

1 **\$2515**
2 Michael E. Sullivan, Esq. (SBN 5142)
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
4 A Professional Corporation
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151
8 *Attorneys for Plaintiff MB America, Inc.*

Electronically Filed
Nov 13 2014 02:21 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

9 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
10
11 **IN AND FOR THE COUNTY OF WASHOE**

12 MB AMERICA, INC., a Nevada
13 corporation,

Case No.: CV14-01229

14 Plaintiff,

Dept. No.: 8

15 v.

16 ALASKA PACIFIC LEASING COMPANY,
17 a Alaska business corporation; and DOES
18 I through X, inclusive,

19 Defendants.
20 _____ /

21 **NOTICE OF APPEAL**

22 NOTICE IS HEREBY GIVEN that Plaintiff MB America, Inc. ("MB America")
23 hereby appeals to the Supreme Court of Nevada from the:

24 (1) Order Granting Summary Judgment, filed on October 22, 2014 and entered
25 on October 23, 2014.

26 **AFFIRMATION:** The undersigned does hereby affirm that this document does not
27 contain the Social Security Number of any person.

28 DATED this 7th day of November, 2014.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

By: 

MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the attached NOTICE OF APPEAL on all parties to this action by the method(s)
5 indicated below:
6

7 ✓ by placing an original or true copy thereof in a sealed envelope, with
8 sufficient postage affixed thereto, in the United States mail at Reno,
9 Nevada, addressed to:

10 Holly S. Parker, Esq.
11 Marilee Breternitz, Esq.
12 Laxalt & Nomura, Ltd.
13 9600 Gateway Drive
14 Reno, Nevada 89521
15 *Attorneys for Defendant Alaska Pacific Leasing Company*

16 ✓ by using the Court's CM/ECF Electronic Notification System
17 addressed to:

18 Holly S. Parker, Esq.
19 Marilee Breternitz, Esq.
20 *Attorneys for Defendant Alaska Pacific Leasing Company*

21 _____ by facsimile addressed to:

22 Holly S. Parker, Esq./Marilee Breternitz, Esq. – Fax # 322-1865
23 *Attorneys for Defendant Alaska Pacific Leasing Company*

24 _____ by hand-delivery addressed to:

25 Holly S. Parker, Esq.
26 Marilee Breternitz, Esq.
27 Laxalt & Nomura, Ltd.
28 9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Defendant Alaska Pacific Leasing Company

29 DATED this 7th day of November, 2014.

30 Merna Meier
31 MERNA MEIER

1310
Michael E. Sullivan, Esq. (SBN 5142)
ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Attorneys for Plaintiff MB America, Inc.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
corporation,

Case No.: CV14-01229

Dept. No.: 8

Plaintiff,

v.

CASE APPEAL STATEMENT

ALASKA PACIFIC LEASING COMPANY,
a Alaska business corporation; and DOES
I through X, inclusive,

Defendants.

Pursuant to NRAP 3(f), Plaintiff MB America, Inc. ("MB America") submits the
following Case Appeal Statement:

1. The district court case number and caption showing the names of all of the
proceedings below are set forth above in the caption to this Case Appeal Statement.

2. Judge issuing decision, judgment or order appealed from: Order Granting
Summary Judgment, filed October 22, 2014 and entered October 23, 2014: Honorable
Lidia S. Stiglich.

3. Appellant and Appellant's Counsel:

MB AMERICA, INC.
c/o Michael E. Sullivan, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89509
Telephone (775) 329-3151

///

1 4. Respondents and Respondent's Counsel:

2 ALASKA PACIFIC LEASING COMPANY
3 c/o Holly S. Parker, Esq.
4 Marilee Breternitz, Esq.
5 Laxalt & Nomura, Ltd.
6 9600 Gateway Drive
7 Reno, Nevada 89521
8 (775) 322-1170

9 5. Whether any identified attorney is not licensed to practice law in Nevada:
10 No.

11 6. Whether Appellant was represented by appointed counsel in district court
12 or on appeal:

13 No. Appellant has been and will continue to be represented by retained
14 counsel.

15 7. Whether Appellant was granted leave to proceed *in forma pauperis*: No.

16 8. Date that proceedings commenced in district court: June 6, 2014.

17 9. A brief description of the nature of the action and result in the district court,
18 including the type of judgment or order being appealed and the relief granted by the
19 district court:

20 MB America and Alaska Pacific Leasing Company entered into an agreement in
21 which Alaska Pacific Leasing agreed to purchase and distribute certain products from
22 MB America. When MB America terminated the contract, Alaska Pacific Leasing stated
23 that it wanted to rescind the parties' agreement. Thus, MB America filed a complaint
24 seeking (1) declaratory relief that the parties' contract is a legally binding contract, and
25 (2) specific performance of the terms of that contract.

26 Alaska Pacific Leasing Company filed a motion for summary judgment on the
27 ground that the parties' requires mediation and arbitration of their underlying dispute.
28 MB America opposed the motion for summary judgment on the ground that a stay,
rather than dismissal, was the appropriate recourse. The district court granted Alaska
Pacific Leasing Company's motion for summary judgment and dismissed MB America's
complaint without prejudice. MB America appeals this order.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the attached **CASE APPEAL STATEMENT** on all parties to this action by the
5 method(s) indicated below:
6

7 ✓ by placing an original or true copy thereof in a sealed envelope, with
8 sufficient postage affixed thereto, in the United States mail at Reno,
9 Nevada, addressed to:

10 Holly S. Parker, Esq.
11 Marilee Breternitz, Esq.
12 Laxalt & Nomura, Ltd.
13 9600 Gateway Drive
14 Reno, Nevada 89521
15 *Attorneys for Defendant Alaska Pacific Leasing Company*

16 ✓ by using the Court's CM/ECF Electronic Notification System
17 addressed to:

18 Holly S. Parker, Esq.
19 Marilee Breternitz, Esq.
20 *Attorneys for Defendant Alaska Pacific Leasing Company*


21 _____ by facsimile addressed to:

22 Holly S. Parker, Esq./Marilee Breternitz, Esq. – Fax # 322-1865
23 *Attorneys for Defendant Alaska Pacific Leasing Company*

24 _____ by hand-delivery addressed to:

25 Holly S. Parker, Esq.
26 Marilee Breternitz, Esq.
27 Laxalt & Nomura, Ltd.
28 9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Defendant Alaska Pacific Leasing Company

29 DATED this 9th day of November, 2014.

30 
31 MERNA MEIER

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV14-01229****Case Description: MB AMERICA, INC. VS ALASKA PACIFIC LEASING CO (D8)****Case Number: CV14-01229 Case Type: OTHER CONTRACTS/ACCT/JUDG - Initially Filed On: 6/6/2014****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - LIDIA STIGLICH - D8	Active
PLTF - MB AMERICA, INC. - @1247780	Active
DEFT - ALASKA PACIFIC LEASING COMPANY - @1259975	Active
ATTY - Holly S. Parker, Esq. - 10181	Active
ATTY - Marilee Breternitz, Esq. - 12563	Active
ATTY - Michael E. Sullivan, Esq. - 5142	Active

Disposed Hearings

- 1 Department: D8 -- Event: CONFERENCE CALL -- Scheduled Date & Time: 9/16/2014 at 11:45:00
Extra Event Text: IN CHAMBERS
Event Disposition: D435 - 9/16/2014
- 2 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 10/6/2014 at 14:14:00
Extra Event Text: DEFENDANT ALASKA PACIFIC LEASING COMPANY'S MOTION FOR SUMMARY JUDGMENT (NO TRIAL DATE)
Event Disposition: S200 - 10/22/2014

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--|
| 1 | 6/6/2014 | - | \$1425 - \$Complaint - Civil
Additional Text: COMPLAINT FOR DECLARATORY RELIEF - Transaction 4466509 - Approved By: MFERNAND : 06-06-2014:15:06:48 |
| 2 | 6/6/2014 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC457733. |
| 3 | 6/6/2014 | - | 4090 - ** Summons Issued
<i>No additional text exists for this entry.</i> |
| 4 | 7/17/2014 | - | 4085 - Summons Filed
Additional Text: ALASKA PACIFIC LEASING COMPANY SERVED ON 14-JUL-2014 - Transaction 4522769 - Approved By: ADEGAYNE : 07-18-2014:08:59:58 |
| 5 | 7/18/2014 | - | 1005 - Acceptance of Service
Additional Text: Transaction 4523087 - Approved By: ADEGAYNE : 07-18-2014:08:57:24 |
| 6 | 7/18/2014 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 4523263 - Approved By: NOREVIEW : 07-18-2014:08:58:55 |
| 7 | 7/18/2014 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 4523283 - Approved By: NOREVIEW : 07-18-2014:09:01:13 |
| 8 | 7/22/2014 | - | 3840 - Request Exemption Arbitration
Additional Text: REQUEST FOR EXEMPTION FROM THE NEVADA MANDATORY ARBITRATION PROGRAM - Transaction 4528292 - Approved By: MCHOLICO : 07-22-2014:15:01:03 |

Report Does Not Contain Sealed Cases or Confidential Information

- 9 7/22/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4528535 - Approved By: NOREVIEW : 07-22-2014:15:02:02
- 10 8/15/2014 - 3975 - Statement ...
 Additional Text: DEFENDANT'S NRCP 7.1 DISCLOSURE - Transaction 4563606 - Approved By: MCHOLICO : 08-15-2014:12:44:46
- 11 8/15/2014 - 1130 - Answer ...
 Additional Text: ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR DECLARATORY RELIEF - Transaction 4563606 -
 Approved By: MCHOLICO : 08-15-2014:12:44:46
- 12 8/15/2014 - \$1560 - \$Def 1st Appearance - CV
 Additional Text: ALASKA PACIFIC LEASING COMPANY - Transaction 4563606 - Approved By: MCHOLICO : 08-15-2014:12:44:46
- 13 8/15/2014 - PAYRC - **Payment Receipted
 Additional Text: A Payment of \$213.00 was made on receipt DCDC466289.
- 14 8/15/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4563790 - Approved By: NOREVIEW : 08-15-2014:12:45:48
- 15 9/8/2014 - A120 - Exemption from Arbitration
 Additional Text: Transaction 4596113 - Approved By: MFERNAND : 09-08-2014:16:28:42
- 16 9/8/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4596654 - Approved By: NOREVIEW : 09-08-2014:16:29:35
- 17 9/9/2014 - 2529 - Notice of Early Case Conferenc
 Additional Text: Transaction 4597923 - Approved By: NOREVIEW : 09-09-2014:12:25:52
- 18 9/9/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4597928 - Approved By: NOREVIEW : 09-09-2014:12:26:53
- 19 9/9/2014 - 2605 - Notice to Set
 Additional Text: 9/25/14 AT 10:00 - Transaction 4597932 - Approved By: YLLOYD : 09-09-2014:14:51:21
- 20 9/9/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4598405 - Approved By: NOREVIEW : 09-09-2014:14:52:11
- 21 9/9/2014 - 3696 - Pre-Trial Order
 Additional Text: Transaction 4598884 - Approved By: NOREVIEW : 09-09-2014:16:36:02
- 22 9/9/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4598887 - Approved By: NOREVIEW : 09-09-2014:16:37:01
- 23 9/10/2014 - 1120 - Amended ...
 Additional Text: AMENDED NOTICE OF NRCP 16.1 EARLY CASE CONFERENCE - Transaction 4600190 - Approved By: MFERNAND :
 09-10-2014:14:35:13
- 24 9/10/2014 - 1120 - Amended ...
 Additional Text: AMENDED NOTICE TO SET TRIAL - SEPTEMBER 25, 2014 @ 11:00 AM - Transaction 4600197 - Approved By:
 MFERNAND : 09-10-2014:14:36:33
- 25 9/10/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4600551 - Approved By: NOREVIEW : 09-10-2014:14:36:15
- 26 9/10/2014 - NEF - Proof of Electronic Service
 Additional Text: Transaction 4600559 - Approved By: NOREVIEW : 09-10-2014:14:37:32

- 27 9/15/2014 - \$2200 - \$Mtn for Summary Judgment
Additional Text: DEFENDANT ALASKA PACIFIC LEASING COMPANY'S MOTION FOR SUMMARY JUDGMENT
- 28 9/15/2014 - 2140 - Mtn Ord Shortening Time
Additional Text: DEFENDANT ALASKA PACIFIC LEASING COMPANY'S EX PARTE MOTION FOR AN ORDER SHORTENING TIME ON ITS MOTION TO STAY
- 29 9/15/2014 - 2195 - Mtn for Stay ...
Additional Text: DEFENDANT ALASKA PACIFIC LEASING COMPANY'S MOTION TO STAY
- 30 9/15/2014 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$200.00 was made on receipt DCDC470618.
- 31 9/15/2014 - 3245 - Ord Shortening Time
Additional Text: Transaction 4607381 - Approved By: NOREVIEW : 09-15-2014:16:41:29
- 32 9/15/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4607386 - Approved By: NOREVIEW : 09-15-2014:16:42:29
- 33 9/17/2014 - 4050 - Stipulation ...
Additional Text: STIPULATION TO STAY DISCOVERY, TRIAL SETTING, EARLY CASE CONFERENCE, PRETRIAL CONFERENCE, AND OTHER CASE-RELATED EVENTS UNTIL MOTIONS FOR SUMMARY JUDGMENT ARE DECIDED - Transaction 4611561 - Approved By: MELWOOD : 09-17-2014:16:04:40
- 34 9/17/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4611897 - Approved By: NOREVIEW : 09-17-2014:16:05:41
- 35 9/17/2014 - 3370 - Order ...
Additional Text: ORDER TO STAY DISCOVERY, TRIAL SETTING, EARLY CASE CONFERENCE, PRETRIAL CONFERENCE, AND OTHER CASE-RELATED EVENTS UNTIL MOTIONS FOR SUMMARY JUDGMENT ARE DECIDED - Transaction 4612030 - Approved By: NOREVIEW : 09-17-2014:16:30:42
- 36 9/17/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4612042 - Approved By: NOREVIEW : 09-17-2014:16:31:54
- 37 9/17/2014 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4612141 - Approved By: MCHOLICO : 09-18-2014:09:31:47
- 38 9/17/2014 - 4301 - Withdrawal of Motion
Additional Text: DEFENDANT ALASKA PACIFIC LEASING COMPANY'S WITHDRAWAL OF ITS MOTION TO STAY - Transaction 4612141 - Approved By: MCHOLICO : 09-18-2014:09:31:47
- 39 9/18/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4612588 - Approved By: NOREVIEW : 09-18-2014:09:33:07
- 40 9/25/2014 - MIN - ***Minutes
Additional Text: 9/16/14 CONFERENCE CALL - Transaction 4624491 - Approved By: NOREVIEW : 09-25-2014:15:06:03
- 41 9/25/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4624496 - Approved By: NOREVIEW : 09-25-2014:15:07:05
- 42 9/26/2014 - 2645 - Opposition to Mtn ...
Additional Text: MB AMERICA, INC.'S OPPOSITON TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - Transaction 4626328 - Approved By: MFERNAND : 09-26-2014:15:07:28
- 43 9/26/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4626416 - Approved By: NOREVIEW : 09-26-2014:15:08:22

- 44 10/3/2014 - 3795 - Reply...
Additional Text: DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Transaction 4637143 - Approved By: MCHOLICO : 10-06-2014:10:37:48
- 45 10/6/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4637938 - Approved By: NOREVIEW : 10-06-2014:10:38:57
- 46 10/6/2014 - 3860 - Request for Submission
Additional Text: DEFENDANT ALASKA PACIFIC LEASING COMPANY'S MOTION FOR SUMMARY JUDGMENT (NO PAPER ORDER PROVIDED) - Transaction 4637981 - Approved By: MFERNAND : 10-06-2014:13:57:07
PARTY SUBMITTING: HOLLY S. PARKER, ESQ.
DATE SUBMITTED: 10/06/2014
SUBMITTED BY: M. FERNANDEZ
DATE RECEIVED JUDGE OFFICE:
- 47 10/6/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4638605 - Approved By: NOREVIEW : 10-06-2014:13:57:53
- 48 10/22/2014 - 3095 - Ord Grant Summary Judgment
Additional Text: Transaction 4664470 - Approved By: NOREVIEW : 10-22-2014:15:59:30
- 49 10/22/2014 - S200 - Request for Submission Complet
Additional Text: SUMMARY JUDGMENT GRANTED
- 50 10/22/2014 - F140 - Adj Summary Judgment
No additional text exists for this entry.
- 51 10/22/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4664471 - Approved By: NOREVIEW : 10-22-2014:16:00:36
- 52 10/23/2014 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4665746 - Approved By: NOREVIEW : 10-23-2014:11:26:02
- 53 10/23/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4665752 - Approved By: NOREVIEW : 10-23-2014:11:27:05
- 54 10/29/2014 - 1950 - Memorandum of Costs
Additional Text: Transaction 4673344 - Approved By: MELWOOD : 10-29-2014:11:36:16
- 55 10/29/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4673630 - Approved By: NOREVIEW : 10-29-2014:11:37:17
- 56 11/3/2014 - 2430 - Mtn to Retax Costs
Additional Text: PLAINTIFF MB AMERICA, INC.'S MOTION TO RETAX COSTS - Transaction 4678331 - Approved By: MCHOLICO : 11-03-2014:15:10:27
- 57 11/3/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4679012 - Approved By: NOREVIEW : 11-03-2014:15:12:46
- 58 11/7/2014 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 4687991 - Approved By: YVILORIA : 11-10-2014:09:09:05
- 59 11/7/2014 - 1310 - Case Appeal Statement
Additional Text: Transaction 4688024 - Approved By: YVILORIA : 11-10-2014:09:07:50
- 60 11/10/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4688406 - Approved By: NOREVIEW : 11-10-2014:09:10:53

61 11/10/2014 - PAYRC - **Payment Receipted

Additional Text: A Payment of \$34.00 was made on receipt DCDC477414.

62 11/10/2014 - NEF - Proof of Electronic Service

Additional Text: Transaction 4688407 - Approved By: NOREVIEW : 11-10-2014:09:10:53

63 11/10/2014 - SAB - **Supreme Court Appeal Bond

No additional text exists for this entry.

64 11/12/2014 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4690711 - Approved By: NOREVIEW : 11-12-2014:08:59:45

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

Plaintiff,

vs.

ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

Currently before the court is Defendant Alaska Pacific Leasing Company's ("Alaska Pacific") *Motion for Summary Judgment*. Plaintiff MB America, Inc. ("MB America") opposed the motion on September 26, 2014, and Alaska Pacific filed a reply. This order follows.

This dispute arises from a dealership contract entered between Alaska Pacific and MB America, a manufacturer of rock crushing machines. Among other clauses, the contract included an arbitration clause, which stated:

DISPUTES AND MEDIATION. The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be submitted to mediation between MB and Dealer with the rules of the American Arbitration Association, of which any hearing or meeting should be conducted in Reno, NV. Any mediation or settlement by the parties shall be

1 documented in writing. If such mediation modifies the language of this
2 Agreement, the modification shall be put in writing, signed by both
parties and added to this Agreement as an attachment.

3 If mediation between the parties does not result in a mutual satisfying
4 settlement within 180 days after submission to mediation, then each
5 party will have the right to enforce the obligations of this Agreement in
6 the court of law in Reno, Nevada with all reasonable attorney fees,
court costs and expenses incurred by the prevailing party in such
litigation to be paid by the other party.

7
8 MB America filed its complaint in this case on June 6, 2014. Alaska Pacific
9 contends that the complaint was prematurely filed, as the parties in this case
10 had not yet submitted their dispute to mediation, pursuant to the contractual
arbitration clause.

11 The Nevada Supreme Court has consistently recognized Nevada's
12 strong public policy in favor of arbitration because arbitration generally
13 avoids the higher costs and longer time periods associated with traditional
14 litigation. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162.
15 "There is a strong public policy favoring contractual provisions requiring
16 arbitration as a dispute resolution mechanism. Consequently, when there is
17 an agreement to arbitrate we have said that there is a 'presumption of
18 arbitrability.'" *Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990)
19 (citing *Int'l Assoc. Firefighters v. City of Las Vegas*, 104 Nev. 615, 620, 764
20 P.2d 478, 481 (1998)).

21 Arbitration clauses are enforced, however, only after an enforceable
22 agreement to arbitrate is found to exist. *Gonski v. Second Judicial District Court of*
23 *State ex rel. Washoe*, 245 P.3d 1164, 1169 (Nev. 2010). Nevertheless, a court, in its
24 discretion, may invalidate unconscionable arbitration provisions; generally, both
25 procedural and substantive unconscionability must be present in order for the court
26 to exercise its discretion to refuse to enforce an arbitration provision as
27 unconscionable. *D.R. Horton, Inc.* at 553-554, 96 P.3d 1159, 1162.
28

1 In this case, MB America does not allege that the arbitration clause between
2 the parties is unconscionable, or otherwise dispute the validity of the provision.
3 Rather, MB America appears to assert that arbitration is unnecessary, because it
4 only filed this action to establish that there is not a legal dispute between the
5 parties. If a dispute exists, MB America agrees that arbitration is appropriate.

6 Given the pleadings filed in this case, as well as the fact that MB America
7 filed a complaint in this court in the first instance, the court concludes that a legal
8 dispute between the parties appears to exist. The dispute also appears to arise from
9 the parties mutually agreed upon contractual obligations. As MB America does not
10 dispute the validity of the parties' contractual arbitration provision, the court
11 concludes that the parties are required to exhaust this administrative remedy
12 before submitting their dispute to this court.¹

13 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
14 *Motion for Summary Judgment* GRANTED. Plaintiff MB America's *Complaint* is
15 DISMISSED, without prejudice.

16 **IT IS SO ORDERED.**

17 **DATED** this 22nd day of October, 2014.

18 
19 LIDIA S. STIGLICH
20 District Judge
21
22
23
24
25
26

27 _____
28 ¹The court notes that while the agreement between the parties requires that any mediator follow the
rules of the American Arbitration Association, any selected mediator need not be a member of the
American Arbitration Association.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 22ND day of October, 2014, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 Holly Parker, Esq.

8 Michael Sullivan, Esq.

9 Marilee Breternitz, Esq.

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13
14 
15 KATHRYN ROGERS
16 Judicial Assistant
17
18
19
20
21
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23
24
25
26
27
28

1 **2540**

2 HOLLY S. PARKER, ESQ.
Nevada State Bar No: 10181
3 MARILEE BRETERNITZ, ESQ.
Nevada State Bar No. 12563
4 LAXALT & NOMURA, LTD.
9600 Gateway Drive
5 Reno, Nevada 89521
6 hparker@laxalt-nomura.com
mbreternitz@laxalt-nomura.com
7 Telephone: (775) 322-1170
Facsimile: (775) 322-1865
8 Attorneys for Defendant Alaska
Pacific Leasing Company
9

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

13 MB AMERICA, INC., a Nevada
14 Corporation

15 Plaintiff

16 vs.

17 ALASKA PACIFIC LEASING COMPANY,
18 a Alaska business corporation; and DOES
19 1-THROUGH X, inclusive,

20 Defendants.

CASE NO: CV14-01229

DEPT. NO. 8

NOTICE OF ENTRY OF ORDER

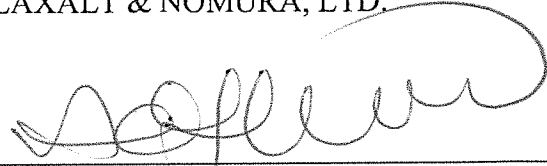
21 Please take notice that the above Court entered its Order Granting Summary Judgment on
22 October 22, 2014, a copy of said Order is attached hereto.
23
24
25
26
27
28

AFFIRMATION PURSUANT TO NRS 239.B.030

The preceding document does not contain the social security number of any person.

DATED this 23rd day of October, 2014.

LAXALT & NOMURA, LTD.



HOLLY S. PARKER, ESQ.

Nevada State Bar No: 10181

MARILEE BRETERNITZ, ESQ.

Nevada State Bar No. 12563

LAXALT & NOMURA, LTD.

9600 Gateway Drive

Reno, Nevada 89521

hparker@laxalt-nomura.com

mbreternitz@laxalt-nomura.com

Telephone: (775) 322-1170

Facsimile: (775) 322-1865

Attorneys for Defendant Alaska

Pacific Leasing Company

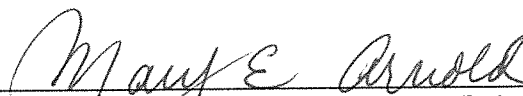
CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 23rd day of October, 2014, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by:

- ☒ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

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9 MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

10 Plaintiff,

11 vs.

12
13 ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

14 Defendant.
15 _____/

16
17 **ORDER GRANTING SUMMARY JUDGMENT**

18 Currently before the court is Defendant Alaska Pacific Leasing Company's
19 ("Alaska Pacific") *Motion for Summary Judgment*. Plaintiff MB America, Inc. ("MB
20 America") opposed the motion on September 26, 2014, and Alaska Pacific filed a
21 reply. This order follows.

22 This dispute arises from a dealership contract entered between Alaska Pacific
23 and MB America, a manufacturer of rock crushing machines. Among other clauses,
24 the contract included an arbitration clause, which stated:

25 **DISPUTES AND MEDIATION.** The parties agree that any disputes
26 or questions arising hereunder, including the construction or
27 application of this Agreement, shall be submitted to mediation
28 between MB and Dealer with the rules of the American Arbitration
Association, of which any hearing or meeting should be conducted in
Reno, NV. Any mediation or settlement by the parties shall be

1 documented in writing. If such mediation modifies the language of this
2 Agreement, the modification shall be put in writing, signed by both
parties and added to this Agreement as an attachment.

3 If mediation between the parties does not result in a mutual satisfying
4 settlement within 180 days after submission to mediation, then each
5 party will have the right to enforce the obligations of this Agreement in
6 the court of law in Reno, Nevada with all reasonable attorney fees,
court costs and expenses incurred by the prevailing party in such
litigation to be paid by the other party.

7
8 MB America filed its complaint in this case on June 6, 2014. Alaska Pacific
9 contends that the complaint was prematurely filed, as the parties in this case
10 had not yet submitted their dispute to mediation, pursuant to the contractual
arbitration clause.

11 The Nevada Supreme Court has consistently recognized Nevada's
12 strong public policy in favor of arbitration because arbitration generally
13 avoids the higher costs and longer time periods associated with traditional
14 litigation. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162.
15 "There is a strong public policy favoring contractual provisions requiring
16 arbitration as a dispute resolution mechanism. Consequently, when there is
17 an agreement to arbitrate we have said that there is a 'presumption of
18 arbitrability.'" *Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990)
19 (citing *Int'l Assoc. Firefighters v. City of Las Vegas*, 104 Nev. 615, 620, 764
20 P.2d 478, 481 (1998)).

21 Arbitration clauses are enforced, however, only after an enforceable
22 agreement to arbitrate is found to exist. *Gonski v. Second Judicial District Court of*
23 *State ex rel. Washoe*, 245 P.3d 1164, 1169 (Nev. 2010). Nevertheless, a court, in its
24 discretion, may invalidate unconscionable arbitration provisions; generally, both
25 procedural and substantive unconscionability must be present in order for the court
26 to exercise its discretion to refuse to enforce an arbitration provision as
27 unconscionable. *D.R. Horton, Inc.* at 553-554, 96 P.3d 1159, 1162.
28

1 In this case, MB America does not allege that the arbitration clause between
2 the parties is unconscionable, or otherwise dispute the validity of the provision.
3 Rather, MB America appears to assert that arbitration is unnecessary, because it
4 only filed this action to establish that there is not a legal dispute between the
5 parties. If a dispute exists, MB America agrees that arbitration is appropriate.

6 Given the pleadings filed in this case, as well as the fact that MB America
7 filed a complaint in this court in the first instance, the court concludes that a legal
8 dispute between the parties appears to exist. The dispute also appears to arise from
9 the parties mutually agreed upon contractual obligations. As MB America does not
10 dispute the validity of the parties' contractual arbitration provision, the court
11 concludes that the parties are required to exhaust this administrative remedy
12 before submitting their dispute to this court.¹

13 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
14 *Motion for Summary Judgment* GRANTED. Plaintiff MB America's *Complaint* is
15 DISMISSED, without prejudice.

16 IT IS SO ORDERED.

17 DATED this 22nd day of October, 2014. .

18 
19 LIDIA S. STIGLICH
20 District Judge
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28 ¹The court notes that while the agreement between the parties requires that any mediator follow the
rules of the American Arbitration Association, any selected mediator need not be a member of the
American Arbitration Association.

1 CERTIFICATE OF SERVICE


2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 22ND day of October, 2014, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 Holly Parker, Esq.

8 Michael Sullivan, Esq.

9 Marilee Breternitz, Esq.

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13
14 
15 KATHRYN ROGERS
16 Judicial Assistant
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CASE NO. CV14-01229 MB AMERICA, INC. VS. ALASKA PACIFIC LEASING CO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

9/16/14
HONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
J. Krush
(Clerk)
N/A
(Reporter)

CONFERENCE CALL

Michael Sullivan, Esq. was present telephonically on behalf of Plaintiff, with no representative present.

Holly Parker, Esq. was present telephonically on behalf of Defendant, with no representative present.

11:53 a.m. – Court convened in Chambers with the Court and counsel present.

The parties participated in a telephone conference related to Defendant's Motion for Order Shortening Time for briefing related to their Motion to Stay. The parties agreed to stay the proceedings pending resolution of the Motion for Summary Judgment. In addition, the parties agreed that Defense Counsel will withdraw its Motion to Stay, and therefore, Plaintiff's Counsel need not respond.

COURT ORDERED: The Court accepted the parties' agreement, and further vacated the Court's Order shortening time related to Defendant's Motion to Stay.
Counsel Parker to prepare Order.

1 **Code 1350**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **MB AMERICA, INC., a Nevada corporation,**

9 **Plaintiff,**

10 **vs.**

Case No. CV14-01229

Dept. No. 8

11 **ALASKA PACIFIC LEASING COMPANY, a Alaska**
12 **business corporation; and DOES -X, inclusive,**

13 **Defendant.**
14
15 _____ /

16 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

17 I certify that I am an employee of the Second Judicial District Court of the State of
18 Nevada, County of Washoe; that on the 12th day of November, 2014, I electronically filed
19 the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

20 I further certify that the transmitted record is a true and correct copy of the original
21 pleadings on file with the Second Judicial District Court.

22 Dated this 12th day of November, 2014
23

24 CATHY HILL, ACTING
25 CLERK OF THE COURT

26 By /s/ Annie Smith
27 Annie Smith
28 Deputy Clerk