IN THE SUPREME COURT OF THE STATE OF NEVADA

ZION WOOD OBI WAN TRUST AND SHAWN WRIGHT AS TRUSTEE OF THE ZION WOOD OBI WAN TRUST

Appellant

vs.

MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada Limited Liability Company; MMAX INVESTMENT PARTNERS d/b/a PROFESSIONAL FIGHTERS LEAGUE; NANCY and BRUCE DEIFIK FAMILY PARTNERSHIP, LLP., a Colorado limited liability partnership

Respondents

Supreme Court Case No: **85051**

District Court Case No:

A-17-764118-C

APPEAL

From the Eighth Judicial District Court
Department I
Clark County Nevada
HONORABLE NANCY ALF

APPELLANTS' REPLY BRIEF

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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:

ZION WOOD OBI WAN TRUST AND SHAWN WRIGHT AS TRUSTEE OF THE ZION WOOD OBI WAN TRUST;

The Law Offices of Byron Thomas has appeared for Appellant Zion Wood Obi Want Trust and Shawn Wright as Trustee of the Zion Wood Obi Wan Trust in the case and is expected to appear in this Court.

Dated this 26th day of July, 2023

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_____/s/ Byron E. Thomas_____

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ARGUMENT

Below, MMAWC, LLC and Ocean Assets Partnership LLC f/k/a the Nancy and Bruce Deifik Family Partnership LLP (collectively referred to as "MMAWC") and MMAX Investment Partners, Inc., d/b/a Professional Fighters League ("MMAX") jointly filed the Motion to Confirm. MMAWC and MMAX will collectively be referred as "Respondents." Respondents filed separate Answering Briefs, but they essentially make the same arguments. Therefore, Zion will address the arguments in this combined Reply.

This Court reviews confirming an arbitration award de novo. WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. 884, 887, 360 P.3d 1145, 1147 (2015). "At common law, "an arbitration award may be vacated if it is 'arbitrary, capricious, or unsupported by the agreement' or when an arbitrator has 'manifestly disregard [ed] the law." Id. An arbitrator's award of fees is reviewed under the same standard. Id. at 1146-1148.

The common law basis for vacating an arbitration award are whether the arbitrator's award is capricious or whether the arbitrator manifestly disregarded the law:

> This court reviews a district court's decision to vacate or confirm an arbitration award de novo." Washoe Cty. Sch. Dist. v. White, 133 Nev. 301, 303, 396 P.3d 834, 838 (2017). Nevada recognizes two common-law grounds under which a district court may review private binding arbitration awards: the court determines "(1) whether the

> award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law." *Id.* at 306, 396 P.3d at 839 (quoting Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. 337, 341, 131 P.3d 5, 8 (2006)).

SVRE, LLC v. Queensridge Realty, LLC, 465 P.3d 1185 (Nev. 2020). The arbitrary-and-capricious standard does not permit a reviewing court to vacate an arbitrator's award **based on a misinterpretation of the law**." Clark Cty. Educ. Ass'n, 122 Nev. at 343–44, 131 P.3d at 9 (emphasis added). Instead, a court's review of the arbitrary and capricious standard is "limited to whether the arbitrator's findings are supported by substantial evidence in the record. [1]" Id. at 344, 131 P.3d at 9–10.

A manifest disregard for the law occurs when the arbitrator acknowledges the law and then simply disregards it:

> ("[T]he issue is not whether the arbitrator correctly interpreted the law, but whether the arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law." (quoting Clark Cty. Educ. Ass'n, 122 Nev. at 342, 131 P.3d at 8)); see also Health Plan of Nev., Inc. v. Rainbow Medical, LLC, 120 Nev. 689, 699, 100 P.3d 172, 179 (2004) ("Manifest disregard of the law goes beyond whether the law was correctly interpreted, it encompasses a conscious disregard of applicable law."). Because "[a] reviewing court should not concern itself with the correctness of an arbitration award[,] and thus[,] does not review the merits of the dispute," Bohlmann v. Byron John Prints & Ash, Inc., 120 Nev. 543,

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> 547, 96 P.3d 1155, 1158 (2004) (internal quotations omitted), overruled on other grounds by Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d 103 (2006), we conclude that the district court did not correctly apply the manifest-disregard-of-the-law standard. See Health Plan of Nev., 120 Nev. at 699, 100 P.3d at 179 ("[E]ven if [an] arbitrator made an error of fact or misapplied the law on [an] issue, it would still not amount to a manifest disregard of the law.").

SVRE, LLC v. Queensridge Realty, LLC, 465 P.3d 1185 (Nev. 2020).

A. Respondents' Argument that the Parties Agreed to Allow the Arbitrator to Rule on the Attorney Fees Before the District Court is Illogical and Inconsistent.

The provision in the AAA Rules that the Respondents claim allows the Arbitrator to award attorney fees incurred during the district court proceeding are as follows:

> The arbitrator may include:
>
> ii. an award of attorney fees if all parties have requested such an or award or its authorized by law or their arbitration agreement.

Vol IV AA572; see also MMAX Answering Brief p. 12 and MMAWC Answering Brief 20-21. The Arbitrator concluded that the parties' arbitration agreement did not allow her to award attorney fees incurred during the arbitration. Vol IV AA572. the Respondents did not appeal that determination and only sought confirmation of attorney fees incurred during the district court proceeding. Vol IV AA517-AA-580. If the Respondents and the Arbitrator truly believed the parties

had consented to allow for her to award attorney fees, then the Arbitrator would have awarded attorney fees incurred during the arbitration to the Respondents. The fact that the Arbitrator concluded that she did not have that authority makes it clear that there was no support for the finding that the parties had agreed to allow the Arbitrator to award fees incurred during the district court case. Vol IV AA572

Moreover, this Court follows the *expression unius* doctrine and applies it to contracts *Flyge v. Flynn*, 166 P.2d 539, 557 (Nev. 1946) (noting that the maxim is "frequently applied in the construction of statutes," but also of "deeds, conveyances, contracts, and other instruments"); see also Solvit, LLC v. Sohum Sys., LLC, No. 223CV00454JADDJA, 2023 WL 3319215, at *3 (D. Nev. May 9, 2023). The attorney fees section of the parties' agreement leaves out any reference to the Arbitrator being able to award attorney fees. The agreement expressly refers to "judicially" compelled arbitration, which again indicates the parties anticipated the remedy being enforced by the district court and the applicable rules of civil procedure and not the Arbitrator and the AAA Rules. Vol IV AA572.

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B. **The Respondents Want the Court to Ignore the Actual Findings of the Arbitrator as it Relates to the Respondents' Ability to Seek Attorney Fees Before the District Court**.

Respondents simply want the Court to ignore the part of the Arbitrator's ruling that states:

> The Supreme Court of the State of Nevada clearly "provided otherwise" by dismissing the case, and in doing, so eliminated the Eighth Judicial District Court's authority to proceed with the matter.

Vol IV AA574. First as pointed out the Arbitrator's decision was not supported by any facts in the record and was legally incorrect. Opening Brief p. 16. As this Court did not dismiss the case, it remanded it back to the district court. Vol IV AA496-507. Moreover, NRCP 54 clearly allows for the request for attorney fees post judgment. It is telling that neither Respondent is willing to argue that the Supreme Court's ruling actually in fact did divest the district court of the ability to award them attorney fees.

Respondents also argue that somehow that the rules of AAA Arbitration gave the Arbitrator the ability to rule on the attorney fees incurred in the district court. MMAX Answering Brief p. 20; MMAWC Answering Brief p. 21-22. But again this is logically inconsistent given the arbitrator's rulings, which were not challenged by Respondents. The Arbitrator concluded that she could not award fees incurred in the arbitration. Vol IV AA572-573. Thus, the AAA Rules did not apply or the Arbitrator would have awarded fees incurred during the arbitration. If

the AAA rules do not let her award fees for a proceeding before her, which she actually decided, how could those rules give her the authority to award fees in a case where the fees were incurred in a proceeding she had no jurisdiction over? Moreover, the parties' agreement contemplated instances where judges compelled arbitration so clearly the award of attorney fees would be governed by the Rules of Civil Procedure. Vol IV AA572. Most importantly none of the cases cited by Respondents are on point with the facts of this case.

C. MMAWC Improperly Attempts to Attribute Facts as Argument.

For some unknown reason MMAWC is now attempting to claim that it did not have the opportunity to supplement it's request for attorney fees before the arbitrator. MMAWC Answering Brief p. 5: 1-4 and note 4. Moreover, MMAWC accuses counsel for Zion of just including this as argument. Id. However, the Arbitrator clearly stated in her opinion that MMAWC had the chance to supplement but chose not to. The Arbitrator states in her September 2021 Order as follows:

> The parties to this arbitration were requested to meet and confer in an effort to agree upon the proper amount and applicable basis, if any, to support an award of attorney fees and costs to Respondents as prevailing parties. Unable to agree, on July 16, 2021, the parties filed their fee motions, along with declaration in support and opposition thereto. After carefully considering the parties submission, the parties were asked on September 8, 2021, whether they has any additional

> submission, information or issues to submit to the Arbitrator for resolution in this matter. Respondent advised in the negative.

Vol. V AA572. As the Arbitrator stated Respondents filed their motions for attorney fees at the same time as Zion filed its Opposition, which was July 16, 2021. So, it was blind briefing. Thus, on September 8, 2021, the Arbitrator asked the parties, which included MMAWC, if MMAWC wanted to supplement their submissions, and MMAWC chose not to. So MMAWC's challenge to the clear fact that they were given the opportunity to supplement and chose not to is mystifying.

Respondent MMAX does not dispute that it was given the opportunity to supplement its attorney fees motion. Rather MMAX either intentionally or unintentionally misstates Zion's waiver argument. MMAX Answering Brief p. 15-16. MMAX made arguments not made by the arbitrator. It cannot not now make those arguments for first time before the district court and repeat those arguments before this Court.

D. MMAX Misstates Zion's Arguments as it Relates to the Arbitrary and Capricious Standard.

Respondent MMAX has chosen to misrepresent Zion's position as it relates to the arbitrary and capricious claim. MMAX Answering Brief p. 14. MMAX states as follows "Similarly, the Arbitrator could not have acted arbitrarily or capriciously because Zion concedes "[t]his is not an instance where the arbitrator

made an error of fact." Id. However, the point that Zion actually made was that there were no facts in the record to support the arbitrator's decision as to why Respondents could not have requested attorney fees before the district court, so her decision was not supported by substantial evidence, thus it was arbitrary and capricious. Answering Brief p. 16-17. That is why Zion then in the following sentence stated:

> There was simply no evidence in the record at all to support the arbitrator's conclusion, that this Court dismissed the case "so eliminated the Eighth Judicial District Court's authority to proceed with the matter." Vol IV AA557.

Id. Since there was no evidence in the record there can be no argument that the Arbitrator's decision was supported by substantial evidence. Clark Cty. Educ. Ass'n, 122 Nev. at 343–44, 131 P.3d at 9. Thus, it was arbitrary and capricious, and nothing in the Opening Brief conceded the arbitrary and capricious claim.

E. **To Not Allow for Zion to Bring its Common Law Defenses Would Lead to Absurd Results**.

Respondent MMAWC appears to be arguing for strict compliance with the timelines in the statute. MMAWC Answering Brief p. 17. However, "strict compliance does not mean absurd compliance." Einhorn v. BAC Home Loans Servicing, LP, 128 Nev. 689, 696, 290 P.3d 249, 254 (2012); see also 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 46:2, at 162 (7th ed. 2007) (Statutes should be read sensibly rather than literally and

controlling legislative intent should be presumed to be consonant with reason and good discretion.)"

As it relates to the confirmation of arbitration awards the Court has added a common law component to the review of decisions arbitrators, the capricious and arbitrary standard. There is absolutely no prejudice to MMAWC to allow Zion to challenge the request to confirmation. For instance, in Hesser v. Kennedy Funding, Inc., 2022 WL 354504, *1 (Feb. 4, 2022) this Court was faced with the interpretation of the renewal of judgment statute. The legislature set clear time tables and used the language of command such as shall and must. Id. Kennedy missed one of those statutorily created deadlines. Id. This Court reaffirmed that the renewal statute was to be strictly construed. Id. Yet, it found that it would be absurd to hold Kennedy to the judicially created timeline. Id. In that case the Court did not create a common law avenue of review as it has in this instance. It would certainly be absurd to have created a common law review process and then say the Court cannot created an exception to determine the common law standards that it set.

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F. **The Respondents' Simply Repeat the Arbitrators' Erroneous Claim of no Evidence that Duty of Good Faith and Fair Dealing had Been Breached**.

The Respondents simply parrot the arbitrator's incorrect statement that no evidence was produced to support the breach of the covenant of good faith and fair dealing. MMAWC Answering Brief p. 27-30; MMAX Answering Brief p. 17-20. The evidence was that Zion specifically bargained for non-dilution. The MMAWC's Operating Agreement provided that Zion was to share in any benefits from an initial public offering:

> Each Unit shall (effective upon and subject to the consummation of such initial Public Offering) convert into shares of common stock of the Successor (the "Successor Stock"), and the shares of Successor Stock shall be allocated among the holders in exchange for their respective Units such that each holder shall receive a number of shares of Successor Stock equal to the quotient of (i) the amount such holder would have received in respect of such holder's Units in a liquidation or dissolution at the time of the initial Public Offering, divided by (ii) the price per share at which the common stock is being offered to the public in the initial Public Offering, in each case net of underwriting discounts and commissions. (Ex.1)

Vol IV AA549. Section 13.03(a) states:

> The organizational documents of the Successor and/or a stockholders' or other agreement, as appropriate, shall provide that the rights and obligations of the Members hereunder (to the extent such rights and obligations survive consummation of an initial Public Offering) shall continue to apply in accordance with the terms thereof unless the parties thereto otherwise agree in writing pursuant to the terms thereof. (Ex. 1).

Vol IV Vol IV AA549 n.5. However, Respondents set up the deal to avoid giving Zion the benefit of going public and the protection of it's interest that it bargained for. The Arbitrator blessed this deception in clear derivation of the law, and the Respondents simply repeating the misstatement of no evidence does not make it so.

CONCLUSION

Fore the foregoing reasons the Arbitrator's decision should be vacated.

Dated this 26th day of July 2023.

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CERTIFICATE OF COMPLIANCE

The below-signed hereby certifies that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3269 words. 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 any improper purpose.

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I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief 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 brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 26nd day of July 2023

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Supreme Court of Nevada by using the Court's electronic service system on July 26, 2023. A copy of the foregoing shall be electronically transmitted from the Court to the email addresses on file for each of the following:

Attorneys for Respondents
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Dated this 26nd Day of July 2023.

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