

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIPPE ZIADE, AN INDIVIDUAL; Z
LEB GROUP, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
PROGRESSIVE CONSTRUCTION,
INC., A NEVADA CORPORATION
A/K/A GROWTH CONSTRUCTION;
GROWTH DEVELOPMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY A/K/A GROWTH
CONSTRUCTION; AJ PROPERTIES
INTERNATIONAL, LLC, A/K/A AJ1, A
NEVADA LIMITED LIABILITY
COMPANY; AJ PROPERTIES
INTERNATIONAL SERIES 2, LLC,
A/K/A AJ2, A NEVADA LIMITED
LIABILITY COMPANY; AND GROWTH
HOLDINGS, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Appellants,
vs.
NIKKEI GLOBAL, INC., A
CALIFORNIA CORPORATION,
Respondent.

No. 87350

FILED

AUG 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

Appellants (collectively Ziade) filed a “Motion to Dismiss For Failure to Satisfy Condition Precedent to Litigation or Alternatively, Motion to Compel Arbitration.” The district court denied the motion based on NRCP 12(g)(2), which provides that “[e]xcept as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another

motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.” The district court reasoned that because Ziade had filed previous motions under Rule 12, Ziade waived the right to seek arbitration.

Ziade contends that its motion was brought under NRS Chapter 38 and that the district court erred by relying solely on NRCP 12(g)(2). We agree. *See Uber Techs., Inc. v. Royz*, 138 Nev., Adv. Op. 66, 517 P.3d 905, 908 (2022) (“We review de novo the district court’s decision to deny the motion to compel arbitration.”). NRS 38.218 permits a party to file an “application for judicial relief,” which includes a motion to compel arbitration under NRS 38.221. Although the district court’s failure to consider NRS Chapter 38 is somewhat understandable,¹ we agree with Ziade that NRS Chapter 38 permitted it to file the at-issue motion irrespective of NRCP 12(g)(2). *Cf. Henry on behalf of BSC Ventures Holdings, Inc. Emp. Stock Ownership Plan v. Wilmington Tr. NA*, 72 F.4th 499, 505 (3d Cir. 2023) (concluding that a motion to dismiss based on an arbitration provision was “in substance, a motion to compel arbitration” because that was the relief being sought in the motion).

Accordingly, reversal is warranted. We leave to the district court to address in the first instance the argument by respondent Nikkei Global, Inc. that Ziade waived or otherwise lost the right to compel arbitration. *Cf. Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 727-28, 359 P.3d 113, 123-24 (2015) (holding a party waives the right to arbitrate when the party “(1) knew of his right to arbitrate, (2) acted inconsistently with

¹Although not a point of emphasis, Ziade cited NRS 38.221 in its July 20, 2023, filing and referenced NRS Chapter 38 at the July 27, 2023, hearing.

that right, and (3) prejudiced the other party by his inconsistent acts").
Consistent with the foregoing, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Danielle K. Pieper, District Judge
Patrick N. Chapin, Settlement Judge
Bailey Kennedy
Michael M. Later
Dziminski Law Group
Dobberstein Law Group
Eighth District Court Clerk