NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 0684

CARLETON LORASO & HEBERT, LLC

VERSUS

GREGORY L. OWENS AND OWENS COLLISION AND SERVICE CENTER, LLC

Judgment Rendered: DEC 2 2 2016

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge,
State of Louisiana
Docket Number C641754

Honorable Donald R. Johnson, Judge Presiding

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Stephen C. Carleton
Carmen T. Hebert
Victor R. Loraso, III
Baton Rouge, LA

Counsel for Plaintiff/Appellant,
Carleton Loraso & Hebert, LLC

Ashly Van Earl
Plaquemine, LA

Counsel for Defendant/Appellee,
Gregory L. Owens and Owens Collision and Service Center, LLC

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BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.

McClendon, J. concurs in the result reached by the majority.

WHIPPLE, C.J.

This matter is before us on appeal by plaintiff, Carleton Loraso & Hebert, LLC ("CLH"), from a judgment of the trial court denying plaintiff's petition to enforce an arbitration agreement. For the following reasons, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

On April 5, 2013, CLH and defendant, Owens Collision and Service Center, LLC ("Owens Collision"), entered into a fee agreement, whereby CLH, a law firm, was to provide legal services to Owens Collison for a set hourly rate and Owens Collision was to pay an initial advance deposit of $5,000.00.

Pertinent to this appeal, the April 5, 2013 fee agreement between CLH and Owens Collision contained an alternative dispute resolution clause, stating:

> **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, Clients and the Firm agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.
>
> **NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.**

Both parties initialed below the alternative dispute resolution clause and signed the bottom of the fee agreement.[1]

In August of 2015, CLH filed a "Petition for Order Directing Defendants to Arbitrate," alleging that Owens Collision had refused to pay CLH for legal services

[1]Although, the fee agreement incorrectly identifies Gregory Evans, not Gregory Owens, as signing for Owens Collision in his capacity as president, Gregory Owens, who is a named defendant herein, does not dispute that he was the individual who signed the agreement with CLH and that any reference to Gregory Evans was a typographical error.

rendered in 2014, as agreed to in the April 5, 2013 fee agreement. The petition further alleged that pursuant to the alternative dispute resolution provision in the fee agreement, the fee dispute between CLH and Owens Collision was to be submitted to the Louisiana State Bar Association ("LSBA") Legal Fee Dispute Resolution Program. However, despite CLH's multiple requests, Owens Collision refused to pay the required initial $100.00 fee required by the LSBA Legal Fee Dispute Resolution Program. Accordingly, CLH sought an order from the trial court requiring Owens Collision to arbitrate its fee dispute with CLH through the LSBA Legal Fee Dispute Resolution Program, and CLH further sought an award of attorneys' fees pursuant to LSA-R.S. 9:4203(E).[2]

The trial court conducted a hearing on CLH's petition to enforce the arbitration agreement on November 2, 2015. At the hearing, Owens Collision argued that the arbitration clause (i.e., the "alternative dispute resolution" provision) in the fee agreement with CLH should not be enforced because it did not comply with the requirements for arbitration clauses in attorney-client agreements as set forth by the Louisiana Supreme Court in Hodges v. Reasonover, 12-0043 (La. 7/2/12), 103 So. 3d 1069, 1077. In contrast, CLH argued that Hodges was distinguishable from the facts of the instant case, because Hodges involved a legal malpractice claim, whereas the dispute herein was a fee dispute.

Following the hearing, the trial court rendered judgment on November 18, 2015, denying CLH's petition to enforce arbitration. Subsequently, the trial court rendered written reasons for judgment, wherein the trial court cited Hodges and stated that the arbitration clause at issue herein did not satisfy the requirements of

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[2]Louisiana Revised Statute 9:4203(E) states:

> E. Failure to pay within ten business days any deposit, fee, or expense required under the arbitration process shall constitute default in the arbitration proceeding. A party aggrieved by the default shall be entitled to remove the matter under arbitration in its entirety to a court of competent jurisdiction and shall be entitled to attorney fees and costs in addition to other remedies as provided in this Section.

Louisiana law and jurisprudence as: (1) it failed to state the substantial costs that may be incurred in arbitrating, and (2) it failed to explicitly disclose the nature of the claims covered by the arbitration clause.

CLH filed the instant appeal of the November 18, 2015 judgment of the trial court, assigning the following as error:[3]

(1) The trial court erred by refusing to enforce the arbitration clause in the fee agreement because a narrow arbitration clause, which only applies to legal fee disputes, does not require inclusion of all "legal effects of binding arbitration" identified by the Louisiana Supreme Court in Hodges.

(2) The trial court erred in finding that CLH (1) failed to disclose to the client that "substantial costs" "may be incurred by arbitrating," and (2) failed to disclose the nature of the claims covered by the clause.

DISCUSSION

In Hodges, the Louisiana Supreme Court granted writs to decide "whether a binding arbitration clause in an attorney-client retainer agreement is enforceable where the client has filed suit **for legal malpractice**." Hodges, 103 So. 3d at 1071 (emphasis added). The court found that there is no *per se* rule against arbitration clauses in attorney-client retainer agreements; however, at a minimum, the attorney must disclose the following legal effects of binding arbitration, assuming they are applicable:

> (1) Waiver of the right to a jury trial;
> (2) Waiver of the right to an appeal;
> (3) Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
> **(4) Arbitration may involve substantial upfront costs compared to litigation;**

[3]Initially, CLH sought review of the November 18, 2015 judgment by filing an application for supervisory writs with this court. This court granted the writ for the limited purpose of remanding the matter to the trial court with instructions to grant CLH an appeal of the judgment, as the judgment constitutes a final judgment that disposed of all issues raised in the lawsuit.

(5) Explicit disclosure of the nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;
(6) The arbitration clause does not impinge upon the client's right to make a disciplinary complaint to the appropriate authorities; and
(7) The client has the opportunity to speak with independent counsel before signing the contract.

Hodges, 103 So. 3d at 1071, 1077 (emphasis added).

At issue herein are Hodges requirements four and five, as stated above, and whether the arbitration clause in the fee agreement between CLH and Owens Collision satisfies these requirements and whether the failure to satisfy these requirements constitutes grounds for not enforcing the arbitration agreement. The crux of CLH's argument on appeal is that the Hodges requirements apply only when an arbitration clause potentially implicates legal malpractice suits. According to CLH, if the dispute does not implicate legal malpractice, then only those requirements that are applicable to the dispute at issue should be required. Accordingly, CLH contends that in the instant case, there was no need to state the "substantial upfront costs [of mediation] compared to litigation," because the fees required by the LSBA Fee Dispute Resolution Program, as mentioned in the subject arbitration clause, are much less than the costs of litigation. Moreover, CLH contends that contrary to the trial court's finding, the arbitration clause at issue herein did "explicitly disclose the nature of the claims covered by the arbitration claim," as the provision refers only to fee disputes.

We first address CLH's argument that the arbitration clause at issue herein "explicitly discloses the nature of the claims covered." Notwithstanding the issue of whether the requirements as set by the Supreme Court in Hodges should apply herein because this is a fee dispute, not a legal malpractice dispute, we note that the general rules governing all arbitration agreements, regardless of context, require that arbitration clauses be reasonably clear and ascertainable. See Snyder v. Belmont Homes, Inc., 2004-0445 (La. App. 1st Cir. 2/16/05), 899 So. 2d 57, 61,

writ denied, 2005-1075 (La. 6/17/05), 904 So. 2d 699 ("Even if Louisiana law favors arbitration, the dispute resolution clause will not be enforced unless the meaning is reasonably clear and ascertainable."); see also Kosmala v. Paul, 569 So. 2d 158, 162 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 91 (La. 1991).

After carefully reviewing the language of the arbitration clause at issue herein, we are unable to find that the clause is "reasonably clear and ascertainable." Snyder, 899 So. 2d at 61. The arbitration clause does not explicitly state what types of claims are subject to arbitration (i.e., fee disputes or legal malpractice claims). Additionally, the language of the arbitration clause is conflicting. Specifically, the first sentence in the arbitration clause refers to arbitration by the Louisiana State Bar Association Legal **Fee Dispute** Resolution Program, while the second sentence states that the parties "are agreeing to have **any dispute** ... decided by neutral binding arbitration." (Emphasis added). Moreover, the first sentence in the arbitration clause states that "**any dispute or disagreement**" will be submitted to the "[LSBA] Fee Dispute Resolution Program." However, a review of the rules governing this program reveals that this program hears only fee disputes,[4] which further demonstrates the ambiguous and contradictory statements in the arbitration clause.

Here, the burden was on CLH to show the existence of a valid contract to arbitrate, as CLH was the party seeking to enforce the arbitration provision. Amer v. Roberts, 2015-0599 (La. App 1st Cir. 11/9/15), 184 So. 3d 123, 129. After reviewing the record before us on appeal, we find that CLH did not satisfy this required burden of proof. We are unable to conclude that a valid contract to

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[4]As stated in the preamble to the program rules, effective May 1, 2010.

> The purpose of the Lawyer Dispute Resolution Program is to give timely, reasonable and final resolution of disputes **over fee issues** between clients and their lawyers as well as disputes between lawyers with their fellow attorneys outside of the civil court system through the use of arbitration. (Emphasis added).

arbitrate exists where the language of the arbitration clause is ambiguous and conflicting. Therefore, we find no error by the trial court in denying CLH's petition to enforce the arbitration agreement.[5]

CONCLUSION

For the above and foregoing reasons, the November 18, 2015 judgment of the trial court is hereby affirmed. Costs of this appeal are assessed to plaintiff Carleton Loraso & Hebert, LLC.

AFFIRMED.

[5]Given our holding herein, we pretermit discussion of CLH's remaining argument pertaining to the applicability in the instant case of the Hodges requirement that an arbitration clause in an attorney-client agreement must state the substantial upfront costs of arbitration as compared to litigation.