

2005

MacDonald Redhawk Investors, Redhawk Development Company, LLC, MacDonald Utah Holdings, LLC v. The Ridges at Redhawk, LLC, Nielsen Red Hawk, LLC, Redhawk Management, LLC, C. Michael Nielsen : Brief of Appellant

Utah Court of Appeals

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James S. Lowrie; R. L. Knuth; Ryan M. Harris; Jones, Waldo, Holbrook & McDonough; Attorneys for Appellees.

David W. Scofield; Peters Scofield Price; Attorneys for Appellants .

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Brief of Appellant, *MacDonald Redhawk Investors, Redhawk Development Company, LLC, MacDonald Utah Holdings, LLC v. The Ridges at Redhawk, LLC, Nielsen Red Hawk, LLC, Redhawk Management, LLC, C. Michael Nielsen*, No. 20051063 (Utah Court of Appeals, 2005).

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IN THE UTAH COURT OF APPEALS

MACDONALD REDHAWK INVESTORS, a
general partnership; REDHAWK
DEVELOPMENT COMPANY, LLC, a Utah
limited liability company; and MACDONALD
UTAH HOLDINGS, LLC, a Utah limited
liability company,

Plaintiffs and Appellees,

-vs-

THE RIDGES AT REDHAWK, LLC, a Utah
limited liability company; NIELSEN RED
HAWK, LLC, an expired Utah limited
liability company; REDHAWK MANAGEMENT,
LLC, an expired Utah limited liability
company; and C. MICHAEL NIELSEN, an
individual,

Defendants and Appellants.

Case No. 20051063-CA

District Court Case No. 050500229

OPENING BRIEF OF APPELLANTS

APPEAL FROM THE RULING AND ORDER OF THE HONORABLE
BRUCE C. LUBECK, DATED NOVEMBER 8, 2005

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UTAH APPELLATE COURTS

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JURISDICTION

This is not an appeal from a final judgment, but rather an appeal from the denial of a motion to compel arbitration and stay proceedings. Appellate jurisdiction exists over such an appeal by virtue of the express provision of UTAH CODE ANN. §§ 78-31a-129(1)(a). See *Pledger v. Gillespie*, 1999 UT 54, 982 P.2d 572. Original appellate jurisdiction lies with the Utah Supreme Court, pursuant to UTAH CODE ANN. § 78-2-2(3)(j). Pursuant to UTAH CODE ANN. § 78-2-2(4), this matter is subject to assignment by the Utah Supreme Court to the Utah Court of Appeals. Pursuant to Order of the Utah Supreme Court, dated November 23, 2005, this appeal was assigned to the Utah Court of Appeals.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. **Issue:** Did the trial court err when it denied Appellants' motion to compel arbitration?

a. **Sub-Issue:** Did the trial court err in holding that the entire dispute was not arbitrable under the terms of the arbitration agreement?

Standard of Review: Appellants have been unable to find any reported Utah Appellate decision addressing the proper standard of review for this specific question. However, since this pre-trial issue was determined without any evidentiary hearing and upon the documents, and because whether the court or the arbitrators should hear the dispute is analogous to a determination of whether the court or the arbitrators have jurisdiction over the dispute, Appellants submit that Utah law requires that the question is properly reviewed under a correction of error standard. See

Jacobsen Construction Company, Inc. v. Teton Builders, 2005 UT 4, ¶ 10, 106 P.3d 719, 723 (“Because the district court did not hold an evidentiary hearing and relied only on documentary evidence, we use a correctness standard on review.”) This standard is also consistent with the standard of review applied by sister courts throughout the country on the precise question of the arbitrability of disputes under arbitration agreements. See, e.g., *State Farm Mutual Automobile Insurance Co. v. Dowdy*, 111 P.3d 337, 340 (Alaska 2005)(“Whether a dispute is arbitrable is a question of law that we will review de novo. On questions of law, we will adopt the rule of law that is most persuasive in light of precedent, reason, and policy.”) Also, the trial court’s construction of a contract raises a question of law, which is reviewed for correctness. See *Bailey-Allen Company, Inc. v. Kurzet*, 876 P.2d 421, 424 (Utah Ct. App. 1994).

APPLICABLE STATUTES AND RULES

1. UTAH CODE ANN. § 78-31a-106(1):

Application for judicial relief. (1) Except as otherwise provided in Section 78-31a-129, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

2. UTAH CODE ANN. § 78-31a-107(1)

Validity of agreement to arbitrate. (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

3. UTAH CODE ANN. § 78-31a-107(2)

Validity of agreement to arbitrate.

* * * *

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

4. UTAH CODE ANN. § 78-31a-108(1)(b)

Motion to compel arbitration. (1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

* * * *

(b) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

5. UTAH CODE ANN. § 78-31a-108(5)

Motion to compel arbitration.

* * * *

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in Section 78-31a-128.

6. UTAH CODE ANN. § 78-31a-108(6)

Motion to compel arbitration.

* * * *

6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders

a final decision under this section.

7. UTAH CODE ANN. § 78-31a-108(7)

Motion to compel arbitration.

* * * *

If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

8. UTAH CODE ANN. § 78-31a-129

Appeals.

(1) An appeal may be taken from:

- (a) an order denying a motion to compel arbitration;
- (b) an order granting a motion to stay arbitration;
- (c) an order confirming or denying confirmation of an award;
- (d) an order modifying or correcting an award;
- (e) an order vacating an award without directing a rehearing; or
- (f) a final judgment entered pursuant to this chapter.

(2) An appeal under this section must be taken as from an order or a judgment in a civil action.

STATEMENT OF THE CASE

A. Nature of the Case.

This is the second litigation in which Plaintiffs/Appellants have brought this arbitrable dispute into Court, rather than arbitration. The dispute is between members

of a limited liability company, over the dissolution of such company, Redhawk Development Company, LLC (“RDC”). The first such action, styled *MacDonald Redhawk Investors v. Redhawk Development, LLC*, Case No. 990908761, resulted in an order compelling arbitration, a genuine copy of which is attached hereto as Appendix 3. That arbitration led to an arbitration award that reserved jurisdiction over future disputes pertaining to the award, and those specifically relating to conveyances of real property, to the Arbitration Panel. R.25.

There is thus no dispute that a valid and binding mandatory arbitration clause exists in the RDC Operating Agreement. There can be no dispute that the “conveyances of properties” is a matter that the Arbitration Panel expressly reserved jurisdiction over in the arbitration award that was confirmed by the Third District Court.

Nevertheless, plaintiffs/appellees argued to the trial court that the **confirmation** of the arbitration award by the Third District Court somehow transformed the underlying character of the dispute into one that was neither within the plain and broad language of the arbitration agreement, nor within the plain and unambiguous reservation of jurisdiction by the Arbitration Panel over precisely these kinds of disputes, even though the “confirmation” cannot change the character of the dispute or substance of the award and provides a judicial imprimatur over that very reservation of jurisdiction to the arbitrators. The trial court concluded, erroneously, in the face of both the plain language of the arbitration agreement and the plain language of the arbitration award, that “any interpretation of an arbitration award, which is now a court judgment, should be done by the court, not an arbitration panel.” R.166. This conclusion is not correct under Utah public policy, controlling Utah statutes, or controlling Utah case law. It is not

even correct under the plain language of the arbitration award that the Third District Court confirmed. The trial court must be reversed, the dispute must be sent to arbitration and the court proceedings must be stayed pending the outcome of such arbitration.

B. Course of Proceedings.

Plaintiffs/Appellees filed their complaint on April 20, 2005. R.1-5.

Defendants/Appellants filed their motion to compel arbitration and stay proceedings on June 7, 2005. R.8-9. The trial court heard such motion on November 7, 2005, and took the matter under advisement. R.161. The Court issued its Ruling and Order denying the motion on November 8, 2005. R.162-166. A Notice of Appeal was timely filed on November 18, 2005. R.163-175.

C. Disposition By Trial Court.

Appellants appeal from the Ruling and Order of the Honorable Bruce C. Lubeck, signed and entered November 8, 2005, denying Appellants' motion to stay proceedings and to compel arbitration. A true and correct copy of such Ruling and Order denying the motion to compel arbitration is attached hereto as Appendix 1. Appellants timely filed their Notice of Appeal on November 18, 2005. A true and correct copy of the Notice of Appeal is attached hereto as Appendix 2.

STATEMENT OF FACTS

1. Plaintiff MacDonald Redhawk Investors ("MacDonald") is a New York general partnership and Plaintiff Redhawk Development Company, LLC ("RDC") is a Utah limited liability company. R.23.

2. The Ridges at Red Hawk, L.L.C. ("The Ridges") is a limited liability

company organized and operating under the laws of Utah, with its principal place of business in Summit County, Utah. R.23. It is the successor in interest to Nielsen Redhawk, LLC. R.25.

3. This case represents the second occasion on which MacDonald has attempted to circumvent its obligation to arbitrate the full scope of the dissolution of RDC. See Appendix 3 and R.91, ¶¶ 1-3. On or about August 30, 1999, MacDonald filed a complaint in the Third Judicial District of the State of Utah, Salt Lake County, Civil No. 990908761 (the “1999 Litigation”), against Redhawk Development, LLC and Nielsen Redhawk, LLC, seeking dissolution and winding up of the limited liability company. R.23-24. Thereafter, the parties entered into a stipulation compelling binding arbitration, consistent with Section 16.1 of the Redhawk Development Operating Agreement, which provides as follows:

16.1 *Dispute Resolution.* Any claim and disputes between the Members arising out of or related to this Agreement, shall be via binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notice and demand for arbitration shall be in writing and shall be made within a reasonable time after the dispute has arisen. All Members stipulate that if the decision of the arbitrator or arbitrators call for dissolution or any manner of partition, or breakup, reorganization or other similar relief, the decision will be oriented and accomplished to minimize potential losses or liabilities, maximize potential net profits and avoid any untimely default or acceleration of debts or other obligations. The decision of the arbitrator or arbitrators shall be final and binding and may be entered into a final judgment by any court having jurisdiction thereof.

R.24, 91. An order compelling arbitration was entered thereafter. Appendix A, R.24, 91.

4. On November 12, 1999, the parties to the 1999 Litigation submitted their respective hearing briefs to the Arbitration Panel. During the arbitration hearing, the Arbitration Panel requested that each of the parties submit “Baseball” proposals setting forth each party’s proposals as the means for partitioning the assets and liabilities of Redhawk Development, LLC. R.24, 91-92.

5. Consistent with the request of the Arbitration Panel, MacDonald and the defendants (“Nielsen”) submitted “Baseball” proposals. On December 15, 1999, the Arbitration Panel selected the Nielsen Baseball Proposal as the means of partitioning the assets and liabilities of the parties and the Arbitration Award. Thereafter, two additional agreements were entered into by the parties (the “Implementation Agreements”) outlining the manner in which the arbitration award would be implemented. R.24-25, 93 ¶ 9.

6. On its face, the Arbitration Award contemplates that subsequent disputes over the dissolution of RDC will arise and that, consistent with the arbitration agreement, the Arbitration Panel would retain jurisdiction over all such disputes. R.25.

7. On or about March 27, 2000, an order was entered in the 1999 Litigation confirming the “Baseball” proposal, as drafted and submitted by Nielsen, which was the Arbitration Award. R.24-25.

8. The Nielsen Baseball Proposal as both adopted by the Arbitration Panel and confirmed by the Court, contains the following provision: “The Arbitration Panel should retain jurisdiction over the conveyances of properties, assumption of debt, assignment of water rights, granting reciprocal easements and the like, subject to the prior efforts of the parties to first mutually consent and agree, which is to be

encouraged.” R.25.

9. On or about May 30, 2000, after the order confirming the arbitration award was entered by the Court, Nielsen Redhawk, LLC and its successor in interest, The Ridge at Redhawk, LLC, made an emergency motion by letter to the Arbitration Panel, seeking a supplemental arbitration award regarding the disposition of certain real property. On June 2, 2000, the Arbitration Panel, exercising its continuing jurisdiction pursuant to the agreement of the parties and the original Arbitration Award, entered a Supplemental Arbitration Award, granting the relief requested in the emergency motion. R.25.

10. Disputes subsequently arose between the parties regarding implementation of the Arbitration and Supplemental Arbitration Award. The parties agreed to attempt to mediate these disputes and selected James R. Holbrook, one member of the Arbitration Panel, as the mediator. R.25.

11. MacDonald submitted a motion to the mediator, rather than the entire Arbitration Panel that retained jurisdiction, requesting a deed exchange, including the requirement that Nielsen be required to execute the form of deeds attached to MacDonald's motion. Nielsen disputes that the deeds effectuate the “Baseball” proposal that Nielsen drafted and which was adopted as the arbitration award by the arbitrators on December 15, 1999, as supplemented on May 20, 2000. R.25-26.

12. The parties were on notice long ago that surveys might be a necessary component of any process to assure that Nielsen in fact received what the arbitration award awarded. R.26.

13. The fact that these issues remained open was made known to the

arbitrator by letter from Robert L. Stolebarger to James R. Holbrook, dated April 21, 2004. R.26, 40-48.

14. The parties' attorneys met in July, 2004, to discuss those issues.

15. After reviewing MacDonald's proposal, it was clear to Nielsen that it did not effectuate the dissolution of RDC, as contemplated by the Nielsen "Baseball" Proposal, and would not in fact result in Nielsen getting either the exact real estate as drawn on the map on the Nielsen "Baseball" Proposal, nor the number of acres the "Baseball" proposal awarded Nielsen. R.33.

16. In fact, the proposed deeds would result in Nielsen being short several hundred thousand dollars in value from what the arbitrators awarded. Nielsen did not and does not agree that such deeds are appropriate in the dissolution of RDC, nor do the deeds effectuate dissolution pursuant to the Nielsen "Baseball" proposal adopted by the Arbitration Panel as its award. R.34-35.

17. For example, Exhibit A to the "Baseball Arbitration Proposal," representing the award of the arbitrators, shows that Nielsen was awarded approximately one-half of Parcel 78. R.50, 62. One of the proposed deeds conveys that property to MacDonald. The Arbitration Panel's award, as confirmed by the Court, gave Nielsen 697.55 acres of property. Without a survey, Nielsen cannot provide an exact figure, but believes Nielsen would be "short" by at least 20 acres from the award if MacDonald receives title to all the real property he seeks. R.34-35.

18. The proposed deeds do not result in anything like the division shown on the colored map that is part of the arbitration award and is therefore inconsistent with the award, itself. R.34-34, 50, 62.

19. In order for any resolution of the issue of whether the proposed deeds, or any deeds, would appropriately effectuate the division encompassed by the arbitration award, unless the parties can come to an agreement by negotiation or mediation, the testimony of surveyors is required. R.34-35.

20. At a mediation conference at the offices of MacDonald's attorneys, held on April 7, 2005, counsel for the parties agreed to submit, on April 21, 2005, a proposed list of issues, if any, their clients would be willing to submit to binding arbitration. R.27, 73-74.

21. On April 21, 2005, Nielsen's counsel did submit a list of issues to be submitted to binding arbitration. MacDonald has not submitted a list of issues and has failed to respond to the arbitrator that he would be willing to submit any issues identified by Nielsen to binding arbitration. R.27, 73-74, 76-80.

22. The April 21, 2005 letter, together with the list of issues attached thereto, constitutes a written demand for binding arbitration of the dispute relating to implementation of the arbitration award, within the meaning of Section 16.1 of the Operating Agreement which governed the arbitration proceedings in the 1999 Litigation. *See id.*

23. Nevertheless, plaintiffs refused to arbitrate and instead filed this second litigation concerning the dissolution of RDC, which is subject both to the plain language of the mandatory arbitration provision and the express continuing jurisdiction of the Arbitration Panel as set forth in the award and is within the scope of the parties' mandatory arbitration agreement. R.24 (arbitration clause), 91, 60 ("3. The Arbitration Panel should ***retain jurisdiction over the conveyances of properties***, assumption of

debt, assignment of water rights, granting reciprocal easements and the like, ***subject to the prior efforts of the parties to first mutually consent and agree***, which is to be encouraged [emphasis added].”

SUMMARY OF ARGUMENT

The order compelling arbitration in the first litigation established the arbitrable nature of the dispute over dissolution of RDC under the broad and mandatory arbitration clause signed by Plaintiffs/Appellees. The present dispute is merely a continuation of the original dispute.

Moreover, the Arbitration Award, itself, recognizing the applicability of mandatory arbitration, expressly reserved jurisdiction to the Arbitration Panel to decide subsequent questions relating to the conveyance of real property. The fact that the Third District Court confirmed that award cannot alter either the underlying mandatory arbitration agreement, or the terms of the award it confirmed. To the contrary, such confirmation gave a judicial imprimatur to the Arbitration Panel’s retention of jurisdiction over such disputes.

The trial court’s decision violates Utah public policy, Utah statutes and case law favoring, indeed, commanding arbitration.

It must be reversed and the action stayed, with Plaintiffs/Appellees ordered to pursue their claims before the Arbitration Panel.

ARGUMENT

I. THE DISTRICT COURT ERRED BY NOT COMPELLING ARBITRATION.

UTAH CODE ANN. § 78-31a-108(2) mandates that, where there is an enforceable

agreement to arbitrate a dispute, the court “**shall** order the parties to arbitrate [emphasis added].” It is also mandatory that the court “shall stay any judicial proceeding that involves a claim subject to the arbitration.” *Id.* § 78-31a-108(7).

The order compelling arbitration in the 1999 litigation establishes that the dispute over dissolution of RDC is arbitrable. The broad language of the arbitration clause clearly encompasses every dispute concerning the dissolution of the limited liability company, RDC: “**Any claim and disputes between the Members arising out of or related to this Agreement**, shall be via binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise.” Statement of Facts, *supra*, ¶ 2. This dispute, between members, pertaining to the dissolution of the limited liability company, cannot fairly be characterized as not “arising out of or related to” the operating agreement of the very limited liability company, when it is nothing more than a continuation of the original dispute.

That the present dispute over the conveyance of real property must be arbitrated is further confirmed by the Arbitration Award entered in that very arbitration, which expressly reserves continuing jurisdiction to the Arbitration Panel over “conveyances of properties,” the exact subject matter of the instant litigation. Statement of Facts, *supra*, ¶ 7. The confirmation by the Third District Court of that very reservation of jurisdiction to the Arbitration Panel could not possibly be construed to cut off the arbitrability of the dispute under the arbitration agreement nor the reservation of jurisdiction to the Arbitration Panel that the Court’s “confirmation” confirmed. Indeed, the Court has no power to modify, alter or amend such reservation of jurisdiction by the Arbitration Panel

unless a timely and well-grounded attack upon the Arbitration Award is made¹— no such attack was made here.

Utah law strongly favors arbitration or other means of extrajudicial dispute resolution. If there is a dispute between the parties as to whether an agreement requires arbitration, the matter should be sent to arbitration. See *Central Florida Investments, Inc. v. Parkwest Associates*, 2002 UT 3, ¶ 16, 40 P.3d 599, 606 (“Moreover, if there is any question as to whether the parties agreed to resolve their disputes through arbitration or litigation, *i.e.*, through the filing of a complaint and recording of a *lis pendens*, we interpret the agreement keeping in mind our policy of encouraging arbitration.”); see also *McCoy v. Blue Cross Blue Shield*, 2001 UT 31, ¶ 14, 20 P.3d 901 (“It is our policy to interpret arbitration clauses in a manner that favors arbitration.”)

The 1999 Litigation was initiated pursuant to Section 16 of the Operating Agreement of RDC. The broad language of the arbitration clause, together with the language of the Arbitration Award (the Nielsen Baseball Proposal), adopted by the Arbitration Panel, clearly encompasses future disputes including the very dispute asserted in the Complaint on file in this action, because it involves “the conveyances of properties, assumption of debt, assignment of water rights, granting reciprocal easements” between the parties to the arbitration and/or their successors in interest. The Utah Arbitration Act, reflecting the strong public policy favoring arbitration, requires

¹See generally *Pacific Development, L.C. v. Orton*, 2001 UT 36, ¶ 7, 23 P.3d 1035, 1037-38; *Softsolutions, Inc. v. Brigham Young University*, 2000 UT 46, ¶ 14, 1 P.3d 1095, 1100.

that a stay be entered in this proceeding, and that the Plaintiffs be ordered to arbitrate such dispute.

Even if there were some doubt about the applicability of the arbitration provision to the dispute between members over the division of the Company's property, in interpreting the arbitration award, however, the Utah Supreme Court has mandated that any such doubts be resolved in favor of arbitration:

It is our policy to interpret arbitration clauses in a manner that favors arbitration. In *Lindon City v. Engineers Construction Co.*, we stated:

[Arbitration] is a remedy freely bargained for by the parties, and "provides a means of giving effect to the intention of the parties, easing court congestion, and providing a method more expeditious and less expensive for the resolution of disputes....

Arbitration clauses should be liberally interpreted when the issue contested is the scope of the clause. ***If the scope of an arbitration clause is debatable or reasonably in doubt, the clause should be construed in favor of arbitration....***

636 P.2d at 1073 (quoting *King County v. Boeing Co.*, 18 Wash.App. 595, 602-03, 570 P.2d 713, 717 (1977)).

Docutel Olivetti Corp. v. Dick Brady Systems, Inc., 731 P.2d 475, 479 (Utah 1986)(emphasis added).

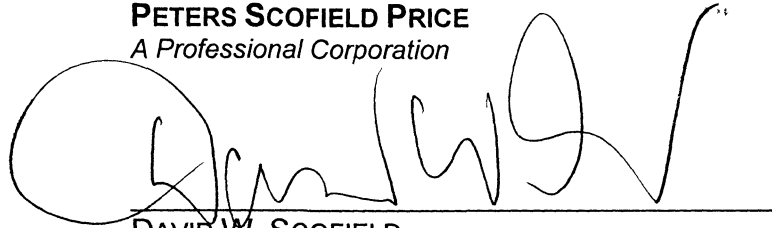
Since there appears to be a mandate in the Arbitration Award itself, as confirmed by the Third District Court that the Arbitration Panel retain jurisdiction over disputes relating to the ordered dissolution, and particularly the conveyances of property, and the language of the arbitration clause in any event encompasses such a dispute, this Court should reverse the trial court and order that it order the plaintiffs to submit their continuing dispute over the dissolution of the Company to arbitration.

CONCLUSION

For the foregoing reasons, the trial court should be reversed, the action should be stayed and the Plaintiffs/Appellees ordered to pursue their claims, if at all, before the Arbitration Panel.

DATED this 19th day of April, 2006.

PETERS SCOFIELD PRICE
A Professional Corporation

A large, stylized handwritten signature in black ink, appearing to read 'D. W. Scofield', written over a horizontal line.

DAVID W. SCOFIELD
Attorneys for the Defendants/Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of the above and foregoing Appellants' Opening Brief were deposited in the United States Mail, first class postage prepaid, this 19th day of April, 2006, addressed to the following:

James S. Lowrie
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A large, stylized handwritten signature in black ink, appearing to read 'D. W. Scofield', written over a horizontal line.

David W. Scofield

APPENDIX 1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

MACDONALD REDHAWK INVESTORS, REDHAWK DEVELOPMENT COMPANY LLC, and MACDONALD UTAH HOLDINGS, LLC, Plaintiffs, vs. THE RIDGES AT REDHAWK, LLC, NIELSEN REDHAWK LLC, REDHAWK MANAGEMENT LLC, and C. MICHAEL NIELSEN, Defendants.	RULING and ORDER Case No. 050500229 Honorable BRUCE C. LUBECK DATE: November 8, 2005
--	--

The above matter came before the court on November 7, 2005, for oral argument on defendants' motion to compel arbitration. Plaintiff was present through James S. Lowry and defendants were present through David W. Scofield.

Defendants filed this motion on June 7, 2005, 2005. Plaintiffs filed an opposition response on June 22, 2005. No reply was filed. A notice to submit was filed by Plaintiffs on August 29, 2005. Oral argument was scheduled and held November 7, 2005. The court took the matter under advisement.

The court has reviewed the pleadings of the parties and the entire file, and heard oral argument, concludes as follows.

BACKGROUND

Plaintiffs filed a complaint on April 28, 2005 seeking to

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quiet title to property in Summit County. Plaintiffs allege they are the owners of the subject property and that defendants assert a right to ownership adverse to that of plaintiffs. Plaintiffs seek a declaration that they own the subject property in fee simple.

Defendants then filed this motion pursuant to UCA 78-31a-106 through 108.

ARGUMENTS

Defendants claim that in 1999 plaintiff filed a complaint seeking dissolution of a limited liability company. A stipulation was entered into under the operating agreement. In March 2000 an order was entered in that litigation confirming the arbitration award. In June 2000 a supplemental arbitration award was entered. The parties disputed the implementation of the arbitration and supplemental arbitration awards, and mediation was attempted. There were disputes about deeds provided and how those compared to the arbitration awards. Defendants claim they have demanded arbitration.

Defendants claim arbitration is favored and if there is a question as to whether arbitration should occur, arbitration is favored. Under the Operating Agreement of Redhawk Development LC, and the arbitration awards, the dispute asserted in this complaint is encompassed. The affidavit of defendant Nielsen is

attached and he asserts he is the principal of Nielsen Redhawk LLC, one of the parties to arbitration with plaintiff MacDonald Redhawk and Redhawk Development, and that the arbitration panel adopted Nielsen's Baseball Proposal, which was confirmed by the district court in 1999. The proposed deeds provided by MacDonald do not conform to the awards nor the baseball arbitration proposal adopted by the arbitrators and confirmed by the court. Nielsen claims his attorney, Robert Stolebarger, did not have authority to enter into an agreement on his behalf and Nielsen never signed an agreement.

Plaintiffs oppose the motion. Plaintiffs claim the quiet title action is over property formerly owned by Redhawk Development, which was controlled by MacDonald and Nielsen. The 1999 arbitration awarded certain unplatted lots, including lots 78, 118 and 119, to MacDonald. Since then Nielsen has refused to convey title to those parcels to MacDonald and this lawsuit is to quiet title to those parcels. The award already awarded the parcels to Macdonald and there is no reason for the arbitration panel to do so again, plus it has no jurisdiction as it has entered an award confirmed by the court. The parties have not agreed to arbitrate disputes about the arbitration award.

In the 1999 lawsuit, MacDonald Redhawk v Nielsen Redhawk, the dissolution lawsuit, one of the main issues was how the LLC's real property should be divided between MacDonald and Nielsen.

The members of Redhawk Development had an operating agreement that contained an arbitration clause requiring arbitration of any claim between members arising out of the operating agreement. The decision of the arbitrator was to be final and binding and could be entered as a final judgment. It was determined that MacDonald was to receive 60.6% and Nielsen 39.4%. After determining the equity, the panel requested what are called baseball proposals, and the panel selected one of those in its entirety as to how the property should be divided. The map attached was an aid, and the appraisal set forth specific lots, which Nielsen's proposal incorporated. Nielsen's proposal was adopted, and the court confirmed in on March 27, 2000. Plaintiff claims Nielsen has refused to finalize the exchange of deeds to the parcels, as MacDonald has record title to certain parcels awarded to Nielsen, and Nielsen retains record title to certain parcels of land the panel awarded to Macdonald.

Plaintiffs claim the issues in this case, title to lots 78, 118 and 119, are not subject to an arbitration agreement. The arbitration award interpretation, not the interpretation of the operating agreement, is what is at issue. Arbitration of a contract cannot be required in a dispute unless there is an agreement.

DISCUSSION

The court agrees with plaintiffs in this case. The court believes that any interpretation of an arbitration award, which is now a court judgment, should be done by the court, not an arbitration panel. The arbitration award is broad, but does not amount to a contract or agreement to arbitrate these issues. The award confirmed by the court should now be interpreted by the court.

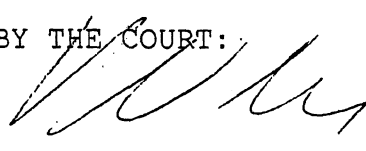
Defendants should file an answer and the case should proceed.

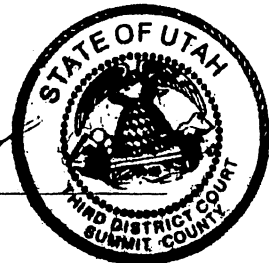
The motion to compel arbitration is DENIED.

This Ruling and Order is the Order of the court and no other order is required.

DATED this 8 day of Nov, 2005.

BY THE COURT:


BRUCE C. LUBECK
DISTRICT COURT JUDGE



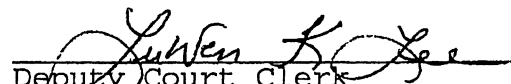
Case No: 050500229
Date: Nov 08, 2005

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 050500229 by the method and on the date specified.

METHOD	NAME
Mail	JAMES S LOWRIE ATTORNEY PLA POB 45444 SALT LAKE CITY, UT 84145-0444
Mail	DAVID W SCOFIELD ATTORNEY DEF 111 EAST BROADWAY SUITE 340 SALT LAKE CITY UT 84111-2605

Dated this 8th day of November, 2005.


Deputy Court Clerk

APPENDIX 2

pd 200

DAVID W. SCOFIELD - 4140
PETERS SCOFIELD PRICE
A Professional Corporation
340 Broadway Centre
111 East Broadway
Salt Lake City, Utah 84111
Telephone: (801) 322-2002
Facsimile: (801) 322-2003

THIRD JUDICIAL DISTRICT
2005 NOV 18 PM 2:54

FILED BY _____

Et

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH**

MACDONALD REDHAWK INVESTORS, a
General Partnership, et al.,

Plaintiffs,

-vs-

THE RIDGES AT REDHAWK, LLC, a Utah
limited liability company, et al.,

Defendants.

NOTICE OF APPEAL

Case No. 050500229 PR

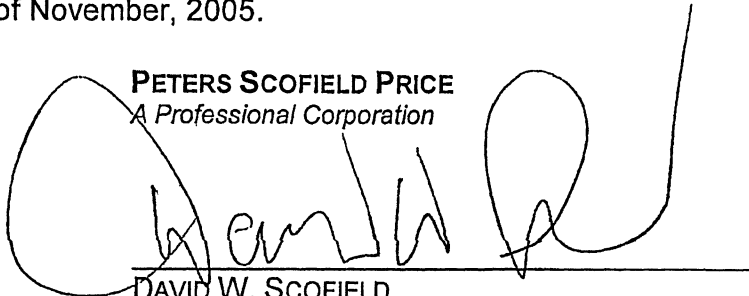
Judge Bruce C. Lubeck

Defendants The Ridge at Red Hawk, L.L.C., Nielsen Redhawk, L.L.C., Redhawk Management L.L.C. and C. Michael Nielsen, by and through their undersigned counsel, appeals to the Utah Supreme Court from the order of the Honorable Bruce C. Lubeck, signed and entered November 8, 2005, denying defendants' motion to compel arbitration. A true and correct copy of the Order of the Court's Ruling and Order is attached to this Notice of Appeal as Exhibit "A."

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DATED this 16th day of November, 2005.

PETERS SCOFIELD PRICE
A Professional Corporation



DAVID W. SCOFIELD
Attorneys for the Defendants

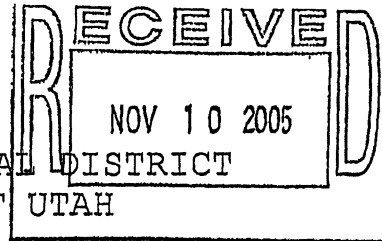
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Notice of Appeal was mailed, postage prepaid, this 16th day of November, 2005, to the following:

James S. Lowrie
R. L. Knuth
Ryan M. Harris
JONES WALDO HOLBROOK & McDONOUGH, P.C.
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101



David W. Scofield



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

MACDONALD REDHAWK INVESTORS,
REDHAWK DEVELOPMENT COMPANY
LLC, and MACDONALD UTAH
HOLDINGS, LLC,

Plaintiffs,

vs.

THE RIDGES AT REDHAWK, LLC,
NIELSEN REDHAWK LLC, REDHAWK
MANAGEMENT LLC, and C. MICHAEL
NIELSEN,

Defendants.

RULING and ORDER

Case No. 050500229

Honorable BRUCE C. LUBECK

DATE: November 8, 2005

The above matter came before the court on November 7, 2005, for oral argument on defendants' motion to compel arbitration. Plaintiff was present through James S. Lowry and defendants were present through David W. Scofield.

Defendants filed this motion on June 7, 2005, 2005. Plaintiffs filed an opposition response on June 22, 2005. No reply was filed. A notice to submit was filed by Plaintiffs on August 29, 2005. Oral argument was scheduled and held November 7, 2005. The court took the matter under advisement.

The court has reviewed the pleadings of the parties and the entire file, and heard oral argument, concludes as follows.

BACKGROUND

Plaintiffs filed a complaint on April 28, 2005 seeking to

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quiet title to property in Summit County. Plaintiffs allege they are the owners of the subject property and that defendants assert a right to ownership adverse to that of plaintiffs. Plaintiffs seek a declaration that they own the subject property in fee simple.

Defendants then filed this motion pursuant to UCA 78-31a-106 through 108.

ARGUMENTS

Defendants claim that in 1999 plaintiff filed a complaint seeking dissolution of a limited liability company. A stipulation was entered into under the operating agreement. In March 2000 an order was entered in that litigation confirming the arbitration award. In June 2000 a supplemental arbitration award was entered. The parties disputed the implementation of the arbitration and supplemental arbitration awards, and mediation was attempted. There were disputes about deeds provided and how those compared to the arbitration awards. Defendants claim they have demanded arbitration.

Defendants claim arbitration is favored and if there is a question as to whether arbitration should occur, arbitration is favored. Under the Operating Agreement of Redhawk Development LC, and the arbitration awards, the dispute asserted in this complaint is encompassed. The affidavit of defendant Nielsen is

attached and he asserts he is the principal of Nielsen Redhawk LLC, one of the parties to arbitration with plaintiff MacDonald Redhawk and Redhawk Development, and that the arbitration panel adopted Nielsen's Baseball Proposal, which was confirmed by the district court in 1999. The proposed deeds provided by MacDonald do not conform to the awards nor the baseball arbitration proposal adopted by the arbitrators and confirmed by the court. Nielsen claims his attorney, Robert Stolebarger, did not have authority to enter into an agreement on his behalf and Nielsen never signed an agreement.

Plaintiffs oppose the motion. Plaintiffs claim the quiet title action is over property formerly owned by Redhawk Development, which was controlled by MacDonald and Nielsen. The 1999 arbitration awarded certain unplatted lots, including lots 78, 118 and 119, to MacDonald. Since then Nielsen has refused to convey title to those parcels to MacDonald and this lawsuit is to quiet title to those parcels. The award already awarded the parcels to MacDonald and there is no reason for the arbitration panel to do so again, plus it has no jurisdiction as it has entered an award confirmed by the court. The parties have not agreed to arbitrate disputes about the arbitration award.

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The court agrees with plaintiffs in this case. The court believes that any interpretation of an arbitration award, which is now a "court judgment, should be done by the court, not an arbitration panel. The arbitration award is broad, but does not amount to a contract or agreement to arbitrate these issues. The award confirmed by the court should now be interpreted by the court.

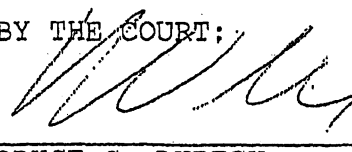
Defendants should file an answer and the case should proceed.

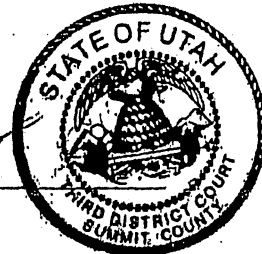
The motion to compel arbitration is DENIED.

This Ruling and Order is the Order of the court and no other order is required.

DATED this 8 day of Nov, 2005.

BY THE COURT:


BRUCE C. LUBECK
DISTRICT COURT JUDGE



Case No: 050500229
Date: Nov 08, 2005

CERTIFICATE OF NOTIFICATION


I certify that a copy of the attached document was sent to the following people for case 050500229 by the method and on the date specified.

METHOD NAME

Mail JAMES S LOWRIE
ATTORNEY PLA
POB 45444
SALT LAKE CITY, UT
84145-0444

Mail DAVID W SCOFIELD
ATTORNEY DEF
111 EAST BROADWAY
SUITE 340
SALT LAKE CITY UT
84111-2605

Dated this 8th day of November, 2005.


Deputy Court Clerk

APPENDIX 3

By _____ Deputy Clerk

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

MACDONALD REDHAWK INVESTORS,)
a Utah General Partnership,)

Plaintiff,)

vs.)

REDHAWK DEVELOPMENT, LLC,)
a Utah Limited Liability Company, and)
NIELSEN REDHAWK, LLC, a Utah)
Limited Liability Company,)

Defendant.)

**ORDER COMPELLING
BINDING ARBITRATION**

Civil No. 990908761

Judge Wilkinson

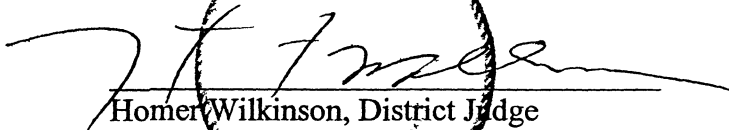
On this day, the Court considered the Agreed Stipulation to Submit to Binding Arbitration (the "Stipulation") filed by Plaintiff MacDonald Redhawk Investors ("Plaintiff") and Defendants Redhawk Development, LLC and Nielsen Redhawk, LLC (collectively, the "Defendants"). Based upon the Stipulation and good cause appearing, it is hereby ORDERED:

1. THAT Plaintiff and Defendant Nielsen Redhawk, LLC ("Nielsen") submit their claims, counterclaims, defenses and offsets between and among them, of every kind, to binding arbitration ("Arbitration") to be conducted by a panel of three Arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise;

2. THAT Defendant Redhawk Development, LLC ("Redhawk") participate in the Arbitration as a nominal Defendant for the purposes of implementing an Arbitration award, as and if directed to do so by the Arbitration panel; and

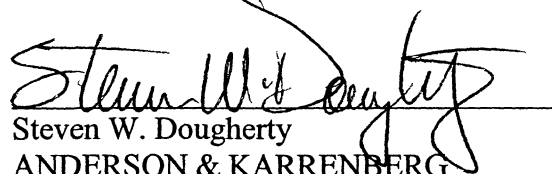
3. THAT Plaintiff and Defendant Nielsen complete their presentations, and that Plaintiff and Defendants submit the matter for decision, to the arbitration panel, no later than November 1, 1999 unless the parties mutually agree otherwise.

SIGNED this 28 day of September, 1999.


Homer Wilkinson, District Judge

Approved as to form:


Robert L. Stolebarger
HOLME, ROBERTS & OWEN
Attorney for Defendant Nielsen Redhawk, LLC



Steven W. Dougherty
ANDERSON & KARRENERG
Attorney for Defendant Redhawk Development, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of September, 1999, I caused to be delivered
BY FIRST-CLASS MAIL a true and correct copy of the foregoing STIPULATION TO
SUBMIT TO BINDING ARBITRATION to the following:

Steven W. Dougherty
ANDERSON & KARRENBURG
50 W. Broadway, Suite 700
Salt Lake City, Utah 84145

Robert L. Stolebarger
HOLME, ROBERTS & OWEN
111 E. Broadway
Salt Lake City, Utah 84145



A handwritten signature, appearing to be "R. Stolebarger", is written over a horizontal line.