thus, it is reasonable to assume that the legislature recognized that Article 425 as an independent preclusion provision was no longer necessary, and amended the article accordingly.

the scope of this Article to reflect changes made in the defense of res judicata and puts the parties *on notice* that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be raised." (Emphasis added.). Clearly, the comments, which link Article 425 to the defense of *res judicata*, indicate a legislative intent that Article 425 serve simply as "notice" to litigants, during the course of litigation, that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be raised.

The expression of legislative intent found in the comments is consistent with the contemporaneous legislative history of the 1990 Act; specifically with the minutes of the Civil Law and Procedure Committee of the House of Representatives.[5] At the Committee meeting on June 18, 1990, Professor Howard L'Enfant, representing the Louisiana State Law Institute, appeared in support of the bill (Senate Bill No. 639) which eventually became Act 521. In response to direct questioning about the effect of Article 425, Professor L'Enfant explained that Article 425 is an "admonition" and its effect "will come from La. R.S. 13:4231 and R.S.13:4232." See, Civil Law and Procedure Committee, Minutes of Meeting, 1990 Regular Session, June 18, 1990, p. 12. He further explained that "Civil Code Article No. 425 warns litigants that res judicata will bar their claims so they must assert all causes of action." ***Id***. This explanation confirms our reading of the comments as expressing a legislative intent that Article 425 have no independent enforcement effect, but rather serve to put litigants "on notice" that they must raise all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation in their pleadings.

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[5] Mindful of the admonition in La. R.S. 24:177(E)(3) that committee minutes "shall not constitute proof or indicia of legislative intent," this court does not draw upon the minutes as proof of legislative intent. Rather the minutes are cited solely as corroboration of the understanding of legislative intent garnered through other sources; *i.e.*, the revision comments and the rules of statutory interpretation.

A different reading of the article would run afoul of our obligation, under the rules of statutory interpretation, to give effect to all parts of a statute and construe no sentence, clause or word as meaningless. **Moss v. State**, 05-1963, p. 15 (La. 4/4/06), 925 So.2d 1185, 1196. As noted by the court of appeal in this matter, interpreting Article 425 as an independent claim preclusion device that does not require identity of parties "will result in abrogating the *res judicata* statutes." **Carollo**, 21-0114 at 18, ___ So.3d at ___. Indeed, it would seem illogical, and an absurd result, for the legislature to have amended the *res judicata* statute, La. R.S. 13:4231, to require both identity of parties and that the causes of action arise out of the same transaction or occurrence and then, in the same Act, to have expanded the scope of Article 425 to require only that the causes of action arise out of the same transaction or occurrence. Under such a scenario, litigants would undoubtedly rely solely on Article 425, rendering the "same parties" requirement in La. R.S. 13:4231 superfluous. Such an interpretation of Article 425 that would render the *res judicata* statutes meaningless cannot be supported, when a reasonable interpretation exists. See, e.g., **St. Martin Parish Police Jury v. Iberville Parish Police Jury**, 33 So.2d 671, 676-677 (1947) ("We are convinced, however, that the Legislature included these words in the statute for some definite purpose, and that they cannot be declared meaningless if we can give them a reasonable interpretation.").

Based on review of La. C.C. art. 425, the *res judicata* statutes, and the 1990 Act which amended these provisions, this court concurs in the assessment of the Second, Third, and Fourth Circuit Courts of Appeal that a proper statutory interpretation leads to the conclusion that the legislature intended that Article 425, as amended, serve as a rule for parties to follow during litigation; *i.e.*, as a warning or notice that all causes of action arising out of the same transaction or occurrence must

be asserted in the same suit. The article is not an independent preclusion provision, but rather is enforced through the exception of *res judicata*. See, **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1238 (La. 1993) ("[A]ll actions arising out of the same transaction or occurrence must be brought together or be subject to a plea of res judicata. La. Rev. Stat. 13:4231; La Code Civ Proc. art. 425."). Because Article 425 is enforced through *res judicata*, all elements of *res judicata*–including identity of parties–must be satisfied for preclusion to operate.[6]

In this case, as the court of appeal correctly found, four of the five elements of *res judicata* are satisfied: (1) there is a valid judgment; (2) that judgment is final; (3) the cause or causes of action asserted in the instant suit existed at the time of the final judgment in the litigation in federal court; and (4) the cause or causes of action asserted in the instant suit arise out of the same transaction or occurrence that was the subject matter of the federal suit. The element of *res judicata* that is missing in this case is identity of parties. DOTD was not a party in the federal litigation. Therefore, the court of appeal correctly held that DOTD's exception may not be maintained.

CONCLUSION

For the reasons expressed above, the ruling of the court of appeal reversing the district court's judgment sustaining the exception of no right of action and remanding this matter to the district court for further proceedings is affirmed.

AFFIRMED

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[6] To the extent that the decisions of the First and Fifth Circuit Courts of Appeal in **Westerman** and **Handy** reach a different conclusion, those decisions are overruled.

SUPREME COURT OF LOUISIANA

No. 2021-C-01670

CARLO CAROLLO, JR., AND FRANK CAROLLO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CARLO CAROLLO, SR. AND THE ESTATE OF ANGELINA CAROLLO

VS.

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of St. Bernard

Hughes, J., concurs.

I regret that this litigation has been needlessly extended, but I do not argue with the technical result.

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VS.

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On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of St. Bernard

Genovese, J., dissents and assigns reasons.

I disagree with the majority's conclusion that all five elements of res judicata must be satisfied in order to trigger the application of La.C.C.P. art. 425. Specifically, I disagree that the "same parties" requirement is implicitly encompassed by the language of La.C.C.P. art. 425. Instead, it is my view that res judicata and La.C.C.P. art. 425 are related, but distinct legal concepts.

Recently, this Court affirmed the long-standing jurisprudential rules governing statutory interpretation:

> "As with statutory interpretation, when interpreting a constitutional provision, the starting point is with the language of the provision." *Civ. Serv. Comm'n of City of New Orleans v. City of New Orleans*, 02-1812, p. 10 (La. 9/9/03), 854 So.2d 322, 330 (internal quotation and citation omitted). "When a constitutional provision is plain and unambiguous, its language must be given effect." *Id*.

Mellor v. Parish of Jefferson, 21-0858, pp. 3-4 (La. 3/25/22), 338 So.3d 1138, 1141. Louisiana Code of Civil Procedure art. 425(A), which is titled "Preclusion by judgment," states as follows: "A party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation." The statute, as written, lacks the "identity of the parties" requirement that is written into the res

judicata statute, La.R.S. 13:4231.[1] In my view, if the legislature had intended La.C.C.P. art. 425 to encompass the "identity of the parties" requirement of res judicata, it would have written it into the statute. I find that the language of La.C.C.P. art. 425 is plain and unambiguous, and requires no further interpretation. Therefore, I find that it should be applied as written, as the Louisiana First and Fifth Circuit Courts of Appeal determined.

However, the requirement in La.C.C.P. art. 425 that a party must join all claims occurring out of the same transaction or occurrence or risk preclusion of the later-raised claims is not absolute and will yield to the interests of justice. *Breaux v. Avondale Indus., Inc*., 02-1713, p. 15 (La. App. 4 Cir. 3/12/03), 842 So.2d 1115, 1123. In this case, however, I find that the interests of justice would not preclude the application of La.C.C.P. art. 425. Plaintiffs had the opportunity to initially sue the DOTD in state court, and then had the additional opportunity to add the DOTD in the federal court proceeding. Plaintiffs did not timely do so. Clearly, the suit against the DOTD in this case stemmed from the same transaction or occurrence as the first

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[1] This statute defines the parameters of res judicata:

> Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Stated another way, res judicata applies when the follow criteria are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit were present at the time of final judgment in the first litigation; and, (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. *Burguieres v. Pollingue*, 02-1385, p. 8 (La. 2/25/03), 843 So.2d 1049, 1053.

suit. There are no exceptional circumstances in this case that would require a deviation from the mandate of La.C.C.P. art. 425.

Therefore, I would reverse the court of appeal's ruling and reinstate the trial court's judgment sustaining the DOTD's peremptory exception of no right of action, thereby dismissing plaintiffs' claims against the DOTD with prejudice.