

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

ROLL-LIFT USA, INC.

NO. 2017 CW 1027

VERSUS

CF INDUSTRIES NITROGEN, LLC

NOV 29 2017

In Re: Federal Insurance Company, applying for supervisory writs, 23rd
Judicial District Court, Parish of Ascension, No. 117917.


BEFORE: PETTIGREW, McCLENDON, WELCH, THERIOT AND CHUTZ, JJ.

WRIT GRANTED WITH ORDER. The release of lien bond issued by defendant/relator Federal Insurance Company was made solely in favor of CB&I Shaw Contractors, Inc., not defendant CF Industries Nitrogen, LLC. Moreover, Federal is a defendant in this litigation only because it issued the lien bond in favor of CB&I and, thus, Federal's liability is derivative of CB&I's alleged liability. Therefore, as surety, Federal is able to raise any defense available to its principal - CB&I. See La. Civ. Code art. 3046. Accordingly, as there is no dispute regarding the existence of the arbitration provisions, we find the district court erred in denying Federal's exception. Therefore, we reverse the district court, grant Federal's dilatory exception of prematurity, and dismiss Roll-Lift USA, Inc.'s action against Federal. See La. Code Civ. P. art. 933.

MRT
WRC
JTP
PMc

Welch, J., dissents. The majority incorrectly finds that the release of bond issued by Federal Insurance Company ("Federal") was made solely in favor of CB&I Shaw Constructors, Inc. ("CB&I"), when in fact the release was made in favor of Roll-Lift USA, Inc. as obligee. Further, as pointed out by the majority, Federal is a surety of CB&I and as such is entitled to claim any defenses available to CB&I. However, as explained by this Court in **Sherwin-Williams Co. v. Culotta**, 2011-1929 (La. App. 1st Cir. 5/2/12), 2012 WL 1550589, arbitration is not defense, but is a mode of dispute resolution created by contract. Federal was not a party to contract between Roll-Lift USA, Inc. and CB&I, and, thus, Federal is not entitled to enforce the contractually created right of arbitration. Further, the doctrine of equitable estoppel, the application of which in this instance is disfavored as noted in **Sherwin-Williams**, is inapplicable to the facts of this case because the litigation herein arises from the Release of Lien Bond, not the underlying contract between Roll-Life USA, Inc. and CB&I. As such, the writ application herein should be denied and the ruling of the district court denying Federal Insurance Company's peremptory exception raising the objection of prematurity should be maintained.

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DEPUTY CLERK OF COURT
FOR THE COURT