

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREYSTONE NEVADA, LLC, A
DELAWARE CORPORATION,
Appellant,

vs.

OLIVER M. MCCOY, JR.,
INDIVIDUALLY; SEAN AND FELICIA
DELAPA, INDIVIDUALLY; JOHN B.
DAVIS, INDIVIDUALLY; NEHAMA
KRAMS, INDIVIDUALLY; GABRIELA
DIETZ, INDIVIDUALLY; ERIK ELDER,
INDIVIDUALLY; TOMER HAZUT,
INDIVIDUALLY; KIM NICKELL,
INDIVIDUALLY; EDO PELLACH,
INDIVIDUALLY; AND YUVADEE
PHUMPACHART, INDIVIDUALLY,
Respondents.

No. 68769

FILED

DEC 09 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

U.S. HOME CORPORATION, A
DELAWARE CORPORATION,
Appellant,

vs.

THE MICHAEL BALLESTEROS
TRUST; RODRIGO ASANION,
INDIVIDUALLY; FEDERICO AGUAYO,
INDIVIDUALLY; FELIPE ENRIQUEZ,
INDIVIDUALLY; JIMMY FOSTER, JR.,
INDIVIDUALLY; THE GARCIA
FAMILY TRUST; ARNULFO ORTEGO-
GOMEZ, INDIVIDUALLY; ELVIRA
GOMEZ-ORTEGA, INDIVIDUALLY;
JOHN J. OLSON, INDIVIDUALLY;
IRMA A. OLSON, INDIVIDUALLY;
OMAR PONCE, INDIVIDUALLY;
BRANDON WEAVER, INDIVIDUALLY;
JON YATES, INDIVIDUALLY; AND
MINTESNOT WOLDETSADIK,
INDIVIDUALLY,
Respondents.

No. 68810 ✓

*ORDER INVITING AMICUS CURIAE BRIEFS AND SUPPLEMENTAL
PARTY BRIEFS*

These appeals present significant issues concerning the enforcement of agreements to arbitrate construction-defect claims arising out of the purchase and sale of residential property in Nevada common-interest communities. The submission of amicus curiae briefs, followed by supplemental party briefs responsive thereto, may be of assistance to the court on, among other issues raised by the parties, the following:

1. Whether the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (FAA), applies to the agreements to arbitrate contained in the purchase agreements or common-interest community CC&Rs involved in these appeals, *see, e.g., Greystone Nevada, LLC v. Anthem Highlands Cmty. Ass'n*, 549 F. App'x 621 (9th Cir. 2013); *see also Cecala v Moore*, 982 F. Supp. 609, 612 (N.D. Ill. 1997).
2. Whether an enforceable agreement to arbitrate can arise from a common-interest community's CC&Rs, *see Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC*, 282 P.3d 1217 (Cal. 2012), consistent with the FAA or Nevada law, including the Uniform Arbitration Act of 2000, as adopted in Nevada, NRS 38.206 et seq. (UAA);
3. Whether the agreements or common-interest community CC&Rs involved in these appeals are unenforceable as unconscionable generally under *Bill Stremmel Motors, Inc. v IDS Leasing Corp.*, 89 Nev. 414, 514 P.2d 654 (1973), or under cases such as *Burch v. Second Judicial Dist. Court*, 118 Nev. 438, 49 P.3d 647 (2002), *D. R. Horton, Inc. v.*

Green, 120 Nev. 549, 96 P.3d 1159 (2004), and *Gonski v. Second Judicial Dist. Court*, 126 Nev. 551, 245 P.3d 1164 (2010), and, if so:

a. The extent to which, if at all, the law respecting unconscionability articulated in these cases is inconsistent with the FAA as interpreted in cases such as *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333(2011), and *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996); and

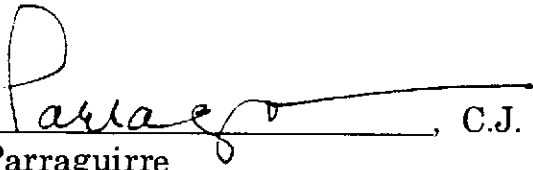
b. Whether a substantive unconscionability challenge to an arbitration agreement on the grounds its procedural remedies, damages, and cost and fee provisions conflict with NRS Chapter 40 is for the arbitrator to decide in determining applicable law or for the court to decide in determining the enforceability of the arbitration agreement.

Amicus briefs that support appellants' positions shall be submitted within 30 days of the date of this order. Amicus briefs that support the respondents' positions, and any supplemental briefs respondents choose to submit in response to the appellants' amici briefs, shall be filed within 60 days of this order. Thereafter, appellants shall have 15 days to submit supplemental briefs, if desired, in response to the briefs filed by respondents and respondents' amici. The type-volume and length limitations applicable to principal briefs shall apply to these submissions.

The Clerk of the Court is directed to send copies of this order to the State Bar of Nevada (ADR, Business, Construction, and Litigation Sections), the Nevada Justice Association, and the Las Vegas Defense

Lawyers, inviting them to participate as amicus curiae in these appeals. If other amici wish to participate, they should do so by stipulation or motion under NRAP 29.

Upon conclusion of this additional briefing, the Clerk shall set these appeals for oral arguments before the en banc court.


Parraguirre, C.J.

cc: Hon. Susan Johnson, District Judge
Hon. Joanna Kishner, District Judge
Stephen E. Haberfeld, Settlement Judge
Ara H. Shirinian, Settlement Judge
Payne & Fears LLP
Shinnick, Ryan & Ransavage P.C.
Fisher & Phillips LLP
Eighth District Court Clerk