

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS MARLOWE AND THOMAS
CONNELLY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE NANCY M. SAITTA, DISTRICT
JUDGE,

Respondents,

and

PETE CONNOR AND DANIEL SIMON,
Real Parties in Interest.

No. 45087

FILED

MAY 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION


This original petition for a writ of mandamus or prohibition challenges a district court order refusing to compel arbitration of an attorney fee dispute. We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. In particular, we are not persuaded that the district court's determination that the first fee agreement was superceded by the later fee agreements was a manifest abuse of discretion.¹ In addition, it appears

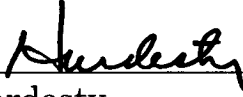
¹See United Fire Insurance Co. v. McClelland, 105 Nev. 504, 780 P.2d 193 (1989) (listing elements of novation and noting that consent to novation may be implied from a transaction's circumstances and the parties' subsequent conduct); see also Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (stating that mandamus may correct a manifest abuse of discretion).

that petitioners waived any right to arbitrate by electing to file a complaint with the Arizona court.² Accordingly, we deny the petition.³

It is so ORDERED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Nancy M. Saitta, District Judge
Beckley Singleton, Chtd./Las Vegas
Brenske & Christensen
Simon Law Office
Clark County Clerk

²See Nevada Gold & Casinos v. American Heritage, 121 Nev. ___, ___ P.3d ___ (Adv. Op. No. 9, April 28, 2005).

³See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). We deny petitioners' motion for a stay as moot in light of this order.