

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MAIDE, LLC, A NEVADA
LIMITED-LIABILITY COMPANY, et al.
Appellants
vs.
CORRINE DILEO, et al.
Respondents

No. 81804
Electronically Filed
Nov 02 2020 05:09 p.m.
DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District 8th Department 14
County Clark Judge Hon. Adriana Escobar
District Ct. Case No. A797533

2. Attorney filing this docketing statement:

Attorney John M. Orr Telephone 702-693-4352
Firm Lewis Brisbois Bisgaard & Smith LLP
Address 6385 South Rainbow Boulevard
Ste. 600
Las Vegas, Nevada 89118
Client(s) Maide, LLC dba Gentle Spring Care Home, Sokhena Huch, and Miki Ton

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jamie S. Cogburn, Hunter Davidson Telephone 702-748-7777
Firm Cogburn Law
Address 2580 St Rose Pkwy
Suite 330
Henderson, NV 89074
Client(s) Corrine Dileo, Cindy Dileo, and Thomas Dileo, Jr

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Denial Arbitration</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

NA

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

NA

8. Nature of the action. Briefly describe the nature of the action and the result below:

See attached "A"

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the district court erred as a matter of law when it ruled that its prior order granting in part and denying in part Defendants' Application for Juicial Relief Motion to Compel Arbitration was clearly erroneous.
2. Whether the disputed arbitration agreement contained a "specific authorization" as required by NRS 597.995(1).
3. Whether NRS 597.995(1) is subject to substantial or strict compliance
4. Whether nonsignatory heirs can be bound by an arbitration agreement in a wrongful death case where all claims stem from a common nucleaus of operative facts

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

NA.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be assigned to the Court of Appeals under NRAP 17(b)(5),(12), which states that the court of appeals is presumptively assigned to "[a]ppeals from a judgment, exclusive of interest, attorney fees, and costs, of \$250,000 or less in a tort case" or "[c]ases challenging the grant or denial of injunctive relief.."

14. Trial. If this action proceeded to trial, how many days did the trial last? NA

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

NA

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Aug 12, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Aug 14, 2020

Was service

☐ Delivery

☐ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 14, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRS 38.247(a)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 38.247(a) provides: "[a]n appeal may be taken from: (a) An order denying a motion to compel arbitration."

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Maide, LLC dba Gentle Spring Care Home, Sokhena Huch, Miki Ton, Corrine Dileo, as Special Administrator of the Estate of Thomas Dileo, Cindy Dileo, Thomas Dileo, Jr.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

NA

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs Corrine Dileo, as Special Administrator of the Estate of Thomas Dileo, Cindy Dileo, Thomas Dileo, Jr. have asserted claims for Wrongful Death, Negligence, Elder Abuse Neglect under NRS 41.1395, Survival Action. Those claims have not been adjudicated. Defendants Maide, LLC dba Gentle Spring Care Home, Sokhena Huch, Miki Ton have filed an application for judicial relief seeking to compel arbitration.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Wrongful Death, Negligence, Elder Abuse Neglect under NRS 41.1395, Survival Action

(b) Specify the parties remaining below:

Maide, LLC dba Gentle Spring Care Home, Sokhena Huch, Miki Ton, Corrine Dileo, as Special Administrator of the Estate of Thomas Dileo, Cindy Dileo, Thomas Dileo, Jr.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

Order is independently appealable under NRS 38.247

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

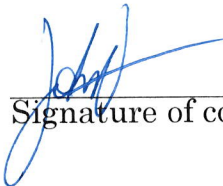
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Maide, LLC et al.
Name of appellant

John M. Orr
Name of counsel of record

Oct 30, 2020
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 2nd day of November, 2020, I served a copy of this record:

- ☒ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jamie Cogburn, Esq.
Hunter Davidson, Esq.
COGBURN LAW
2580 St Rose Pkwy Suite 330
Henderson, NV 89074
Tel: 702.748.7777
Attorneys for Respondents

Dated this 2nd day of November, 2020

/s/ Roya Rokni
Signature

ATTACHMENT “A”

ATTACHMENT “A”

8. Briefly Describe the Nature of the action and the result below:

This is a Wrongful Death case that stems from Thomas Dileo's residency at Gentle Spring Care Home ("Gentle Spring"). Gentle Spring is a licensed "residential home for groups" under NRS 449 et seq. Corrine Dileo, Mr. Dileo's ex-wife and power of attorney, executed an arbitration agreement on Mr. Dileo's behalf at the outset of his residency at Gentle Spring.

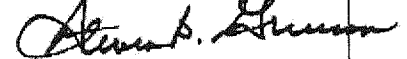
On or around June 24, 2017, Mr. Dileo developed a wound on his leg that became gangrenous and eventually had to be amputated. Mr. Dileo died on August 13, 2017, while admitted at Spring Valley Hospital. Plaintiffs Corrine Dileo, as Special Administrator of the Estate of Thomas Dileo, Cindy Dileo, and Thomas Dileo, Jr. allege that Gentle Spring negligently cared for and supervised Mr. Dileo, which purportedly caused him to develop gangrene and his subsequent need for a leg amputation. Plaintiffs further allege this amputation caused or contributed to Mr. Dileo's death.

Defendants filed an Application for Judicial Relief -Motion to Compel Arbitration (the "Motion") on September 13, 2019. The Court heard this Motion on January 28, 2020. Senior Judge Hon. Charles Thompson heard Petitioners' Motion. The Court granted Petitioner's Motion with regard to the Estate's claims on January 28, 2020. The court denied the Motion as it applied to the heirs because they were not parties to the arbitration agreement. The Order granting in part and denying in part Petitioners' Motion was entered on April 22, 2020. In their Opposition to Petitioners' Motion, Respondents argued that the subject arbitration agreement (the "Agreement") did not comply with NRS 597.995, which requires arbitration agreements to contain a specific authorization. The Court found the Agreement complied with NRS 597.995. The Court, however, found that because Thomas Dileo, Jr. and Cindy Dileo (collectively the "Heirs") were not signatories to the Agreement, they could not be compelled to arbitrate their claims against Petitioners. The Court, therefore, granted Petitioners' Motion with regard to the Estate and denied it with regard to the Heirs.

Respondents' filed a Motion for Rehearing of Defendants' Motion to Compel Arbitration on April 21, 2020. Respondents argued in this motion that the Court incorrectly ruled the Agreement complied with NRS 597.995. Respondents' Motion for Rehearing was heard by Hon. Adriana Escobar on May 26, 2020. The Court reversed its prior Order and ruled that the Agreement did not comply with NRS 597.995 and was, therefore, unenforceable. The Court's Order granting Respondents' Motion for Rehearing and Denying Petitioners' Motion to Compel Arbitration was entered on August 14, 2020. Petitioners now seek review of the Court's Order granting Respondents' Motion for Rehearing and denying Petitioners' Motion to Compel Arbitration.

ATTACHMENT “B”

ATTACHMENT “B”



CASE NO: A-19-797533-C
Department 1

1 **COMP**
2 **COGBURN LAW OFFICES**
3 Jamie S. Cogburn, Esq.
4 Nevada Bar No. 8409
5 jsc@cogburncares.com
6 Hunter S. Davidson, Esq.
7 Nevada Bar No. 14860
8 2580 St. Rose Parkway, Suite 330
9 Henderson, Nevada 89074
10 Telephone: (702) 748-7777
11 Facsimile: (702) 966-3880
12 *Attorneys for Plaintiffs*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 CORINNE R. DILEO as Special
10 Administrator for the ESTATE OF THOMAS
11 DILEO; THOMAS DILEO, JR. as Statutory
12 Heir to THOMAS DILEO; and CINDY
13 DILEO, as Statutory Heir to THOMAS
14 DILEO

Case No.:
Dept. No.:

13 Plaintiffs,

14 vs.

15 MAIDE, L.L.C, a Nevada limited-liability
16 company d/b/a GENTLE SPRING CARE
17 HOME; SOKHENA K. HUCH, an individual;
18 MIKI N. TON, an individual; DOE
19 INDIVIDUALS 1-10, inclusive; ROE
20 ENTITIES 11-20, inclusive;

21 Defendants.

COMPLAINT

20 Plaintiffs Corinne R. DiLeo, as Special Administrator for the Estate of Thomas DiLeo,
21 Thomas DiLeo, Jr., as Statutory Heir to Thomas DiLeo, and Cindy DiLeo, as Statutory Heir to
22 Thomas DiLeo (collectively, "Plaintiffs"), by and through their counsel of record, Jamie S.
23 Cogburn, Esq. and Hunter S. Davidson, Esq. of Cogburn Law Offices, hereby alleges as follows:

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GENERAL ALLEGATIONS

(Parties to the Action)

1. Thomas DiLeo (“Decedent”) was Plaintiff Thomas DiLeo, Jr.’s and Plaintiff Cindy DiLeo’s father, and Plaintiff Corinne R. DiLeo’s ex-husband. Decedent suffered significant neglect while an elderly resident at Gentle Spring Care Home, a skilled-nursing facility.

2. Decedent died in Clark County, Nevada and, at the time of his passing, was a resident of Clark County, Nevada.

3. Decedent was born on August 15, 1934 and, therefore, was an “older person” as that term is defined in NRS 41.1395.

4. At all times relevant hereto, Plaintiff Corinne R. DiLeo was, and continues to be, an individual residing in Clark County, Nevada.

5. At all times relevant hereto, Plaintiff Thomas DiLeo, Jr. was, and continues to be, an individual residing in Clark County, Nevada.

6. At all times relevant hereto, Plaintiff Cindy DiLeo was, and continues to be, an individual residing in Clark County, Nevada.

7. At all times relevant hereto, Defendant Maide, L.L.C d/b/a Gentle Spring Care Home (“Maide”) was, and continues to be, a Nevada limited-liability company.

8. At all times relevant hereto, Defendant Sokhena K. Huch (“Sokhena”) was, and continues to be, an individual residing in Clark County, Nevada.

9. At all times relevant hereto, Defendant Miki N. Ton (“Ton”) was, and continues to be, an individual residing in Clark County, Nevada.

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12 12. At all times relevant hereto, each of the Defendants were the agents, servants,
13 employees, and/or partners of each of their Co-Defendants, and were acting within the course and
14 scope of their employment. Each of the Defendants as aforesaid, when acting as principal, was
15 negligent in the selection, hiring, training, and/or supervision of each and every other Defendant,
16 as its agent, servant, employee and partner.

FIRST CAUSE OF ACTION

(Abuse/Neglect of An Older Person as to Each of the Defendants)

19 13. Plaintiffs re-allege and incorporate by reference the allegations in the paragraphs
20 above as though fully set forth herein.

14. Decedent was born on August 15, 1934 and, therefore, was an “older person” as that term is defined in NRS 41.1395.

23 15. In or about the year 2014, Decedent was admitted into the Nursing Facility for 24-
24 hour care and supervision.

1 16. Upon being admitted into the Nursing Facility, in or about the year 2014, Decedent
2 suffered from dementia.

3 17. Upon being admitted into the Nursing Facility, in or about the year 2014,
4 Defendants knew that Decedent suffered from dementia.

5 18. Defendants voluntarily assumed responsibility for Decedent's care, including,
6 among other things, providing him with food, shelter, clothing, and services necessary to maintain
7 his physical and mental health.

8 19. Given Decedent's condition upon admission into the Nursing Facility, Defendants
9 knew that Decedent required 24-hour care and supervision to ensure that his daily needs were met.

10 20. Given Decedent's condition upon admission into the Nursing Facility, Defendants
11 knew that Decedent struggled to care for himself and that Decedent relied upon the Nursing
12 Facility's staff to provide assistance.

13 21. During Decedent's residency at the Nursing Facility, Defendants failed to provide
14 the basic care to Decedent and protect him from harm.

15 22. As a result of Defendants' inadequate care, Decedent suffered various injuries.

16 23. In particular, at the beginning of July 2017, Decedent purportedly injured his leg
17 on a wheelchair while at the Nursing Facility.

18 24. To treat Decedent's leg injury, an employee or agent of the Nursing Facility
19 wrapped Decedent's leg with an elastic bandage wrap and would not let Decedent remove it.

20 25. The employee or agent of the Nursing Facility wrapped Decedent's leg too tight
21 with the elastic bandage wrap.

22 26. As a result of Decedent's leg being wrapped too tight with an elastic bandage wrap,
23 Decedent developed gangrene on his leg.

24 27. After noticing that Decedent's leg had begun to change colors, the Nursing Facility
25 attempted to treat Decedent themselves, rather than transporting Decedent to a hospital.

1 28. On or about July 21, 2017, after realizing the Nursing Facility would not transport
2 Decedent to a hospital, Plaintiff Cindy DiLeo called 911 and had Decedent immediately
3 transported to Spring Valley Hospital, in Las Vegas, Nevada.

4 29. On or about July 21, 2017, upon being admitted into Spring Valley Hospital,
5 hospital physicians determined they would need to amputate Decedent's leg that developed
6 gangrene.

7 30. On or about July 27, 2017, Decedent's leg amputation was postponed because
8 Decedent's sodium chloride levels were too high.

9 31. On or about August 3, 2017, Decedent's leg was amputated, as a result of the
10 gangrene he developed while a resident at the Nursing Facility.

11 32. On or about August 10, 2017, Decedent passed away from complications stemming
12 from Defendants' inadequate care.

13 33. Decedent's injuries and death were, in part, caused by Defendants' failure to
14 sufficiently staff the Nursing Facility with enough qualified employees to meet all of Decedent's
15 daily needs.

16 34. Defendants' staffing practices may have saved them costs associated with labor,
17 but they cost Decedent his dignity and comfort, while jeopardizing his safety, health, wellbeing
18 and, ultimately, Decedent's life.

19 35. Although Defendants owed a duty of services to Decedent in regard to his personal
20 safety, health and welfare, Defendants failed to provide Decedent services necessary to maintain
21 his physical and mental health.

22 36. Defendants' failures constitute neglect of Decedent.

23 37. Defendants' failures were made in conscious disregard of the health and safety of
24 Decedent.

25

SECOND CAUSE OF ACTION

(Negligence as to Each of the Defendants)

44. Plaintiffs re-allege and incorporate by reference the allegations in the paragraphs above as though fully set forth herein.

45. In caring for Decedent, Defendants, Defendants' staff, and Defendants' employees/agents had a duty to exercise the level of knowledge, skill, and care of those in good standing in the community.

THIRD CAUSE OF ACTION

(Wrongful Death as to Each of the Defendants)

49. Plaintiffs re-allege and incorporate by reference the allegations in the paragraphs
above as though fully set forth herein.

1 64. Plaintiffs have individually suffered severe emotional distress, loss of society,
2 companionship and comfort, grief, sorrow, mental pain and suffering, psychiatric impairment and
3 loss of enjoyment of life as a proximate cause of the acts or omissions of Defendants, their servants,
4 agents, and employees, in excess of Fifteen Thousand Dollars (\$15,000.00).

5 65. Plaintiffs are informed and believe that the alleged acts of the Defendants were
6 done with conscious disregard and deliberate indifference of the rights, welfare, and safety of
7 Plaintiff and Decedent

8 66. As a further result of Defendants' conduct, Plaintiffs have had to retain the services
9 of Cogburn Law Offices in this matter, and therefore, seek reimbursement of attorney's fees and
10 costs.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against all Defendants, and each of them, as follows:

1. For compensatory damages in an amount in excess of \$15,000;
2. For special damages in an amount in excess of \$15,000;
3. For punitive damages in an amount in excess of \$15,000;
4. For reasonable attorney's fees and costs incurred herein;
5. For additional damages pursuant to NRS Chapter 41;
6. For pre-judgment and post judgment interest;
7. For costs of suit; and
8. For such other and further relief as the court may deem just and proper.

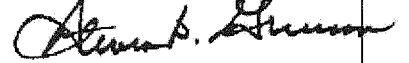
DATED this 27th day June, 2019.

COGBURN LAW OFFICES

By: Hunter S. Davidson, Esq.
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Hunter S. Davidson, Esq.
Nevada Bar No. 14860
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiffs

ATTACHMENT “C”

ATTACHMENT “C”



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7 *Attorneys for Defendants*

8 *Maide, LLC d/b/a Gentle Spring Care Home,*
9 *Sokhena K. Huch, and Miki N. Ton*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.
22

CASE NO. A-19-797533-C

DEPT. NO. 14

**ORDER ON DEFENDANTS' MOTION TO
COMPEL ARBITRATION**

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1 The above-entitled matter having come on for hearing upon Defendants Maide,
2 LLC, Sokhena Huch, and Miki Ton's (collectively referred to as "Defendants") Motion to
3 Compel Arbitration on January 28, 2020. Defendants, appearing by and through John M.
4 Orr, Esq. and Plaintiffs Cindy Dileo, as the Administrator of the Estate of Thomas Dileo
5 (the "Estate"), Thomas Dileo, Jr., an heir of Thomas Dileo, and Cindy Dileo, an heir of
6 Thomas Dileo (Thomas Dileo, Jr. and Cindy Dileo collectively referred to as the "Heirs"),
7 appeared by and through Hunter Davidson, Esq. The Court having reviewed the
8 pleadings and papers on file, being fully advised in the premises, having heard the oral
9 argument of counsel and good cause appearing therefore, the Court finds as follows:

10 The Court finds Corinne Dileo executed a valid arbitration agreement (the
11 "Agreement") on behalf of Thomas Dileo on January 30, 2015, when Mr. Dileo became a
12 resident a Gentle Spring Care Home. On June 27, 2019, Plaintiffs Corinne Dileo, Thomas
13 Dileo, Jr., and Cindy Dileo, filed a Complaint against Defendants, asserting claims under
14 NRS § 41.1395 ("Elder Abuse"), NRS 48.105 ("Wrongful Death"), and for Negligence
15 under NRS § 41.100. Cindy and Thomas Dileo, Jr. were not a signatories to the
16 Agreement.

17 The Supreme Court of Nevada has held "[g]enerally, arbitration is a matter of
18 contract and a party cannot be required to submit to arbitration any dispute which he has
19 not agreed so to submit" *Truck Ins. Exchange v. Swanson*, 124 Nev. 629, 634, 189 P.3d
20 656, 550 (2008). A nonsignatory "may be bound to an arbitration agreement if so dictated
21 by the 'ordinary principles of contract and agency...[:]' (1) incorporation by reference; (2)
22 assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel." *Id.*

23 NRS 38.221 further provides a specific framework with which this Court must
24 analyze whether a dispute is subject to arbitration:

NRS § 38.221 Motion to compel or stay arbitration.

1. On motion of a person showing an agreement to arbitrate
and alleging another person's refusal to arbitrate pursuant to
the agreement:

1 (a) If the refusing party does not appear or does not oppose
the motion, the court shall order the parties to arbitrate; and

2 (b) If the refusing party opposes the motion, the court shall
3 proceed summarily to decide the issue and order the parties
to arbitrate unless it finds that there is no enforceable
4 agreement to arbitrate.

5 2. On motion of a person alleging that an arbitral proceeding
has been initiated or threatened but that there is no
6 agreement to arbitrate, the court shall proceed summarily to
decide the issue. If the court finds that there is an enforceable
7 agreement to arbitrate, it shall order the parties to arbitrate.

8 3. If the court finds that there is no enforceable agreement, it
may not, pursuant to subsection 1 or 2, order the parties to
9 arbitrate.

10 . . .

11 . . .

12 6. If a party makes a motion to the court to order arbitration,
the court on just terms shall stay any judicial proceeding that
13 involves a claim alleged to be subject to the arbitration until
the court renders a final decision under this section.

14 7. If the court orders arbitration, the court on just terms shall
stay any judicial proceeding that involves a claim subject to
15 the arbitration. If a claim subject to the arbitration is
severable, the court may limit the stay to that claim.

16 NRS 38,221(1)-(3), (6)-(7).
17

18 The Estate's claims for Wrongful Death, Elder Abuse, and Negligence are subject
19 to Arbitration because Corrinne Dileo, as the special administrator of the Estate,
20 "succeeds to the rights and obligations of the Estate's decedent, effectively stepping into
21 the shoes of the decedent." *Colo. Nat'l Bank of Denver v. Friedman*, 846 P.2d 159, 163
22 (Colo. 1993). The Heirs "not have standing to assert an elder abuse or negligence claim."
23 *Echevarria v. Echevarria*, No. 66618, 2015 WL 7431757 (Nov. 19, 2015) ("nothing in NRS
24 41.085 authorizes an heir to maintain an action for elder abuse or neglect on behalf of a
25 decedent."); NRS 41.100(1) ("[e]xcept as otherwise provided in this section, no cause of
26 action is lost by reason of the death of any person, but may be maintained by or against
27 the person's executor or administrator.").

1 The Court finds that there is no evidence the Heirs are bound to the Agreement
2 by virtue of other principles of contract law, i.e., estoppel, assumption, agency. Under
3 NRS 38.221(1), there is not a valid agreement to arbitrate between the Heirs and
4 Defendants.

5 The Court does find as a matter of law that there is a valid agreement to arbitrate
6 between the Estate and Defendants.

7 The Court, having considered the arguments of counsel, and good cause
8 appearing, hereby finds and orders as follows:

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Corinne R.
10 Dileo's, as Special Administrator for the Estate of Thomas Dileo, claims against
11 Defendants for Elder Abuse, Negligence, and Survival Action be referred to binding
12 Arbitration pursuant to the Resident Agreement Addendum attached to Defendants'
13 Motion.

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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs Thomas
2 Dileo, Jr. and Cindy Dileo's, as statutory heirs to Thomas Dileo, individual claims against
3 Defendants for Wrongful Death are stayed during the pendency of the binding arbitration.

4 IT IS SO ORDERED

5 DATED this 3rd day of ^{AE}April ~~March~~, 2020.

6
7 
DISTRICT COURT JUDGE

8 Submitted By:

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10
11 By: /s/ John M. Orr

12 S. Brent Vogel, Esq.

13 John M. Orr, Esq.

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

14 Attorneys for Defendant
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ATTACHMENT “D”

ATTACHMENT “D”



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7 *Attorneys for Defendants*

8 *Maide, LLC d/b/a Gentle Spring Care Home,*
9 *Sokhena K. Huch, and Miki N. Ton*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.
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CASE NO. A-19-797533-C

DEPT. NO. 14

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
2 captioned matter on the 7th day of April, 2020, a copy of which is
3 attached hereto.
4

5 DATED this 22nd day of April, 2020

6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7
8

9 By /s/ John M. Orr
10 S. BRENT VOGEL
11 Nevada Bar No. 6858
12 JOHN M. ORR
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Attorneys for Defendants

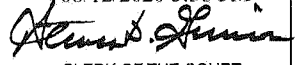
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2020, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

By /s/ Roya Rokni
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTACHMENT “E”

ATTACHMENT “E”


CLERK OF THE COURT

COGBURN LAW

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Facsimile: (702) 966-3880
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

CORINNE R. DILEO as Special
Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR. as Statutory
Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
DILEO

Plaintiffs,

vs.

MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive;

Defendants.

Case No.: A-19-797533-C
Dept. No.: 14

**ORDER REGARDING PLAINTIFFS'
MOTION FOR REHEARING ON
DEFENDANTS' MOTION TO
COMPEL ARBITRATION**

COGBURN LAW
2580 St. Rose Parkway, Suite 330, Henderson, Nevada 89074
Telephone: (702) 748-7777 | Facsimile: (702) 966-3880

*Order re: Motion for Rehearing
DiLeo, et al. v. Maide, L.L.C
Case No. A-19-797533-C*

Plaintiffs' Motion for Rehearing on Defendants' Motion to Compel Arbitration ("Motion to Reconsider") was heard by the Honorable Adriana Escobar on May 26, 2020 at 9:00 a.m. Hunter S. Davidson, Esq., of Cogburn Law, appeared on behalf of Plaintiffs Corinne R. DiLeo, as Special Administrator for the Estate of Thomas DiLeo ("the Estate"); Thomas DiLeo, Jr., as Statutory Heir to Thomas DiLeo ("Plaintiff Thomas"); and Cindy DiLeo, as Statutory Heir to Thomas DiLeo ("Plaintiff Cindy" and, collectively with the Estate and Plaintiff Thomas, "Plaintiffs"). John M. Orr, Esq., of Lewis Brisbois Bisgaard & Smith, appeared on behalf of Defendants Maide, L.L.C d/b/a Gentle Spring Care Home ("Maide"), Sokhena K. Huch ("Defendant Huch"), and Miki N. Ton ("Defendant Ton" and, collectively with Maide and Defendant Huch, "Defendants").

After review and consideration of the points and authorities on file herein, and having heard oral arguments of counsel on this matter, the Court hereby finds and concludes as follows:

I. BACKGROUND

This case arises from the alleged neglect of Decedent Thomas DiLeo ("Decedent") while he was a resident of Defendants' residential facility for groups, Gentle Spring Care Home, located at 6418 Spring Meadow Drive, Las Vegas, Nevada ("Care Home"). On August 10, 2017, Decedent passed away, allegedly from Defendants' neglect and inadequate care.

On June 27, 2019, Plaintiffs filed their Complaint, asserting the following causes of action against each of the Defendants: (1) Abuse/Neglect of an Older Person; (2) Negligence; (3) Wrongful Death; and (4) Survival Action. On August 14, 2019, Defendants filed their Answer to Plaintiffs' Complaint.

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*Order re: Motion for Rehearing
DiLeo, et al. v. Maide, L.L.C
Case No. A-19-797533-C*

On September 13, 2019, Defendants filed a Motion to Compel Arbitration (“Motion to Compel Arbitration”), arguing the instant matter should be removed into binding arbitration pursuant to NRS 38.221 and an arbitration agreement purportedly entered between Decedent and Defendants on January 30, 2015 (“Arbitration Agreement”).

On September 24, 2019, Plaintiffs filed their Opposition to Defendants’ Motion to Compel Arbitration wherein they argued, among other things: (1) that the Arbitration Agreement was void and unenforceable because it lacked NRS 597.995’s specific authorization requirement; and (2) that Plaintiffs could not be bound to the Arbitration Agreement because they were not signatories to the Arbitration Agreement.

On January 28, 2020, Defendants’ Motion to Compel Arbitration came before Senior Judge Charles Thompson, who held the Arbitration Agreement was binding and enforceable between the Estate and Defendants but not between Plaintiffs Thomas and Cindy and Defendants. As such, the Estate’s claims against Defendants for Elder Abuse, Wrongful Death, and Survival Action were subject to binding arbitration, while Plaintiff Thomas’s and Plaintiff Cindy’s claims against Defendants for Wrongful Death remained stayed in District Court during the pendency of the binding arbitration.

On April 7, 2020, Judge Thompson’s Order was entered. Defendants filed their Notice of Entry of Order on April 22, 2020.

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***Order re: Motion for Rehearing
DiLeo, et al. v. Maide, L.L.C
Case No. A-19-797533-C***

On April 21, 2020, Plaintiffs filed the underlying Motion to Reconsider. In their Motion to Reconsider and Reply in Support of Motion to Reconsider, Plaintiffs argued that Judge Thompson's decision was clearly erroneous because the Arbitration Agreement lacked the specific authorization required under NRS 597.995. In support of their position, Plaintiffs pointed to the various arbitration agreements reviewed in *Fat Hat, LLC v. DiTerlizzi*, 385 P.3d 580 (Nev. 2016), wherein the Nevada Supreme Court interpreted NRS 597.995's specific authorization requirement.

On May 5, 2020, Defendants filed their Opposition to Plaintiffs' Motion to Reconsider wherein they argued, *inter alia*, that the Arbitration Agreement complied with NRS 597.995's specific authorization requirement as interpreted in *Fat Hat, LLC v. DiTerlizzi*, 385 P.3d 580 (Nev. 2016).

On May 26, 2020, Plaintiffs' Motion to Reconsider came on for hearing before Department 14 of the Eighth Judicial District Court, with the Honorable Adriana Escobar presiding.

II. FINDINGS

After review and consideration of the points and authorities on file herein, and having heard oral arguments of counsel on this matter, the Court hereby finds as follows:

1. Leave for reconsideration of motions is within the Court's discretion. EDCR 2.24. The Court may reconsider its order when one of the following apply: (1) the prior ruling was clearly erroneous; (2) there is an intervening change in controlling law; (3) substantially different evidence is subsequently introduced; (4) there are other changed circumstances; or (5) manifest injustice would result were the prior ruling permitted to stand. *See Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga, & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 489 (1997); NRCP 60.

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2. NRS 597.995(1) provides the clear and unambiguous requirement for an agreement that includes an arbitration clause:

[A]n 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.

3. Here, Judge Thompson's decision to grant, in part, Defendants' Motion to Compel Arbitration was clearly erroneous because the binding arbitration provision within the Arbitration Agreement lacks NRS 597.995(1)'s specific authorization requirement. Specifically, the subject provision within the Arbitration Agreement did not have a separate signature block or initial section for Plaintiffs to affirmatively agree to said provision. As such, the Arbitration Agreement is void and unenforceable pursuant to NRS 597.995(2)

III. CONCLUSION

Based upon the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiffs' Motion to Reconsider is GRANTED.
2. The Court's prior Order regarding Defendants' Motion to Compel Arbitration, entered on April 7, 2020, is VACATED.
3. Defendants' Motion to Compel Arbitration is DENIED IN ITS ENTIRETY.

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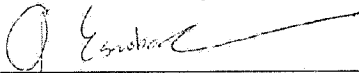
*Order re: Motion for Rehearing
DiLeo, et al. v. Maide, L.L.C
Case No. A-19-797533-C*

4. Each of Plaintiffs' causes of action, Abuse/Neglect of an Older Person, Negligence, Wrongful Death, and Survival Action, may proceed before the Eighth Judicial District Court.

IT IS SO ORDERED.

DATED: August 12, 2020.

Dated this 12th day of August, 2020


DISTRICT COURT JUDGE

718 AE3 448B 394F
Adriana Escobar
District Court Judge

Respectfully Submitted by:

COGBURN LAW

By: /s/ Hunter S. Davidson
Jamie S. Cogburn, Esq.
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Hunter S. Davidson, Esq.
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Attorneys for Plaintiffs

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Corinne DiLeo, Plaintiff(s)

CASE NO: A-19-797533-C

7 vs.

DEPT. NO. Department 14

8 Maide, LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/12/2020

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17 John Orr john.orr@lewisbrisbois.com

18 Hunter Davidson hsd@cogburncares.com

19 File Clerk efile@cogburncares.com

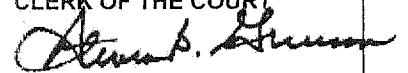
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7 *Attorneys for Defendants*

8 *Maide, LLC d/b/a Gentle Spring Care Home,*
9 *Sokhena K. Huch, and Miki N. Ton*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.
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CASE NO. A-19-797533-C

DEPT. NO. 14

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an ORDER REGARDING PLAINTIFFS' MOTION FOR
2 REHEARING ON DEFENDANTS' MOTION TO COMPEL ARBITRATION was entered with
3 the Court in the above-captioned matter on the 12th day of August, 2020, a copy of which is
4 attached hereto.

5
6 DATED this 14th day of August, 2020

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8
9
10 By /s/ John M. Orr
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19 Attorneys for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2020, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

By /s/ Roya Rokni
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP