IN THE SUPREME COURT OF THE STATE OF NEVADA

MMAWC, LLC a Nevada limited liability company; BRUCE DEIFIK, an individual; and NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP, LLLLP a Colorado limited liability partnership, APPELLANTS, v. ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC , a Wyoming limited liability company; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	APPEAL No. 75596 Eight Judicial District Court Case No. A-17-764118-C

RESPONDENTS' ANSWERING BRIEF

Attorney for Appellants
Byron E. Thomas, Esq.
Nevada Bar No. 8906
Law Offices of Byron Thomas
3275 S. Jones Blvd, #104
Las Vegas Nevada, NV 89146
Tel: 702 747-3103
bthomaslaw@gmail.com

RESPONDENTS' NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record for Respondents ZION WOOD OBI WAN TRUST, and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST, WSOF GLOBAL, LLC certifies that:

ZION WOOD OBI WAN TRUST is a Nevada trust. To my knowledge, there are no publicly held companies that own 10% or more of common stock of ZION WOOD OBI WAN TRUST, and that no publicly held company owns any interest in ZION WOOD OBI WAN TRUST.

WSOF GLOBAL, LLC is a Wyoming limited liability company. To my knowledge, there are no publicly held companies that own 10% or more of common stock of WSOF GLOBAL, LLC, and that no publicly held company owns any interest in WSOF GLOBAL, LLC.

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ZION WOOD OBI WAN TRUST, and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST, WSOF GLOBAL, LLC have been represented in this appeal and the underlying matter by the following attorneys and law firms:

Law Offices of Byron Thomas
Byron E. Thomas, Esq., NSB 8906
3275 S. Jones Blvd., #104
Las Vegas Nevada 89146

Respectfully submitted this 28th day of September 2018

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas, Esq.

Attorney for Respondents Zion Wood Obi Wan Trust, and Shawn Wright as Trustee, And WSOF Global, LLC

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Are nonparties to an arbitration agreement prohibited from seeking enforcement of the arbitration agreement?
2. Are claims between nonparties to an arbitration agreement subject to that arbitration agreement?

STATEMENT OF FACTS

On or about October 15, 2012 Vince Hesser entered into a Master License agreement with MMAWC, LLC ("MMAWC"). AA008 ¶ 48.

The Master License Agreement gave Mr. Hesser the exclusive right to license the WSOF brand outside of the United States. AA008 ¶ 49.

Subsequently, Vince Hesser assigned the Master License Agreement to WSOF GLOBAL LIMITED and its successor WSOF Global LLC ("GLOBAL"). AA008 ¶ 50.

Respondent MMAWC previously attempted to falsely deny the Master License Agreement (the "Licensing Agreement") existed and attempted to tortuously interfere in the rights and business of GLOBAL. AA008 ¶ 51.

A dispute arose over the terms of the license agreement and parties instituted litigation. The parties were able to reach a resolution of their disputes, and GLOBAL also became a party to the Settlement Agreement. AA008-9 ¶ 52.

As a part of the Settlement Agreement the parties amended the Licensing Agreement.

The Settlement Agreement and Licensing Agreement read as follows:

> Paragraph 2 of the Settlement Agreement: *The l 0/15/12 Hesser License shall be reaffirmed and remain in full force and effect as of the date of this Agreement, as amended by the execution of the Amendment to Consulting and Master Licensing Agreement in the form attached hereto and incorporated herein as Exhibit B.* ***The license is a material part of settlement on behalf of Hesser and Wright and is not subject to any modification, cancellation, assignment, pledge, lien, or encumbrance by WSOF or any of its creditors and shall survive any restructure, sale, receivership or bankruptcy of WSOF.***

AA008 ¶ 53.

The Amended License Agreement paragraph 1 also states: "[t]his Agreement shall be binding upon and shall survive any successors of MMA, or its ownership, tradenames or trademarks." AA0010 ¶ 54.

Therefore, any successor company is obligated to comply with the terms and conditions of the Licensing Agreement and the Settlement Agreement. AA0010 ¶ 54.

Subsequent to settlement, GLOBAL executed agreements for media content sharing rights with several MMA organizations from all over the world, on six continents based on the MMAWC license branding. AA0010 ¶ 54.

GLOBAL attempted to keep MMAWC informed of its upcoming events, but would receive childish email responses from the chief officers of MMAWC such as: "Hey idiot don't send me your stupid emails again!!", or phone calls threatening violence against GLOBAL employees. These same officers continue to operate the PFL brand. AA0010 ¶ 59.

GLOBAL continued to operate its business unfettered under this "naked" license arrangement which helped promote the overall brand name. AA010

Upon disclosure by MMAWC that an asset transfer was about to take place, Zion's principals received an email on December 16, 2016 from Chris

Childs, purported legal counsel for MMAWC, representing and affirming that the apparent Successor Company will be honoring the license.

The Successor Company did not honor the license and this litigation began. AA0010 ¶¶ 62-77.

On January 18, 2018 Appellant MMAWC, LLC filed a Motion to Dismiss the Complaint and Compel Arbitration. AA024 - AA115. The Motion to Dismiss was based on the arbitration provision in the Licensing Agreement. Id. The Motion to Dismiss also alleged that Zion Wood Obi Wan Trust ("Zion") and Shawn Wright as trustee of Zion Wood Obi Wan Trust ("Wright") were bound by the arbitration agreement. Id.

On or about February 2, 2018, Global, Zion, and Wright then filed an Opposition. AA116 - AA148. Global contended, among other arguments, that the arbitration agreement did not comport with NRS 597.995 and was thus void. On or about February 15, 2018 MMAWC, then filed a Reply. AA149 – AA197. In the Reply Respondent raised the issue that the Federal Arbitration Act preempted NRS 597.995. *Id*.

A hearing was held on February 21, 2018. AA198 – AA204. At the hearing again Global argued that the NRS 597.995 voided the arbitration agreement, and that Global and MMAWC were the only parties to the Licensing Agreement. Id. The

Court agreed with Global and voided the arbitration agreement pursuant to NRS 597.995 AA205 – AA206.

SUMMARY OF ARGUMENTS

The arbitration provision at issue only appears in a Licensing Agreement. The signatories to that License Agreement are Global and MMAWC. Thus they are the only parties governed by the arbitration clause. Moreover, only claims amongst and between Global and MMAWC are subject to arbitration.

The License Agreement is unambiguous and therefore the parol evidence rule is applicable. The parties' negotiations were therefore merged into the License Agreement.

NRS 597.995 is not ambiguous or vague. Moreover, it simply seeks to enforce general principles of contract law, and thus does not run afoul of the Federal Arbitration Act. Neither the interstate or foreign commerce clause applies to the License Agreement.

ARGUMENT

I. The Arbitration Agreement Only Applies to MMAWC, and Global.

Appellants contend that:

> Respondents claims are all based on the integrated settlement agreements discussed above (e.g., the Settlement Agreement, 4th Operating Agreement and Amended Licensing Agreement) which are subject to an expressly negotiated Arbitration Provision that was jointly

> drafted by the parties and subsequently expressly agreed to by the parties.

Opening Brief p. 6.

This is simply not accurate. The arbitration provision only appears in the Licensing Agreement. The only parties to the Licensing Agreement are Global and MMAWC. Thus, according to long established principles of contract interpretation the arbitration agreement only applies to those parties.

It is well settled law that when reviewing a contract, the Court looks to the plain meaning of the contract terms, and it applies meaning to all the contract's provisions. *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005); *Phillips v. Mercer*, 94 Nev. 279, 282, 579 P.2d 174. A contract should not be interpreted so as to lead to an absurd result. *Reno Club, Inc. v. Young Inv. Co*., 64 Nev. 312, 325, 182 P.2d 1011, 1017 (1947).

The License Agreement is a stand-alone agreement between MMAWC and Global only. The License Agreement is a part of the Settlement Agreement to extent that the Court approving the Settlement Agreement would have the authority to resolve disputes between MMAWC and Global. There are simply no other parties to the Licensing Agreement, and the arbitration clause, despite Appellants' arguments to the contrary.

To allow Bruce Deifik ("Deifik") and the Nancy and Bruce Deifik Family Partnership LLLP ("The Deifik Family Partnership"), to piggy back onto the arbitration provision of the License Agreement would nullify the plain meaning of the License Agreement. The Licensing Agreement specifically states that it is between MMAWC and Global in general:

> This AMENDMENT TO CONSULTING AND MASTER LICENSE AGREEMENT (the "Amendment") is entered into as of February 19, 2016 ("Effective Date") between MMAWC, L.L.C. a Nevada limited liability company ("MMA") and WSOF Global Limited, a Hong Kong company ("Consultant")(each a "Party" and collectively the "Parties")

AA105. In addition, the arbitration provision at issue, specifically states that it is only between MMAWC and Global, "18. Arbitration MMA and Consultant agree." AA114.

The Settlement Agreement itself makes it clear that the License Agreement is only between Global and MMAWC:

> The license is a material part of the settlement on behalf of Hesser and Wright and is not subject to any modification, cancellation, assignment, pledge, lien or encumbrance by **WSOF** [MMAWC], or any of its creditors and shall survive any restructure, sale, receivership, or bankruptcy of **WSOF** [MMAWC]

AA047 ¶ 2.1 (emphasis added). Paragraph 9 of the Settlement Agreement also provides as follows:

> Save and except the separate agreements provided in Sections 1 and 2 above, this Agreement contains the entire agreements and understandings between the Parties as to the resolution of their Disputes

> and the Actions and may be modified only by a written document executed by the Parties. This Agreement shall be effective upon execution.

AA052. The Licensing Agreement is the separate agreement identified in Section 2. Therefore, it is clear that the Licensing Agreement maintained it separate nature from the Settlement Agreement.

In addition Section 9 makes it clear that there are differences between disputes that arise under the Licensing Agreement and those that arise under the settlement agreement. Thus, Zion and Shawn Wright are not a party to the License Agreement and thus do not have to arbitrate their claims, and Deifik and the Deifik Family Trust cannot use the License Agreement to compel arbitration.

The parties also made a distinction between disputes that would arise under the Settlement Agreement and those that would arise under the Licensing Agreement. AA0047. Thus, none of the claims in the Complaint arising from the Settlement Agreement are part of the claims governed by the Licensing Agreement's arbitration provisions.

Moreover, MMAWC's interpretation leads to a truly absurd result. Under the interpretation expounded by MMAWC, Deifik and the Deifik Family Partnership must be a party to the entire Licensing Agreement, and not just the arbitration provision. But there is absolutely no discussion of the rights, privileges, duties, and obligations of Deifik and the Deifik Family Partnership. It would make

absolutely no sense to interpret the License Agreement to include Deifik and the Deifik Family Partnership, because they have no rights to the content of either MMAWC or Global.

Likewise, if Deifik and the Deifik Family Partnership are a party to the License Agreement through the operation of the Settlement Agreement, then Global is a member of MMAWC. Again another absurd result.

II. The Licensing Agreement is Clear and Unambiguous, Thus the Parties' Negotiations Were Merged Into the Licensing Agreement and are Prohibited by the Parol Evidence Rule.

The Appellants seek to introduce evidence of the parties' negotiations. The Appellants contend that the negotiations demonstrate that the arbitration provision was specifically authorized, and thus satisfy the requirements of NRS 597.995. Appellants simply make the bold statement that the evidence of negotiations is not excluded by the parol evidence rule, because it does not vary the contract. Opening Brief p. 27.

This is not the complete test of whether the parol evidence rule is applicable. First, there must be some ambiguity in the contract. Where "a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning." *Geo. B. Smith Chemical v. Simon,* 92 Nev. 580, 582, 555 P.2d 216, 216 (1976). At no point in the Appellants' Brief do they make the argument that the Licensing Agreement is ambiguous. As a matter of fact they make the

contrary argument. Appellants argue that the License Agreement is clear and demands that the parties arbitrate the claims in the Complaint. Opening Brief p. 1.

Moreover, the parol evidence rule specifically provides that all of the parties' prior negotiations are merged into the written agreement.

> When parties reduce their contract to writing, all oral negotiations and agreements are merged in the writing, and the instrument must be treated as containing the whole contract,

Daly v. Del E. Webb Corp., 96 Nev. 359, 361, 609 P.2d 319, 320 (1980). Thus, the parol evidence rule is on point and it applies to the Licensing Agreement, thus the negotiations as to the Licensing Agreement were merged into the written agreement and represent the parties entire contract.

III. NRS 597.995 Is Not Vague and Ambiguous.

The Appellants merely rehash the vague and ambiguous arguments raised in the unpublished decision of *Fat Hat, LLC, v. DiTerlizzi*, 385 P.3d 580, 2016 WL 5800335 *1 (Nev. 2016). For instance, the Appellants allege that the legislative intent was to regulate consumer contracts. Opening Brief p. 21- 25. This argument was made and rejected in *Fat Hat*. The *Fat Hat* Court pointed out that:

> The text of NRS 597.995 and that of Nevada's general arbitration statute, NRS 38.219, do not reveal an ambiguity with respect to NRS 597.995's broad scope and, in fact, militate against limiting NRS 597.007 to consumer contracts as Fat Hat urges. NRS 38.219(1) broadly states that, "[a]ri agreement contained in a record to submit to

> arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except as otherwise provided in NRS 597.995. ." (emphasis added). NRS 597.995(1) provides that "an agreement which includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement must include specific authorization for the provision which indicates that the person has affirmatively agreed to the provision." If there is no specific authorization, then the arbitration provision is "void and unenforceable." NRS 597.995(2). NRS 597.995(3) creates an exception to NRS 597.995(1) and NRS 597.995(2), providing that they do not apply to collective bargaining agreements (CBAs). If NRS 597.995 only applied to consumer contracts, NRS 597.995(3) would be unnecessary. See Clark Cty. v. S. Nev. Health Dist., 128 Nev. 651, 656, 289 P.3d 212, 215 (2012) ("Statutes should be read as a whole, so as not to render superfluous words or phrases or make provisions nugatory.").

Id. * 2. The Fat Hat Court used standard cannons of statutory interpretation. There is no reason for the Court to second guess its decision in Fat Hat.

Appellants also blatantly misstate Respondents position as well as what the documents mean. Appellants make the following misstatement:

> Respondents agree and admit that the Amended Licensing Agreement, including the Arbitration Provision, together with the 4th Operating Agreement are part and parcel of the Settlement Agreement.

Opening Brief p. 24, What Appellants seems to mean by this statement is that Respondents have agreed that somehow Appellants became a party to the Licensing Agreement even though the Licensing Agreement is strictly between MMAWC and Global, and the Settlement Agreement specifically states that they are separate

agreements. The Respondents have specifically refuted that position. AA200:15-AA201:9; see *supra.*

The Appellants then continue the harangue about the negotiations that were considered pursuant to the parol evidence rule. Opening Brief p. 25. There was no mendacity on the part of counsel or the parties. It does not appear that either counsel, or party, was aware of NRS 597.995 because neither mentioned. As Appellants repeat over and over again the Licensing Agreement was jointly drafted, thus they were in just as good a position as Respondents to insure that the Licensing Agreement comported with the dictates of NRS 597.995. Most importantly NRS 597.995 actually voids the arbitration agreement as opposed to making it avoidable, thus it is as if the arbitration provision does not exist, and Appellants never acted in bad faith. Therefore, Appellants *ad hominin* attacks against counsel and Respondents needs to stop.

Finally, the *Fat Hat* Court identified what specifically authorized means. specifically authorized means:

> However, the contracts for respondents DiTerlizzi, Klus, Monica, and Kirtz did not contain the "specific authorization" for the arbitration provision in their respective contracts that NRS 597.995 demands. Though the arbitration provision immediately preceded the signature line on the last page for all the contracts, that was a general signature line indicating consent to all the terms of the contract. Thus, those signatures do not qualify as specific authorizations for the arbitration provision. Although Kirtz initialed at the bottom of the page with the arbitration provision, she initialed at the bottom of every page; thus, her

> initials fail to demonstrate that she affirmatively agreed to the arbitration provision. Because Fat Hat's contracts with respondents DiTerlizzi, Klus, Monica, and Kirtz failed to include the specific authorization NRS 597.995 requires, the arbitration provisions in those four contracts are void and unenforceable, and we affirm the district court's order denying arbitration as to them. Respondents Hebert and Mihaylova, on the other hand, signed

Appellants' arguments that the course of negotiations show specific authorization are simply unpersuasive. As previously stated the negotiations were merged into the Licensing Agreement.

IV. NRS 597.995 is not Pre-empted by the Federal Arbitration Act Because the Statutory Scheme of NRS 597 Does not Just Apply to Arbitration Agreements.

Section 2 of the FAA makes arbitration agreements "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. This section "permits agreements to arbitrate to be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citation and internal quotation marks omitted).

NRS 597.995 employs generally applicable contract defenses. The requirement of specific acknowledgement is clearly meant to protect the parties from unconscionability or duress. Therefore, it is not invalidated by the FAA.

V. The FAA does not Apply Because the Licensing Agreement Does not Involve Interstate or Foreign Commerce.

Appellants rely heavily on *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265 (1995), for the proposition that the Licensing Agreement touched on interstate commerce. However, *Allied-Bruce Terminix Companies, Inc. v. Dobson*, is distinguishable from the case at hand. In the instant case the agreement between MMAWC and Global specifically takes the action out of the United States. Section 1.2 of the Licensing Agreement specifically excludes the United States and its territories from its reach. AA106 So there is no interstate commerce at issue.

Moreover, the regulation of foreign commerce is not applicable to the Licensing Agreement either. The Licensing Agreement is between MMAWC and Global not between any foreign entities. If and when Global entered into a sublicensing agreement with a foreign entity then that subleasing agreement may be governed by the foreign commerce clause but that is not the case before this Court.

Finally the District Court did not elevate form over substance. The District Court followed the well established law that parol evidence is not admissible when you have a fully integrated document. The parties negotiations were merged into the Licensing Agreement.

CONCLUSION

For the foregoing reasons Respondents seek a determination from this Court that the March 18, 2018 Order of the District Court is affirmed, or in the alternative,

if the Court determines that the arbitration provisions are enforceable, a ruling that the arbitration agreement only binds MMAWC and Global, and only applies to the claims under the Licensing Agreement and not to claims concerning any other agreement.

CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 32

1. I hereby certify that this Respondent's Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word, 2016 Edition, Times New Roman in 14-point font.

2. I further certify that this Respondent's Answering Brief complies with the page or type-volume limitations of NRAP 32(a)(7)(ii), excluding the parts exempted by NRAP 32(a)(7)(C), because: It is proportionately spaced, has a typeface of 14 points or more and contains approximately 3,960 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for an improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 23(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page and volume number, if any, of the transcript or appendix where the matter relied on

is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 28th day of September 2018

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas, Esq.

Attorney for Respondents Zion Wood Obi Wan Trust, and Shawn Wright as Trustee, And WSOF Global, LLC

CERTIFICATE OF SERVICE

I certify that on September 28, 2018, I served a true and correct copy of the foregoing RESPONDENT'S ANSWERING BRIEF upon all counsel of record by use of the court's electronic service and electronic mail:

Kennedy & Couvillier,
Maximiliano D. Couvillier
Attorney of Appellants.

/s/ Byron E. Thomas

Counsel for Defendants