

**KAREN L. BRADY WIFE OF
DAVID A. PIRNER** * **NO. 2018-CA-0556**
VERSUS * **COURT OF APPEAL**
DAVID A. PIRNER * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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**BEL SOME, J., CONCURS, IN PART, AND DISSENTS, IN PART, WITH
REASONS.**

The Defendant, Mr. David Pirner, appeals the trial court's judgment concerning a prenuptial agreement he signed with the Plaintiff, Ms. Karen Brady. The trial court rendered two judgments regarding the prenuptial agreement. In its first judgment, the trial court found that the separate property agreement was invalid. In its second judgment, it found the remainder of the agreement to be a valid and enforceable contract between the parties. For the following reasons, I respectfully concur, in part, and dissent, in part, from the majority's opinion.

As a preliminary matter, I concur with the majority ruling to deny the motion to dismiss the appeal filed by the Plaintiff. In addition, I concur in the majority's opinion in affirming the trial court's initial judgment finding the separate property agreement invalid as to form.

However, I dissent from the majority's finding that the remaining clauses in the contract are valid. Therefore, I would reverse the trial court's second judgment.

In order to confect a valid contract, four elements are required: (1) the capacity to contract; (2) mutual consent; (3) a certain object; and (4) a lawful

cause. *In re Succession of Flanigan*, 06-1402, p. 6 (La. App. 4 Cir. 6/13/07), 961 So.2d 541, 544; see also La. C.C. arts. 1918, 1927, 1966 and 1971.

“Consent may be vitiated by error, fraud, or duress.” La. Civ.Code art.1948. However, “[e]rror vitiates consent only when it concerns a cause without which the obligation would not have been incurred and that cause was known or should have been known to the other party.” La. Civ.Code art.1949; see also La. Civ.Code art.1967; La. Civ.Code arts. 1823, 1824, 1826 (1870); Marty et Raynaud, *Droit civil—Les obligations*, Part I, at 111–112 (1962). Cause is the reason why a party obligates himself, and without a lawful cause, an obligation cannot exist. La. Civ.Code arts.1966 and 1967.

Peironnet v. Matador Res. Co., 12-2292 (La. 6/28/13), 144 So.3d 791, 807.

In this case, the parties entered into a prenuptial agreement. As such, the principal cause of the agreement was to create a separate property regime. Since the primary cause was to create a separate property regime, the additional terms in the contract hinged upon the validity of separate the property clause. Without a valid separate property agreement, consent to the remainder of the agreement was vitiated. Therefore, the entire contract is invalid.

Accordingly, I would partially reverse the trial court’s judgment pertaining to the enforcement of the remainder of the agreement. For these reasons, I concur, in part, and dissent, in part, from the majority’s opinion.