

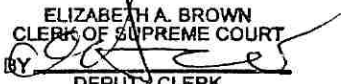
IN THE SUPREME COURT OF THE STATE OF NEVADA

NIKKEI GLOBAL, INC., A
CALIFORNIA CORPORATION,
Appellant,
vs.
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,
Respondents.

No. 89960

FILED

APR 24 2026

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 without prejudice. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Appellant Nikkei Global, Inc. (Nikkei) and respondents Philippe Ziade and various corporations (collectively, Ziade) entered into a real estate business contract containing an alternative dispute resolution (ADR) provision requiring negotiation, mediation, and arbitration as a condition precedent to litigation. After the district court concluded that

Ziade waived the right to seek arbitration under NRCP 12(g)(2) and denied its motion to dismiss, this court reversed and directed the district court to determine whether Ziade waived or otherwise lost the right to compel arbitration under NRS Chapter 38. *Ziade v. Nikkei Glob., Inc.*, No. 87350, 2024 WL 3841618 (Nev. Aug. 14, 2024) (Order of Reversal and Remand). On remand, the district court concluded that Nikkei failed to comply with the ADR provision as a condition precedent to litigation, and that Ziade did not waive the right to compel arbitration. The district court dismissed Nikkei’s amended complaint without prejudice and denied Nikkei’s motion for reconsideration. Nikkei appeals.

Nikkei argues that Ziade waived the right to compel arbitration. Because a district court’s order resolving a motion to compel arbitration typically involves mixed questions of fact and law, we defer to the district court’s factual findings but review pure questions of law de novo. *Gonski v. Second Jud. Dist. Ct.*, 126 Nev. 551, 557, 245 P.3d 1164, 1168 (2010), *overruled on other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 192, 415 P.3d 32, 42 (2018). A party seeking to compel arbitration may have waived that right if the party: (1) knew of the right to arbitrate, (2) acted inconsistently with that right, and (3) prejudiced the other party by those inconsistent acts.¹ *Nev. Gold & Casinos,*

¹The parties do not argue that the Federal Arbitration Act (FAA) applies, or that prejudice is no longer a factor in a Nevada waiver analysis. *Compare Nev. Gold & Casinos, Inc. v. Am. Heritage, Inc.*, 121 Nev. 84, 90, 110 P.3d 481, 485 (2005) (identifying prejudice as a factor in waiver analysis), *with Morgan v. Sundance, Inc.*, 596 U.S. 411, 419 (2022) (“[P]rejudice is not a condition of finding that a party, by litigating too long, waived its right to stay litigation or compel arbitration under the FAA.”).

121 Nev. at 90, 110 P.3d at 485 (observing that a party must show all three elements to prove waiver).


We perceive no abuse of discretion in the district court's findings that, because the original complaint did not make clear which contract governed, Ziade was unaware of any applicable right to arbitrate and did not act inconsistently with that right. The district court required Nikkei to provide a more definite statement identifying the contract under which it sought relief. Only after Nikkei amended its complaint to identify the contract with the ADR provision did Ziade's right to arbitrate become apparent, after which Ziade promptly moved to compel arbitration. *See Silverwing Dev. v. Jackson & Sons, LLC*, No. 89464-COA, 2025 WL 2999831, at *3 (Nev. Ct. App. Oct. 24, 2025) (Order of Reversal and Remand) (holding that a delay in moving to compel arbitration does not constitute inconsistent conduct where the party engaged only in limited, non-substantive litigation activity).

Nikkei's assertions regarding the statute of limitations and litigation costs do not establish prejudice under Nevada law, which focuses on whether a party gained a litigation advantage, such as by engaging in discovery unavailable in arbitration, litigating substantial issues on the merits, or creating duplication of effort. *Nev. Gold & Casinos*, 121 Nev. at 90-91, 110 P.3d at 485. When Ziade moved to compel arbitration, the case had progressed only minimally. Neither party had engaged in discovery, and the district court had resolved only pre-answer motions to dismiss. There was no meaningful litigation advantage or duplication of effort, and Nikkei was not prejudiced. *See, e.g., Silverwing Dev.*, 2025 WL 2999831, at *4 (concluding that district court erred by finding the plaintiff was prejudiced where the parties had exchanged limited discovery and litigated

no substantial issues on the merits); *U.S. Home Corp. v. Medina*, Nos. 64604 & 66203, 2018 WL 2272804, at *3 (Nev. May 10, 2018) (Order of Reversal and Remand). The lack of prejudice provides additional support for the district court's conclusion that Ziade did not waive the right to compel arbitration.

Nikkei alternatively argues that the district court was required to stay the action, pending satisfaction of the ADR provision, rather than dismiss the complaint. Our review of the record reveals that Nikkei did not request a stay from the district court before the court entered the subject order, nor did Nikkei do so when it moved for reconsideration. Thus, we decline to consider this argument. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish

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