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

APPELLEES' ORIGINAL BRIEF

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1. RESPONSE TO JURISDICTIONAL STATEMENT:

This Panel's jurisdiction is limited to review of an Interlocutory Devolutive Appeal under La. C.C.P. Art. 3612(B) granting a prohibitory injunction against Appellant, Jonathan Scully ("Appellant/Scully"), in favor of Appellees, Ross Laris ("Appellee/Laris") and Millennium Supply Boats, LLC ("MSB")[1] (collectively "Appellees"), prohibiting Appellant/Scully from management of the Pelican Companies[2] and requiring Appellant/Scully to return all Pelican property and access to the Pelican Companies and prohibiting Appellant/Scully from engaging in unlawful/illegal acts against the Pelican Companies pending arbitration. The Court stayed the District Court litigation[3] pending arbitration except as necessary to enforce the Preliminary Injunction. Appellant/Scully appealed. He filed a Motion to Stay the arbitration which was denied by the La. First Circuit on June 17, 2025. Appellant/Scully has no right to appeal[4] the order compelling arbitration nor the stay of litigation pending arbitration. This Court of Appeal properly denied Appellant's Motion to Stay arbitration. This appeal is an attempt to collaterally attack that

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

2 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 are collectively referred to as "Pelican" herein.

3 See LSA R.S. §9:4202 relative to the automatic stay of litigation.

4 See *Collins v. Prudential Ins. Co of America*, 752 So. 2d 825, 829 (La. 2000); *Arkel Constructors, Inc. v. Duplantier & Meric, Architects, LLC, et al.*, 965 So. 2d 455 (La. App. 1 Cir. 7/25/07), holding that an order compelling arbitration is not appealable.

decision because every argument, issue, and alleged error in Appellant/Scully's Original Brief is foundationally based upon Appellant/Scully's objections to arbitration including his attempt to have the District Court address the validity of contracts as a whole, an issue reserved to the arbitration panel.[5]

This interlocutory appeal under La. C.C.P. Art. 3612 is limited to orders regarding the granting or denial of a preliminary injunction.

A preliminary injunction preserves the *status quo* while the case is awaiting a decision on the merits by the arbitration panel. The issues to be determined for a preliminary injunction by the District Court and reviewed by this Court are 1) What was the *status quo* as to company management at the time suit was filed? and 2) Was either party guilty of any unlawful act that would give rise to grounds for a prohibitory injunction without any showing of irreparable injury? Appellant/Scully's Brief omits all evidence or even comment on *status quo* or bad acts. However, the record shows that at the time suit was filed by Appellant/Scully, he was a minority member of a Louisiana limited company who had lost his position as manager months before. He had defaulted on payments he promised to make to Appellees under the 2021 Contract.[6] He intentionally performed several illegal/unlawful actions causing damage to the Pelican Companies which clearly justify the issuance

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[5] *Marchand v. Texas Brine Co., LLC*, 272 So.3d 101, 105 (La. App. 1 Cir. 1/28/19).

[6] R. Vol. 4, p. 820-825, Defendants' Exhibit 1, Contract and Personal Guarantee, dated September 6, 2021 (the "2021 Contract").

of a preliminary injunction against Appellant/Scully to preserve the *status quo* pending arbitration.

2. STATEMENT OF THE CASE WITH ACTION OF THE DISTRICT COURT:

A. STATEMENT OF THE CASE

This matter arises out of a written September 6, 2021 Contract and Personal Guarantee (the "2021 Contract")[7] whereby Appellant/Scully transferred to MSB a 50.1% majority interest each of the ten (10) Pelican Companies. Appellant/Scully was the owner of 100% of the membership interest before the 2021 transfer. The Pelican Companies were having problems growing the business, especially with insufficient cash flow and excessive liabilities. Appellant/Scully claimed that if he could get access to capital, he could grow the business and generate significant revenue and profit through rentals of more expensive equipment to pay debt service and profits. Appellee/Laris had significant ability to borrow and provide capital in the form or loans or loan guarantees. Loans and financing have been recognized as an appropriate capital contribution to exchange for a percentage of membership of a Louisiana limited liability company.[8]

In September of 2021, Appellee/Laris tendered the 2021 Contract to Appellant/Scully along with a check for $1,000,000. The arrangement was in

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[7] R. Vol. 4, p. 820-825, Defendants' Exhibit 1.

[8] *Belgard v. Manchac Technologies, LLC*, 92 So.3d 660 (La. App. 3 Cir. 6/6/2012).

writing. Appellees had previously arranged for financing of some equipment which Appellant/Scully desired to rent to the Pelican Companies' clients.[9] This was done by putting the property in the name of MSB with a guarantee made by Appellee/Laris. Appellees agreed to provide loans and financing, including one million dollars cash at closing, which was to be repaid by Appellant/Scully. The revenue from equipment rentals was paid to the Pelican Companies. Appellant/Scully agreed to repay the loans and the monthly payments or debt service on the financed equipment.[10] Appellees had complete discretion as to making any post-closing loans for any purpose including equipment financing.

In exchange for the above, on September 6, 2021, Appellant/Scully signed the 2021 Contract whereby he transferred 50.1% of the ownership/membership of the Pelican Companies to MSB. Appellant/Scully received one million dollars in cash at closing[11], plus past financing of the two pieces of equipment for the Pelican Companies which became subject to the Guarantee obligations of Appellant/Scully, plus the opportunity for additional financing. Appellant/Scully was the initial Manager of the Pelican Companies.

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9 R. Vol. 4, p. 803-804, Defendants' Exhibits 19, 20, 21, and 22, Emails regarding financing of equipment before the Contract, namely a Gene telehandler, in May of 2021; *and* Defendants' Exhibits 23 and 24, Emails regarding the financing of a Kubota Excavator in August of 2021.

10 R. Vol. 4, p. 820-825, Defendants' Exhibit 1.

11 R. Vol. 2, p. 434, 16th JDC Reasons for Judgment; *and* R. Vol. 5, p. 1241, line 5 to p. 1242, line 3, Excerpts of Transcript of Venue Hearing Testimony of Jonathan Scully in the 16th JDC, Defendants' Exhibit 17.

Over the next two years Appellant/Scully selected more than $11 million in equipment[12] and MSB or its designee financed more than 122 pieces of equipment at Appellant/Scully's request[13], with Appellee/Laris personally guaranteeing the payments based upon Appellant/Scully's assurance in the 2021 Contract that Appellant/Scully would promptly repay the debt service when due.[14] Appellant/Scully mismanaged the Pelican Companies and defaulted on the amounts he was obligated to pay to Appellees as required by the 2021 Contract he signed.[15]

In May 2023, the Members, including Appellant/Scully, agreed to the terms of and signed ten (10) identical written Operating Agreements, one for each of the Pelican Companies.[16] In each Operating Agreement, all members agreed that contract disputes between the Members, including disputes over capital contributions, were subject to commercial arbitration.[17] All Members, including Appellant/Scully, agreed in writing that the Member(s) with 50.1% ownership

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[12] R. Vol. 4, p. 806-807, Defendants' Exhibit 29, where Mr. Scully requested purchase/ financing of 23 pieces of new equipment for over $2.9 million; *and* see discussion in Appellee's Reply Brief R. Vol. 4, p. 804-809, and Defendants' Exhibit 30, where he requested purchase/financing of 97 pieces of new equipment for over $7.99 million. These are examples showing Appellant/Scully chose the equipment.

[13] R. Vol. 4, p. 806-808, Discussion in Reply Memorandum with Exhibits. Defendants/Appellees used the same exhibit numbers for all motions and at the trial on their Exceptions.

[14] Amounts due MSB, its designee, and Laris under the Note and Personal Guarantee include cash loans to the Pelican Companies and downpayments on financed equipment.

[15] R. Vol. 2, p. 378-380, Defendants' Exhibit 12, Declaration of Matthew Bernard Under Penalty of Perjury dated July 11, 2024; *and* R. Vol. 4, p. 762-764, Defendants' Exhibit 16, 2nd Declaration of Matthew Bernard Under Penalty of Perjury.

[16] Defendants' Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, Operating Agreements for the Pelican Companies, dated May 22, 2023 (collectively, the "Operating Agreements").

[17] Defendants' Exhibits 2 through 11 at Article 16.2(a).

interest were entitled to remove the manager of each of the Pelican Companies, with or without cause, at any time and for any reason.[18] All Members including Appellant/Scully agreed in writing that the membership interests as of that date, May 22, 2023, were "a) Millennium Supply Boats, LLC - 50.1%" and "b) Jonathan Scully- 49.9%".[19]

Appellant/Scully was removed as Manager of the Pelican Companies on April 2, 2024[20] and has had no authority to act in the name of any of the Pelican Companies since.

B. ACTION OF THE DISTRICT COURT

Appellees learned of several unlawful acts of Appellant/Scully seeking to and causing damage to the Pelican Companies at Christmas of 2024 including his taking of the Pelican Companies' server and laptop to prevent it from collecting revenue from customers. Appellees filed motions including a Motion for a Temporary Restraing Order and to set a hearing for a preliminary injunction. The District Court granted the Temporary Restraining Order on January 3, 2025, and set a hearing on the Preliminary Injunction on January 15, 2025.[21] The District Court considered the 2021 Contract, the Operating Agreements signed in 2023, the sworn testimony of

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[18] Defendants' Exhibits 2 through 11 at Article 8.12.
[19] Defendants' Exhibits 2 through 11 at Article 5.1.
[20] R. Vol 5, p.1090, Defendants' Exhibit 13, Minutes of Meeting and Action of Shareholders in Writing in Lieu of Additional Meeting, dated April 02, 2024.
[21] R. Vol 4, p. 818-819.

both Appellant/Scully and Appellee/Laris, and Defendants' Exhibits 1 through 61, and the District Court:

1) Granted the Motion of Appellees for a Preliminary Injunction requiring Appellant/Scully, a minority membership interest owner, to return property to the Pelican Companies, prohibiting him from signing contracts or filing pleadings in the name of the Pelican Companies, ordering he not convert any further Pelican Companies' assets to his personal use or possess any more of the Pelican Companies' property, and requiring him to cooperate with the return of the Pelican Companies' property to the Pelican Companies, including restoring access to Kristie Izaguirre, Comptroller of the Pelican Companies;[22] and

2) Ordered the case be sent to arbitration with AAA as agreed by Appellant/Scully by his signing the Operating Agreements;

3) Granted the Motion of Appellees for an Order to stay the 17th JDC's litigation, pending arbitration, except as necessary to enforce the Preliminary Injunction to protect the Pelican Companies from continued unlawful acts of Appellant/Scully, similar to his past acts, over the opposition of Appellant/Scully[23]; and

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[22] R. Vol.6, p. 1277, *et seq.*, Preliminary Injunction.

[23] Appellant/Scully wrongfully listed the Pelican Companies as a plaintiff in the District Court and wrongfully listed Pelican Companies as an Appellant in this Court without authority. Appellant/Scully performed numerous acts in the name of Pelican Companies without authority, some of which are documented herein. The Preliminary Injunction barred Appellant/Scully from acting in the name of the Pelican Companies.

4) Denied the Cross Motion of Appellant/Scully for an injunction and to stay the arbitration.

Mr. Scully filed a devolutive appeal and a second Motion to Stay Arbitration with the Louisiana First Circuit. The First Circuit denied the 2nd Motion of Appellant/Scully to Stay the Arbitration, reportedly eliminating this from his appeal. Appellant/Scully seeks to relitigate the arbitration issue.

3. SUMMARY OF ARGUMENT

Interlocutory appeals are only allowed when expressly provided by law.[24] This interlocutory appeal is based only upon La. C.C.P. Art. 3612, i.e. "from an order or judgment relating to a preliminary or final injunction." The Preliminary Injunction preserves the *status quo* pending the award of the arbitration panel. In determining the *status quo*, the District Court properly reviewed the company documents which showed Appellant/Scully was a minority membership owner and the manager of the Pelican Companies until he was removed as Manager in April of 2024 and thereafter, he was not authorized to act on behalf of the Pelican Companies when suit was filed in July of 2024; however, after that time, he committed more than a dozen illegal actions which included converting company checks and property to his personal use, selling one company office with no authority, trying to shut down the remaining

[24] La. C.C.P. Art. 2083(C); *Saavedra v. Dealmaker Developments, LLC*, 8 So. 3d 758, 761 (La. App. 4 Cir. 2009)

company office, preventing the company from billing its customers for rental services, and damaging company property. The District Court properly issued a Prohibitory Injunction pending arbitration which was well within its discretion, especially considering the company documents and bad acts of Appellant/Scully were admitted by Appellant/Scully at the trial of the injunction. This interlocutory appeal is limited to the injunction issue. Instead, Appellant/Scully is seeking to collaterally attack the Order compelling arbitration even though he signed ten (10) Operating Agreements by which he bound himself to commercial arbitration. All of Appellant/Scully's arguments on appeal are based on his objection to arbitration, either directly or indirectly, by complaining that the District Court did not reach the merits of his claim that the contracts as a whole were void, an issue reserved for the arbitration panel. Essentially, he claims the contracts he signed are all void, so all the company property now belongs to him. This Panel denied his Motion to Stay Arbitration on June 17, 2025. His appeal is a frivolous collateral attack on the Order compelling arbitration. Appellant/Scully has no right to appeal the Order compelling arbitration. The District Court did not abuse its discretion by referring the issue of validity of the contract as a whole to the arbitration panel because that is exactly what the law requires. The appeal should be summarily dismissed.

4. ARGUMENT IN RESPONSE TO ASSIGNMENTS OF ALLEGED ERRORS:

None of the Assignments of Error stated by Appellant/Scully are properly before the Court except for the Order granting the injunction against Appellant/Scully[25] and denying the requested injunction sought by Appellant/Scully.[26] A preliminary injunction is an interlocutory procedural device designed to preserve the pre-suit *status quo* between the parties, pending trial on the main demand.[27]

The *status quo* on the issue of management appointment is determined by company records[28] which in this case showed: Appellant/Scully was the original Manager and Owner until he transferred a majority interest to MSB, as confirmed by his signature on Defendant's Exhibits 1 through 11. Company Minutes show he was terminated as Manager on April 2, 2024.[29] Appellant/Scully offered no company documents to contradict the above. His sole argument is that the District Court should find the contracts void and therefore disregard the company documents.

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[25] R. Vol. 2, p.467, *et. seq.*, Appellees' (Defendants') Memorandum in Support of Motion to Stay Proceedings and for Protective Order Pending Arbitration; R. Vol. 4, p. 800, *et. seq.*, Reply Memorandum; R. Vol. 4, p. 811, *et. seq.*, Petition for Temporary Restraining Order and Preliminary Injunction; Defendants' Exhibits 1 through 61; *and* R. Vol. 6, p.1328-1419, Transcript of hearing before Judge Rebecca Robichaux in the 17th JDC.

[26] R. Vol. 5, p. 1142, *et. seq.*, Motion for Temporary Restraing Order and Preliminary Injunction as to Arbitration.

[27] Deepwater Property Management, LLC v. Citywide Development Services, LLC, 385 So. 3d 727 (La. App. 4 Cir. 2024).

[28] *RJANO Holdings, Inc. v. Phelps Dunbar, LLP*, 366 So.3d 499, at p. 504-512 (La. App. 4 Cir. 9/21/22).

[29] R. Vol. 5, p. 1090, Defendants' Exhibit 13.

However, that argument would require the District Court to reach the merits of the validity of the contracts as a whole which is prohibited when there is an arbitration agreement under *Aguillard, infra* and *Marchand, supra.* The District Court instead, recognized that because the parties agreed to binding arbitration, the validity of the contracts as a whole are reserved for the arbitration panel. Specific responses to Appellant/Scully's alleged Errors are as follows:

1a) Appellant's Alleged Error: Trial court erred in granting preliminary injunction regarding management of the Pelican Companies.

Appellees' Response is above. He submitted no evidence of company records in response to Appellees' prima facie showing.

1b) Appellant's Alleged Error: Trial court erred in sending case to arbitration.

Appellees' Response: Appellant/Scully signed ten Operating Agreements to arbitrate. The Panel already rejected this directly. Appellant/Scully has no right to appeal the order compelling arbitration.

2) Appellant's Alleged Error: Trial court erred in denying plaintiff's preliminary injunction regarding Laris' management of the Pelican Companies.

Appellees' Response: Appellant/Scully identified no company documents supporting his claim to be Manager. His converting company assets to his personal use disqualifies him. The only basis of Appellant/Scully seeking to replace Laris as Manager of the Pelican Companies is the argument that the contracts are invalid as a whole, an issue reserved for the arbitration panel.

3) Appellant's Alleged Error: Trial court erred in excluding/restricting the testimony on the evidence as to Appellant/Scully's intent as to Exhibit P-1, an unsigned, unagreed Letter of Intent that predated the 2021 Contract.

Appellees' Response: The issue before the District Court was preservation of the *status quo* regarding the preliminary injunctions pending arbitration. Appellant/Scully's claim that the whole contract is void was not the subject of the District Court's evidentiary hearing. His intent in 2021 is irrelevant to any injunction issue. He can try to present evidence of his intent to the trier of fact – the arbitration panel – although it is nevertheless inadmissible under the parole evidence rules.

The remaining Assignments of Error are not properly subject to review by this Panel before an arbitrator's award because all issues as to the validity of the contract as a whole are "reserved for arbitration," per *Aguillard*.[30]

5. ARGUMENT IN RESPONSE TO LISTING OF ISSUES:

Every issue listed by Appellant/Scully either involves arbitration, or challenges to the validity of the contract as a whole, which is reserved for the arbitration by the ten (10) written Operating Agreements signed by Appellant/Scully.[31] He agreed to arbitration and that he was a 49.9% minority interest owner.

6. ARGUMENT IN RESPONSE TO APPELLANTS' STATEMENT OF THE FACTS:

A. ARGUMENT DOCUMENTING FACTS MISSTATED BY APPELLANT/SCULLY:

Appellees fully complied with all portions of the 2021 Contract and the Operating Agreements. Appellant/Scully agreed in the 2021 Contract that Appellees had the discretion to make any post-closing loans. It is not against public policy to exchange financing for membership in a limited liability company.[32] The 2021

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[30] *Aguillard v. Auction Management Corp.*, 908 So.2d 1, 17 (La. 2005); *Marchand v. Texas Brine Company, LLC*, 272 So.3d 101, 105 (La. App. 1 Cir. 1/28/19).

[31] R. Vol. 6, p. 1275, ln. 13-26, 16th JDC hearing transcript, Appellant/Scully's testimony admitting he signed all Operating Agreements.

[32] *Belgard v. Manchac Technologies*, 92 So.3d 660 (La. App. 3 Cir. 6/6/12).

Contract and the Operating Agreements signed by Appellant/Scully are clear and unambiguous showing he was a minority interest owner of Pelican.

B. ARGUMENT DOCUMENTING FACTS OMITTED BY APPELLANT/SCULLY AS TO ILLEGAL/ UNAUTHORIZED ACTIONS OF APPELLANT/SCULLY

As of April 2, 2024, Appellant/Scully was a minority shareholder who had no authority of the Pelican Companies to act as Manager.[33]

Bad Act #1 – Filing Pleadings in the Name of the Pelican Companies:

Appellant/Scully had no authority to file a Petition in the name of the Pelican Companies nor against the Pelican Companies[34] but he did so anyway in July of 2024 and since.[35] A Louisiana limited liability company elects whether to be managed by its members or manager. The Pelican Companies were managed by a manager,[36] but Appellant/Scully was not the manager after April 2, 2024. After he was no longer manager, Appellant/Scully's lawyer wrongfully filed the pleadings that he purportedly filed on behalf of the Pelican Companies in the records in the

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33 R. Vol. 5, p. 1090, Defendants' Exhibit 13, Minutes of Meeting where Appellant/Scully was terminated as manager April 2, 2024.

34 *RJANO Holdings, Inc. v. Phelps Dunbar*, 366 So.3d 499, 511 (La. App. 4 Cir. 9/21/22), a case where the court said a 50% minority shareholder was not authorized to file pleadings in the name of the limited liability company if he was not the manager. See also company documents and operating agreements. Defendants' Exhibits 2 through 13, show Scully was not authorized to act for the limited liability company pending arbitration on the merits.

35 R. Vol. 1, p. 2-28, Petition which was filed in St. Mary Parish on July 8, 2024.

36 LSA R.S. §12:1311 provides that the management of the limited liability company shall be managed in accordance with the operating agreements.

16th JDC, 17th JDC, and Louisiana First Circuit Court of Appeal without authority or consent of Appellees or Pelican.

Bad Act # 2 – Unauthorized Sale of Pelican Realty:

On July 14, 2024, Appellant/Scully signed a Cash Deed whereby he acted in the name of Pelican Real Estate of America, LLC, wrongfully and without authority or even giving notice to the Pelican Companies or Appellees, and sold three parcels of the Pelican Companies' real estate acting "through its sole member/manager Jonathan Scully."[37] This violates LSA R.S. §12:1329 which states:

> 1329. Nature of Membership Interest
> A membership interest shall be an incorporeal movable. **A member shall have no interest in the limited liability property.**[38]
> (emphasis added.)

Appellant/Scully's July 2024 written representation on the Cash Deed that he was authorized to act "as sole owner and manager" was an intentional misrepresentation, sworn before a notary public. This sale was inconsistent with Appellant/Scully's acknowledgment he was a minority shareholder per Defendants' Exhibit 1 transferring a 50.1% interest to Appellee/MSB and also Defendants Exhibits 2 through 11 section 5.1 of the Operating Agreements signed by him in May of 2023.

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[37] R. Vol. 4, p. 762-763, Defendants' Exhibit 16, 2nd Declaration of Matthew Bernard; *and* R. Vol. 3, p. 745-751, Defendants' Exhibit 14, Cash Deed regarding the Sale of Realty to Michelle LeBlanc Porth, dated July 15, 2024 R. Vol. 3, p. 745-746.

[38] RJANO Holdings, Inc. v. Phelps Dunbar, LLP, supra.

He was fired as Manager three months before he signed the Cash Deed.[39] Appellant/Scully also violated section 8.8 of the Pelican Companies' Operating Agreements which gives the Manager no authority to sell property worth over $100,000 without approval of the Members.[40] One of the parcels sold was Pelican Companies' "Brown Office," a company office and building owned and used by the Pelican Companies. Deprivation of access to realty or other violations of law are acts that justify a preliminary injunction without irreparable injury.[41] Nevertheless, this is the second of several unlawful acts showing why the District Court was well within its discretion in granting the preliminary injunction against Appellant/Scully.

Bad Act # 3 – Receipt/Conversion of $73,000 from Lake End Rentals Sale:

If acting as Manager or Member, Appellant/Scully had duties under LSA R.S. §12:1314 to act as a fiduciary under Louisiana law and specifically, he:

> "(1) Shall be deemed to stand in a fiduciary relationship to the limited liability company and its members and shall discharge his duties in good faith, with the diligence, care, judgment, and skill which an ordinary prudent person in a like position would exercise under similar circumstances"...

On July 9, 2024, Appellant/Scully finalized the sale of substantially all the assets of Lake End Rentals, LLC, a Pelican Company, and diverted $73,303.77 of the

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[39] See Defendants' Exhibits 12 and 13, R. Vol. 5, p. 1086-1090.

[40] R. Vol 5, p. 1008, *et seq.*, Defendants' Exhibit 9, Operating Agreement for Pelican Real Estate of America, Section 8.8(a); *and* R. Vol 4, p. 762, Defendants' Exhibit 16. The deed was for over $200,000, R. Vol. 3, p. 745-46, Defense Exhibit 14.

[41] *Deepwater Property v. Citywide Development*, 385 So.3d 727 (La. App. 4 Cir. 3/15/24); *Jurisich v. Jenkins*, 749 So.2d 597, 599 (La. 1999).

proceeds to his personal account, without the knowledge or approval of Appellee/Laris (who was owed nearly $90,000) or the Pelican Companies (who were owed $289,000).[42] The Pelican Companies were paid $40,000 of the net proceeds but this was an illegal unauthorized breach of the fiduciary duties under LSA R.S. §12:1314. It was also a conversion of movables under Louisiana law.[43]

Bad Act # 4 – Cut off the Pelican Companies' Comptroller's Access to Banking, Email, and Accounting Records:

On or about September 27, 2024, Appellant/Scully locked out and eliminated the Pelican Companies' Comptroller's access to the Pelican Companies' banking, email, and accounting systems so neither the Comptroller, Kristie Izaguirre, nor Appellees' Accountant, Matthew Bernard, could access the bank account or QuickBooks account.[44] This, like the other acts, were done without notice to Appellees nor the Pelican Companies. Administrative credentials of the Pelican Companies' Comptroller were cancelled by Appellant/Scully to conceal his bad acts so the money Appellant/Scully was secretly diverting company funds to himself

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[42] R. Vol. 4, p. 762, Defendants' Exhibit 16, 2nd Declaration of Mathew Bernard; *and* R. Vol. 4, p. 752-761, Defendants' Exhibit 15, bank documents showing money diverted to Appellant/Scully and showing the payments that Appellant/Scully secretly paid to himself were for $40,000.00 and $30,303.77.

[43] In *Dual Drilling Co. v. Mills Equipment Investments, Inc.*, 721 So.2d 853 (La. 1998), the court held: "A conversion is committed when any of the following occurs: 1) possession is acquired in an unauthorized manner; 2) the chattel is removed from one place to another with the intent to exercise control over it; 3) possession of the chattel is transferred without authority; 4) possession is withheld from the owner or possessor; 5) the chattel is altered or destroyed; 6) the chattel is used improperly; or 7) ownership is asserted over the chattel." See also, *Wellan v. Comfort Innovations, LLC*, 305 So.3d 883 (La. App. 1 Cir. 6/12/20) at 891-892.

[44] R. Vol. 4, p. 763, Defendants' Exhibit 16.

could not be discovered or stopped. The Pelican Companies eventually learned that the only people who had access to the accounting records were Appellant/Scully and his personal CPA. This interfered with the Pelican Companies' "performance of day-to-day functions including input and processing of payroll, recording payments and receipts, journal entries, and other accounting functions including timely reports and payments due to the IRS and La. Department of Revenue.[45] This is a breach of fiduciary duty under LSA R.S. §12:1314 and likely a violation of law, LSA R.S. §14:73.4 due to denial of access. The consequences of preventing access to company records to cover up bad acts were significant.[46]

Bad Acts #5, 6, 7, 8, 9, 10, and 11 at Christmas of 2024:

Appellant/Scully sought to shut down/sabotage the Pelican Companies.[47] Specifically, at Christmas of 2024, Appellant/Scully 5) shut down the Pelican Companies' office phones, 6) shut down the Pelican Companies' surveillance cameras, 7) shut down the Pelican Companies' office internet, 8) secretly took the Pelican Companies' laptop, 9) secretly took the Pelican Companies' server, 10) denied the Pelican Companies access to the Pelican Companies' Post Office box, where customer rental checks were mailed, and 11) attempted the complete closure

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[45] *Id.*; *and* R. Vol. 5, p. 1230 *et. seq.*, Defendants' Exhibit 59, Declaration of Kristie Izaguirre Under Penalty of Perjury, dated January 13, 2025.

[46] R. Vol. 6, p. 1325-1327, Declaration of Kristie Izaguirre Under Penalty of Perjury, dated March 10, 2025.

[47] R. Vol. 4, p. 811-819, Appellees' Verified Petition for Temporary Restraining Order and Preliminary Injunction, e-filed December 27, 2024.

of the White Office as stated by Appellant/Scully in a text to the Comptroller while she was out of town.[48] These bad acts include violations of LSA R.S. §14:68, unauthorized use of movables, wrongful conversion, and other laws.

The Pelican Companies' employees saw that things were missing from the office.[49] Appellant/Scully did not initially admit that he took anything, so the Pelican Companies reported the burglary to the Berwick Police Department. The investigating officer interviewed the Pelican Companies' personnel and confirmed there was no sign of a break-in at the office, so they interviewed Appellant/Scully who admitted that he went into the office with his keys and codes and took the Pelican laptop and server, telling police the Pelican Companies' server and laptop belonged to him.[50]

The District Court Judge issued a Temporary Restraining Order, requiring Appellant/Scully to restore access to the Pelican Companies' Comptroller and return the Pelican Companies' property to the Pelican Companies.[51]

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[48] R. Vol 5, p. 1220, Defendants' Exhibit 49, Text message from Appellant/Scully to Kristie Izaguirre regarding shutdown if the white office [12/26/2024 11:11 AM]. As mentioned above, Appellant/Scully as a minority member in an LLC who is not the manager has no interest in the limited liability property" under LSA R.S. 12:1329 and *RJANO, supra.*

[49] The Pelican Companies' server is important because it and the laptop are required for the Pelican Companies to send bills to their rental clients and to collect company revenue.

[50] R. Vol. 5, p. 1206-1208, Defendants' Exhibit 45, Berwick Police Dept. Offense Report.

[51] R. Vol. 4, p. 818-819, Temporary Restraining Order.

Bad Act # 12 – Conversion/Wrongful Taking of Pelican Rental Property: Skid Steer Rental Equipment:

The Pelican Companies suspected that Scully/Appellant had converted a valuable piece of rental equipment – a skid steer – to his personal use. In response to the District Court's Temporary Restraining Order, Appellant/Scully admitted that he took it.[52] Appellant/Scully, through his counsel, initially agreed to return it the next day along with other items in his possession.[53] However, the skid steer would not start and was stuck in the mud "just off a pipeline access," having been placed there by Appellant/Scully, and was not then available for the Pelican Companies to generate rental income, another fiduciary duty breach and violation of unauthorized use of movables or worse.[54]

Bad Act 13 – Internal Water Damage to the Pelican Companies' Server:

When Appellant/Scully returned the server to the Pelican Companies as ordered, it was left on an outside step at an entrance to the Pelican Companies' White Office on a dry day along with the Pelican Companies' laptop, some U.S. Mail addressed to the Pelican Companies, and a key to the Pelican Companies' Post Office box. The inside of the server necessary to bill the Pelican Companies' clients

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[52] This is another conversion of a movable. LSA R.S. §14:68

[53] R. Vol. 5, p. 1211-1214, Defendants' Exhibit 48, Email chain between David Flotte and Mark Barbre.

[54] R. Vol. 5, p. 1211-1214, Defendants' Exhibit 48, Emails between counsel dated January 8, 2025; *and* Defendants' Exhibit 60, January 13, 2025 Emails regarding the Pelican Companies' skid steer stuck in the mud where Appellant/Scully put it after he took it from the Pelican Companies many weeks or months earlier.

was found to be full of water. The server and laptop were inside the White Office when Appellant/Scully secretly took them. The weather was dry when Appellant/Scully returned them. The Pelican Companies had to hire a salvage company to recover the Pelican Companies' data to resume business operations.[55] This Pelican Companies' server and laptop are used to bill the Pelican Companies' rental customers. The circumstances of water damage while in the wrongful possession of Appellant/Scully suggest violation of LSA R.S. §14:73.7 Computer Tampering, LSA R.S. §14:73.3, Offenses Against Computer Equipment, or more serious violations.

Bad Act No. 14 – Wrongful Conversion to Appellant/Scully's Personal Account of Several Checks from Clients of the Pelican Companies that Appellant/Scully Took from the Pelican Companies' U.S. Post Office Box While He Blocked the Comptroller's Access to Banking Records:

In response to the Temporary Restraining Order against him, Appellant/Scully returned some mail from the Pelican Companies' Post Office box. He used the key to access checks payable to the Pelican Companies, took them from the Post Office box, then converted funds from multiple deposits to his personal use while he was in control of the Patterson State Bank account.[56] For example, on January 7, 2025, Appellant/Scully deposited a rental check in the amount of $6,263.98 to the Pelican

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[55] R. Vol. 5, p. 1230, *et.seq.*, Defendants' Exhibit 59 at p 2-4; *and* R. Vol. 5, p. 1221-1227 and p. 1229, Defendants Exhibits 50-56 and 58, Photographs and video of water damage to Pelican Server when returned to Pelican by Appellant/Scully.

[56] Defendants' Exhibit 61, Patterson State Bank records 12/13/24 through 1/7/2025.

Companies' Patterson State Bank account after he endorsed it on behalf of the Pelican Companies without knowledge, consent, or authority of Appellees or the Pelican Companies.[57] The taking of multiple U.S. Mail and checks from a Post Office box and converting them to his personal use are violations of several laws above and others not mentioned here.[58]

During Appellant/Scully's testimony at the Preliminary Injunction hearing on January 13, 2025, he admitted:

1) He was aware of Defendants' Exhibit 13, the Minutes of his April 2, 2024 in-person meeting resulting in Appellant/Scully's termination as Manager of the Pelican Companies,[59] although he claims to be the Manager and 100% owner after April 2, 2024. Appellant/Scully's position is not based upon any company records as required by *RJANO, supra,* but because he says so after his interpreting the Louisiana law by which he claims all the contracts are void.[60]

2) He admitted he sent the text dated December 26, 2024, Defendants' Exhibit 49, which is the means by which he was shutting down the White Office.[61]

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[57] Defendants' Exhibit 61, 14 pages of documents obtained from Patterson State Bank the day before the hearing on the preliminary injunction, obtained only because of the TRO allowing access to bank records, including three internet transfers to Account No. 6281 which is Appellant/Scully's personal account.

[58] 18 U.S.C. §1708

[59] R. Vol. 6, p. 1377, ln. 16-32, Transcript of Testimony of Appellant/Scully.

[60] R. Vol. 6. p. 1375, ln. 9 to p. 1377, ln. 2, Transcript of Testimony of Appellant/Scully. Defendant's Exhibits 1 through 11 and 13, as compared to contracts he signed.

[61] R. Vol. 6, p. 1379, ln. 23-27, Transcript of Testimony of Appellant/Scully.

3) He swore he was trying to stop Kristie Izaguirre, the Pelican Companies' Comptroller, and testified "that justifies shutting down the office at Christmas..."[62]

4) He admitted that he took the Pelican Companies' server because he did not want to allow the Pelican Companies to collect money from its rental clients.[63] He considered the Pelican Companies' money to be his money because he says all the contracts are void.

5) He was shown the Berwick Police Report relative to the burglary of the Pelican server and laptop. He then denied he gave a statement to police, swore he did not have to tell Appellees nor anyone at the Pelican Companies when he took the server. He said that the Berwick Police were his friends.[64]

6) Finally, Appellant/Scully admits that he used the key to the Pelican Companies' Post Office box to obtain checks made payable to the Pelican Companies, deposit those checks into the Pelican Companies' Patterson State Bank account, then transfer funds to himself through Acct. No 6821, including amounts of $20,000, $1,830, and $6,260 as shown in Defendants' Exhibit 61.[65]

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[62] R. Vol. 6, p. 1381, ln. 3-24, Transcript of Testimony of Appellant/Scully.
[63] R. Vol. 6, p. 1382, lines 2-5, Transcript of Testimony of Appellant/Scully.
[64] R. Vol. 6, p. 1385, ln. 6 to p. 1387, ln. 2, Transcript of Testimony of Appellant/Scully.
[65] R. Vol. 6, p. 1393, ln. 7 to p. 1396, ln. 19, Transcript of Testimony of Appellant/Scully.

None of Appellant/Scully's bad acts were controverted at trial of the preliminary injunction. Appellant/Scully tried to justify them by stating that the contracts he signed were void; however, he produced no company documents to show he was 100% Owner and Manager. He first proclaimed himself so only after he was terminated as Manager, defaulted on his loan guarantees to Appellees and after Appellees extended or guaranteed $15 million in loans based upon Appellant/Scully's written promise to repay.

7. ARGUMENT REGARDING THE STANDARD OF REVIEW:

An appellate court reviews a trial court's decision on the grant or denial of a preliminary injunction under the abuse of discretion standard of review. [66]

A trial court has broad discretion in the granting or denial of a preliminary injunction and will not be disturbed on review, absent clear abuse of that discretion. That broad standard is based upon a conclusion that the trial court committed no error of law and was not manifestly erroneous or clearly wrong in making a factual finding that was necessary to the proper exercise of its discretion.[67]

A preliminary injunction is an interlocutory procedural device designed to preserve the existing *status quo* between the parties, pending trial on the main demand.[68]

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[66] Deepwater Property Management, LLC v. Citywide Development Services, LLC, 385 So.3d 727 (La. App. 4 Cir. 3/15/24).

[67] *Id.*

[68] *Id.*

The procedural requirements to satisfy "the standard of proof required to meet the elements for a preliminary injunction differ, contingent upon whether the preliminary injunction sought is a prohibitory injunction or a mandatory injunction."[69]

A prohibitory injunction, which simply preserves the *status quo* until a full trial on the merits, may be issued on a prima facie showing by the party seeking the injunction. A mandatory injunction, however, has the same basic effect as a permanent injunction, and may not be issued on merely a prima facie showing that the party seeking the injunction can prove the necessary elements.[70]

Irreparable injury is "a loss sustained by an injured party which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard."[71]

If the mover seeks a prohibitory preliminary injunction, as opposed to a mandatory one, then the mover may be entitled to injunctive relief without the requisite showing of irreparable injury. To avail oneself of this exception, the mover must make a prima facie showing that the conduct sought to be restrained is unconstitutional or unlawful, i.e., it constitutes a direct violation of a prohibitory law

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69 *Id.*
70 *Id.*
71 *Id.*

and/or a violation of a constitutional right.[72] Thereafter, the trial court should grant the prohibitory preliminary injunction if the trial court determines the following requirements: (a) the conduct violates a prohibitory law (ordinance or statute) or the constitution; (b) the injunction seeks to restrain conduct, not order it (i.e., is prohibitory as opposed to mandatory); and (c) the mover has met the burden of making a prima facie showing that he is entitled to the relief sought.[73]

The company documents showing Appellant/Scully was a minority owner, not the Manager after April 2, 2024, presented a *prima facie* case that Appellee/Laris should be recognized as Manager. The 15 unlawful acts and testimony of Appellant/Scully show that he is intentionally seeking to damage the Pelican Companies now that he is not the Manager, showing the scope of the prohibitory injunction was proper to protect the Pelican Companies and Appellees.

8. ARGUMENT IN RESPONSE TO STATEMENT OF THE PROFFER:

Appellant/Scully objects to exclusion of parole evidence and introduction of a Letter of Intent which predated the written 2021 Contract. The Letter of Intent[74] was non-binding, unsigned, and was not an agreement by its own terms.[75] The

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[72] *Id.*; *Jurisich v. Jenkins*, 749 So.2d 597, 599 (La. 10/19/99), (citing *S. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm'n*, 555 So.2d 1370 (La. 1990)); *Phillips' Bar & Restaurant, Inc. v. City of New Orleans*, 116 So.3d 92, 107 (La. App. 4 Cir. 4/24/13); *Yokum v. Pat O'Brien's Bar, Inc.*, 99 So.3d 74, 81 (La. App. 3 Cir. 8/15/12).

[73] Deepwater Property Management, LLC v. Citywide Development Services, LLC, 385 So.3d 727 (La. App. 4 Cir. 3/15/24).

[74] Appellant/Scully's proffer identified as Exhibit "P-1".

[75] Exhibit P-1.

District Court excluded it because it was not relevant to the preliminary injunctions. Appellant/Scully contends it was admissible to show the intent of Appellees to attack the validity of the contract as a whole, however this is reserved for the arbitrator. The Appellees' intent in early 2021, before there was any agreement, does not address the *status quo* just before suit was filed or the company documents relative to ownership after Appellant/Scully signed operating agreements ratifying his minority interest from 2021through May of 2023. Moreover, parole evidence cannot properly change the written words of the unambiguous 2021 Contract in the face of statutory and jurisprudential parole evidence rules.

Appellant/Scully's citation to LSA R.S. §12:1322(B), claiming a forfeiture penalty of 50.1% interest in the Pelican Companies by Appellees, does not apply because of LSA R.S. §12:1322(A)'s statutory parole evidence rule which states:

> "A promise by a member to contribute to the limited liability company shall not be enforceable unless set forth in a **writing signed** by the member." (emphasis added).

While the arbitration panel will decide any claim as to the validity of the Contract, the forfeiture section cited by Appellant/Scully was not violated because Laris made no such promise.[76] Verbal evidence of intent is inadmissible under the statutory parole evidence rule quoted above. There was no alleged written promise

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[76] Appellant/Scully testified in the 16th JDC that neither he nor Appellees signed Exhibit P-1; Defendants Exhibit 17, R. Vol. 6, p. 1261, ln. 1-9.

by Appellees to contribute to the Pelican Companies beyond the loans which Appellee/Laris approved. Parole evidence does not allow Appellant/Scully to get a declaration of forfeiture without any written promise by a member to make a capital contribution. Evidence of Appellant/Scully's intent prior to the 2021 Contract was properly excluded from the injunction hearing based upon the statutory parole evidence rule of LSA R.S. §12:1322(A).

Additionally, the wording of the excluded Exhibit P-1 shows that Appellant/Scully and Appellees had not reached an agreement but would prepare a written document if an agreement was reached later. Exhibit P-1 stated on its face that it was never agreed, never signed by either party, and provides that "it is not a contract," "is not binding on either party," and "either party may withdraw from it at any time prior to a binding agreement being reached."[77] In situations such as this, the Louisiana Supreme Court established a jurisprudential parole evidence rule as follows:

> "Where the parties intend to reduce their negotiations to writing, they are not bound until the contract is reduced to writing and signed by them."[78]

Thus, parole evidence and Exhibit P-1 are inadmissible. The 2021 Contract signed by Appellant/Scully states as to post closing loans:

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[77] *Id.*

[78] Coleman v. Jim Walter Holmes, Inc., 6 So.3d 179, 183 (La. 2009).

> "6. 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."[79]

No provision in the 2021 Contract contradicts this clause. Appellant/Scully does not point to any other provision in the 2021 Contract to suggest it is ambiguous because there are no conflicting clauses.

> "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."[80]

Parole evidence of intent of Scully before the written signed 2021 contract was properly excluded from evidence at the injunction hearing.

Appellant/Scully cites *Doucet*,[81] involving an error excluding evidence in a tort trial on the merits. *Doucet* is distinguishable because the District Court in Scully never had a full trial on the merits like in *Doucet*, only on the preliminary injunction subject to interlocutory review. The merits of the validity of the contract as a whole are reserved for the arbitration panel. *Doucet* was a tort trial with no arbitration clause.[82]

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79 R. Vol. 4, p. 820, Defendants' Exhibit 1.

80 *Aguillard*, 908 So.2d at 17.

81 *Doucet v. Champagne*, 657 So. 2d. 92 (La. App. 1 Cir. 4/7/95).

82 Scully can seek to introduce Exhibit P-1 in the arbitration matter because the validity of the contract as a whole is reserved to the Arbitrator.

Appellant/Scully claims that the contract is also void due to La. C.C.P. Art. 1770. Validity of the contract as a whole was not before the District Court and is not before this panel on interlocutory appeal because validity of the contract is reserved to the arbitration panel under *Aguillard* and *Marchand.*

The District Court did not rule on the merits of the validity of the contracts as a whole and instead, enforced the arbitration clause and granted Appellees a preliminary injunction to preserve the status quo until the arbitration panel reaches the merits.

9. APPELLEES' ARGUMENT IN RESPONSE TO OTHER OBJECTIONS BY APPELLANT/SCULLY

Appellant/Scully cites cases and statutes that involve illegal contracts[83] prohibited by statutes which are against public policy. Instead, the contracts in question were legal. There was mutual risk and mutual cause: both Appellant/Scully and Appellees desired to be prosperous and make money from rentals. Arguments against the validity of the contracts as a whole are reserved for the arbitration panel.

Appellant/Scully cites a case involving a claim by a charter school against the state Board of Elementary and Secondary Education for the proposition that "interpretation of a contract is a question of law, subject to 'de novo' review by this

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[83] *Bach Inv. Co. v. Phillip*, 722 So.2d 1222 (La. App. 5 Cir. 12/16/98) was a contractual assignment of lottery winnings prohibited by statute; *Baker v. Maclay Properties Company*, 648 So.2d 888 (La. 1995) was a contractual fee splitting arrangement between real estate agents in different states which violated the privileges and immunities clause of the U.S. Constitution.

Court.[84] That case is not on point because it did not involve a contract with an arbitration clause. The arrangement between Appellant/Scully and Appellees was not illegal in violation of any statute.

Appellant/Scully cites two arbitration cases.[85] *A & B Valve*[86] is distinguishable because it involved Texas arbitration law so the mandatory provisions of Louisiana's statutes[87] and jurisprudence[88] were not applicable. *Delta*[89] is also distinguishable because the contract providing for arbitration was found to be ambiguous, whereas the arbitration provisions in the Pelican Companies' Operating Agreements are unambiguous.[90]

The court in *Delta* found that even though the arbitration provisions were ambiguous, arbitration was required. *Delta* simply holds that if the contract is ambiguous on arbitration, arbitration should be ordered anyway. "The entire contract is not before the court, just the arbitration provisions."[91]

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84 *Pelican Educational Foundation, Inc. v. The Louisiana State Board of Elementary and Secondary Education*, 97 So.3d 440 (La. App. 1 Cir. 6/22/12).

85 This panel already denied Appellant's Motion to Stay Arbitration, so this is moot.

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

87 LSA R.S. §9:4202.

88 *Aguillard*, supra.

89 *Delta Administrative Services LLC v. Limousine Livery, Ltd.*, 216 So.3d 906 (La. App. 4 Cir. 6/17/15).

90 Defendants' Exhibits 2 through 11, at Section 16.2.

91 *Aguillard v. Auction Management Corp.*, 908 So.2d 1, 17 (La. 2005).

Appellant/Scully cites *Delta* to support an argument that the District Court committed error by failing to admit Exhibit P-1, the May 18, 2021 Letter of Intent. Parole Evidence was not admissible. Exhibit P-1 has nothing to do with the injunction nor the agreement to arbitrate. Instead, the law is:

> ...**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 (U.S.) Supreme Court, requires resolution of the doubt in favor of arbitration.**[92] **(emphasis added.)**

Appellant/Scully argues that the Contract is inconsistent with the Operating Agreements, and the choice of a litigation forum is inconsistent with arbitration. Appellees disagree. An arbitration often cannot proceed from beginning to end without filing pleadings in a district court because the party seeking arbitration may have to file a motion to have it judicially compelled, a motion to obtain stays of litigation, motions seeking restraining orders in cases such as this one, and motions for enforcement following an arbitration award.[93] If the dispute is not within the scope of the arbitration agreement then the parties need a choice of forum. Parties

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[92] *Aguillard*, 908 So.2d at 18.

[93] LSA R.S. §9:4202; §9:4207; and LSA R.S. §9:4209.

need to protect themselves by both choice of law and forum selections clauses to ensure they can compel and enforce arbitration clauses.

Appellant/Scully claims the judicial forum selection clause in the Operating Agreements is inconsistent with arbitration provisions in the same agreement. The limited forum selection clause cited by Appellant/Scully from the Operating Agreements is only for disputes "requiring judicial resolution,"[94] such as injunctions, motions to compel arbitration, and enforcement of an arbitration award. Appellant/Scully relies on Section 18.1 which states:

> 18.1 Choice of Law. The provisions of this agreement shall be construed in accordance with the laws of the State of Louisiana, without regard to any conflicts of laws policies or principles. **If any dispute arising out of or related to the agreement requires judicial resolution,** the parties agree that such matter shall be litigated in a court of competent jurisdiction…The parties irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of forum non conveniens to the maintenance of such action or proceeding… (emphasis added)

Scully's case on the merits does not require judicial resolution because the dispute is within the scope of the arbitration clause. However, Scully's filing suit, filing in the wrong venue, and his repeated failure to honor his written promises to arbitrate make forum selection necessary for preliminary matters. The clause quoted above upon which Appellant/Scully relies is not nearly as specific or comprehensive as the arbitration provision which vests exclusive jurisdiction in arbitration as follows:

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[94] *See* Section 18.1 of Defendants' Exhibits 2 through 11.

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 or the payment of capital contributions or in relation to the other members).**

The Louisiana Supreme Court recognizes:

"...a contract provision that is susceptible to different meanings must be interpreted with a meaning that renders it effective, and not with one that renders it ineffective. Each provision in a contract must be interpreted in light of other provisions so each is give the meaning suggested by the contract as a whole.[95]

The two clauses from the same operating agreements do not conflict. All ten (10) Operating Agreements provide for arbitration of all disputes or issues between the members, issues arising out of the contract, and all claims arising out of the rights and responsibilities of the members in relation to the company including purchase of membership interests and payment of capital contributions. In contrast, the forum selection clause only applies when judicial resolution is required such as the items mentioned above. (i.e., compelling arbitration, injunctive relief, enforcement, etc.)

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[95] *Clovelly Oil Co., LLC v. Midstates Petroleum Co., LLC*, 112 So.3d 187, 192 (La. 2013).

It is well established that, in contract interpretation, the more specific provision controls the general.[96] But these are all questions for the arbitration panel not addressed by the district court and not subject to review on this interlocutory appeal.

The determination of the validity of contracts as a whole (the issue in the case at bar) is left to the arbitrator, not the District Court and thus not this panel. 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 adhesionary 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.**"[97] (Emphasis added.)

Because the entire contract was not before the Court, the District Court cannot have abused its discretion by 1) not declaring the contract void under the Civil Code, or void under the Revised Statute on capital contributions, or 2) excluding the

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[96] *Coleman v. State Farm Fire and Casualty Co.*, 377 So.2d 270, 274 (La. App. 1 Cir. 10/11/23), citing *Aikman v. Thomas*, 2003-2241 (La. App. 1 Cir. 9/17/04), 887 So. 2d 86, 90.

[97] *Aguillard*, 908 So. 2d at 17.

unsigned Letter of Intent as this goes only to Appellant/Scully's argument that the contract was void, an issue for the arbitration panel.

10. CONCLUSION

The appeal is frivolous. The District Court properly issued a preliminary injunction prohibiting Appellant/Scully from management of the Pelican Companies and ordering him to return all property taken from the Pelican Companies and not possess or take company assets and control pending arbitration. The District Court had the benefit of hearing the testimony of Appellant/Scully in addition to documented illegal acts and his testimony. Appellant/Scully's attempt to re-litigate the order compelling arbitration based upon his claims that the contracts are void raises no valid objection in this interlocutory appeal because the validity of the contract as a whole is reserved for the arbitration panel. The District Court made no errors. The rulings of the District Court should be affirmed.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on the 31st day of July 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.

/s/ David M. Flotte
DAVID M. FLOTTE