

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MCDOWELL; TOBY JACKSON; AND ALBERTO VASQUEZ, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF ZERO-GRAVITY HOLDINGS, INC., A NEVADA CORPORATION,

Appellants,

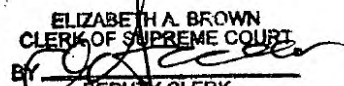
vs.

SPACE ADVENTURES, INC., A DELAWARE CORPORATION; ERIC C. ANDERSON, INDIVIDUALLY; MICHAEL HENKE, INDIVIDUALLY; PETER DIAMANDIS, INDIVIDUALLY; RICHARD GARRIOTT DE CAYEUX, INDIVIDUALLY; ROBERT WALKER, INDIVIDUALLY; TOM SHELLEY, INDIVIDUALLY; AND KARLYN RADER, INDIVIDUALLY; ZERO-GRAVITY CORPORATION OF NEVADA, A NEVADA CORPORATION; TERESE BREWSTER, INDIVIDUALLY; ANDREW LAMPERT, INDIVIDUALLY; MIGUEL FORBES, INDIVIDUALLY, AND SPACE ADVENTURES HOLDINGS, LLC,
Respondents.

No. 82669

FILED

DEC 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing an amended complaint in a derivative matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.¹ Appellants Michael McDowell, Toby Jackson, and Alberto Vasquez filed a derivative action, individually

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

and on behalf of appellant Zero-Gravity Holdings, Inc. They claimed that respondents (collectively, Space Adventures) caused harm to Zero-Gravity and their interests as shareholders through a series of corporate restructurings. The district court dismissed the complaint, finding that it could not exercise personal jurisdiction over each of the respondents. During the pendency of this appeal from that decision, appellants initiated arbitration proceedings regarding those same claims and the arbitrator dismissed each claim on the merits.²

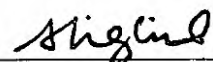
Space Adventures argues that appellants are barred from relitigating their claims in Nevada because the arbitrator's decision resolved all of appellants' claims. We agree. As this court has recognized, the doctrine of issue preclusion applies to preclude relitigating claims "which ha[ve] been finally determined by a court of competent jurisdiction." *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994), holding modified on different grounds by *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465 (1998). This includes claims decided in arbitration. See *Int'l Ass'n of Firefighters, Loc. 1285 v. City of Las Vegas*, 107 Nev. 906, 911, 823 P.2d 877, 880 (1991) ("Policy considerations underlie our conclusion that the doctrine of [issue preclusion] should apply to arbitration."); see also *Todd Shipyards Corp. v. Indus. Union of Marine & Shipbuilding Workers of Am., Loc. 15, AFL-CIO*, 242 F. Supp. 606, 611 (D.N.J. 1965) ("An award of an arbitrator acting within the scope of his authority has the effect of a judgment and is conclusive as to all matters submitted for decision at the instance of the parties."). Issue preclusion


²We reject appellants' argument that they only submitted derivative claims to arbitration and that their individual claims remain in the action below. The arbitrator's award discussed all of appellants' claims in depth and resolved them, including their individual claims.

applies when “(1) the issue decided in the prior litigation [is] identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted [was] a party or in privity with a party to the prior litigation’; and (4) the issue was actually and necessarily litigated.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (quoting *Tarkanian*, 110 Nev. at 598, 879 P.2d at 1191, *modified on different grounds by Weddell v. Sharp*, 131 Nev. 233, 240-41, 350 P.3d 80, 85 (2015)). Because the same parties participated in arbitration and the arbitrator issued a final decision resolving the same issues raised herein, including appellants’ individual claims, appellants are barred from relitigating their claims in the underlying action and the district court did not err in dismissing the complaint.³ See *Five Star Capital Corp.*, 124 Nev. at 1055, 194 P.3d at 713; see also *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (“[I]t is well established that this court may affirm rulings of the district court on grounds different from those relied upon by the district court.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Parraguirre


_____, J.
Stiglich


_____, Sr.J.
Gibbons

³In light of this, we need not address appellants’ challenges to the district court’s personal jurisdiction findings.

⁴The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Timothy C. Williams, District Judge
Paul M. Haire, Settlement Judge
Albright Stoddard Warnick & Albright
Wolf Haldenstein Adler Freeman & Herz
Lewis Roca Rothgerber Christie LLP/Las Vegas
Snell & Wilmer, LLP/Las Vegas
Williams & Connolly LLP
King Scow Koch Durham LLC
Eighth District Court Clerk