CATHERINE ALFORD	*	**NO. 2017-C-1036**
VERSUS	*	**COURT OF APPEAL**
CB CONSTRUCTION & DEVELOPMENT, LLC	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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LOBRANO, J., DISSENTS AND ASSIGNS REASONS.

I respectfully dissent from the majority opinion reversing the judgment of the district court. I find that the court below correctly overruled the dilatory exception of prematurity filed by CB Construction & Development, LLC ("CBCD").

As we stated in *Delta Administrative Services L.L.C. v. Limousine Livery, Ltd.*, 15-0110, pp. 7-9 (La.App. 4 Cir. 6/17/15), 216 So.3d 906, 911-12:

> In Louisiana, the positive law favors arbitration as "a preferred method of alternative dispute resolution." *Hodges v. Reasonover*, 12–0043, p. 4 (La.7/2/12), 103 So.3d 1069, 1072 (citing *Aguillard v. Auction Management Corp.*, 04–2804, p. 6 (La.6/29/05), 908 So.2d 1, 7). Under Louisiana law, a written contract to settle a dispute by arbitration is binding and enforceable. La. R.S. 9:4201. Pursuant to La. R.S. 9:4202, "a court shall stay the trial of an action in order for arbitration to proceed if any party applies for such a stay and shows (1) that there is a written arbitration agreement and (2) the issue is referable to arbitration under that arbitration agreement, as long as the applicant is not in default in proceeding with the arbitration." *International River Ctr. v. Johns–Manville Sales Corp.*, 02–3060, p. 3 (La.12/3/03), 861 So.2d 139, 141; *see also Matthews–McCracken Rutland Corp. v. City of Plaquemine*, 414 So.2d 756, 757 (La.1982) (holding that "[o]nce the court finds an agreement to arbitrate and a failure to comply therewith, the court shall order arbitration.").
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> "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25, 103 S.Ct. 927, 941, 74 L.Ed.2d 765 (1983); *see*

> *also Aguillard*, 04–2804 at p. 18, 908 So.2d at 25. "Notwithstanding the strong presumption in favor of arbitration, **the arbitration clause which is sought to be enforced must have a "reasonably clear and ascertainable meaning" in order to enforce arbitration.** *J. Caldarera & Co. v. Louisiana Stadium & Exposition Dist.*, 98–294, p. 4 (La.App. 5 Cir. 12/16/98), 725 So.2d 549, 551 (quoting *Kosmala v. Paul*, 569 So.2d 158, 162 (La.App. 1st Cir.1990)). The question of whether there is an agreement to arbitrate is generally one for the court to decide based on state law contract principles. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S.Ct. 588, 154 L.Ed.2d 491 (2002); *Saavedra v. Dealmaker Developments, LLC*, 081239, pp. 6–7 (La.App. 4 Cir. 3/18/09), 8 So.3d 758, 762–63. Under the Louisiana Civil Code, the interpretation of a contract is the determination of the common intent of the parties. La. C.C. art.2045; *Ganier v. Inglewood Homes, Inc.*, 06–0642, p. 3 (La.App. 4 Cir. 11/8/06), 944 So.2d 753, 756. [Emphasis supplied; footnotes omitted.]

The initial contract signed by the parties on December 21, 2015 clearly contains an enforceable arbitration clause. The second contract dated March 3, 2016, however, is problematic with regard to the remedies available to Catherine Alford, the owner of the property in question.

The March 3, 2016 contract addressed a number of agreed-upon deadlines missed by CBCD. This contract sets forth new deadlines for various items of work to be completed. I recognize that the procedures set forth in this document will "constitute non-performance of this and all preceding contracts between Contractor [CBCD] and Owner [Alford]." However, the contract also states: "Remedies for non-compliance may include bad reviews, reports to the Better Business Bureau and **legal action**." [Emphasis supplied.] Nowhere does the March 3, 2016 contract mandate arbitration.

I find ambiguity by reading the two contracts as one, as CBCD urges. While the second contract does not include a price, it is a contract under Louisiana law. Pursuant to La. C.C. art. 1906: "A contract is an agreement by two or more parties

whereby obligations are created, modified, or extinguished." The March 3, 2016 contract altered the obligations owed by CBCD to Alford.

Because I find an ambiguity between the two contracts and a lack of intent that the parties agreed that disputes for non-performance be subject to arbitration, I respectfully dissent from the majority opinion finding otherwise.