**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2013 CA 0771**

**ERICA GREEN**

**VERSUS**

**REGIONS BANK AND**
**MORGAN KEEGAN AND COMPANY, INC.**

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**On Appeal from the 19th Judicial District Court**
**Parish of East Baton Rouge, Louisiana**
**Docket No. 611,118, Section 23**
**Honorable William A. Morvant, Judge Presiding**

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**Erica Green**

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**Defendants-Appellees**
**Regions Bank and**
**Morgan Keegan & Co., Inc.**

**BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.**

**Judgment rendered** MAR 19 2014

**PARRO, J.**

Erica Green, a trust beneficiary, challenges a judgment, sustaining an exception pleading the objection of prematurity in favor of Regions Bank and Morgan Keegan and Company, Inc. (Morgan Keegan), and dismissing her suit against these defendants without prejudice. For the following reasons, we affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

In August 1998, Lisa Green and her five-year-old daughter, Erica, were involved in an automobile accident in which Mrs. Green died and Ms. Green was seriously injured and left disabled. As part of a lawsuit later filed and ultimately settled, a special needs trust (Trust) containing $443,240.38 was established for Ms. Green's care and support.[1] In March 2000, Eric Green, Ms. Green's father, was named trustee of the Trust. The record does not contain a copy of the Trust instrument;[2] but, according to an allegation made by Ms. Green in this suit, the only type of distribution that could be made from the Trust, without prior court approval, was a medical expense distribution. Any other distribution from the Trust required court approval. Other than this allegation, the record contains no specific details regarding the terms of the Trust, or management of the Trust funds, between March 2000 and March 2006.

On March 9, 2006, Mr. Green opened a new consumer checking account in his name at Regions Bank, where he allegedly deposited an unknown amount of the Trust funds.[3] On that same date, he met with a financial advisor at Morgan Keegan to

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[1] Federal law provides for the establishment of a special needs trust to provide funding for the care of a disabled person in addition to Medicaid or Social Security disability benefits for which the person may be eligible. See 42 U.S.C. §1396p(d)(4)(A); Watkins v. Barry, 06-858 (La. App. 3rd Cir. 12/6/06), 946 So.2d 262, 265, writ denied, 07-0373 (La. 4/27/07), 955 So.2d 686. Here, the parties refer to the Trust as a "special needs trust," but we do not analyze whether this Trust indeed satisfies the requirements of federal law. Accord Anderson v. Dussault, 177 Wash. App. 79, 310 P.3d 854, 855 n.1 (2013).

[2] As used in the Louisiana Trust Code, LSA-R.S. 9:1721 et seq., except when the context clearly indicates otherwise, a "[t]rust instrument" means "the written document creating the trust and all amendments and modifications thereof." LSA-R.S. 9:1725(8).

[3] The record indicates that, in 1999, prior to becoming the trustee, Mr. Green had previously opened an account bearing Ms. Green's name at AmSouth Bank. However, it is unclear whether this account contained Trust funds. The record shows that AmSouth Bank merged into Regions Bank in November 2006, and AmSouth accounts were converted to Regions Bank accounts in July, October, and December 2007. All legacy AmSouth consumer customers, including Mr. Green, received a copy of the Regions Bank deposit agreement, effective October 26, 2007; further, that agreement contained the same Regions Bank arbitration provisions applicable to the checking account Mr. Green opened at Regions Bank in his own name on March 9, 2006.

discuss opening a trust account for the "Erica Green Special Needs Trust" (EGSNT account). As shown on a "Trust New Account Form," Mr. Green opened the EGSNT account at Morgan Keegan on April 10, 2006, in the amount of $300,000. According to Ms. Green's petition, Mr. Green died on September 1, 2008, after a lengthy illness. Ms. Green also alleges that, at the time of Mr. Green's death, all but approximately $2,000 of the Trust funds had been exhausted.

On September 10, 2008, Yolanda Esokpunwu, Ms. Green's aunt, was appointed successor trustee of the Trust. On August 31, 2009, Ms. Esokpunwu filed suit against Regions Bank and Morgan Keegan, alleging that they were responsible for the Trust losses based on an alleged breach of contract, negligence, a breach of a duty of reasonable care in advising Mr. Green, and negligent misrepresentation. In response, Regions Bank and Morgan Keegan separately filed dilatory exceptions pleading the objection of prematurity. They each claimed that Ms. Esokpunwu was bound by Mr. Green's agreements with them to submit any dispute regarding the accounts at Regions Bank and Morgan Keegan to binding arbitration. After a hearing on the exceptions, the trial court signed two judgments on April 30, 2010, granting each defendant's exception, and dismissing Ms. Esokpunwu's claims against them without prejudice.

Almost two years later, on April 12, 2012, Ms. Green, who had reached the age of majority, filed the instant suit against Regions Bank and Morgan Keegan, essentially making the same allegations as those asserted by Ms. Esokpunwu in the previous suit. Regions Bank and Morgan Keegan responded by jointly filing a dilatory exception pleading the objection of prematurity, claiming that Ms. Green was bound, just as Ms. Esokpunwu was, by Mr. Green's agreements with them to submit any dispute regarding the accounts to binding arbitration. In due course, the trial court held a hearing on the objection of prematurity.[4] At the hearing, Regions Bank and Morgan Keegan introduced

[4] At the hearing, the trial court also addressed a declinatory exception pleading the objection of lis pendens and a motion to quash subpoenas duces tecum, which had been earlier filed by Regions Bank and Morgan Keegan. The disposition of these matters is not at issue in this appeal.

evidence[5] to show that, in 2006, when Mr. Green opened the checking account at Regions Bank and the EGSNT account at Morgan Keegan, he signed documentation agreeing to submit any dispute regarding the accounts at either institution to binding arbitration. Ms. Green opposed the objection of prematurity, contending she was not bound by the arbitration agreements as would be a trustee, because she, as the trust beneficiary, had separate causes of action against Regions Bank and Morgan Keegan under LSA-R.S. 9:2222(2), a provision of the Louisiana Trust Code, LSA-R.S. 9:1721 et seq.

At the conclusion of the hearing on the objection of prematurity, in explaining its intent to grant the exception, the trial court stated:

> [A]s I look at the lawsuit, Ms. Green is filing the same claim that was previously filed on her behalf by the trustee, only now she's asserting it in her own capacity as a major. I think that this would be *lis pendens* if the first suit was still pending, but it's been dismissed. Though it's not raised, it would probably be *res judicata* on the issue of prematurity because we've got the same contract, the same claims, the same arbitration provisions. But the Court is going to maintain the exception of prematurity for the reasons previously stated on March 15, 2010.[6] I think that her claims [are] based on this contract [which] contains an arbitration provision requiring [that] this matter go to binding arbitration. And whether it's brought in a representative capacity or in her individual capacity is of no moment. It's still a claim for breach of this contract, and the contract contains an arbitration provision. So, I'm going to maintain the exception of prematurity, dismissing Ms. Green's suit as against [Regions Bank] and [Morgan Keegan] without prejudice, at plaintiff's costs, and, again, that this matter is going to go to arbitration should she wish to pursue this claim. [Underscoring added].

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[5] As later discussed, at the hearing on the exception of prematurity, Regions Bank and Morgan Keegan introduced affidavits of a Regions Bank employee and a Morgan Keegan employee. Exhibits were attached to both affidavits. Under LSA-C.C.P. art. 930, "[o]n the trial of the dilatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition." This court has interpreted the word "evidence" in LSA-C.C.P. art. 930 to mean competent, legal evidence. Board of Com'rs of Port of New Orleans v. Louisiana Com'n on Ethics for Public Employees, 416 So.2d 231, 238 (La. App. 1st Cir.), writ denied, 421 So.2d 248 (La. 1982); see also Smith v. Alford, 04-0586 (La. App. 1st Cir. 3/24/05), 906 So.2d 674, 676. A sworn affidavit is hearsay and is not competent evidence unless its use is specifically authorized by statute. Board of Com'rs of Port of New Orleans, 416 So.2d at 238. However, to preserve an evidentiary issue for appellate review, it is essential that the party entitled to challenge evidence as inadmissible do so by entering a contemporaneous objection to the evidence and stating the reasons for the objection. See Armand v. Lady of the Sea General Hosp., 11-1083 (La. App. 1st Cir. 12/21/11), 80 So.3d 1222, 1226, writ denied, 12-0230 (La. 3/30/12), 85 So.3d 121. Moreover, a party's failure to object to inadmissible evidence when it is admitted constitutes a waiver of the objection, and the trial court does not err in considering such evidence. Id. Thus, although the affidavits introduced into evidence at the hearing by Regions Bank and Morgan Keegan were hearsay, Ms. Green did not object to their admissibility as such, and the trial court did not err in considering them.

[6] March 15, 2010, was the date of the hearing on the exceptions of prematurity filed by Regions Bank and Morgan Keegan in the earlier suit filed by Ms. Esokpunwu.

In conformity with these reasons, the trial court signed a judgment on December 11, 2012, sustaining Regions Bank's and Morgan Keegan's exception raising the objection of prematurity and dismissing Ms. Green's claims against them without prejudice.

Ms. Green appeals from the adverse judgment.[7] In a single assignment of error, she contends the trial court erred in sustaining the exception of prematurity based on the same reasons she asserted below.

**DISCUSSION**

Louisiana Code of Civil Procedure article 926(A)(1) provides for the dilatory exception pleading the objection of prematurity. The exception is intended to retard the progress of an action rather than to defeat it. See LSA-C.C.P. art. 923. An action is premature if it is brought before the right to enforce the obligation sued on has accrued. See LSA-C.C.P. art. 423. The objection of prematurity raises the issue of whether the judicial cause of action has yet to come into existence because some prerequisite condition has not been fulfilled. Armand v. Lady of the Sea General Hosp., 11-1083 (La. App. 1st Cir. 12/21/11), 80 So.3d 1222, 1225-26, writ denied, 12-0230 (La. 3/30/12), 85 So.3d 121.

The defense that a plaintiff is not entitled to judicial relief because of a valid agreement to submit claims to arbitration may be raised, as it was here, by the dilatory exception of prematurity. Cook v. AAA Worldwide Travel Agency, 360 So.2d 839, 841 (La. 1978); O'Neal v. Total Car Franchising Corp., 44,793 (La. App. 2nd Cir. 12/16/09), 27 So.3d 317, 319. When the issue of failure to arbitrate is raised by the exception of prematurity, the defendant pleading the exception has the burden of showing the existence of a valid contract to arbitrate, by reason of which the judicial action is premature. Cook, 360 So.2d at 841; O'Neal, 27 So.3d at 319. If the dilatory exception of prematurity is sustained, the premature action shall be dismissed. LSA-C.C.P. art. 933.

[7] Ms. Green first challenged the December 11, 2012 judgment by filing an application for supervisory writs in this court. This court granted the writ, noting that the judgment was a final appealable judgment and remanding the case with an order to the trial court to grant Ms. Green an appeal. Green v. Regions Bank, et al., 13-0046 (La. App. 1st Cir. 3/25/13) (unpublished writ action).

In support of their exception of prematurity, Regions Bank and Morgan Keegan introduced the affidavit of John Michael Bannister, a Regions Bank vice president and senior regional operations manager. In his affidavit, Mr. Bannister explained that, when Mr. Green opened the Regions Bank checking account on March 9, 2006, he signed a signature card, wherein he acknowledged receipt of a deposit agreement that contained arbitration provisions. A copy of the deposit agreement is attached to Mr. Bannister's affidavit. A statement at the bottom of the first page of the deposit agreement reads:

> **Arbitration and Waiver of Jury Trial**. THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE AND A WAIVER OF JURY TRIAL. PLEASE REFER TO PARAGRAPH 34 OF THIS AGREEMENT.

Further, Paragraph 34 of the deposit agreement states, in pertinent part:

> 34. **ARBITRATION AND WAIVER OF JURY TRIAL.** Either you or we may choose to have any disputes between you and us resolved by binding arbitration, as provided below. ***Rights that you or we would have in court may not be available in arbitration. It is important that you read this entire arbitration provision.***
>
> By opening or maintaining an account, you and we agree that, upon written demand for arbitration made by you or us, all disputes, controversies and claims (subject to the provisions below and regardless of whether based on contract, fraud, tort, intentional tort, statute, regulation, constitution, common law, equity or otherwise, and whether pre-existing, present or future), that arise from or relate to (a) this Agreement, your account, any transaction involving your account ... , (b) the relationships that result from the account or this Agreement (including, to the fullest extent permitted by applicable law, relationships with third parties who are not parties to this Agreement or this arbitration provision), or (c) the scope or enforceability of this Agreement (collectively, a "Claim") shall be settled by binding arbitration.

Additionally, Mr. Bannister explained that, in 2007, after a merger with AmSouth Bank, Regions Bank mailed a "Consumer Disclosure Booklet" to all of its customers with accounts in Louisiana, Mississippi, and Tennessee, which would have included Mr. Green, a Louisiana resident. This "Consumer Disclosure Booklet," the terms of which superseded prior agreements and became effective on October 2, 2007, also contained a deposit agreement, which included arbitration provisions. A copy of the "Consumer Disclosure Booklet" is attached to Mr. Bannister's affidavit. A statement immediately preceding Section I of the deposit agreement reads:

> **ARBITRATION AND WAIVER OF JURY TRIAL. THIS AGREEMENT CONTAINS PROVISIONS FOR BINDING ARBITRATION AND**

**WAIVER OF JURY TRIAL. YOUR ACCEPTANCE OF THIS AGREEMENT INCLUDES YOUR ACCEPTANCE OF AND AGREEMENT TO SUCH PROVISIONS.**

Immediately following the above statement, **SECTION I: AGREEMENT FOR DEPOSIT ACCOUNTS** states, in pertinent part:

> 1. **Acceptance of This Agreement.** ... [B]y maintaining an account after our sending ... this Agreement ... , you agree to the terms of this Agreement ... .
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> . . . .
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> 34. **ARBITRATION AND WAIVER OF JURY TRIAL. Except as expressly provided below, you and we agree that either party may elect to resolve by BINDING ARBITRATION any controversy, claim, counterclaim, dispute or disagreement between you and us, whether arising before or after the effective date of this Agreement (any "Claim"). This includes, but is not limited to, any controversy, claim, counterclaim, dispute or disagreement arising out of, in connection with or relating to any one or more of the following: (1) the interpretation, execution, administration, amendment or modification of the Agreement; (2) any account; (3) any charge or cost incurred pursuant to the Agreement; (4) the collection of any amounts due under the Agreement or any account; (5) any alleged contract or tort arising out of or relating in any way to the Agreement, any account, any transaction, any advertisement or solicitation, or your business, interaction or relationship with us; (6) any breach of any provision of the Agreement; (7) any statements or representations made to you with respect to the Agreement, any account, any transaction any advertisement or solicitation, or your business, interaction or relationship with us; (8) any of the foregoing arising out of, in connection with or relating to any agreement which relates to the Agreement, any account, any transaction or your business, interaction or relationship with us. If either party elects to arbitrate, the Claim shall be settled by BINDING ARBITRATION under the Federal Arbitration Act ("FAA").**

We also note that the Regions Bank deposit agreement defined **you, your, yours, depositor, and customer**, in pertinent part, as:

> [A]s the context may require, any person or entity in whose name the account is maintained according to our records, ... and/or any person or entity that has a beneficial interest in the account, and/or any such person's or entity's assignee or successor in interest to the account.

Regions Bank and Morgan Keegan also introduced the affidavit of Patrick G. Talamo, a Morgan Keegan financial advisor, into evidence. In his affidavit, Mr. Talamo explained that he met with Mr. Green on March 9, 2006, to discuss Mr. Green's request to open the EGSNT account. A "Trust New Account Form" and a "New Account Client

Agreement and Disclosure Statement" (MK Agreement) were mailed to Mr. Green the following day for review. On April 10, 2006, Mr. Talamo again met with Mr. Green at which time Mr. Green opened the EGSNT account, and signed a Trust New Account Form, acknowledging that he had "read, received, [understood, and agreed] to abide by all the terms and conditions" of the MK Agreement, and that that document "[contained] a binding arbitration clause and other provisions substantially affecting [his] rights." Copies of the signed Trust New Account Form and MK Agreement are attached to Mr. Talamo's affidavit.

Under the section of the MK Agreement titled **Morgan Keegan Client Agreement**, Paragraph 5 states, in pertinent part:

> **5. Arbitration**
> **This agreement contains a predispute arbitration clause. ...**
>
> **You agree and, by accepting, opening or maintaining any account for you, Morgan Keegan agrees that all controversies between you and Morgan Keegan ... which may arise from any account or for any cause whatsoever, shall be determined by arbitration. ...**
>
> **This arbitration provision shall apply to any controversy or claim or issue in any controversy arising from events which occurred prior to, on or subsequent to the execution of this arbitration agreement. ...**

Ms. Green claims that she, as trust beneficiary, is not bound by these arbitration provisions. She contends that LSA-R.S. 9:2222(2) provides her a separate cause of action against Regions Bank and Morgan Keegan. Louisiana Revised Statute 9:2222(2) provides:

> A trustee is the proper plaintiff to sue to enforce a right of the trust estate, except that a beneficiary may sue to enforce such a right, in order to protect his own interest, in an action against:
>
> . . . .
>
> (2) An obligor, if there is no trustee or the trustee cannot be subjected to the jurisdiction of the proper court.[8] [Emphasis added].

While recognizing that the trustee is generally the proper party to sue on behalf of a trust, the above statute gives a beneficiary a limited right to sue an obligor to

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[8] For purposes of the Louisiana Trust Code, the "proper court" in the case of an inter vivos trust means the district court of the parish designated by the settlor, or if no designation is made, and the trustee is a nonresident, the district court in which the agent for service of process of any nonresident trustee is domiciled. See LSA-R.S. 9:1725(5) and 2235. Because the subject Trust instrument in which Ms. Esokpunwu was designated successor trustee is not part of the appellate record, the "proper court" of Louisiana in this case is unknown.

enforce "a right of the trust estate" in certain circumstances. An examination of Ms. Green's claims in this suit reveals that the "right" she seeks to assert indeed belongs to the Trust estate. Her claims against Regions Bank and Morgan Keegan relate to their alleged improper handling of Trust funds, that is, she alleges they are responsible for the Trust losses based on breach of contract, negligence, a breach of duty in advising Mr. Green, and negligent misrepresentation. However, if this "right of the trust estate" to pursue claims for these alleged breaches and negligence falls within the scope of the subject arbitration provisions, then the "right" must be arbitrated, regardless of who asserts it.

Ms. Green does not dispute that Mr. Green had the power to enter into contracts on behalf of the Trust. As part of this power, Mr. Green also had the express authority, pursuant to LSA-R.S. 9:2121,[9] to submit claims affecting the Trust property to arbitration.[10] Thus, Mr. Green properly agreed to abide by the terms of the Regions Bank deposit agreement and the MK Agreement, both of which contained very broad arbitration provisions. The arbitration provisions of the 2007 Regions Bank deposit agreement bound Mr. Green to submit any claim "arising out of, in connection with or relating to any agreement which relates to the [deposit agreement], any account, any transaction or your business, interaction or relationship with [Regions Bank]" to binding arbitration.[11] The arbitration provisions of the MK Agreement likewise bound Mr. Green, as trustee of the EGSNT, to submit "all controversies" between him and Morgan Keegan "which may arise from any account or for any cause whatsoever" to binding arbitration. These broad arbitration provisions plainly encompass the "rights" of the Trust.

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[9] Under LSA-R.S. 9:2121, a trustee has express authority to "compromise, submit to arbitration, or abandon claims affecting the trust property." (Emphasis added).

[10] Generally, the trustee of a trust acquires title to the trust property with authority to manage it and to transfer it. Edward E. Chase, Jr., 11 La. Civil Law Treatise, Trusts §1:2 at 3 (2nd ed. 2009); also see Bridges v. Autozone Properties, Inc., 04-0814 (La. 3/24/05), 900 So.2d 784, 796-97 ("Under Louisiana law, title to the trust property vests in the trustee alone, and a beneficiary has no title to or ownership interest in trust property, but only a civilian 'personal right' vis-à-vis the trustee, to claim whatever interest in the trust relationship the settler has chosen to bestow.") The exact nature and extent of the duties and powers of a trustee are determined from the provisions of the trust instrument, except as otherwise expressly provided by the Louisiana Trust Code, and, in the absence of any provisions of the trust instrument, by the provisions of "Part V. Duties and Powers of the Trustee" of Chapter 1 of the Louisiana Trust Code. See LSA-R.S. 9:2061-2173. As earlier noted, a copy of the trust instrument at issue in this case is not part of the record.

[11] We also note that, under the definition of "you" in the Regions Bank deposit agreement, Ms. Green, as trust beneficiary, is also bound as "any person or entity that has a beneficial interest in the account ... ."

Consequently, because Mr. Green was bound by these arbitration provisions, and because the rights of the Trust fall within the scope of these arbitration provisions, Ms. Green cannot sue independently to enforce these rights of the Trust, because they must proceed to binding arbitration.[12]

Ms. Green also argues that she should not be bound by the arbitration provisions at issue, because she neither signed them nor even knew of their existence. As a general rule, it is true that a party cannot be required to arbitrate a dispute that he has not agreed to so submit. See Snyder v. Belmont Homes, Inc., 04-0445 (La. App. 1st Cir. 2/16/05), 899 So.2d 57, 63, writ denied, 05-1075 (La. 6/17/05), 904 So.2d 699; Lakeland Anesthesia, Inc. v. United Healthcare of La., Inc., 03-1662 (La. App. 4th Cir. 3/17/04), 871 So.2d 380, 386-87, writs denied, 04-0969 & 04-0972 (La. 6/25/04), 876 So.2d 834, citing Larry E. Edmondson, Domke on Commercial Arbitration §1:2 (3rd. ed. 2003). Nonetheless, "a non-signatory to an agreement containing an arbitration provision may be bound by that provision under accepted theories of agency or contract law ... ." Gunderson v. F.A. Richard & Assoc., Inc., 05-917 (La. App. 3rd Cir. 8/23/06), 937 So.2d 916, 921, citing Lakeland Anesthesia, Inc., 871 So.2d at 393; see also Prasad v. Bullard, 10-291 (La. App. 5th Cir. 10/12/10), 51 So.3d 35, 40.

To the extent Ms. Green's claims are based on breach of the agreements Mr. Green had with Regions Bank and Morgan Keegan, she cannot hold these parties to certain terms of the agreements but not to others. If a non-signatory seeks to enforce the terms of a written agreement containing an arbitration provision, he must accept all of the terms of the agreement, including the arbitration provision. In other words, he cannot seek to enforce specific terms of the agreement while seeking to avoid enforcement of the arbitration provision. The non-signatory cannot have it both ways; he cannot rely on the agreement when it works to his advantage and then repudiate the agreement when it works to his disadvantage. See Shroyer v. Foster, 01-0385 (La. App. 1st Cir. 3/28/02), 814 So.2d 83, 89, superseded by statute on unrelated grounds,

[12] This conclusion is consistent with the Louisiana Supreme Court's view that arbitration is favored, and any doubt concerning the scope of arbitrable issues should be resolved in favor of arbitration. Morial v. BPI Home Builder, LLC, 12-2195 (La. 11/2/12), 99 So.3d 1006 (per curiam).

as stated in Arkel Constructors, Inc. v. Duplantier & Meric, Architects, LLC, 06-1950 (La. App. 1st Cir. 7/25/07), 965 So.2d 455, 458-49; also see Southwest Texas Pathology Associates, L.L.P. v. Roosth, 27 S.W.3d 204, 208 (Tx. Ct. App. 8/16/00); contrast Billieson v. City of New Orleans, 02-1993 (La. App. 4th Cir. 9/17/03), 863 So.2d 557, 562, writ denied, 04-0563 (La. 4/23/04), 870 So.2d 303 (When non-signatory's claims are not in any way associated with the enforcement of the terms of the contract containing the arbitration provision, the non-signatory is not bound to arbitrate those claims.)

Next, according to Ms. Green, LSA-R.S. 9:2222(2) gives her, as trust beneficiary, a "direct, private right of action" against Regions Bank and Morgan Keegan, because Ms. Esokpunwu, although the trustee of the Trust, is also a Georgia resident, who cannot be subjected to the jurisdiction of a Louisiana court. According to Ms. Green, once Ms. Esokpunwu's suit against Regions Bank and Morgan Keegan was dismissed in 2010, "she no longer had and still does not have any contacts with the state of Louisiana outside of her status as trustee of the relevant Trust Account," and that this status alone is not enough to "involuntarily" subject Ms. Esokpunwu to the jurisdiction of the courts of this state.

Ms. Green's argument that Ms. Esokpunwu, as a Georgia resident, is not subject to the jurisdiction of a Louisiana court is incorrect. Under the express terms of LSA-R.S. 9:1784, "[a] trustee who accepts a trust established pursuant to [the Louisiana Trust Code] submits to the jurisdiction of the courts of this state." Assuming that the Trust was established pursuant to the Louisiana Trust Code, it is undisputed that Ms. Esokpunwu accepted the Trust in 2008, after Mr. Green's death, and therefore submitted herself to the jurisdiction of the courts of Louisiana. Ms. Green's argument to the contrary is without merit.

In summary, we conclude that Regions Bank and Morgan Keegan have carried their burden of showing the existence of valid contracts to arbitrate between Mr. Green, as trustee of the Trust, and Regions Bank, and between Mr. Green, as trustee of the Trust, and Morgan Keegan. The subject arbitration provisions encompass the rights of

the Trust. Ms. Green's suit is an attempt to enforce the rights of the Trust. Because the rights of the Trust are subject to binding arbitration, Ms. Green's suit is premature and the trial court properly dismissed it. See LSA-C.C.P. art. 933(A); Cook, 360 So.2d at 841; O'Neal, 27 So.3d at 319.

**CONCLUSION**

For the foregoing reasons, the trial court's December 11, 2012 judgment, sustaining the exception pleading the objection of prematurity filed by Regions Bank and Morgan Keegan and Company, Inc. and dismissing Erica Green's suit without prejudice, is affirmed. Each party is to bear its own costs of this appeal.

**AFFIRMED.**