

**In the Supreme Court of Nevada**

ALBERT THOMAS, et al.,  
Appellants,  
  
vs.  
MEI-GSR HOLDINGS, LLC, et al.,  
Respondents.

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Nov 08 2018 08:27 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**REPLY BRIEF ON “MOTION FOR LEAVE TO FILE REPLY”**

***1. Defendants are Using the Proper Procedure—  
Asking this Court for Permission to File a Reply***

Plaintiffs-appellants criticize defendants-respondents for asking permission to file a reply brief that clarifies, among other things, why this Court can address jurisdictional and justiciability defects for the first time on rehearing. It is precisely because such a reply is not automatic that respondents filed the motion for leave.

***2. The Sworn-Statement Requirement Applied to Plaintiffs’  
Complaint, and Plaintiffs Misrepresent that It Did Not***

Plaintiffs now do not dispute that the sworn-statement requirement in NRS 38.330—which, as defendants explain, is a prerequisite to the court’s gaining jurisdiction—was in effect when they filed this action. Plaintiff claim in opposing the request for leave, however, that

that requirement applied only to *nonbinding* arbitration, which they had never attempted. Of course, just as a medical-malpractice plaintiff who is unable to find an expert to support the allegations is not thereby *excused* from the expert-affidavit requirement, plaintiffs are not excused from the sworn-affidavit requirement simply because they failed to take a necessary step before filing suit.

And there is no dispute that, in 2011, arbitration was a prerequisite to filing suit. *See* NRS 38.310(1); 2007 Nev. Stat. 2278. If it was nonbinding, the parties needed to follow the sworn-affidavit requirement. NRS 38.330(5). If it was binding, the only possible review would be an application to vacate the award under NRS 38.241, subject to that statute's strict limitations on overturning arbitration awards. NRS 38.330(6). Defendants focused on the requirements for nonbinding arbitration because, charitably, that would be the only avenue for a district court to adjudicate the claims without deference to any prior proceedings. There was, in 2011, no path to filing a complaint following mediation or a referral to the Real Estate Division's program; when those options were added in 2013, the Legislature added sworn-affidavit requirements for them, as well. But in 2011, the parties had to try arbi-

tration—and had to swear that they had done so in filing their complaint.

This Court should grant leave to file the reply.

Dated this 7th day of November, 2018.

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**CERTIFICATE OF SERVICE**

I certify that on November 7, 2018, I submitted the foregoing “Reply Brief on ‘Motion for Leave to File Reply’” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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