

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

DOCKET NUMBER 2025-CA-0481

JONATHAN SCULLY, ET AL
PLAINTIFFS-APPELLANTS

v.


ROSS LARIS, ET AL
DEFENDANTS-APPELLEES

ON APPEAL FROM THE
17TH JUDICIAL DISTRICT COURT
CIVIL ACTION NUMBER 150,707; DIVISION "A"
HONORABLE REBECCA N. ROBICHAUX

APPELLANTS' REPLY BRIEF

Respectfully Submitted:

LONG LAW FIRM, L.L.P.
1800 City Farm Drive
Building 6
Baton Rouge, LA 70806
Phone: 225.922.5110
Fax: 225.922.5105
Email: jwc@longlaw.com
mlb@longlaw.com
hkc@longlaw.com

BY: 
J. WENDELL CLARK (# 04150)
MARK L. BARBRE (# 30385)
HANNAH K. COBB (# 41192)

Counsel for Appellants, Jonathan Scully, et al

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I. THE ASSIGNMENTS OF ERROR AND ISSUES PRESENTED FOR REVIEW ARE PROPERLY ADDRESSED BY THE COURT.

A. All Aspects of Both Preliminary Injunction Rulings are Before the Court.

Appellants have a right to appeal both their denied request for preliminary injunction and the preliminary injunction awarded to Appellees. "An appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction..." La. C.C.P. Art. 3612(B). There is no limitation on Appellants' appeal rights under Article 3612. Contrary to Appellees' suggestion, there is no limit to this appeal based on the subject matter or scope of the preliminary injunctions ruled upon by the Trial Court.

Despite that most of Appellees' Brief is spent trying to convince the Court that it cannot review the issues raised by Appellants, Appellees have cited *no authority* that either Appellants or this Court cannot address the granting or denying of the preliminary injunctions by the Trial Court under Article 3612.¹

B. Appellants Sought Preliminary Injunctive Relief, and the Denial is Appealable.

Appellees' Brief largely ignores that it was Appellants that initially filed for preliminary injunction, and that Appellants sought such relief primarily upon a showing that MSB/Laris was not a member of Pelican under the Contract. The failures of the Contract (as null, or alternatively, upon failure to provide the capital contribution) were principal to Appellants' demand for preliminary injunction. The

¹ Appellees rely heavily upon *Collins v. Prudential Ins. Co. of America*, 1999-1423 (La. 1/19/00), 752 So.2d 825 and *Arkel Constructors, Inc. v. Duplantier & Meric, Architects, L.L.C.*, 2006-1950 (La. App. 1 Cir. 7/25/07), 965 So.2d 455. However, neither case involved an injunction or appeal under La. C.C.P. Article 3612.

Trial Court then found the Contract provided ownership to MSB/Laris, which was in error. This error is properly appealed and is appropriately before the Court.²

C. No Motion to Compel Arbitration was before the Trial Court.

Appellees' Brief wrongly asserts that because the Trial Court found arbitration to be required, Louisiana law forecloses appeal of that determination. However, every single case Appellees cite was procedurally postured upon a motion to stay/compel arbitration and a resulting non-appealable interlocutory judgment.³ None of the cases cited by Appellees for their argument arise in the context of a preliminary injunction and an appeal "as a matter of right" under Article 3612.⁴

Here, both Appellants and Appellees sought preliminary injunctive relief, including but not limited to injunctive relief related to arbitration and control of Pelican. Yet, Appellees cite no law under the preliminary injunction procedure that Article 3612 is not applicable or that the cases cited cases by Appellees on non-appealable trial court rulings apply here. That is because only Article 3612 is applicable to this appeal of the preliminary injunction orders. By Article 3612's plain language, Appellants have a right to appeal orders and judgments "relating to a preliminary... injunction." The substance of the issues addressed by the injunctive relief does not diminish the appeal rights under Article 3612. All appeal issues before the Court "relate to" the Trial Court's judgments on Appellants' and Appellees' requested injunctive relief and are properly considered by this Court.

² Appellees also wrongly assert that because the Court declined to exercise its discretion to stay the arbitration pending this appeal, that Appellants have, somehow, forfeited their right to appeal under Article 3612. The denial of Appellants' Motion to Stay Arbitration Pending Appeal was made upon this Court's discretion, and that decision is not dispositive or binding upon the Court in consideration of this appeal.

³ See, particularly, *Collins and Arkel Constructors*.

⁴ In fact, Appellees later cite *Marchand v. Texas Brine Company, LLC*, 2018-0621 (La. App. 1 Cir. 1/28/19), 272 So.3d 101, where this Court expressly considered whether the parties had agreed to arbitrate under written contracts.

II. WHO OWNS PELICAN?

It would stand to reason that Appellees' basis for ownership in Pelican would be significant when the injunctive relief sought is over management and control of the company and related claims and challenges to the basis of ownership. Yet, Appellees' Brief completely side-steps the issue and does not address their fatal deficiencies under La. C.C. Art. 1770 or La. R.S. 12:1322(B), whereby Appellees have no ownership in Pelican. Under these laws and the Contract, MSB/Laris are not owners of Pelican and have no right to control the companies. Given this, it is no surprise Appellees do not want this Court to consider ownership issues and the Contract, because they have no legitimate legal claims to ownership in Pelican.

However, in order to be granted injunctive relief, a party must establish a "likelihood of success on the merits" and "entitlement to the relief sought."⁵ Here, for exercising control of Pelican, that meant Scully needed only to demonstrate he had a greater claim than MSB/Laris to majority ownership of Pelican, which the evidence and the law justified. MSB/Laris had the same threshold requirement, but the terms of the Contract and MSB/Laris' failure to make the loan commitment demonstrate their failures under the injunctive relief requirements. The failures of MSB/Laris' ownership claim under the Contract were paramount to both Appellants' and Appellees' preliminary injunction requests and were central to the legal elements for injunctive relief the Trial Court was required to evaluate but failed to consider.

MSB/Laris acknowledge their only claim to ownership in Pelican is pursuant to the Contract.⁶ The Contract is null under La. C.C. Art. 1770, or unfulfilled and

⁵ *Moore v. iDream Enterprises, Inc.*, 2022-0418 (La. App. 1 Cir. 12/14/23), 380 So.3d 625, 630.

⁶ "This matter arises out of a written September 6, 2021 Contract and Personal Guaranty (the "2021 Contract") whereby Appellant/Scully transferred to MSB a 50.1% majority interest [in] each of the ten (10) Pelican Companies." Appellee Brief, p.3.

resulting in MSB/Laris' forfeiture of ownership under La. R.S. 12:1322(B).⁷ Under either analysis, MSB/Laris have no ownership interest in Pelican under the uncontroverted facts established at the trial on the preliminary injunctions.⁸

The fact that Appellees' Brief offers *zero* arguments that address the application of La. C.C. Article 1770 or La. R.S. 12:1322(B) speaks volumes to their lack of any basis for ownership in Pelican. Not one footnote, nor one citation is made by Appellees. Why? Because there is no credible argument to be made that MSB/Laris has an ownership interest in Pelican.

The Contract clearly addresses a loan of \$45,000,000 *is* being made to Pelican, with stated reasons why Pelican needs the funds and MSB's ability to loan the funds. Yet, later in the Contract, it states:

Despite any language above, neither Millennium, nor Ross Laris (nor any designee of either) shall be obligated to advance any funds or authorize any draws on the line of credit in favor of Pelican. Such advances (loans) or draws on the line of credit shall be at the complete discretion of Ross Laris or Millennium.

This provision is unambiguous in that it allows MSB/Laris to make none, some, or all of the loan for *any* or *no* reason. This provision directly implicates nullity under Article 1770.

"A suspensive condition that depends solely on the whim of the obligor makes the obligation null." La. C.C. art. 1770.

In fact, it is difficult to envision a more direct offense to the prohibition under Article 1770, further emphasizing Appellees' complete avoidance of Appellants correct application of the law to the Contract.

⁷ The uncontroverted evidence at trial on the preliminary injunctions was that MSB/Laris did not provide \$45,000,000 in credit, did not provide Pelican with requested loan proceeds, and MSB/Laris were not able to secure loans for Pelican. In fact, Pelican was denied loans at banks recommended by MSB/Laris. R. Vol. 6, pp. 1366-67.

⁸ R. Vol. 6, pp.1367-70 and R. Exhibit P3, showing MSB/Laris could not loan \$50,000 to Pelican mere months after the Contract was signed.

Instead, Appellees ask this Court to ignore their egregious Contract, ignore applicable law, and let them continue to operate (and damage) the Pelican businesses they do not own until an arbitration panel tells them otherwise. Appellees suggest to the Court "there is nothing to see here" because their positions do not stand up under the slightest scrutiny. However, there is very much for the Court to see, and correct, on this appeal.

MSB/Laris' sole claim to ownership in Pelican is pursuant to the Contract. Absent majority ownership in Pelican, MSB/Laris have no basis to manage Pelican, and Appellees did not meet the required elements of "right to relief" or "likelihood of success" to obtain a preliminary injunction. MSB/Laris' arguments for ownership in Pelican before the Trial Court found themselves conflicted under Article 1770 and 12:1322(B).

On one hand, MSB/Laris doubled-down that no loan commitment was made, and it was solely at Laris' unfettered discretion whether to loan any amounts to Pelican – which Article 1770 declares as null. On the other hand, MSB/Laris have also asserted that numerous "loans" were made and that Scully is personally responsible for them - indicating MSB/Laris was obligated to make the loans if Scully was reciprocally obligated to repay them.⁹ If the Contract is valid and enforceable as Appellees assert, then MSB/Laris was bound to extend the \$45,000,000 credit promised to Pelican as a capital contribution in exchange for 50.1% ownership.

Yet, the uncontroverted evidence in the Record is that mere months after the Contract, Pelican requested to draw on the \$45,000,000 credit, and MSB/Laris indicated it could not meet the request, but only provide \$50,000 (which needed to

⁹ Curiously, Appellees argue that La. R.S. 12:1322(B) requires a written agreement to make a capital contribution, but then simply ignore the Contract (a written agreement) by suggesting the Contract made no promise (implicating Article 1770). See Appellee Brief, p.27.

be returned to Laris the next week!).¹⁰ MSB/Laris has repeatedly refused to extend the \$45,000,000 credit it promised in the Contract, which it gave as a capital contribution for the membership interest in Pelican. Under La. 12:1322(B), MSB/Laris' membership interest has been "forfeited" because of the repeated failure to meet the capital contribution obligation of providing a \$45,000,000 loan, which MSB/Laris acknowledged Pelican needed and was the legal cause addressed by the Contract.

III. DETERMINATION OF OWNERSHIP IN PELICAN ANSWERS THE ISSUES ON CONTROL AND ARBITRATION.

Scully is the sole owner/member of Pelican. As such, he alone is permitted to determine who manages and operates Pelican.

Since Appellees cannot establish any ownership in Pelican, they cannot establish any rights under the operating agreements to invoke arbitration. Therefore, there can be no "dispute between the members" necessary to bring to arbitration.

IV. THERE IS NO ARBITRATION AGREEMENT IN THE CONTRACT.

Appellees avoidance of the Contract is not limited to the ownership issue. Appellees also would have the Court ignore the Contract in evaluating arbitration. Appellees simply skip past the fact that there is *no arbitration provision* in the Contract and that the Contract calls for litigation of *any* disputes arising out of the Contract.¹¹ Appellees have no response to the fact that the document they signed and rely upon for ownership in Pelican and claims against Scully has no arbitration provision.

¹⁰ R. Vol. 6, pp. 1366-70 and R. Exhibit P3.

¹¹ Paragraph 7 of the Contract provides in pertinent part: "The parties agree that any legal action taken between the parties, arising out of or in any way related to this contract and/or their business relationship, shall be filed and litigated in the Seventeenth Judicial District Court for Lafourche Parish, Louisiana."

The Contract, its interpretation, and claims "arising out of or in any way related to" the Contract are solely within the jurisdiction of the district court by its own terms, not an arbitration panel.

In addition, the express language of the operating agreements rejects Appellees attempts to take the arbitration provision from the operating agreements and affix it to the Contract. The operating agreements state:

18.8 Integration: Prior Operating Agreements. This Agreement embodies the entire agreement and understanding between the Members regarding the subject matter hereof, and, as such, supersedes any prior agreements or understandings, whether verbal or written, regarding the subject matter hereof. However, this Agreement does not supersede the terms of Exhibit "A."

Appellees have offered no explanation as to why the Contract, which has no arbitration provision, cannot and should not be considered by the Court.

Yet again, the Contract matters, and must be evaluated relative to the injunctive relief requests concerning arbitration. Appellees' arguments that the Court should defer to an arbitration panel, to address the Contract that does not have an arbitration provision, are only of their own twisted application of facts and law, convenient to their position. The law does not support an avoidance of the baseline issues to give Appellants an appeal in name only.

The Contract, signed by Appellees, calls for litigation and not arbitration. They should be held to the public forum for dispute resolution they agreed to.

V. RESPONSE TO APPELLEES' LISTING OF "ACTS."

Perspective changes everything. From the viewpoint that Scully is the sole or controlling owner of Pelican, every one of the "acts" identified in Appellees' Brief (pp.12-22) is not only justified, but they were also plainly done to protect and

preserve Pelican and its interest from damage by Laris, particularly siphoning money and resources to Laris' entity, LAC.¹²

From the Pelican financial records (now solely controlled by Laris) and Scully's testimony, Laris/MSB have caused Pelican to unjustifiably transfer approximately \$200,000 per month to LAC since mid-2022, totaling approximately \$7,500,000.¹³ (Laris/MSB were making Pelican pay more than \$230,000 per month to LAC, for no value to Pelican.¹⁴) Pelican has lost money and resources because Laris has required payments be sent to LAC.¹⁵ LAC (Laris) has gained equipment it (not Pelican) owns.¹⁶

Laris forcibly removed Scully from Pelican in April 2024, only when Scully refused to agree with Laris' demand that Scully transfer some of Scully's membership interest in Pelican to a third party for no compensation to Scully, but with Scully taking on debt – simply non-sensical.¹⁷ Contrary to MSB/Laris' new assertion, prior to April 2024 they made no serious complaint about Scully's management of Pelican, particularly under the constraints created by MSB/Laris in not honoring the loan commitment in the Contract.

Scully obtained a temporary restraining order in July 2024, recognizing him with authority to act for Pelican.¹⁸ From the time of issuance of that temporary restraining order until a countervailing temporary restraining order was issued on

¹² Scully readily admitted at trial to taking steps to prevent Laris-controlled Pelican from making unjustified payments of hundreds-of-thousands of dollars to LAC. R. Vol. 6, pp.1380-1383.

¹³ There is no agreement between Pelican and LAC for payment of any amounts, and no obligation for Pelican to remit amounts to LAC.

¹⁴ R. Vol. 6, p.1371-75 and R. Exhibit P4.

¹⁵ R. Vol. 6, p.1399.

¹⁶ Incredibly, LAC has continued to purchase new equipment and send it to the Pelican yard to sit, unused. Relatedly, Appellees' briefing continues to escalate the alleged amounts at issue, claiming Pelican "selected" \$9,000,000 in equipment at some point (see Appellees' Brief at p. 5), but now asserting in the arbitration that Scully is personally responsible for \$15,000,000 in equipment.

¹⁷ R. Vol. 6, p.1377-78, 83. Laris has wrongfully taken the Pelican businesses and Scully's sole source of income, which date back to when Scully started a grass-cutting business when he was 16.

¹⁸ R. Vol. 1, p.29.

January 2, 2025,¹⁹ Scully had the right and authority to act for Pelican. Every single “act” of Scully addressed by Appellees was done in protection of Laris unjustifiably funneling Pelican’s funds to LAC, and where the last orders of a court had recognized Scully with authority to act for Pelican.²⁰

Contrary to Appellees’ assertion, the *status quo* prior to the January 2025 temporary restraining order was not Laris’ wrongful documented removal of Scully in April 2024. The *status quo* was the July 2024 temporary restraining order giving Scully authority to act on behalf of Pelican.

VI. CONCLUSION.

This Court has jurisdiction and must consider the Contract, ownership of Pelican, and the arbitration issues on this appeal under La. C.C.P. Art. 3612. MSB/Laris do not have ownership in Pelican pursuant to La. C.C. Art. 1770, or alternatively, La. R.S. 12: 1322(B), which is a threshold determination on this appeal. There is no basis for arbitration under the Contract, which is controlling on the claims by all parties. The Trial Court’s injunction in favor of Appellees should be reversed. The Trial Court’s denial of Appellants’ request for injunctive relief should be reversed, and injunctive relief should be rendered in favor of Appellants.

¹⁹ R. Vol 4, p.818.

²⁰ Scully justifiably believed the parties had reached a settlement in November 2024, but Laris reneged and filed an arbitration demand.

Respectfully Submitted:

LONG LAW FIRM, L.L.P.

1800 City Farm Drive

Building 6

Baton Rouge, LA 70806

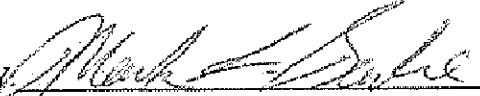
Phone: 225.922.5110

Fax: 225.922.5105

Email: jwc@longlaw.com

mlb@longlaw.com

hkc@longlaw.com

BY 

J. WENDELL CLARK (# 04150)

MARK L. BARBRE (# 30385)

HANNAH K. COBB (# 41192)

Counsel for Appellants, Jonathan Scully, et al

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing reply brief of appellants has been served upon the following by e-mail and/or United States mail, postage pre-paid and properly addressed:

Honorable Rebecca N. Robichaux
JUDGE, LAFORCE PARISH
17TH JUDICIAL DISTRICT COURT
201 Green Street, 1st Floor
Thibodaux, LA 70301
divisiona@17thjdc.com

Mr. David M. Flotte
SALLEY HITE MERCER & RESOR
365 Canal Street
Suite 1710
New Orleans, LA 70130
dflotte@shmrlaw.com

Mr. Christopher H. Riviere
Ms. Michelle Riviere
Mr. Evan M. Zizzi
CHRISTOPHER H. RIVIERE, PLC
103 West Third Street
P. O. Box 670
Thibodaux, LA 70302
criviere@rivierelaw.com
mriviere@rivierelaw.com
ezizzi@rivierelaw.com

Mr. Camille A. Morvant, II
MORVANT & CAVELL
402 West Fourth Street
Thibodaux, LA 70301
camorvant@gmail.com



MARK L. BARBRE

RECEIVED
CLERK'S OFFICE

OCT 06 2025

COURT OF APPEAL
FIRST CIRCUIT



LONG LAW FIRM
BATON ROUGE • WASHINGTON, D.C.

October 2, 2025

The Honorable Rodd Naquin
Clerk of Court
Court of Appeal, First Circuit
1600 North 3rd Street
Baton Rouge, LA 70802

Re: *Jonathan Scully, et al v. Ross Laris, et al*
17th JDC, Parish of Lafourche; No. 150,707, Div. "A"
1st Circuit Court of Appeal, No. 2025-CA-0481
LLF File No. 4518-002

Dear Mr. Naquin,

I represent the Appellants, Jonathan Scully, et al, in the above captioned matter. The parties have reached a settlement agreement addressing all issues in this matter and we are in the process of finalizing necessary documents. This case was argued last week (JJ. McClendon, Greene, and Stramberg), so all counsel wanted to advise the Court promptly of the settlement.

Your staff indicated I should send this letter and that a follow up letter confirming confection of the settlement would be sufficient to remove the case from the Court's docket. If something further may be necessary, please let me know. Otherwise, I will submit a confirmation letter upon confection of the contemplated settlement items, likely next week.

Should you have any questions, please do not hesitate to contact me. As always, thank you to you and your staff for your diligent attention to these matters.

Very truly yours,

LONG LAW FIRM, L.L.P.

/s/ Mark L. Barbre

Mark L. Barbre

cc: All counsel

Long Law Firm, LLP 1800 City Farm Drive, Building 5 Baton Rouge, LA 70806
Telephone: (225) 922-5110 www.LongLaw.com Telefax: (225) 922-5105



Office Of The Clerk
Court of Appeal, First Circuit
State of Louisiana
www.la-fca.org

Rodd Naquin
Clerk of Court

Post Office Box 4408
Baton Rouge, LA
70821-4408
(225) 382-3000

Notice of Judgment and Disposition

October 30, 2025

Docket Number: 2025 - CA - 0481

Jonathan Scully, et al
versus
Ross Latis, et al

TO: Camille A. Morvant II
Morvant and Cavell
402 W. 4th St.
Thibodaux, LA 70301
camorvants@gmail.com

Christopher H. Riviere
The Law Offices of CHRISTC
103 West Third Street
P.O. Box 670
Thibodaux, LA 70301
criviere@rivierelaw.com

David M. Flotte
One Canal Place, Ste. 1710
365 Canal Street
New Orleans, LA 70130
dflotte@shmlaw.com

Evan M. Zizzi
103 West Third Street
Thibodaux, LA 70302

Michelle E. Riviere
103 West Third Street
Thibodaux, LA 70302

Hannah K. Cobb
1800 City Farm Drive, Bldg 6
Baton Rouge, LA 70806

James Wendell Clark
1800 City Farm Drive
Bldg 6
Baton Rouge, LA 70806
JWC@longlaw.com

Mark L. Barbre
1800 City Farm Drive
Bldg 6
Baton Rouge, LA 70806
mlb@longlaw.com

Hon. Rebecca Robichaux
212 Green Street
1st Floor
Thibodaux, LA 70301
VIA EMAIL

Annette Fontana
Parish of Lafourche
P. O. Box 818
Thibodaux, LA 70302

In accordance with Local Rule 6 of the Court of Appeal, First Circuit, I hereby certify that this notice of judgment and disposition and the attached disposition were transmitted this date to the trial judge or equivalent, all counsel of record, and all parties not represented by counsel.

RODD NAQUIN
CLERK OF COURT

Case
10/25/25
Check # 20155
\$50.00

2025 CA 0481
Court of Appeal, First Circuit
Received: 10/27/2025
Postmarked:
Filed: 10/27/2025

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

DOCKET NUMBER 2025-CA-0481

JONATHAN SCULLY, ET AL
PLAINTIFFS-APPELLANTS

v.

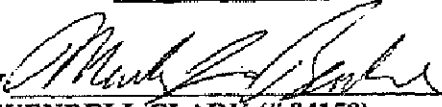
ROSS LARIS, ET AL
DEFENDANTS-APPELLEES

ON APPEAL FROM THE
17TH JUDICIAL DISTRICT COURT
CIVIL ACTION NUMBER 150,707; DIVISION "A"
HONORABLE REBECCA N. ROBICHAUX

MOTION TO DISMISS APPEAL FILED ON BEHALF OF APPELLANTS

Respectfully Submitted:

LONG LAW FIRM, L.L.P.
1800 City Farm Drive
Building 6
Baton Rouge, LA 70806
Phone: 225.922.5110
Fax: 225.922.5105
Email: jwc@longlaw.com
mlb@longlaw.com
hkc@longlaw.com

BY: 
J. WENDELL CLARK (# 04150)
MARK L. BARBRE (# 30385)
HANNAH K. COBB (# 41192)

Counsel for Appellants, Jonathan Scully, et al

MAY IT PLEASE THE COURT:

Movers - Appellants, Jonathan Scully, *et al*, through undersigned counsel, represent that all Appellants and all Appellees have settled and resolved all claims in this matter and all parties have agreed to dismiss this matter, in its entirety. In connection with the settlement, Appellants move the Court to dismiss this appeal.

WHEREFORE, Appellants asks that this Honorable Court grant a Motion to Dismiss this Appeal.

Respectfully Submitted:

LONG LAW FIRM, L.L.P.

1800 City Farm Drive

Building 6

Baton Rouge, LA 70806

Phone: 225.922.5110

Fax: 225.922.5105

Email: jwc@longlaw.com

mlb@longlaw.com

hkc@longlaw.com

BY: 

J. WENDELL CLARK (# 04150)

MARK L. BARBRE (# 30385)

HANNAH K. COBB (# 41192)

Counsel for Appellants, Jonathan Scully, et al

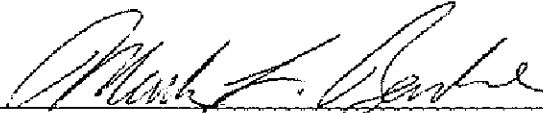
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss Appeal has been served this 23rd day of October 2025 upon the following by e-mail and/or United States mail, postage pre-paid and properly addressed:

Mr. David M. Flotte
SALLEY HITE MERCER & RESOR
365 Canal Street
Suite 1710
New Orleans, LA 70130
dflotte@shmlaw.com

Mr. Christopher H. Riviere
Ms. Michelle Riviere
Mr. Evan M. Zizzi
CHRISTOPHER H. RIVIERE, PLC
103 West Third Street
P. O. Box 670
Thibodaux, LA 70302
criviere@rivierelaw.com
mriviere@rivierelaw.com
ezizzi@rivierelaw.com

Mr. Camille A. Morvant, II
MORVANT & CAVELL
402 West Fourth Street
Thibodaux, LA 70301
camorvant@gmail.com



MARK L. BARBRE

**STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT**

2025 CA 0481

JONATHAN SCULLY, ET AL

VERSUS

ROSS LARIS, ET AL

17TH JUDICIAL DISTRICT COURT
PARISH OF LAFOURCHE CASE NO. 150707

ORDER

IT IS HEREBY ORDERED that the October 27, 2025 Motion to Dismiss Appeal, filed on behalf of appellants, Jonathan Scully, individually and as a member of Pelican Companies of America, LLC, et al, is **GRANTED**, and the above-captioned appeal is **DISMISSED**.

PMc
HG
TPS

Ordered and issued on
this 30th day of October 2025.



Chief Deputy Clerk

DOCKET NO. 2025-CA-0481

**LOUISIANA COURT OF APPEAL
FOR THE FIRST CIRCUIT**

JONATHAN SCULLY, ET AL
Plaintiff-Appellant

v.

ROSS LARIS, ET AL
Defendants-Appellees

**On Appeal from the
17TH JUDICIAL DISTRICT COURT
Civil Action No. 150,707; Division: "A"
HON. REBECCA N. ROBICHAUX**

**DEFENDANTS-APPELLEES'
OPPOSITION TO PLAINTIFF-APPELLANT'S MOTION FOR
EXPEDITED CONSIDERATION OF PLAINTIFFS-
APPELLANTS' MOTION TO STAY ARBITRATION**

CHRISTOPHER H. RIVIERE (No. 11297)
MICHELLE E. RIVIERE (No. 40496)
EVAN M. ZIZZI (No. 40553)
CHRISTOPHER H. RIVIERE, PLC
103 West Third Street
Post Office Box 670
Thibodaux, Louisiana 70302
Telephone: (985) 447-7440
Facsimile: (985) 447-3233
criviere@rivierelaw.com
mriviere@rivierelaw.com

ezizzi@rivierelaw.com

-and-

DAVID M. FLOTTE (#1364)
SALLEY HITE MERCER & RESOR, LLC
365 Canal Street, Suite 1710
New Orleans, Louisiana 70130
Tel.: (504) 566-8800
Fax: (504) 321-6508
dflotte@shmrlaw.com

-and-

CAMILLE A. MORVANT, II (#1496)
402 West Fourth Street
Thibodaux, LA 70301
Tel.: 985-209-0188
camorvants@gmail.com

Counsel for Defendants-Appellees

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**DEFENDANTS-APPELLEES' OPPOSITION TO PLAINTIFF-
APPELLANT'S MOTION FOR EXPEDITED CONSIDERATION OF
MOTION TO STAY ARBITRATION**

NOW INTO COURT, through undersigned counsel, comes *Defendants-Appellees*, Ross Laris ("Mr. Laris"), Millennium Supply Boats LLC ("MSB")¹, manager and majority owner of Pelican Companies of America, LLC; Pelican Rentals and Services, LLC; Pelican Contractors of USA, LLC; Pelican Industrial of USA, LLC; Pelican Equipment Company, LLC; Pelican Marine and Oil, LLC; Pelican Transportation and Logistics, LLC; Jonathan Scully Companies, LLC; Pelican Real Estate of America, LLC; and Lake End Rentals, LLC (collectively, the "Pelican Companies")² who for their Opposition to the Motion of Jonathan Scully to Stay Arbitration and Motion for Expedited Consideration, respectfully aver as follows:

¹ MSB is a limited liability company owned by Ross Laris.

² In the district court, Mark Barbre appeared as counsel for the Pelican companies at the suggestion of Mr. Scully over the objection of Laris and Millennium Supply Boats LLC. Undersigned counsel for Ross Laris and MSB is appearing as counsel for the Pelican Companies in the arbitration asserting claims against Mr. Scully. The district court found that Mr. Scully had no authority to act in the name of the Pelican Companies as is stated in the Preliminary Injunction issued on the same day as the litigation was stayed pending arbitration, so the district court record was never clarified. To avoid confusion, the court should recognize that Pelican Companies, while listed as an appellant, did not object and does not object to the Preliminary Injunction nor the arbitration. The sole appellant is Jonathan Scully. The Record should be clarified in this respect.

1. SUMMARY OF ARGUMENT

The appeal was wrongfully filed in the name of the Pelican Companies. That appeal should be dismissed because counsel for Mr. Scully does not have the authority to represent the Pelican Companies. The sole appellant is Jonathan Scully. The appeal by Mr. Scully of the Order staying arbitration should be dismissed because Mr. Scully has no right to appeal the order to arbitrate.

This matter arises out of a September 2021 Contract and Personal Guarantee whereby *Appellant*, Jonathan Scully (“Mr. Scully”), transferred to MSB a 50.1% majority interest each of the Pelican Companies. In May 2023, Mr. Scully, who was then the manager of the Pelican Companies, acknowledged he was a minority (49.9% interest) owner in each Pelican Company, ratifying the September 2021 contract, and agreed that contract disputes between members, including disputes over capital contributions, were subject to commercial arbitration when he signed ten (10) Operating Agreements, one for each of the Pelican Companies.

All the May 2023 Operating Agreements have identical terms, calling for dispute resolution through binding Commercial Arbitration.

2. THE DISTRICT COURT RULING

Mr. Scully/Appellant seeks to invalidate the Operating Agreements, as well as the Contract and Personal Guarantee he signed, keep 100% of the money he received, and walk away from his obligation to pay MSB over \$15 million he owes

under the contracts he signed. The District Court considered the Contract and Personal Guarantee, the ten (10) Operating Agreements, the sworn testimony of both Mr. Scully and Mr. Laris, numerous declarations under penalty of perjury including that of Kristie Izaguirre, comptroller of the Pelican Companies, numerous exhibits, and the District Court:

- 1) Granted the Motion of Laris/MSB for a Preliminary Injunction requiring Mr. Scully, a minority membership interest owner, to return property to the Pelican Companies, not act or file pleadings in the name of the Pelican Companies, not convert any further Pelican Companies' assets to his personal use or take any company property, and to cooperate with the return of Pelican Companies' property to MSB/ Laris as manager of the Pelican Companies and to Kristie Izaguirre, Comptroller of Pelican Companies;
- 2) Granted the Motion of Laris/MSB for an Order to stay the 17th Judicial District Court's litigation filed by Appellant, and to proceed to arbitration, except as necessary to enforce the Preliminary Injunction to protect the Pelican Companies from similar future acts of Mr. Scully, over the opposition of Mr. Scully; and
- 3) Denied the Cross Motion of Mr. Scully to stay the arbitration and enjoin Laris/MSB from proceeding with arbitration, which was duplicative of No. 2.

3. BACKGROUND FACTS AND LITIGATION

In September of 2021, Mr. Laris tendered the Contract and Personal Guarantee to Mr. Scully along with a check for \$1,000,000. The arrangement proposed by Mr. Laris was in writing. Laris/MSB has previously arranged for financing of some equipment which Mr. Scully desired to rent to customers. This was done by putting the property in the name of MSB with a Laris Guarantee. MSB/Laris agreed to provide loans and financing including \$1 million cash at closing, which was to be repaid by Mr. Scully. The two pieces of rental equipment previously selected by Mr. Scully were to be covered under the financing arrangement, so the revenue was to go to Pelican and Mr. Scully was to pay the debt service. The arrangement further provided for past and future loans to Pelican as requested by Mr. Scully, but subject to the approval of Ross Laris/Millennium. While Ross Laris/Millennium had complete discretion as to making any post-closing loans, for any future loans/equipment financing, Pelican was to keep the rental revenue and Mr. Scully was responsible for reimbursement of the monthly notes/debt service to MSB or its designee.

In exchange for the cash and financing, Mr. Scully transferred 50.1% of the ownership/membership of the ten (10) Pelican Companies to MSB. Mr. Scully agreed to the deal, received the \$ 1 million cash at closing, plus past financing of the two pieces of equipment for Pelican plus the opportunity for additional financing.

The written contract clearly provided that Mr. Laris, through MSB or its designee, would provide financing subject to the discretion of MSB /Laris. Over the next two (2) years Mr. Scully selected more than \$15 million dollars in equipment and MSB or its designee financed it at Mr. Scully's request, and Mr. Laris personally guaranteed the payments based upon Mr. Scully's assurance in the Contract and Personal Guarantee that he would work the equipment, the Pelican Companies would keep the rental revenue and pay the debt service.³ Mr. Scully mismanaged the companies and defaulted on the amounts he was obligated to pay to MSB and Mr. Laris. After Mr. Scully was removed as manager, Mr. Scully secretly sold Pelican realty, falsely claiming he was the sole owner, converted Pelican company property to his own use, and tried to shut down the Pelican Companies by taking the Pelican Companies' server, damaging it, and taking Pelican checks and equipment then converting it to his personal use.

Scully was the manager of the Pelican Companies up until April of 2024. After that time, Laris was the manager of the Pelican Companies. Beginning in July of 2024, Mr. Scully wrongfully filed pleadings in the name of the Pelican Companies in the District Courts whereas he, as a minority membership owner who had been removed as manager in April of 2024, had no right to file any pleadings in the name

³ Amounts due MSB, its designee, and Laris under the Note and Personal Guarantee include cash loans to Pelican and downpayments on financed equipment of over \$6.65 million and attorney fees presently owed by Scully under his Personal Guarantee.

of Pelican Companies⁴, as found by the district court. *See RJANO Holdings v. Phelps Dunbar*, 366 So. 3d 499, 511 (La. App. 4th Cir. 9/21/2022).

4. **THE LAW: MR. SCULLY HAS NO RIGHT TO APPEAL THE ORDER COMPELLING ARBITRATION**

MSB/Laris, Appellees, object to Mr. Scully's contention that he has authority to appeal the Order enforcing the mandatory referral of disputes to arbitration under LSA R.S. 9:4202, because an interlocutory order compelling arbitration is not appealable under the law.⁵ The First Circuit in *Arkel*⁶ stated:

In *Collins v. Prudential Ins. Co. of America*, 99-1423, p. 6 (La. 1/19/00), 752 So.2d 825, 829, **our supreme court held that an order compelling arbitration was not appealable.** (Emphasis added.)

Scully claims he can appeal based upon LA C.C.P. Art. §3612. The provisions of LA C.C.P. Art. §3612(C) do not apply to an order compelling arbitration. As held by the Louisiana Supreme Court in *Collins* and the Louisiana First Circuit in *Arkel*, there is no right to appeal from an order of a district court referring a matter to arbitration.

The order compelling arbitration is not based upon a showing of irreparable injury; instead it is automatic and mandatory under LSA R.S. §9:4202, which states:

“Stay of Proceedings brought in violation of arbitration agreement:

⁴ Scully will be referred to herein as Appellant/Scully and MSB/Laris will be referred to as Appellees MSB/Laris.

⁵ *Collins v. The Prudential Insurance Co. of America*, 752 So. 2d 825, 828 (La. 2000); *Arkel Constructors v. Duplantier & Meric*, 965 So. 2d 455, 458 (La. App. 4th Cir. 2007).

⁶ *Arkel Constructors, Inc. v. Duplantier & Meric, Architects, LLC, et al.*, 965 So. 2d 455 (La. App. 1 Cir. 7/25/07).

If any suit or proceedings be brought upon any issue referable to arbitration under an agreement in writing for arbitration, **the court** in which suit is pending, upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under such an agreement, **shall on application of one of the parties stay the trial of the action until an arbitration has been had** in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with the arbitration.” (Emphasis added.)

Mr. Scully signed ten (10) Operating Agreements and the scope of the issues in dispute are within the scope of the arbitration clause in the Operating Agreements.

Mr. Scully instead seeks relief because he claims that he will sustain irreparable injury by participating in arbitration before coming back to 17th Judicial District Court to enforce any arbitrator’s award. The Louisiana Supreme Court in *Collins* holds there is no right to appeal an order compelling arbitration, stating:

“Irreparable injury exists in the context of La. Code Civ. P. art. 2083 only where the error sought to be corrected on an appeal from the interlocutory judgment cannot, as a practical matter, be corrected on an appeal following a determination of the merits. Blanchard v. State Through Parks & Rec. Comm’n, 96-0053 La.5/21/96), 673 So.2d 1000; Brown v. New Orleans Pub. Serv., Inc., 490 So.2d 271 (La.1986) (Lemmon, J., concurring). Whether a particular type of claim is properly within the scope of the parties’ contractual agreement is a matter that can be reviewed on appeal after the conclusion of the arbitration. A party can move in district court to vacate an arbitration award (or, alternatively, can contest a motion to confirm an award) on certain enumerated grounds, including the ground that the arbitrators have “exceeded their powers.” The ruling of the trial judge will then be subject to an appeal. If it is determined that a dispute resolved by the arbitrators was not within the scope of the arbitration agreement, it can be remanded for a trial on the merits when the arbitration award is set aside. Thus, a party’s right to a trial in court is not irretrievably lost, even if the district court errs in ordering arbitration in the first instance. For that reason, we cannot consider an

order compelling arbitration as one that gives rise to irreparable injury.” (Emphasis added.)⁷

Appellant’s legal argument that he is entitled to an appeal based upon irreparable injury is also misplaced because the grounds for appeal of interlocutory orders based upon irreparable injury was eliminated by amendment to LA. C.C.P. Art. 2083 effective January 1, 2006. (See Official Revision Comment-2005 which states that states that “interlocutory judgments are only appealable when expressly provided by legislation.”) Mr. Scully next claims the right to appeal based upon LA C.C.P. Art. 3612, which does not apply to give him the right to an appeal nor a right to stay the arbitration.

LA C.C.P. Art. 3612 (C) states:

“An appeal from an order or judgment relating to a preliminary injunction must be taken and any bond must be furnished within fifteen days of the date of the order or judgment. The court in its discretion may stay further proceedings until the appeal has been decided.” (Emphasis added.)

The reference in Article 3612 deals with a stay of a preliminary injunction not an order compelling arbitration. Moreover, a stay of arbitration is improper because it would directly conflict with the statutory mandate of LSA R.S. 9:4202 and the authorities cited above confirming that appellate review is premature until a district court enforces an arbitrator’s award.

⁷ *Collins v. The Prudential Ins. Co. of America*, 752 So. 2d 825, 829-830 (La. 2000).

The Appeal should be dismissed as it relates to arbitration.

5. **MR. SCULLY/APPELLANT'S AUTHORITIES DO NOT SUPPORT HIS ARGUMENTS**

The authorities cited by Mr. Scully/Appellant either support the order compelling arbitration or are factually distinguishable. In seeking a stay of arbitration, Scully/Appellant cites nine (9) cases involving requests for arbitration. Of those nine, four (4) were factually distinguishable because the party objecting to arbitration did not sign a written contract that covered the scope of the arbitration issues⁸; four (4) were cases where arbitration was compelled⁹; and the last one was factually distinguishable because it involved a contract under Texas law so the mandatory provisions of LSA R.S. 9:4202 were not applicable.¹⁰

By way of historical development of the law, prior to the Louisiana Supreme Court's decision in *Aguillard v. Auction Management Corp.*¹¹, there was a split in the Louisiana Circuit Courts of Appeal relative to the interpretation of arbitration causes. The Second and Fourth Circuits adopted a liberal policy, favoring and enforcing

⁸ *Patriot Construction & Industrial, LLC v. Buquet & Leblanc, Inc.*, 2023 WL 7214727 (La. App. 3 Cir. 4/16/21); *South LA Contractors, LLC v. MAPP, LLC*, 353 So.3d 144 (La. App. 1 Cir. 9/16/22); *W.E. Parks Lumber Co., Inc. v. Ronald A. Coco, Inc.*, 297 So.2d 925 (La. App. 1 Cir. 6/28/74); and *Billieson v. City of New Orleans*, 863 So.2d 557 (La. App. 4 Cir. 9/17/03.)

⁹ *Saavedra v. Dealmaker Developments, LLC*, 8 So.3d 758 (La. App. 4 Cir. 3/18/09); *Rain CII Carbon LLC v. ConocoPhillips Co.*, 105 So.3d 757 (La. App. 4 Cir. 10/24/12); *Coleman v. Jim Walter Homes, Inc.*, 6 So.3d 179 (La. 2009); and *Delta Administrative Services, L.L.C. v. Limousine Livery, Ltd.*, 216 So.3d 906 (La. App. 4 Cir. 6/17/15.)

¹⁰ *A&B Valve and Piping Systems, L.L.C. v. Commercial Metals Co.*, 28 So.3d 1202 (La. App. 3 Cir. 1/27/10).

¹¹ *Aguillard v. Auction Management Corp.*, 908 So.2d 1 (La. 2005).

arbitration agreements whereas the First and Third Circuits had a conservative policy, restricting enforcement of arbitration agreements.¹² The Louisiana Supreme Court resolved the split between the Circuits by adopting the view of the Second and Fourth Circuits, liberally staying litigation to enforce arbitration clauses as consistent with Federal law.¹³ In clarifying the law, the Supreme Court held:

“Resolving the Split

Finally, addressing the determination of the enforceability of arbitration agreements under a contract of adhesion analysis, we hold that a presumption of arbitrability does exist. Due to the strong and substantial similarities between our state arbitration provisions and the federal arbitration law as seen through a comparison of La. Rev. Stat. §§ 9:4201 and 9:4202 and 9 U.S.C. §§ 2 and 3, the federal jurisprudence provides guidance in the interpretation of our provisions. We, therefore, adopt the United States Supreme Court's interpretation of the federal arbitration law.

Accordingly, even when the scope of an arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration. The weight of this presumption is heavy and arbitration should not be denied unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation that could cover the dispute at issue. Therefore, even if some legitimate doubt could be hypothesized, this Court, in conjunction with the Supreme Court, requires resolution of the doubt in favor of arbitration.

In conclusion, we find the court of appeal erred in invalidating the contract as adhesionary and lacking mutuality. We further adopt the liberal interpretation policy favoring arbitrability of the Second and Fourth Circuits.

¹² *Aguillard*, 908 So.2d at 11.

¹³ *Aguillard*, 908 So.2d at 18.

DECREE

For the foregoing reasons, the judgments of the lower courts that found the contract, including the arbitration clause, adhesionsary and lacking in mutuality are reversed, and this matter is stayed pending arbitration.

REVERSED; STAY PENDING ARBITRATION GRANTED.¹⁴
(Emphasis added.)

The legal test for granting a motion to stay litigation pending arbitration is stated by *Aguillard*:

“According to [La.Rev.Stat. § 9:]4202, a court **shall stay** the trial of an action in order for arbitration to proceed if any party applies for such a stay and shows (1) that there is a written arbitration agreement and (2) the issue is referable to arbitration under that arbitration agreement, as long as the applicant is not in default in proceeding with arbitration.”¹⁵

The determination of the validity of contracts as a whole (the issue in the case at bar) is left to the Arbitrator, not the court. In that regard, *Aguillard* confirmed the court is only to review the arbitration clause, not other contract provisions which are left to the arbitrator. The Louisiana Supreme Court stated:

“We find the court of appeal erred in declaring the whole contract governing the terms and conditions of the auction adhesionsary and lacking in mutuality. The only issue before the court was the enforceability of the arbitration clause as this matter came before the court through the defendants' motion to stay proceedings pending arbitration. **The entire contract was not properly before the court, just the arbitration provisions. The merits are reserved for arbitration.**”¹⁶ (Emphasis added.)

¹⁴ *Aguillard*, 908 So. 2d at 18.

¹⁵ *Aguillard*, 908 So. 2d at 18.

¹⁶ *Aguillard*, 908 So. 2d at 17.

Mr. Scully, signed ten (10) Operating Agreements, one for each of the Pelican Companies which had the following arbitration clause:

16.2 Arbitration. All disputes or issues between the Member(s) which cannot be resolved by agreement or by an appropriate vote of the Member(s) shall be decided by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association.

(a) This shall be considered an exclusive reservation of subject matter jurisdiction, personal jurisdiction and venue, and shall apply to all disputes disagreements and/or claims arising out of this agreement and/or related in any way to the rights and responsibilities of members in relation to the Company (including the purchase of membership interests of the payment of capital contributions or in relation to the other members). (Emphasis added.)¹⁷

Mr. Scully testified under oath that he signed those ten (10) Operating Agreements.¹⁸

The Louisiana Supreme Court in *Aguillard* stated:

“It is well settled that a party who signs a written instrument is presumed to know its contents, and cannot avoid its obligations by contending that he did not read it, that he did not understand it, or that the other party failed to explain it to him.”¹⁹

Mr. Scully admitted that he signed the original Contract and Personal Guarantee, that he was tendered that Contract and a check for one million dollars and that he signed the Contract so he could take the check and then spent the money.

¹⁷ See excerpts of Exhibits 2 through 11 which are the Operating Agreements

¹⁸ See Exhibit 17, p. 86, ln. 13-26.

¹⁹ *Aguillard*, 908 So.2d at 17.

He was given an opportunity to have the Contract reviewed by his attorney but if he left the office with the Contract unsigned, he could not take the check. He voluntarily chose to sign the Contract and spend the money.²⁰ Mr. Scully kept operating for years until he was removed as manager after Mr. Scully was in default. Then he converted Pelican assets to his personal use and tried to sabotage the company.

The allegations in Mr. Scully's Petition and other pleadings clearly show Mr. Scully/Appellant is claiming there was a failure of MSB to make the capital contribution. Mr. Scully complains of a contract breach and fraud in the inducement of the agreement for the sale of 50.1% of the total ownership/membership of the Pelican Companies. Mr. Scully claims all eleven (11) contracts he signed are void. Thus, the issues in the litigation are covered by the written signed arbitration clauses in ten (10) separate contracts.

The Motion to Stay Arbitration should be denied and the Appeal should be summarily dismissed.

6. MR. SCULLY/APPELLANT'S DELAY TACTICS

The District Court litigation was properly stayed. Mr. Scully/Appellant improperly seeks to stay the arbitration to retard the process and shut down all claims against him in the arbitration proceeding. Nothing will shut down the monthly

²⁰ See Defendants' Exhibit 17, Excerpts of Transcript of Venue Hearing Testimony of Jonathan Scully, at p. 48-50.

payments that MSB and Laris are paying to creditors under the contract on \$11 million dollars in loans made at Mr. Scully's request to purchase more equipment and guaranteed by Mr. Laris. Mr. Scully defaulted on his payments to Laris/MSB, however, Laris/MSB has continued to pay the amounts due lenders without contribution from Mr. Scully/Appellant since April of 2024. The purpose of Louisiana's arbitration act is to allow cases to move forward expeditiously, so Mr. Scully's request for stay is unjustified.

Mr. Scully/Appellant has caused 7 months of delays in the arbitration process which included filing in the wrong venue, St. Mary Parish; delaying the order of transfer to Lafourche for 4 months while he failed to disclose whether he would appeal; failing to pay his fees for the arbitration (which are being funded by Laris); objecting to the arbitration to which he agreed in writing; and seeking to stay the order compelling arbitration.

The Louisiana Supreme Court has outlined the process of allowing the arbitration to go to completion before there is any judicial review of the arbitrator's award, but even then, the scope of the review is limited. Staying the arbitration would be an abuse of discretion and an unwarranted violation of LSA R.S. 9:4202, employing a disruption of the arbitration process in violation of *Collins*, *Arkel*, and *Aguillard*. The claim of Laris/Appellee against Scully/Appellant for breach of contract is only pending in the arbitration. A panel of arbitrators has been appointed.

Laris/MSB paid Mr. Scully's fees with AAA because Scully was seeking to delay the arbitration, despite being ordered to arbitration by the District Court. The request for the stay or delay of the Arbitration is a dilatory tactic of Scully prohibited by LSA R.S. 9:4202 which should be denied.

7. **CONCLUSION**

The Motion to Stay Arbitration should be denied. Expedited consideration of the Motion to Stay Arbitration should be denied and the appeal should be dismissed as to arbitration because Jonathan Scully/Appellant has no right to appeal an order sending a case to arbitration. The purported appeal by Pelican Companies should be denied because counsel for Mr. Scully/Appellant has no legal authority to act for the Pelican Companies. The Pelican Companies never authorized counsel for Mr. Scully to act in their name and the district court held he had no authority to act in the name of the Pelican Companies. The district court properly ordered Mr. Scully to return all company property to the Pelican Companies.

Respectfully submitted by:

CHRISTOPHER H. RIVIERE (No. 11297)
MICHELLE E. RIVIERE (No. 40496)
EVAN M. ZIZZI (No. 40553)
CHRISTOPHER H. RIVIERE, PLC
103 West Third Street
Post Office Box 670
Thibodaux, Louisiana 70302
Telephone: (985) 447-7440
Facsimile: (985) 447-3233
criviere@rivierelaw.com
mriviere@rivierelaw.com
ezizzi@rivierelaw.com

-and-

DAVID M. FLOTTE (#1364)
SALLEY HITE MERCER & RESOR, LLC
365 Canal Street, Suite 1710
New Orleans, Louisiana 70130
Tel.: (504) 566-8800
Fax: (504) 321-6508
dflotte@shmrllaw.com

-and-

CAMILLE A. MORVANT, II (#1496)
402 West Fourth Street
Thibodaux, LA 70301
Tel: 985-209-0188
camorvants@gmail.com

Counsel for Defendants-Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on the 2nd day of June 2025, served a copy of the foregoing pleading on counsel for all parties to the proceeding, either by facsimile, hand delivery, email, and/or mailing the same via U.S. Mail, properly addressed, and first-class postage prepaid.

DAVID M. FLOTTE