IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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Case No. 80376

GREGORY GARMONG,

Appellant

--against--

WESPAC; GREG CHRISTIAN,

Respondents

Appeal from the Second Judicial District Court of Washoe County, Nevada
Judge Lynne Simons, Case No. CV12-01271

APPELLANT'S PETITION PURSUANT TO NRAP 40B

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Appellant Gregory Garmong is an individual. The undersigned has appeared as counsel for him at all times in the District Court and this Court.

There have been no other counsel for the petitioner in the District Court or this Court.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Attorney for Petitioner

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Appellant/Plaintiff/Petitioner Garmong submits his Petition pursuant to NRAP 40B(a).

Garmong, an elderly Nevada citizen, was swindled out of a substantial portion of his retirement savings by Respondents/Defendants Wespac and Christian, and he thereafter brought this action. The matter was referred to an arbitrator, whose Scheduling Orders (JA 1/015:12-13 and JA 1/057) expressly authorized Garmong to file Plaintiff's Motion for Partial Summary Judgment (1/JA 059-110) based upon the undisputed material facts, and Garmong did so. Arbitrator refused to address the undisputed facts and relevant procedural, evidentiary and substantive law of PMPSJ. Instead, he excused his failure to decide on grounds, a "merits hearing," that have been expressly rejected by the courts.

Second, after the parties contractually agreed and arbitrator ordered that NRAP 68, dealing with offers of judgment, would not be included in the law governing the arbitration, Respondents made an offer of judgment while still bound by their contract and without obtaining a reversal of arbitrator's order excluding, by omission, offers of judgment. Arbitrator then awarded attorneys fees to Respondents under Rule 68 contrary to the agreement between the parties and arbitrator's order excluding Rule 68.

Third, discovery established that there was no valid agreement to arbitrate in the first instance, and thus the arbitrator had no jurisdiction.

The District Court affirmed the arbitrator's rulings, and Garmong brought this appeal. The appeal was referred to the Court of Appeals, which affirmed the District Court, contrary to the law of the United States and this Court. Garmong petitioned for rehearing, and was denied.

PMPSJ HAS NEVER BEEN ADJUDICATED ACCORDING TO THE UNDISPUTED MATERIAL FACTS AND THE LAW

The arbitrator's initial decisions (JA 3/366-368) and upon reconsideration (JA 3/391-393) shows that he never evaluated PMPSJ according to the undisputed material facts and the governing law.

The arbitrator commented that the paperwork of PMPSJ and Respondents' opposition was voluminous (JA 3/367-8). He elected to avoid the work of evaluation and a decision by calling for (JA 3/392) a "merits hearing . . . to assess and weigh the credibility of each [declaration] witness" of PMPSJ and Respondents' opposition (JA 3/392). The evaluation of declarant credibility when deciding a motion for summary judgment is forbidden by both this Court (Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14 (2002)), and the United States Supreme Court (Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)).

The arbitrator admitted (JA 3/392:3) that "Many of the facts relied upon by [Garmong] are indeed 'undisputed,'" but still refused to follow the procedure for deciding motions for summary judgment mandated by Wood v. Safeway, Inc., 121 Nev. 724 (2005).[1] It is unclear why the arbitrator authorized filing motions for summary judgment if he did not want to be bothered to decide them.

Garmong next asked the District Court to vacate, under NRS 38.241, the arbitrator's refusal to decide PMPSJ on the merits, and the award of attorney's fees, but it refused to do so.

Garmong appealed to this Court, which referred the matter to the Court of Appeals. The Court of Appeals refused to decide PMPSJ, even though it is mandated to conduct a *de novo* review of a decision denying a summary judgment motion. GES, Inc. v. Corbitt, 117 Nev. 265, 268 (2001). Garmong asked for reconsideration by the Court of Appeals, but it refused.

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[1] This petition does not deal with the merits and substantive errors made by the arbitrator in deciding PMPSJ of the types discussed in WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. 884, 887 (2015). These are discussed in PMPSJ (1/JA 059-110). The arbitrator never attempted to decide PMPSJ under the substantive law. (JA 3/366-368, JA 3/391-393). This Petition requests this Court to require that someone decide PMPSJ according to the law.

This Petition presents the circumstance of the refusal of the arbitrator, the District Court, and the Court of Appeals to decide a summary judgment motion according to the applicable law. This Court should grant this Petition and ensure that PMPSJ be decided according to the applicable law.

THE USE OF ARBITRATORS

The use of arbitrators presupposes that they will follow the law, and will not intentionally mislead the parties. In the present case, the arbitrator did not follow the law and allowed the Petitioner to believe that an award of attorney's fees under NRCP 68 was not a possibility.

These points were raised with the Appeals Court; it did not address either of them. This case merits the review of this Court to rectify this problem.

"[A]n arbitrator . . . does not sit to dispense his own brand of industrial justice." United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960); Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 559 U.S. 662, 663, 671-72 (2010). An arbitrator must follow the agreement(s) between the parties, the established facts and the law of the jurisdiction.

QUESTIONS PRESENTED FOR REVIEW AND

REASONS REVIEW IS WARRANTED

I. Refusal to decide PMPSJ on the merits

Question 1.

Whether the Court of Appeals may properly affirm the arbitrator's refusal to decide PMPSJ on the merits, where the Court of Appeals failed to follow the basic law of summary judgment after the arbitrator admitted and the Court of Appeals acknowledged that "Many of the facts relied upon by Claimant are indeed 'undisputed.'" (JA 3/0392:3). The arbitrator's sole rationale for refusing to decide PMPSJ was an invalid legal argument previously rejected by this Court and the United States Supreme Court, holding a "merits hearing" to evaluate declarant credibility as part of deciding summary judgment. The appellate court did not review the arbitrator's decision *de novo*, as this Court mandates.

Reasons review is warranted.

NRAP 40B(a) sets forth three factors that may be considered in determining whether to grant review. All three of these factors are satisfied for this Question. Additionally, several other factors discussed below are implicated.

(1) Question is of first impression and of general statewide significance. This Court has never considered whether an arbitrator and the Court of Appeals may refuse to rule substantively on a motion for summary judgement by relying on a rationale expressly rejected by this Court and the United States Supreme Court, i.e., holding a merits hearing to evaluate credibility of the declarants. It is significant statewide because summary judgment motions are utilized statewide and are recommended when there are no disputed facts in order to improve the efficiency of litigation.

More generally, this Court has never decided whether a plaintiff forced to arbitration gives up his right to have his lawsuit decided by the applicable facts and governing law.

(2) The decision of the Court of Appeals conflicts with prior decisions of this Court and the United States Supreme Court. To cite a few of many examples (others being discussed *infra)*:

a) Appellate courts are required to review *de novo* the lower court's denial of PMPSJ and without deference to the lower court's findings. GES, Inc. v. Corbitt, 117 Nev. 265, 268 (2001) ("Our review [of denial of a motion for summary judgment] is *de novo* and without deference to the district court's findings."); Benchmark Ins. Co. v. Sparks, 127 Nev. 407, 411 (2011).

The Court of Appeals' Order of Affirmance ("OA") declined to review the arbitrator's decision on PMPSJ *de novo.*

b) OA conflicts with the procedure set forth in Wood v. Safeway, Inc., 121 Nev. 724 (2005), requiring the court first to evaluate PMPSJ as to which material facts are undisputed, and then decide the motion according to the undisputed facts and relevant evidentiary and substantive law. OA 5 recognizes that the arbitrator admitted that "Many of the facts relied upon by [Garmong] are indeed "undisputed." Yet neither the arbitrator nor the OA determined which Undisputed Material Facts were undisputed, and whether those facts entitled Garmong to judgment. In fact, none of the Undisputed Material Facts, set forth and established with admissible evidence in PMPSJ, were disputed with admissible evidence by Respondents. JA 3/292. See extensive discussion at JA 3/283-322.

c) OA affirmed the arbitrator's refusal to decide PMPSJ on the merits, based upon the single excuse that a "merits hearing" was required to evaluate credibility of witnesses as part of deciding a motion for summary judgment, without addressing this law. Such an approach directly conflicts with, and is contrary to, Pegasus, 118 Nev. at 713-14 and Anderson, 477 U.S. at 255, both prohibiting courts from deciding issues of credibility based

upon the evidence submitted in a motion for summary judgment and opposition. See AOB 22-23.

These differences and others are of statewide significance because arbitration is utilized statewide, because summary judgments are widely used in the course of lawsuits and arbitration, and because the Respondents prey on the elderly statewide. Further, the errors by the Court of Appeals were called to its attention in a Petition for Rehearing and were not addressed.

(3) The case involves fundamental issues of statewide public importance, specifically whether the arbitrator, the District Court, and the Court of Appeals may refuse to follow the established law.

a) When it refused to follow precedent, OA rejected the principle of *stare decisis* and the Rule of Law upon which our entire legal system rests. Michigan v. Bay Mills Indian Community, S.Ct. 2024, 2036 (2014), held "*stare decisis* is a foundation stone of the rule of law," citing to Vasquez v. Hillery, 474 U.S. 254, 265 (1986). Vasquez explains, "That doctrine [*stare decisis*] permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." In Armenta-Carpio v. Nevada, 129 Nev. 531, 535 (2013), this Court,

following the same approach, held "we will not overturn precedent absent compelling reasons for doing so." The rejection of *stare decisis* by the Court of Appeals did not occur on a single isolated point, but on virtually every issue.

b) The Appeals Judges swore the oath of office of NRS[2] 282.020, and they are required to adhere to the Code (see Code Part VI, Scope [2] and Application Sec. I(A)). The oath requires all judges, including Appeals Judges, to "support, protect and defend the Constitution and Government of the United States, and the Constitution and government of the State of Nevada . . . and to . . . well and faithfully perform all the duties of the office." The Code requires all judges to "comply with the law, including the Code of Judicial Conduct" (Rule 1.1), "uphold and apply the law, and . . . perform all duties of judicial office fairly and impartially" (Rule 2.2), "decide cases according to the law and facts" (Rule 2.4, comment [1]).

In the present case, the Appeals Judges did not adhere to the law, their oaths, or the Code, resulting in a decision contrary to the applicable rule of law.

The following additional factors also reach statewide.

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[2] Statutes set forth the policy of the State of Nevada

(4) Respondents Wespac and Christian, acting as financial planners and advisors, defrauded their elderly client and depleted his retirement savings.

Incredibly, Respondents withheld information that the person who dealt with Petitioner Garmong, Respondent Christian, had been previously disciplined and suspended from practice by the SEC for fraudulent securities practices. JA 1/65:26-66:4. Garmong's Declaration stated that he would never have dealt with Respondents if they had disclosed this fact. JA 3/244-245 (§35) Yet as a result of their fraudulent concealment, Respondents led Garmong into accepting services from Christian, to Garmong's great financial loss. This one concealment was sufficient to establish Respondents' liability under the Fifth-Seventh Claims of Appellant's First Amended Complaint (JA 1/24-25).

Wespac also concealed that it had failed to produce a Code of Ethics as required by the SEC. JA 1/65:1-9.

Financial planners also have a fiduciary duty of full disclosure to their clients. NRS 628A.010(3); NRS 628A.020; Randono v. Turk, 86 Nev. 123, 129 (1970); Perry v. Jordan, 111 Nev. 943, 947 (1995).

OA does not even mention these failures of disclosure, although they

were argued in Appellant's Opening Brief ("AOB") at 26-27 and 31.

(5) Respondents Wespac and Christian failed to obey the law of the State of Nevada and concealed that failure from Garmong. Garmong's Declaration stated that he would not have done business with Respondents if they had been honest and made disclosure as required by their fiduciary status, as such concealment would have placed him on notice not to deal with the Respondents.

Wespac was not licensed as an investment advisor as required by NRS 90.330, did not register as a foreign LLC as required by NRS 86.544, and did not have the insurance or surety bond required by NRS 628A.040(1), and concealed all of these significant failures to follow Nevada law. JA 1/65:10-25 and 1/93:6-95:21. The OA does not even mention any of these concealments.

(6) The OA disregarded the fact that Respondents filed three falsified declarations of Respondent Christian to persuade the courts to refer this matter to arbitration. JA 3/297:20-301:11. This Court should not permit the intentional defrauding of courts by parties.

(7) Respondents used their fiduciary position to prey upon their elderly client. The elderly are accorded special protection under both United States

and Nevada law. AOB 47-48. NRS 598.0933 and 598.0977; Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598 (2000); Washington v. Glucksberg, 521 U.S. 702, 731 (1997) ("[T]he State has an interest in protecting vulnerable groups-including the poor, the elderly, and disabled persons-from abuse, neglect, and mistakes."). Garmong was "elderly" at all relevant times, being over 60 years of age. The OA does not recognize either the special protection afforded the elderly or the fact that Garmong was in that protected class.

(8) A question of statewide importance is, then, whether this Court approves of out-of-state "financial planners" and "financial advisors" coming to Nevada, refusing to comply with their fiduciary duties of disclosure and failing to comply with Nevada's registration and licensing laws, and then recklessly or intentionally dissipating the retirement savings of Nevada's elderly citizens.

II. Award of attorney's fees

Question 2

Whether the Court of Appeals may properly affirm an arbitrator's granting of a motion for attorneys fees under NRAP 68, where the parties had previously contractually agreed, and the arbitrator ordered and misled the

parties to believe, that NRAP 68 was excluded from the arbitration proceedings. The Court of Appeals did not review the arbitrator's decision *de novo*, as this Court mandates.

Reasons review is warranted.

The three factors of NRAP 40B(a) are satisfied for this Question.

(1) Question 2 is of first impression and of general statewide significance. Because arbitrations are conducted statewide, it is of great significance whether arbitrators are permitted intentionally to mislead one party to an arbitration, so that the other party is benefitted, and unilaterally to reject or modify binding contractual agreements between the parties.

The parties to an arbitration under the rules of the Judicial Arbitration and Mediation Service ("JAMS"), under which this arbitration was conducted, may select governing rules for the arbitration, which then become binding upon the arbitrator and the parties. JAMS Rule 24 requires in relevant part. "(c) In determining the merits of the dispute, the arbitrator shall be guided by the rules of law agreed upon by the Parties[.]" The parties agreed (JA 1/0014:17-20) that certain rules of civil procedure would be included in the governing law of the arbitration, but NRCP 68 was not included. Arbitrator's Scheduling Order at JA 1/0015:23-26 entered an order to the same effect.

This order was never withdrawn or modified. And, once the parties and arbitrator had agreed upon the governing rules, they could not be unilaterally changed by the arbitrator. See Reply to Answer to AOB, at 26.

In the parties' agreement, and as ordered by the arbitrator, NRCP Rule 68 was not "applicable law" in the arbitration.

Yet Respondents later made an offer under Rule 68 and the arbitrator awarded attorneys fees based upon that offer.

An equally important statewide issue of first impression, discussed at AOB 56, is whether litigants should trust and rely upon anything that arbitrators set forth in orders. To establish respect for the judiciary and the Courts, the public should be able to trust what arbitrators and judges represent to them. Courts of other jurisdictions have held that they should, see United States v. Buchanan, 59 F.3d 914, 918 (9th Cir.1995) and Nagib v. Conner, 192 F.3d 127 at *4 (5th Cir. 1999). Blackstone Val. Gas & Elec. Co. v. Rhode Island Power, 12 A.2d 739, 752 (R. I.1940) unequivocally held that an arbitrator may not properly misrepresent facts or law to parties. In the present case, the arbitrator represented and ordered that the governing rules of the arbitration would not include NRCP 68, allowed Appellant Garmong to proceed for 20 months relying upon this representation, and then awarded

fees without ever revising his order. The Court of Appeals affirmed.

(2) The decision of the Court of Appeals conflicts with prior decisions of this Court.

Confirmation of an arbitrator's award of attorneys fees must be reviewed *de novo* without deference to the arbitrator's findings. Thomas v. City of North Las Vegas, 122 Nev. 82, 97 (2006), held "[W]hen the attorney fees matter implicates questions of law, the proper review is de novo." Here, the attorney fees matter implicates interpretation of NRCP 68, JAMS Rule 24, the arbitrator's misrepresentations, the arbitrator's unilateral modification of a contract between parties, and several case authorities. OA did not review the attorneys fees matter *de novo*. Instead, OA 5 stated, "Rather, courts give considerable deference to the arbitrator's decision," citing its own non-precedential decision in Knickmeyer v. State ex rel. Eighth Judicial Dist. Court, 133 Nev. 675, 676-77 (2017), which is contrary to this Court's holding of Thomas.

The stipulation between the parties to exclude NRCP 68, memorialized by the arbitrator's order (JA 1/0014:17-20), is a contract. Redrock Valley Ranch, LLC v. Washoe County, 127 Nev. 451, 460 (2011). Arbitrator's subsequent rejection of this contract is contrary to Nevada contract law. All

Star Bonding v. State of Nevada, 119 Nev. 47, 49 (2003). As held by Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52 (1981), "[A] court has no power to create a new contract for the parties which they have not created or intended themselves." The arbitrator and the OA ignored the original binding contractual agreement between the parties that Rule 68 would not be a governing rule of the arbitration.

Further, because arbitration is a matter of contract, the arbitrator is bound to follow the original expectation of the parties, which was that NRCP 68 was not included. Principal Investments v. Harrison, 132 Nev. 9, 14-15 (2016) ("Because arbitration is fundamentally a matter of contract, courts and arbitrators must 'give effect to the contractual rights and expectations of the parties.' "); DeSage v. AW Financial Group, LLC, 461 P.3d 162, *4 (2020); Volt Information Sciences, Inc. v. Board, 489 U.S. 468, 479 (1989). JAMS Rule 24 and the case authorities provided that the arbitrator could not change the rules to include NRCP 68, unless both parties agreed. The comments of the 9th Circuit Court of Appeals are instructive on this point:

> The scope of the arbitrator's authority is determined by the contract requiring arbitration as well as by the parties' definition of the issues to be submitted in the submission agreement. *Piggly Wiggly Operators' Warehouse, Inc. v. Piggly Wiggly Operators' Warehouse Indep. Truck Drivers Union, Local No. 1*, 611 F.2d 580, 583–84 (5th Cir.1980) (holding that the court must look at

> both the contract requiring arbitration as well as the submission agreement to determine the arbitrator's authority); see also *Executone Info. Sys., Inc. v. Davis*, 26 F.3d 1314, 1323 (5th Cir.1994) ("[T]he parties may agree to arbitration of disputes that they were not contractually compelled to submit to arbitration."). In other words, the "initial contract to arbitrate may be modified[or expanded] by the submission agreement." *Piggly Wiggly Operators' Warehouse, Inc.*, 611 F.2d at 584.

Schoenduve Corp. v. Lucent Techs., Inc., 442 F.3d 727, 732 (9th Cir. 2006).

Even more to the point, the Supreme Court of Oklahoma stated:

> We are mindful that the arbitration statutes, like arbitration agreements, are viewed as a shortcut to substantial justice with minimum court interference, *Garner v. City of Tulsa, 1982 OK 104, ¶ 21, 651 P.2d 1325, 1328*, and that a fundamental purpose of arbitration is to preclude court intervention into the merits of disputes which the parties have agreed to submit to arbitration. *Voss v. City of Oklahoma City, 1980 OK 148, ¶ 5, 618 P.2d 925, 927–928*. A court will, however, intervene when it is evident that the arbitrator has ignored the parties' agreement. In vacating the arbitrator's award, the district court found the arbitrator manifestly disregarded the law by ignoring the parties' agreement on attorney's fees, costs, charges and expenses of arbitration.

Sooner Builders & Investments, Inc. v. Nolan Hatcher Const. Services, L.L.C., 164 P.3d 1063, 1072 (Okla. 2007) (emphasis added).

(3) Whether the case involves fundamental issues of statewide public importance.

Consideration of this Question 2 also involves the same point discussed above, that Appeals judges swear the oath of office of NRS 282.020 and are

required to adhere to the Code. They did not do so in this case.

III. Discovery established that

There was no Agreement to Arbitrate

QUESTION 3

Whether it was proper to conduct arbitration when discovery established that there was no complete, unambiguous agreement including an arbitration clause ever made of record. Accordingly, there was no agreement to arbitrate. NRS 34.241(1)(e). (This information was not available earlier in the case, prior to discovery. Respondents' earlier assertion of the existence of an agreement was based upon three perjured declarations of Respondent Christian, and only discovery proved there was no agreement.)

Additional Facts

It was factually established during discovery that there was no complete copy of any purported agreement containing an arbitration provision. (PMPSJ Reply, JA 3/0285:18-25, and 3/0298:5-0301:11). Respondents never attempted to provide a copy of any purported complete agreement during the course of the relationship. (JA 4/479:13-16). Respondents argued a purported contract that they alleged contained a provision to arbitrate. The contract was to have included an alleged agreement, a Confidential Client

Profile including completed pages 10-11, three different documents confusingly named "Exhibit A" and three different documents confusingly named "Exhibit B." Instead, Respondents made of record two different versions of a purported agreement, two different versions of the Profile, an unauthenticated and unsigned one out of three separate Exhibits A, and none out of three Exhibits B. Respondent Christian stated under oath that he was "guessing" that one of the papers Respondents called an Exhibit B was "obviously" an Exhibit A. He blamed the typist for what he characterized as "typo" errors. (JA 4/624:20-0625:7). Additionally, when all of the different versions were sorted out, they were still missing crucial completed pages 10-11 of the Profile, two Exhibits A, and all three Exhibits B.

Respondents never made of record a complete agreement. The purported agreement ¶ 14 (JA 3/0229) provided that "This agreement, including the Confidential Client Profile and all Exhibits attached hereto, constitutes the entire agreement of the parties." Absent the complete Profile and all Exhibits, there was no "agreement of the parties." Arbitrator therefore did not have a complete Contract to adjudicate, had no jurisdiction, and consequently exceeded his authority.

Reasons review is warranted.

The three factors of NRAP 40B(a) are satisfied for this Question.

(1) Whether the question presented is one of first impression of general statewide significance.

Respondents initially persuaded the courts to refer the case to arbitration solely on the basis of three perjured declarations of Respondent Christian. JA 3/297:20-301:11. Challenged during discovery, Respondents were not able to produce a single complete agreement containing an arbitration provision, as required by NRS 38.221(1); Obstetrics and Gynecologists v. Pepper, 101 Nev. 105, 107 (1985). Yet the arbitrator and the Court of Appeals ignored the absence of the agreement and went forward in violation of NRS 38.221(1). The question of whether the arbitrator had jurisdiction under these circumstances has never been adjudicated and should be.

(2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court;

NRS 38.221(1) requires that the party asserting an agreement to arbitrate, here Respondents, demonstrate a valid agreement that includes an

arbitration provision. Obstetrics and Gynecologists, 101 Nev. at 107.

In the present case, Respondents never met this burden of "showing that a binding agreement existed." They never even attempted to meet this burden, other than the three perjured Christian Affidavits. No one has identified in the record a single, complete agreement.

As discussed at JA 5/0880:8-21, any "agreement to arbitrate" must be a complete contract for any portion of it to be valid and enforceable. NRS 38.221(3). An incomplete collection of paper purporting to be an "agreement" or contract cannot be enforced. See Dodge Bros., Inc. v. Williams Estate, 52 Nev. 364, 287 P. 282, 283-4 (1930) ("There is no better established principle of equity jurisprudence than that specific performance will not be decreed when the contract is incomplete, uncertain, or indefinite.").

Respondents prepared the incomplete collection of paper they assert is a Contract and forced it on Garmong. Any incompleteness or ambiguity must be interpreted against Respondents' interests. Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62-63 (1995).

NRS 38.219(2) requires that the District Court "shall decide whether an agreement to arbitrate exists." Here, no court did so in light of the absence of a complete Agreement as newly established during discovery, and the

Court of Appeals affirmed. NRS 38.219(1) mandates that the District Court may not approve an agreement to arbitrate if there is a ground at law or in equity for revocation of a contract. Incompleteness is such a ground for revocation.

The alleged agreement must also be interpreted against Respondents because they refused to provide all of the parts of an agreement, in an unambiguous form. Respondents had possession, custody, and control of all of the parts of the alleged agreement, if such ever existed. They prepared the papers, and never gave a copy of them to Garmong until the present lawsuit was filed. (JA 4/0478:25-0480:10). To enforce an arbitration provision, Respondents had an obligation to place into the record a complete Contract that unambiguously included all of the parts. They produced none of these.

(3) Whether the case involves fundamental issues of statewide public importance.

Consideration of this Question 3 also involves the same point discussed above, that all Nevada judges, including the Appeals Judges, swear the oath of office of NRS 282.020 that must be obeyed when sworn, and they are required to adhere to the Code (see Code Part VI, Scope [2] and Application Sec. I(A)). They did not do so in this case.

CONCLUSION

AOB xvi lists as the Second Issue of the appeal: "Whether by submitting to arbitration, a party gives up the right to have his case decided by the established facts and the governing law." The arbitrator, the District Court, and the Court of Appeals have all incorrectly decided that a party forced to arbitrate gives up his right to have his case decided by established facts and governing law. This Court should reverse the position of the Court of Appeals and decide the matters presented in the AOB according to law.

DATED this 22nd day of March, 2021.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for appellant Garmong

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition 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 petition has been prepared in a proportionally spaced typeface using WordPerfect 12 in 14 point Arial.

2. I further certify that this petition complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains **4,584** words.

3. Finally, I hereby certify that I have read this petition and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a 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 petition is not in conformity with the requirements of the Nevada Rules of Appellate

Procedure.

DATED this 22nd day of March, 2021.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for Petitioner

PROOF OF SERVICE OF APPELLANT'S PETITION FOR REVIEW

I, Carl M. Hebert, certify that, on March 22, 2021, I served the Appellant's Petition for Review on Thomas C. Bradley, Esq., counsel for respondents Wespac and Greg Christian, through the Court's electronic filing system to his e-mail address, tom@tombradleylaw.com, consistent with Nevada Electronic Filing and Conversion Rule 9(c).

DATED this 22nd of March, 2021.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

Counsel for Petitioner Garmong