No. 21-1534

In the Supreme Court of the United States

ORIGINAL

RAHILA TARVERDIYEVA,

Petitioner,

v.

COINBASE GLOBAL, INC. A/K/A COINBASE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

9 U.S.C. §§ 2, The Act's clause—which allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract," § 2—recognizes only "generally applicable contract defenses, such as fraud, duress, or unconscionability."

THE QUESTIONS PRESENTED ARE:

1. Whether the Judge exceeded her authority when she ruled only "breach of contract" and granted compelling arbitration if the Petitioner's claim concerns "breach of contract and Grand theft (over millions of dollars)", when Theft/Fraud Allows Courts to Refuse to Enforce Arbitration Agreements.

2. Whether the 11th Circuit Court correctly dismissed the Petitioner's case if she appealed the lower Court's departure from the essential requirements of law, and she appealed under Fl. Rule 9.130(a)(3)(C)(iv) whether the lower court properly determined a party's right to arbitration.

PARTIES TO THE PROCEEDINGS

Petitioner

- Rahila Tarverdiyeva, petitioner on review, was the plaintiff-appellant below

Respondent

- Coinbase, Inc., respondent on review, was the defendant-appellee below.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit

No. 21-13354

Mrs. Rahila Tarverdiyeva, *Plaintiff-Appellant,* v. Coinbase Global, Inc., a.k.a. Coinbase, *Defendant-Appellee*

Date of Final Judgment: March 22, 2022.

U.S. District Court for the Middle District of Florida

No. 8:21-cv-01717

Rahila Tarverdiyeva, *Plaintiff,* v. Coinbase Global, Inc., *Defendant*

Date of Final Order: September 8, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The United States Court of Appeals for the Eleventh Circuit Entered the Order of Dismissal for Petitioner on March 22, 2022. (App.1a). Order of the United States District Court for the Middle District of Florida dated September 8, 2021 is attached (App.3a). District Court of Florida Deny Plaintiff's Motion for Reconsideration on December 9, 2021. (App.9a).

JURISDICTION

The court of appeals entered its order dismissing petitioners' appeal (App.1a) on March 22, 2022 and did not respond yet petitioners' timely request for reconsideration of that order. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Rule of Appellate Procedure—9.130(a)(3)(C)(iv)

9.130(a)(3)(C)(iv) provides, in relevant part:

"The courts of appeals . . . shall have jurisdiction of appeals from nonfinal decisions of the district courts of the United States to determine entitlement to arbitration. . . . "

9 U.S.C. § 2

"A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."," § 2—recognizes only "generally applicable contract defenses, such as fraud, duress, or unconscionability."

INTRODUCTION

A. Statutory Background

This case concerns the applicability of certain provisions of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2: "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." § 2 recognizes only "generally applicable contract defenses, such as fraud, duress, or unconscionability."

The lower Court disregarded this provision and unlawfully granted the Respondents' motion to "Compel Arbitration and stay the action," even though the Petitioner's Claim "Breach of contract and grand theft" is outside the scope of the arbitration agreement.

Coinbase, Inc. is a Delaware company and wholly owned subsidiary of Coinbase Global, Inc. Coinbase is in the business of, *inter alia*, operating interactive cryptocurrency exchanges and other related businesses around the world via its website and cellular phone application.

Petitioner opened her Coinbase account in December 2017, and in so doing agreed to Coinbase's User Agreement.

On November 11, 2020, Coinbase employees accessed her account, converted all funds into 972 ETH (over $2 million at today's market price), and sent 41 unauthorized transactions in a few minutes, claiming that hackers allegedly stole all her funds using her API key, which is not true, because no one (not even her) can withdraw funds using her API key, which forbids permission to send even a single transaction. After investigation, it became clear that this theft was organized by high-level Coinbase employees. The Petitioner provided Coinbase with 50 pages of direct evidence of the theft, but Coinbase refused to refund the stolen funds even though they were unable to refute the evidence. Moreover, they removed all evidence for the date of the theft, not only from her account, but also from her Data (History). The petitioner opened 2 disputes with Coinbase (in accordance with the User Agreement), but Coinbase closed both disputes without explanation. The Petitioner hired lawyers 2 times, and both times Coinbase colluded with lawyers to mislead her (the reason she terminated her contract with those lawyers).

B. Facts and Procedural History

On July 15, 2021, the Petitioner filed a civil lawsuit as Pro Se Litigant in Florida District Court, alleging "Breach of Contract and Grand theft by employees, among other things" and provided the court with 50 pages of evidence against the theft.

On August 12, 2021, the Respondent filed a Motion "To Compel Arbitration and Stay Action". Petitioner

argues that Breach of Contract and Grand Theft out of narrow scope of Arbitration agreement following the law: "Under the Federal Arbitration Act ("FAA"), 9 U.S.C § 1, *et seq.*, agreements to arbitrate are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Thus, an arbitration agreement may be found unenforceable pursuant to "generally applicable contract defenses, such as fraud, duress, or unconscionability." *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68 (2010)

On September 8, 2021 The Judge in her Order (App. 3a) granted the Respondent Motion to Compel Arbitration and Stay Action. The lower Court ruled without scheduling a hearing, conference, or oral argument as required by law. Moreover, she only ruled for "breach of contract" and omitted to mention the plaintiff's claim "grand theft".

On September 17 and on October 7, 2021, Petitioner filed a "Motion for Reconsideration "(Dkt. 14 & 18) and reminded the Court that her Order excluded "Grand Theft "claim which is out of the scope of the Arbitration Agreement and asked to reconsider her judgment.

On December 9, 2021, the lower court Judge Mary Scriven denied both Petitioner' motions, (App.9a) asserting that "Having signed the arbitration agreement, Plaintiff is bound by it" (App.11a). Petitioner timely filed a Notice to appeal the Order.

On January 3, 2022, Defendant/Respondent moved to dismiss the appeal, explaining that the order was nonfinal and arguing that the circuit court lacked jurisdiction to hear the appeal.

Petitioner filed a Brief and Reply to Respondent's Brief.

On March 22, 2022, the 11th Circuit Court granted Respondent's Motion to Dismiss the Case (App.1a) allegedly "lack of jurisdiction" without even considering the Petitioner's Brief or turned a blind eye to a departure from the essential requirements of the law and to the completely erroneous ruling of the lower court.

On April 5, 2022, The Petitioner filed Motion for Reconsideration but has not yet received a response.

STATEMENT OF THE FACTS

A lower court's decision "has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of [the Supreme] Court's supervisory power." She ruled without scheduling a hearing, conference or oral discussion as required by law. *See* Docket "*Zubin v. Coinbase Global, Inc.*" It must be said that this case is identical to Petitioner's Claim (Fraud) and the U.S. District Court in N. D. California denied Coinbase's motion to Compel Arbitration and Stay Action. "In this action accusing defendant cryptocurrency exchange platform of violating the Electronic Funds Transfer Act and Regulation E, defendant moves to compel arbitration. Because the delegation clause and the broader arbitration provision are unconscionable for the same reasons, the motion is DENIED". Coinbase has filed an appeal against this order, and the 9th District has scheduled a hearing. But the Petitioner had no hearing (See her Docket

(App.16a)). Both courts denied her the right to be heard. *See* Docket "*Underwood v. Coinbase Global, Inc*".

The Lower Court's Order (App.3a) states: "THIS CAUSE comes before the Court for consideration of Defendant's Motion to Compel Arbitration and Stay Action, (Dkt. 5), Plaintiff's Response in opposition thereto, (Dkt. 8), and Defendant's Motion for Leave to File Reply in Support of Motion to Compel Arbitration and Stay Action. (Dkt. 9)".

Thus, Judge confirmed that she made a decision considering only these two motions from Defendant Dkt.5 and Dkt.9 and Plaintiff's Dkt.8 which was in fact a response to Defendant's motion Dkt.5 (about breach of Contact). In this Order, Judge Mary Scriven ignored Plaintiff's main allegation of "grand theft" (Dkt.1) and did not mention it anywhere in her 5-pages Order.

For this reason, the Petitioner would like to bring the attention of this Court to the following assertions of Judge Mary Scriven which was the ground to the appeal:

1. "Plaintiff asserting that Defendant violated the terms of its User Agreement". (App.4a)

   In fact, the Plaintiff/Petitioner asserting that the Defendant violated the terms of the User Agreement and committed grand theft.

2. "Plaintiff is ORDERED to submit her claims in this action to arbitration in accordance with arbitration clauses in the User Agreement" (App.7a)

In fact, violation of the User Agreement and grand theft are out of the clause of the Arbitration Agreement

in accordance with the Rule: 9 U. S. C. §§ 2, The Act's clause—which allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract," §2—recognizes only "'generally applicable contract defenses, such as fraud, duress, or unconscionability,'" *AT&T Mobility LLC v. Concepcion*, 563 U.S."

"Florida law does not bar a civil theft claim simply because a contractual relationship is involved. *Masvidal v. Ochoa*, 505 So.2d 555 (Fla. 3d DCA 1987). However, where a contractual relationship exists, the alleged loss which results from the theft, must be separate and distinct from any loss alleged to have resulted from the breach of contract. *O'Donnell v. Arcoiries, Inc.*, 561 So.2d 344 (Fla. 4th DCA 1990)".

The lower Court Judge did not mention in her Order "theft/fraud" (Fla. Stat. § 772.11 Civil remedy for theft). This error alone should preclude any contrary arguments from Coinbase and Judge, should overturn the erroneous lower Court decision. The judge does not mention that the breach of contract resulted in a grand theft of the user's funds by Coinbase Respondents and grand theft is out of the scope of Arbitration Agreement. The Coinbase Respondent in her Brief (p.1) to Appellate Court also confirmed that lower court decisions were based on breach of contract only.

The lower Court did not follow the "Florida Arbitration Code" which required a determination of whether the particular dispute falls within the scope of that agreement. *AT&T Techs., Inc. v. Commc'n Workers of America*, 475 U.S. 643 (1986).

Judge Mary Scriven stated in her Order (Dkt. 13, page 2): "Plaintiff is a user of Defendant's platform

and has agreed to the terms of the User Agreement. The User Agreement provides, in relevant part, that:

> 7.2. Arbitration. If you have a dispute with Coinbase, we will attempt to resolve any such disputes through our support team. If we cannot resolve the dispute through our support team, you and we agree that any dispute arising under this [User Agreement] shall be finally settled in binding arbitration, on an individual basis".

The Judge failed to mention that plain language of this section demonstrates that the parties agreed to submit to the Arbitrator any disagreements that were included in this User Agreement. Courts construe such clauses "Under" or "Arising Under" the Agreement to be relatively narrow.

Consequently, because the claim is about breach of contract, employee theft and fraudulent agreement, the court's question should become whether the theft and breach of contract were a party to the arbitration agreement between the Petitioner and Coinbase? The answer is no. The arbitration agreement stated that "disputes arising under this User Agreement" (terms and conditions contained in this Agreement) will be subject to arbitration. Thus, this provision is limited to the agreement clauses and does not extend to such as theft and breach of contract. Petitioner's claim arises not from the [Agreement], but from post agreement conduct that violates a separate, distinct federal law. *See Cape Flattery Ltd. v. Titan Mar., LLC*, 647 F.3d 914 (9th Cir. 2011) ("arising under" language signals a narrow arbitration clause); *Mediterranean Enters., Inc. v. SsangYong Corp.*, 708 F.2d 1458 (9th Cir. 1983) (phrase "arising under" deemed relatively narrow).

"In contrast, if a claim does not have a nexus to a contract if it pertains to the breach of a duty otherwise imposed by law-it does not require arbitration, it requires a court. The presumption in favor of arbitration does not apply 'if contractual language is plain that arbitration of a particular controversy is not within the scope of the arbitration provision.'" *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042 (9th Cir. 2009).

Florida courts instruct that, under the Florida Arbitration Code, no party may be forced into arbitrating something they did not agree to arbitrate, notwithstanding the general rule favoring arbitration. A second way of stating this idea is to notice that Florida courts teach that contracts providing for arbitration are to be carefully constructed so as not to force a non-arbitrable issue into arbitration. *Paine Webber, Inc. v. Hess*, 497 So.2d 1323 (Fla. 3d D.C.A. 1986).

Further Judge ruled in her Order (App.6a): "Indeed, Plaintiff brings this suit against Defendant, seeking damages for its breach of the User Agreement. (Dkt. 1)".

This is a misleading statement by the Judge. In fact, Plaintiff/Petitioner is not seeking damages for breach of contract but seeks for damages of stolen funds by Coinbase Respondents. The judge and Coinbase are trying the Petitioner to compel to arbitration only for breach of contract. In this case, the Respondents of Coinbase will compensate the Petitioner some damages for breach of contract, and her stolen funds (more than $2 million) will be lost forever. Binding arbitration awards are rarely challenged, and Coinbase will continue to steal users' funds.

The Judge ordered this case to stay pending completion of Arbitration and administratively closed and the Court of Appeal dismissed the case.

On September 17 and October 7, 2021 (Dkt. 14/18) Petitioner filed the motion for Reconsideration. In these motions she explained clearly that the Judge Order excluded the main claim of Petitioner "grand theft by Coinbase Fla. Stat. § 772.11 Civil remedy for theft" and fraudulent agreement § 162(2).

On December 9, 2021, the Judge denied both motions by asserting: "Having signed the arbitration agreement, Plaintiff is bound by it" (App.11a). This is not true, there are many lawsuits that have denied defendants' motions for compelling arbitration because the dispute was not covered by an arbitration agreement. *See Corp.*, 2013 WL 4509652 at *9; *see Parfi Holding AB v. Mirror Image Internet, Inc.*, (Del. 2002). It cannot be the case that any challenge to a contract must be referred to arbitration if the contract contains any form of arbitration clause. If that were the case, there would be no need for the Court to ever consider the scope of the agreement, and a court's inquiry would be limited to whether a valid agreement to arbitrate exists.

See Seaboard Coast Line Railroad v. Trailer Train Co., 690 F.2d 1343 (11th Cir. 1982) (holding that the federal policy favoring arbitration "cannot serve to stretch a contract beyond the scope originally intended by the parties").

Miller v. Roberts, 682 So.2d 691 (Fla. 5th DCA 1996) The trial court denied arbitration of the fraud counts, and the Fifth District Court of Appeal affirmed on review in affirming, the Miller court held that Dr.

Roberts' fraud claims were not arbitrable since the extant arbitration clause did not refer to tort claims. ("The general rule is that where an arbitration agreement exists between the parties, arbitration is required only of those controversies or disputes which the parties have agreed to submit to arbitration.").

Florida Department of Insurance v. World Re, Inc., 615 So.2d 267 (Fla. 5th DCA 1993). We affirm the trial court's order denying the motion to compel arbitration as to the counts alleging fraud, conspiracy, and breach of fiduciary duty." The wording of an arbitration clause is an important factor in determining whether a dispute is to be referred to arbitration or to court proceedings, whether the arbitration provision covers a particular type of dispute. If it is clear that the dispute falls within the scope of the arbitration clause, the court will compel arbitration. If it is clear that the dispute falls outside the scope of the provision, the court will rule against arbitration and hear the case".

See James & Jackson, LLC v. Willie Gary, LLC, 906 A.2d. 76 (Del. 2006). "a party attempting to invoke arbitration will not prevail by reciting the message that courts favor arbitration when the contract language they rely on does not demonstrate the parties' intent to submit the dispute in question to arbitration."

By explicit terms, then, there can be no question that the arbitration clause does not extend to the present dispute between Petitioner and Coinbase concerning fraud in stealing her funds. It cannot be the case that any challenge to a contract must be referred to arbitration if the contract contains any form of arbitration clause. If that were the case, there would be no need for the Court to ever consider the scope of the

agreement, and a court's inquiry would be limited to whether a valid agreement to arbitrate exists.

See In Hearn v. Comcast Cable Communs., LLC, 2019 U.S. Dist. LEXIS 1811430 (October 21, 2019). The court denied arbitration because the plaintiff's claims did not arise out of the agreement and therefore were outside the scope of the arbitration clause. The court analyzed the principles of contract law and explained that courts should not compel arbitration for claims that are "unmoored from the agreements containing arbitration provisions."

If the arbitration clause limits arbitration to performance-related disputes, then the arbitrator cannot decide other matters, such as tort, theft disputes. *Cf. Negrin v. Kalina*, No. 09. CIV 6234, 2010 WL 2816809, at *6 (S.D.N.Y. July 15, 2010).

In short, regardless of the "favorable policy" toward arbitration, Petitioner simply did not contract or agree to arbitrate issues involving fraud, employee theft, and conspiracy.

Petitioner filed a timely appeal, but 11th Circuit Court granted Respondent's motion to dismiss Petitioner's case.

REASONS FOR GRANTING THE PETITION

Petition for Writ of Certiorari should grant for the following two reasons:

> There can be no dispute that the Questions Presented are sufficiently important to merit this Court's attention. The ruling in this case effectively forecloses further "percolation," because this one judicial ruling will govern future behavior because the court below is the court that will decide almost all of the cases raising that issue. A writ of certiorari is used to remedy an action taken by a lower tribunal that exceeds the lower tribunal's authority or otherwise departs from the essential requirements of law when no other alternative legal remedy exists.

I. Petitioner Pitches Her Issue as One of Importance, Not Just to Her Case But to the Legal World in General.

This is an egregious case when the company stealing a huge amount of a user's funds, and the court, ignoring the Rules/Statutes, helps this company cover up the crime through compelling arbitration, stating in the ruling that the petitioner's claim is only about "breach of contract" and hides the fact that there are 50 pages of direct evidence of theft provided by the petitioner to the court. Obviously, the prevailing party utilized fraud and corruption to obtain a decision in their favor. The lower court ruled without a hearing, conference, or oral argument. The arbitrator's decision will also be based on "breach of contract" and award a

lower amount of money, and the petitioner cannot appeal this decision due to "lack of jurisdiction" and binding arbitration is rarely subject to appeal. But the company will continue to steal users' funds and thousands of people, and in a few years, maybe millions of users (Coinbase has over 60 million users) will suffer from employee theft and misjudgment decisions of the Courts. Civil theft refers to a tort and is based on the intentional taking of another person's property/funds. Forced arbitration allows corporations to keep wrongdoing secret and avoid accountability for harming the Petitioner.

The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error. *Jones v. State*, 477 So.2d 566 (Fla. 1985) (Boyd, C.J., concurring specially). The lower court's ruling is a "departure from the essential requirements of law.'

The law is very clear, and the violation of that clearly established principle of law results in a miscarriage of justice. *See Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So.3d (Fla. 2010).

The common-law writ of certiorari may be exercised only to quash a lower-court judgment or order rendered without or in excess of jurisdiction or which constitutes a departure from the essential requirements of law when there is no other sufficient remedy (Such as an appeal) available to the aggrieved litigant.

See, Dresner v. City of Tallahassee, 164 So.2d 208 (Fla. 1964).

II. This Court Should Clarify How to Apply the Statute So That Courts Do Not Make Different Decisions on the Same Law.

The ruling of the 11th Circuit Court expressly and directly conflicts with a decision of another 4th District Court of Florida and of the State Supreme Court on the same question of law: 9.130(a)(3)(C)(iv).

11th Circuit Court dismissed the Petitioner's Appeal "because the order is not final or immediately appealable under the collateral order doctrine, we lack jurisdiction to review it. *See* 28 U.S.C. § 1291; *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325 (11th Cir. 2000); *Am. Express Fin. Advisors, Inc. v. Makarewicz*, 122 F.3d 936 (11th Cir. 1997) (dismissing appeal of an order compelling arbitration, staying proceedings, and administratively closing the case)". But 4th District Court of Florida hold that the court's nonfinal order determines entitlement to arbitration and is now appealable to a district court of appeal under rule 9.130(a)(3)(C)(iv). Art. V, § 4(b)(1), Fla. Const. (providing district courts of appeal with jurisdiction to "review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court"). Thus, if Petitioner's case had been in the 4th District Court of Florida, it would not have been dismissed. *See Mallory v. Brinckerhoff*, No. 4D21-405 (4th District Court of Florida, Mar. 3, 2021).

We write to resolve the jurisdictional question and explain that this Court has non-final appeal jurisdiction over the order at issue under Florida Rule of Appellate Procedure 9.130. The court ordered the parties to

complete arbitration and stayed the action until arbitration was completed. Plaintiffs filed a notice to appeal the order. Defendant moved to dismiss the appeal, explaining that the order was nonfinal and arguing that the circuit court lacked jurisdiction to hear the appeal under Florida Rule of Appellate Procedure 9.130. The appellate jurisdiction of the circuit courts to review non final orders is governed by general law as enacted by the Legislature. *Blore v. Fierro*, 618 So.2d 762 (Fla. 1994); *see* Art. V, § 5(b), Fla. Const. ("The circuit courts shall have . . . jurisdiction of appeals when provided by general law"); *see also* Fla. R. App. P. 9.130(a)(1) ("This rule applies to appeals to the district courts of appeal of the nonfinal orders authorized herein and to appeals to the circuit court of nonfinal orders when provided by general law."). The test for whether an order is final is whether further judicial labor is required or contemplated. Although the court file was administratively closed, the court merely "stayed" the action and further judicial labor — such as confirmation of an arbitration award and entry of a final judgment — was contemplated. The court's nonfinal order determines entitlement to arbitration and is now appealable to a district court of appeal under rule 9.130(a)(3)(C)(iv). Art. V, § 4(b)(1), Fla. Const. (providing district courts of appeal with jurisdiction to "review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court"). This Court has jurisdiction to hear the appeal from the nonfinal order compelling arbitration in this case, and the motion to dismiss the appeal is denied. Warner, Damoorgian and Forst, JJ., concur.

The Florida Supreme Court has authority to establish the types of nonfinal orders appealable under this

rule: 9.130(a)(3)(C)(iv). The sole concern in a Rule 9.130 (a)(3)(C)(iv) appeal is whether the trial court properly determined a party's right to arbitration. *Tenet Healthcare Corp. v. Maharaj*, 859 So.2d 1209 (Fla. 4th DCA 2003). ("Rule 9.130(a)(3) (C)(iv) does allow for appellate review in arbitration cases but only as to the essential issue of whether a party is entitled to arbitration"); *S.D.S. Autos, Inc. v. Chrzanowski*, 982 So.2d 1 (Fla. 1st DCA 2007). Non-final orders staying arbitration are also subject to appellate review. *Alphagraphics Franchising, Inc. v. Stebbins*, 617 So.2d 463 (Fla. 4th DCA 1993). *See Litchford & Christopher, P.A. v. Daniel J. Deutsch and Jacqueline* 16 Fla. L. Weekly Supp. 804a (Fla. 9th Cir. App. June 17, 2009) (appeal from an order compelling arbitration). The order is non-final because it is an order referring the matter to arbitration and staying the proceedings pending arbitration. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(B).

A circuit court may review non-final orders that are not otherwise appealable where there has been a "departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal." Fla. R. App. P. 9.030(c)(2); Fla. R. App. P. 9.100(a). *See All Am. Semiconductor v. Unisys Corp.* (Fla. Dist. Ct. App. 1994)

Appellant appeals a non-final order compelling arbitration and staying proceedings. Appellant's complaint against appellee, alleged theories of fraud, negligent misrepresentation, and breach of express and implied warranties. Although arbitration clauses are generally favored, the clause must refer to the subject matter being contested. We determine that, here, the parties did not contract to arbitrate appellant's

claims. Appellant's complaint flows from a relationship and agreement outside the scope of the agreement. We therefore reverse the order compelling arbitration and remand for further proceedings.

See The Ohio Supreme Court, in the case of *Mynes v. Brooks* (2009) Ohio 5017 (4th Dist.), issued an important ruling dealing with the appealability of a court order granting or denying a stay of a trial court's proceeding, pending arbitration. The Court in Mynes held that an order granting or denying a stay, pending arbitration, issued under O.R.C 2711.02(B), is a final appealable order under O.R.C 2711.02(C). Therefore, every time a party to litigation moves a court to stay the trial pending an arbitration, the judge's ruling, whether granting or denying the motion, will be an order which can be immediately appealed.

Under the Iowa Arbitration Act (IAA), an appeal may be taken from (1) an order denying an application to compel arbitration and (2) an order granting an application to stay in arbitration. Iowa Code § 679A. 17(1)(a), (b). "We treat a motion by its contents, not its caption." *Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)".

American Heritage Life Insurance v. Orr, 294 F.3d 702 (5th Cir. 2002). We hold that, as a matter of law, the district court order compelling arbitration, which also stays the underlying state court proceedings and closes the case in federal court, is an immediately appealable, final decision under the ambit of 9 U.S.C. § 16(a)(3) of the FAA. As such, this court has jurisdiction to entertain the instant appeal. Of particular importance in the instant dispute is the fact that, in addition to compelling arbitration and staying the pending state court proceedings, the district court

ordered the case closed but did not dismiss the action. The final, substantive paragraph of the district court's order provides as follows: "This case is CLOSED." A District Court Order That Compels Arbitration, Stays the Underlying State Court Proceedings, and Closes the Case is an Immediately Appealable, Final Decision Within the Contemplation of § 16(a)(3) of the FAA.

This Court should clarify: the Order compelling arbitration, staying proceedings, and administratively closing the case is final or non-final, is appealable or non-appealable.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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