

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOM BATES; CHAKIB IBRAHIM;
FORREST MORGAN; PHIL BRAUN;
MIKE ASHLEY; CHRISTINE HOLDEN;
JOHN DUNCAN; JEFF PAISLEY
(WHOSE TRUE AND CORRECT NAME
IS STEVEN PASLEY); GREGG
GRIGAITIS; JORGE CAIRO; JORGE
DIPAOLA; RANDY BOLICK; AND
HEATHER READY,
Appellants,

vs.

NEVADA RESORT PROPERTIES POLO
TOWERS LIMITED PARTNERSHIP
D/B/A POLO TOWERS, A NEVADA
LIMITED PARTNERSHIP,
Respondent.

No. 48348

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order denying a motion to compel arbitration. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellants are defendants in the underlying action. They are employees of Marriot Ownership Resorts, Inc. Respondent brought suit against appellants alleging several causes of action arising from agreements between respondent and Marriot. Appellants are nonsignatories to the agreements; however, they seek to enforce an arbitration clause contained in the agreements. Respondent contended in district court and on appeal that appellants could not enforce the arbitration agreement because they were not parties to the contract that contained the agreement, nor were they third-party beneficiaries of the contract. The district court denied their motion to enforce arbitration,

finding that they were not parties to the agreements and therefore could not enforce the arbitration provision included within those agreements.

Initially, appellant argues that the determination of arbitrability should be left to an arbitrator and not decided by the courts. A question regarding the arbitrability of a matter is determined by the court “[u]nless the parties clearly and unmistakably provide otherwise in their agreement”¹ As appellants did not sign the agreements containing the arbitration provision they seek to enforce, the parties did not clearly provide that arbitrability should not be determined by the court. Thus, we properly undertake a review of the district court’s order denying arbitration. We review the denial of a motion to compel arbitration de novo.² Doubts regarding the propriety of arbitration are resolved in favor of requiring arbitration.³

There are several ways in which a nonsignatory to a contract may properly enforce an arbitration agreement against a signatory of the contract.⁴ In this matter, the pertinent doctrine is equitable estoppel.⁵ Under equitable estoppel a plaintiff signatory to a contract containing an

¹Clark Co. Public Employees v. Pearson, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990).

²Id.

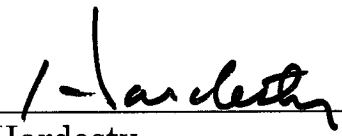
³Id. at 591, 798 P.2d at 138.

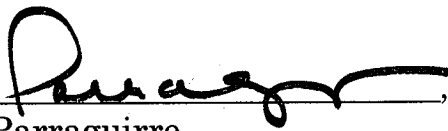
⁴See Truck Ins. Exch. v. Palmer J. Swanson, Inc., 124 Nev. ___, ___ P.3d ___ (Adv. Op. No. 59, July 31, 2008) (recognizing as theories in which an arbitration agreement may be enforced against a nonsignatory: “1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel”).

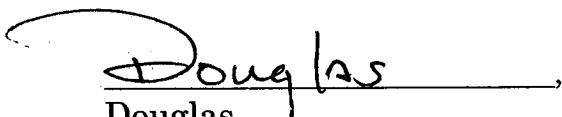
⁵See id.

arbitration provision is prevented from avoiding the agreement to arbitrate if the plaintiff's claims rely on the contract as the basis for relief.⁶ After reviewing the allegations in respondent's complaint, it is evident that most, if not all, of respondent's claims against appellants rely upon and are closely related to the agreements that contain the arbitration agreement. As a result, respondent is precluded under equitable estoppel from avoiding the agreement to arbitrate. Furthermore, as the claims relate to the contract, they clearly fall within the purview of the arbitration agreement. Therefore, the district court incorrectly denied the motion to compel arbitration, and we reverse. We remand this matter to the district court to enter an order granting the motion.

It is so ORDERED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁶MS Dealer Service Corp. v. Franklin, 177 F.3d 942, 947 (11th Cir. 1999); Hughes Masonry v. Greater Clark County Sch. Bldg., 659 F.2d 836, 838, 840-41 (7th Cir. 1981); Metalclad v. Ventana Environmental, 1 Cal. Rptr. 3d 328, 334-35 (Ct. App. 2003).

⁷Based on our resolution of this case, we need not address appellants' other arguments on appeal.

cc: Hon. Mark R. Denton, District Judge
William F. Buchanan, Settlement Judge
Hunterton & Associates
Williams & Connolly LLP
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk