

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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.

Electronically Filed
Jan 24 2022 03:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. : 82829
(Consolidated with Case No. 82833)

District Court No. : A-20-816145-B

Consolidated Appeal and Petition for Writ of Mandamus from the Eighth Judicial
District Court of State of Nevada for the County of Clark
The Honorable Elizabeth Gonzalez, District Court Judge

RESPONDENT'S REPLY IN SUPPORT OF MOTION TO DISMISS
APPEAL

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

SANTORO WHITMIRE

Danielle L. Gilmore (*pro hac vice*)
daniellegilmore@quinnemanuel.com
Dakota S. Speas (*pro hac vice*)
dakotaspeas@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

James E. Whitmire (Nev. Bar No. 6533)
jwhitmire@santoronevada.com
10100 W. Charleston Blvd., # 250
Las Vegas, Nevada 89135
Telephone: (702) 948-8771
Facsimile: (702) 948-8773

Attorneys of Respondent Hakkasan USA, Inc.

MEMORANDUM OF POINTS & AUTHORITIES

I. Argument

As Respondent Hakkasan USA, Inc. (“Hakkasan”) explained in its opening memorandum, this Court lacks jurisdiction over this appeal (Case No. 82829) under Nevada Revised Statutes 38.247(1)(a) because the District Court did not enter an order denying a motion to compel arbitration. In response, Petitioners Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively, “Willis”) contend that the District Court did in fact deny a motion to compel arbitration. Opp. 6. According to Willis, its “Motion to Strike request[ed], in part, that the District Court compel arbitration, and the Motion to Strike was denied in its entirety,” so the District Court necessarily must have denied a motion to compel arbitration. *Id.*

That argument is incorrect because it mischaracterizes the motion that Willis filed in the District Court. Willis did not file an unqualified motion to compel arbitration. Rather, Willis filed a *contingent* motion: It sought to compel arbitration “if”—and only *if*—“the jury waiver provision in the [Brokerage Terms, Conditions & Disclosures (the “T&Cs”)] is deemed to be unenforceable.” Petitioner’s Appendix, Volume I (“App’x I”) at 62; *see also id.* at 68 (“***Should the Court decline to enforce the jury waiver***, the claim asserted by Hakkasan against Willis in this case should be compelled to arbitration.”) (emphasis added). The District Court expressly noted the contingent nature of the motion. *See* Petitioner’s Appendix, Volume II (“App’x II”) at 286. Because the District Court did not ultimately hold that the Jury Waiver Clause is unenforceable, it had no basis to reach Willis’s contingent motion. The District Court’s denial of the Motion to Strike therefore

cannot be construed to have denied Willis's contingent motion to compel arbitration.¹

This Court accordingly does not have appellate jurisdiction under Nevada Revised Statutes 38.247(1)(a) because the District Court did not deny a motion to compel arbitration. *See Deutsche Bank Nat'l Tr. Co. for Registered Holders of Long Beach Mortg. Loan Tr. 2005-WL2 v. Whittington Holdings 1, LLC*, 395 P.3d 849 (Nev. 2017) (table decision) (declining to infer that district court implicitly denied requested relief and dismissing appeal). This appeal should therefore be dismissed. *See Brown v. MHC Stagecoach*, 129 Nev. 343, 345 (2013) (This Court has jurisdiction to decide appeals only as permitted by statute or court rule.).

II. Conclusion

For the foregoing reasons and those stated in Hakkasan's opening memorandum, this Court should grant Hakkasan's motion to dismiss the appeal in Case No. 82829.

¹ In briefing before this Court, Willis acknowledges that its appeal in Case No. 82829 is based on a hypothetical ruling that the Jury Waiver Clause is unenforceable. Pet. for Writ of Mandamus 6 n.2 ("Willis has filed a direct appeal of the district court's denial of its request to compel arbitration as an alternative remedy *if* the district court found the jury waiver to be unenforceable under Nevada law.") (emphasis added).

DATED this 24th day of January in the year 2022.

SANTORO WHITMIRE

By /s/ James E. Whitmire
James E. Whitmire, Esq. (Nev. Bar No.
6533)
10100 W. Charleston Blvd. #250
Las Vegas, NV 89135

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Danielle L. Gilmore, Esq. (*pro hac vice*)
Dakota S. Speas, Esq. (*pro hac vice*)
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017

*Attorneys for Respondent Hakkasan USA,
Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 24th day of January, 2022, a true and correct copy of **RESPONDENT’S REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL** was served by electronically filing with the Clerk of the Supreme Court using the EFlex system and served upon the persons/parties in the matter and identified on such system.

/s/ James E. Whitmire

Santoro Whitmire