

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS OF ARIZONA, INC.; and
WILLIS TOWERS WATSON
INSURANCE SERVICES WEST,
INC.,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT
COURT, CLARK COUNTY,
NEVADA; THE HONORABLE
ELIZABETH GONZALEZ

Respondents,

AND

HAKKASAN USA, INC.;
ENDURANCE AMERICAN
SPECIALTY INSURANCE
COMPANY; and SOMPO
INTERNATIONAL HOLDINGS,
LTD.,

Real Parties in Interest.

Supreme Court Case No.: 82829

(consolidated with Case No. 82833)

Electronically Filed
Jan 03 2022 12:25 p.m.
District Court Case No.: A-20-816145-B
Elizabeth A. Brown
Clerk of Supreme Court

OPPOSITION TO MOTION TO DISMISS APPEAL

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Watson Insurance Services West, Inc.*

Appellants Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively “Willis”)¹ hereby oppose the Motion to Dismiss Appeal filed by Respondent Hakkasan USA, Inc. (“Hakkasan”) in Case No. 82829. This Opposition is based on the attached Memorandum of Points and Authorities and supporting documentation, the papers on file in this matter, and any oral argument this Court may allow.

DATED this 3rd day of January, 2022.

/s/ Patrick J. Reilly

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¹ Willis of Arizona, Inc. merged into Willis Towers Watson Insurance Services West, Inc. in December 2019 and no longer exists as a separate entity.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS APPEAL

I. INTRODUCTION

Petitioners and Appellants, Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively, “Willis”), by and through their counsel of record, the law firms of Brownstein Hyatt Farber Schreck, LLP and Saul Ewing Arnstein & Lehr, LLP, hereby oppose Respondent Hakkasan USA, Inc.’s (“Hakkasan”) Motion to Dismiss Appeal (the “Motion”), which seeks the dismissal of Willis’s appeal in Case No. 82829.² Hakkasan’s Motion should be denied because this Court has jurisdiction over Willis’s appeal in Case No. 82829 under the plain language of NRS 38.247(1)(a).

II. RELEVANT BACKGROUND

Hakkasan filed its original Complaint in the District Court on June 5, 2020. One month later, on July 7, 2020, Willis filed a motion to dismiss arguing, among other things, that the Complaint should be dismissed as to Willis because Hakkasan failed to initiate mediation through JAMS prior to commencing litigation as required by the dispute resolution provision of the “Brokerage Terms, Conditions & Disclosures” (the “T&Cs”), which set forth the terms governing Willis’s relationship with Hakkasan. *See* Willis’s Appellants’ Appendix – Volume I (“VI”) at 2. After a

² Despite its Motion, Hakkasan acknowledges that this Court has original jurisdiction to decide Willis’s Petition for Writ of Mandamus in Case No. 82833. *See* Motion at 1, n. 1.

hearing on Willis's motion to dismiss, and applying the T&Cs' dispute resolution provision to the present dispute, the District Court compelled Hakkasan and Willis "to mediation before JAMS in the next sixty day period from the date of this Order before any further proceedings occur with respect to the Willis Defendants[.]" *Id.* Mediation then took place on November 3, 2020, no resolution was reached, and Willis filed its Answer to Plaintiff's Amended Complaint and Response to Demand for Jury Trial (the "Answer") on December 16, 2020. *See* VI at 33. Willis asserted in its Answer the following Affirmative Defense: "Plaintiff's demand for a jury trial as to its claims against Willis must be denied and stricken because Plaintiff waived its right to a jury under the Brokerage Terms, Conditions & Disclosures that govern Plaintiff's relationship with Willis." VI at 58.

On February 11, 2021, Willis filed its Motion To Strike Plaintiff's Jury Demand As To Its Claims Against The Willis Defendants Or, In The Alternative, To Compel Arbitration (the "Motion to Strike"). *See* VI at 61. In the Motion to Strike, Willis argued that the District Court should enforce the dispute resolution provision set forth in the T&Cs that the parties agreed to and either strike Hakkasan's jury demand or compel the parties' dispute to arbitration. *See* VI at 61-69. After the parties' briefing on the Motion to Strike was completed, the District Court chose not to hold a hearing and entered a minute order denying the Motion to Strike stating that "[i]ssues related to the proposal are distinct with those which remain at issue in

this matter.” Subsequently, on March 25, 2021, the District Court executed an Order denying the Motion to Strike holding that “Hakkasan’s present claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations are outside the scope of the Dispute Resolution clause in Section 1.13 of the T&Cs.” *See Willis’s Appellants’ Appendix – Volume II (“VII”)* at 286.

On April 23, 2021, Willis filed a Petition for Writ of Mandamus requesting that this Court issue a writ of mandamus directing the District Court to strike Hakkasan’s jury demand with regard to the claims against Willis. Willis also filed a notice of appeal on April 23, 2021, given that the District Court’s Order denying the Motion to Strike also served to deny Willis’s request to compel arbitration. Willis then moved to consolidate the Petition for Writ of Mandamus proceeding (Docket No. 82833) with the appeal (Docket No. 82829). By Order dated May 28, 2021, this Court consolidated the two matters and directed Hakkasan to answer the Petition for Writ of Mandamus, noting that “an answer may assist this court in resolving the petition.” The Court further directed Willis to file an opening brief in the appeal (Case No. 82829) and set a schedule for Hakkasan to respond by filing a “combined answering brief in Docket No. 82829 and, on behalf of respondents, an answer, including authorities, against issuance of the requested writ in Docket No. 82833.”

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III. ARGUMENT

Hakkasan contends that “this Court does not have jurisdiction to decide the appeal noticed by Willis . . . in Case No. 82829 because the District Court did not enter an order denying a motion to compel arbitration below[.]” (Motion at 1.) Hakkasan reasons that because the District Court denied the Motion to Strike on the ground that claims in this case are outside the scope of the T&Cs’ Dispute Resolution provision, the District Court did not actually deny Willis’s request to compel arbitration. *Id.* at 4. Hakkasan’s argument simply “loses the forest through the trees.” NRS 38.274 plainly states that “1. An appeal may be taken from: (a) An order denying a motion to compel arbitration[.]” Willis filed the Motion to Strike requesting, in part, that the District Court compel arbitration, and the Motion to Strike was denied in its entirety. The reasoning cited by the District Court does not change the fact that the District Court’s March 21, 2021 Order (*see* VII at 284-86) denied Willis’s motion that sought to compel arbitration among other requests for relief. Because the appeal in Case No. 82829 fits squarely within the plain language of NRS 38.274(1)(a), it is appropriately before this Court.

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CONCLUSION

For the foregoing reasons, Hakkasan's motion to dismiss the appeal in Case No. 82829 should be denied.

DATED this 3rd day of January, 2022.

/s/ Patrick J. Reilly

Patrick J. Reilly

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Appellate Procedure 25(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **PETITIONERS'/APPELLANTS' OPPOSITION TO MOTION TO DISMISS APPEAL** was served by submitting electronically for filing and/or service with Supreme Court of Nevada's EFlex Filing system and serving all parties with an email address on record, as indicated below, pursuant to Rule 8 of the N.E.F.C.R. on the 3rd day of January, 2022, to the addresses shown below:

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