

COPY

DISTRICT COURT  
CLARK COUNTY, NEVADA  
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JAN 16 10 39 AM '07

GHOLAMREZA Z. JAZI, et al.

Plaintiffs

vs.

RAY KOROGHLI, et al.

Defendants

FILED

CASE NO. A-511131

DEPT. NO. XI  
CLERK OF THE COURT

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE

HEARING ON MOTIONS

THURSDAY, JANUARY 11, 2007

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APPEARANCES:

FOR THE PLAINTIFFS:

HOLLY FIC, ESQ.  
MICHAEL A. REYNOLDS, ESQ.

FOR THE DEFENDANTS:

JOHN M. NETZORG, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 11, 2007, 10:23 A.M.

2 (Court was called to order)

3 THE COURT: Okay. A-511131, Jazi versus Koroghli.

4 (Pause in the proceedings)

5 MS. FIC: Holly Fic, Your Honor, for the plaintiff.

6 Bar Number 7699.

7 MR. REYNOLDS: And Mike Reynolds, also.

8 MR. NETZORG: Good morning, Your Honor. John  
9 Netzorg on behalf of the defendants.

10 (Off-record colloquy - Court and Clerk)

11 THE COURT: Okay. Which motion do you want to do  
12 first, the motion to vacate, or the motion to confirm the  
13 arbitration award?

14 MS. FIC: Since our motion is first, Your Honor, I'd  
15 like to argue first. And I promise I won't be that long. I  
16 have an 11:00 o'clock, actually a settlement conference, to go  
17 to.

18 THE COURT: You saw that the gentleman who was here  
19 earlier kept saying he was going to be brief, and even though  
20 he's not a lawyer, he talked for a really, really long time.

21 MS. FIC: I promise you I won't be --

22 (Off-record colloquy)

23 MS. FIC: Your Honor, hopefully, I mean, I consider  
24 -- you know, we have our motion to confirm an entry of  
25 judgment. We've got a simple premise here. We've got an

1 11/28, 2005, stipulation to arbitration. Not for mediation,  
2 it's for arbitration. The defendants fully agreed to submit  
3 to arbitration and that the arbitration shall be binding with  
4 no right of appeal. It's Exhibit 2. And it shows that the  
5 defendants actually, you know, participated in the language,  
6 because they hand-wrote certain notes that they did or did not  
7 agree to and initialled any changes. But they left the  
8 provision that the arbitration shall be binding with no right  
9 of appeal as unmarked, and therefore it stands. And it is our  
10 stipulation for arbitration.

11 We also had an arbitration scheduling order. The  
12 parties agreed -- specifically, defendants agreed to Mr. Hale  
13 to arbitrate the matter, who, after having heard two full days  
14 of testimony, having reviewed all the exhibits, the  
15 depositions that were submitted, and arguments of counsel on  
16 9/8/06, set forth the parties' stipulation on the record. And  
17 he even stated that -- Mr. Hale stated that he would file an  
18 arbitration decision, to which none of the parties objected.  
19 He fully asked the parties if they would want to participate  
20 in any changes. He asked on two occasions. He invited the  
21 parties to add any additional terms, and they were set on the  
22 record. The court reporter recorded the terms of the  
23 agreement as if it was a stipulated judgment. The arbitrator  
24 recorded these and memorialized the terms, and he even said,  
25 this will completely resolve all claims of the LLCs and the

1 individuals that are involved in this litigation.

2           And consistent with the arbitrator's record of the  
3 September 8th, 2006, resolution, Arbitrator Floyd Hale issued  
4 the arbitration decision. So not only did the parties have  
5 the terms recorded by a court reporter, but this was  
6 formalized by a decision by the arbitrator called an  
7 "Arbitration Decision."

8           So there's case law out there, Your Honor, that when  
9 there's just even the attorneys doing -- who have  
10 authorization to settle and they put it down in writing with  
11 the court reporter, that's almost like EDCR 7.50, which  
12 provides that stipulations should be in writing or entered in  
13 the court minutes.

14           Here we had an arbitration which had gone on for  
15 some time. It wasn't just a one-shot deal. Parties had given  
16 opening testimony -- I mean opening statements, and testimony  
17 was taken and everything like that. So here we have it.  
18 We've got an agreement on the record with counsel present,  
19 with the parties present, and a neutral third-party  
20 arbitrator. The terms were recorded by a court reporter, like  
21 EDCR 7.50, and then it was actually reduced to a writing in  
22 the arbitration decision.

23           And so -- and, you know, and counsel were free to  
24 add anything they want. And then we get it down to where  
25 we're going to have it down -- put it down to writing, have

1 the parties sign these agreements, and they back out. We  
2 prepared everything for them to sign it. And also, too, the  
3 parties had gone back and forth with Arbitrator Hale, asking  
4 to reopen these issues, asking -- and they were denied. And  
5 we did a motion to implement the award, and that was granted  
6 by the arbitrator.

7           So what we're seeking, Your Honor, today is to  
8 confirm and enter this arbitration award and confirm the  
9 decision of the arbitrator, because we don't want to keep  
10 going back and forth. The terms were set forth, the parties  
11 agreed to them, the parties were present, counsel was present,  
12 and we had an arbitrator there. So we would submit that, Your  
13 Honor, please confirm the arbitration decision and enter the  
14 judgment so that the parties will sign the release agreements.

15           THE COURT: Mr. Netzorg.

16           MR. NETZORG: Thank you, Your Honor.

17           As we've argued in the briefs rather extensively,  
18 this started out as an --

19           THE COURT: Very extensively. My son thought I had  
20 more homework than he did last night.

21           MR. NETZORG: I know. And I appreciate it. I know  
22 it's rather voluminous. It's very important, obviously, to  
23 the client.

24           THE COURT: Okay. I understand. It's important to  
25 everybody.

1 MR. NETZORG: And this started out as an  
2 arbitration, and that is correct. And then there were a  
3 couple items that weren't accurate. There were opening  
4 arguments by counsel. The plaintiff gave his direct  
5 examination, and then he was cross-examined on about one third  
6 of the materials, at which point a mediation started. Counsel  
7 argues that as a result of these proceedings that the parties  
8 understand it was put on the record. And, Your Honor, this is  
9 the only place where you see the defendants' participation.

10 But first and foremost, Your Honor, Arbitrator Hale  
11 mentions that he was proud that the parties asked him to  
12 mediate instead of arbitrate. He references that the terms  
13 and conditions will be in the settlement agreement. We'll go  
14 into these in more specifics in a second.

15 But, Your Honor, what has happened is there was a  
16 settlement of this case, and the plaintiffs haven't performed  
17 material terms and conditions, material terms and conditions  
18 that appear in the recorded arbitration statement. And I'd  
19 ask the Court -- it's just a few pages, and we might go  
20 through that and review it, because it is critically  
21 important. This is where the parties' understandings are  
22 discussed. It's Exhibit A to our motion to vacate, which  
23 makes it the easiest to locate, because it's Exhibit A. But  
24 it's attached on numerous occasions. I'm sure the Court's had  
25 a chance to review it. The pagination --

1 THE COURT: What page?

2 MR. NETZORG: Our motion to vacate, Exhibit A.

3 THE COURT: But what page on that?

4 MR. NETZORG: I would ask the Court to turn to  
5 page 4 at the bottom. And my cross-references will be to the  
6 pagination at the bottom of the exhibit, rather -- because for  
7 some reason --

8 THE COURT: This is a rough transcript, so its page  
9 numbers differ from that which is attached to the other  
10 side's, plaintiffs' transcript.

11 MR. NETZORG: Oh. Very good. Very good.

12 THE COURT: I noticed that when I looked at them  
13 last night.

14 MR. NETZORG: Well, thank you, Your Honor. Because  
15 I -- it was most confusing to counsel, as well.

16 But as we review it, after -- and understand this  
17 arbitration lasted for weeks, but that was because we went  
18 over our allotted time and Arbitrator Hale had Fridays  
19 available. So the fact it went on for weeks was not  
20 indicative that the actual -- we were hearing testimony day  
21 in, day out.

22 But Mr. Hale went on the record, and he announces  
23 the case at page 4 and at page 5, and he says -- he says,  
24 "Having heard two full days of testimony and the arguments of  
25 counsel, it appears that the resolution of this case will be

1 as follows. And counsel are free to correct me."

2 And the intention was, Your Honor, that because this  
3 was a settlement and we were putting it on the record, that  
4 the people's intentions -- the parties intentions be added.  
5 This wasn't a decision on the merits. It was exactly what it  
6 was, a settlement, as if I were to come in here and say, Your  
7 Honor, we've settled today, we want to put the terms and  
8 conditions on the record.

9 What were those terms and conditions? Very first  
10 thing -- page 5, Your Honor, of Exhibit A. Very first thing,  
11 to make sure that there was no confusion. "This is pursuant  
12 to a stipulation, obviously, so we want to make sure there is  
13 a universal and complete resolution of all issues." That was  
14 a material consideration.

15 THE COURT: That's you talking, as opposed to Mr.  
16 Hale?

17 MR. NETZORG: That's me, talking, yes. That's the  
18 very first thing after -- after -- just to make sure that that  
19 was on the record, that there wasn't any confusion later and  
20 that someone would try and deny us the benefits of why it was  
21 that we were going to be tendering over \$5 million in  
22 consideration. So this wasn't a situation where we had a car  
23 accident and we were worried about the fender. This was a  
24 real estate case that involves over 40,000 acres of land over  
25 7 square miles of property located in four separate sections



1 that had been acquired at a price in excess of 16 million.

2 And did we not ask to have this recorded?

3 THE COURT: It's always recorded in here.

4 MR. NETZORG: Ah. Very wonderful.

5 THE COURT: Now you're going to get a bill for it.

6 MR. NETZORG: Thank you very much. I appreciate  
7 that. Please send me your bill. I'm too old to be forgetting  
8 that one. But thank the Court to deferring to business  
9 litigants who --

10 Okay. So the defendants were looking for a  
11 universal settlement. And the Supreme Court has held on  
12 innumerable occasions that obviously a settlement and  
13 resolution is a material consideration.

14 Mr. Hale then went on and discussed some portions of  
15 it. He talks about Mr. Zandian [phonetic] at page 6, and he's  
16 going to get the Pahrah [phonetic] property, and the Pahrah is  
17 I believe 4400 -- 4600 acres, and I may be wrong, and he's to  
18 receive it free and clear. Well, that was very important,  
19 that he receive it free and clear, just as it was important to  
20 the defendants that they receive his consideration free and  
21 clear. So the Pahrah land -- this is in Fernley, Nevada, and  
22 it is 4600 acres, but I may be mistaken, it's over a thousand.  
23 At which point on page 7 at line 11 I mention that there's --  
24 there's some engineering that hasn't been done.

25 And then Mr. Lee states -- and this is I take

1 umbrage with the position that's been argued that we didn't  
2 present the arguments or didn't complain at the time. It  
3 says, "John, please do me a favor --" "John" referring to me  
4 at page 7 and line 13 at the top "-- let the gentleman finish.  
5 Let him finish, and we will put our comments --" So he's  
6 asking that we put the comments, I understood it, at the end.

7           So Mr. Hales starts all over and he talks about the  
8 Pahrah property at page 7, line 20, is to be free and clear to  
9 Mr. Zandian.

10           And then on page 8 he talks about 320 acres, also  
11 located in Washoe County, and that's to be free and clear to  
12 Mr. Zandian, because it was very important that it be free and  
13 clear. "Mr. Sadri and Mr. Koroghli will within 30 days from  
14 today pay Mr. Zandian \$250,000." There was nothing about  
15 paying Mr. Lee \$250,000. That's what the parties had  
16 negotiated. They were to pay Mr. Zandian \$250,000. There is  
17 a change subsequently, but that money was money that wasn't  
18 fees awarded to Mr. Lee. That was part of the consideration  
19 we're talking. And this has serious importance to the  
20 defendants because there are tax consequences of this  
21 transaction, there are innumerable other parties involved,  
22 there are other people that hold ownership interests, and  
23 we're -- we address these at a later -- very shortly,  
24 actually.

25           Then at page 9 Mr. Hale goes on and talks about, at

1 line 16, all the LLCs and properties that are subject to this  
2 arbitration herein, including the Pahrah properties and the  
3 Wendover project, waive any claim to reimbursement for  
4 consulting fees.

5 And then he states, "The parties will through  
6 counsel prepare any necessary documents to effect the  
7 transfers of the LLCs and the underlying real estate." This  
8 is page 9, lines 21 through 23. So it's understood that  
9 there's going to be a preparation of further documents.

10 But going on at page 9 on the rough draft, our  
11 Exhibit A, line 24, "And the parties and representatives of  
12 these LLCs will execute all necessary documents to effect this  
13 settlement and arbitration order." This settlement. This is  
14 a settlement and the meeting of the minds. The defendants had  
15 an understanding of what they were to get, and it's expressed  
16 in this document.

17 Now, "Mr. Lee: We would like to have the check  
18 payable to my office for \$250,000." He wants the check made  
19 payable to his office. This is Mr. Zandian's \$250,000. He  
20 wants it payable to his office. There's nothing about he's  
21 supposed to get paid five days in advance, there's nothing  
22 about that the defendants are under a unilateral obligation to  
23 perform.

24 Then, "Mr. Hale: The settlement check will be  
25 payable to John Peter Lee." This is a settlement. This is

1 what we understood. That's what everyone talked about,  
2 settlement agreements and settlement.

3 Then finally, "Anything else?" Now, Mr. Lee had  
4 requested that we put our items -- or withhold them to the  
5 end, so at page 10, line 9, "We would like a mutual release  
6 executed by and between the parties." And Mr. Hale agrees to  
7 that.

8 Then below that we talk about -- page 10, line 13 --  
9 "We need a warranty from the parties that the properties and  
10 interests being transferred haven't been previously  
11 transferred --" this is typical; you're not going to take some  
12 interest not of record with no warranty "-- that the parties  
13 in fact do currently hold these interests --" we want to know  
14 that there hasn't been a conveyance, typical, it would be  
15 boilerplate warranties "-- and that they are capable of  
16 transferring the interests that are subject to this order free  
17 and clear of claims by any third parties." This is at pages  
18 10 and 11 of Exhibit A. Free and clear.

19 Well, Your Honor, we've provided the Court with  
20 Exhibit C1, which is the rights of first refusal that the  
21 plaintiff has assigned all of his LLC interest, he has given a  
22 prior transfer to a limited number of members. In the Big  
23 Springs Ranch, LLC, which is 35,000 acres, there's one other  
24 member, Mr. Abershombie. With the Wendover Project, which is  
25 approximately 67 acres located outside of Wendover, I think

1 there may be 13 other members of the LLC. He was under an  
2 obligation to deliver this free and clear. He has never  
3 tendered his property free and clear. Every tender has been  
4 subject to rights of first refusal in third parties.

5           It is customary -- we went to West, we went to  
6 business transactions and filled out a form assignment of an  
7 LLC or limited partnership interest, and the form assignment  
8 necessarily is the consent from the other parties that hold  
9 rights of first refusal. There are two reasons. One, even  
10 absent a right of first refusal, a transfer without the  
11 consent would liquidate the limited partnership. Mr. Zandian  
12 was receiving thousands of acres free and clear, and he was to  
13 deliver the consideration free and clear. And he has not.

14           And so under the proposed -- you know, why they  
15 would try and cram this thing down, why -- why in the world  
16 would the defendants be required to transfer their assets  
17 encumbered subject to rights of first refusal in third parties  
18 while the plaintiff would receive them free and clear? It  
19 clearly was not the intention. And they have refused to sign  
20 this document. It is in here. We are asking that which is  
21 customary. These are standard, customary requirements.  
22 There's nothing exceptional.

23           Your Honor, also in 100 percent of all escrows  
24 handled in Nevada and everywhere else in the United States of  
25 America the parties to the real estate escrow are required

1 under federal law, 26 USC, Section 1445, to make a declaration  
2 to the Internal Revenue Service of their non-foreign residency  
3 status. That is federal law. Typically that appears in a  
4 separate document.

5 The only change we made to the form document was to  
6 eliminate a number of the provisions and to include the non-  
7 foreign resident declaration because this involved transfers  
8 of interest in real property. Those --

9 MS. FIC: I don't mean to interrupt. Can we  
10 clarify? I don't -- how are we in an escrow? I mean, I don't  
11 think escrow even applies. I mean, I --

12 THE COURT: You've got to do an escrow.

13 MS. FIC: You do?

14 THE COURT: You have land that you're transferring;  
15 right?

16 MS. FIC: Okay.

17 THE COURT: So --

18 MS. FIC: Well, because we -- we did quitclaim  
19 deeds, and we sent over all the paperwork and --

20 MR. NETZORG: Excuse me. I'm sorry. I waited  
21 for --

22 THE COURT: Somebody not going to tell the IRS about  
23 this transaction? Because that would be bad.

24 MS. FIC: I just didn't think there had to be  
25 escrow.

1 THE COURT: That's all right.

2 MR. NETZORG: Then -- so this -- this is the essence  
3 of the transaction. Why would we -- why would we take  
4 interests that were encumbered by third parties so that we  
5 could invite future litigation when the whole -- the very  
6 first thing I said is, Your Honor, we need a universal  
7 settlement? This is a universal settlement. We don't -- we  
8 want the property free and clear. They have consistently  
9 refused.

10 On that issue, we were provided blank quitclaim  
11 deeds with runoffs from some database, no legal description  
12 incorporated in them, where we would just sign them in blank  
13 and hand them to the defendant. We're supposed to give five  
14 days before we get anything a quarter of a million dollars to  
15 the attorney. Where this requirement came from I cannot  
16 fathom. "I'll let the two of you to work out the language."

17 Well, Your Honor, I didn't think taking a --  
18 whatever. I took a form document as I would have done in any  
19 other transaction for an assignment of an LLC interest,  
20 especially -- this wasn't -- if it was five or ten dollars,  
21 maybe you could do it on a cocktail napkin like the one the  
22 plaintiffs put together, but any other document would have  
23 necessarily have required, you know, the representations to  
24 which the parties had agreed.

25 Then looking at page 11, line 2, I mentioned that

1 they were speaking of three married guys, we want to know if  
2 they're speaking for the community interest of their spouses  
3 on each and every one that is transferred. This was  
4 specifically in the -- in the transcript. And why was this  
5 important?

6 We've given you the history of the Dutch Shipyard.  
7 The testimony -- cross-examination of Mr. Zandian had simply  
8 covered the Dutch Shipyard transaction. We hadn't even gotten  
9 much beyond that. This is a case where in 1997 he had signed  
10 off for \$2.1 Dutch guilders. He settled with his Dutch  
11 partner to sell his interest. One year later he rescinds that  
12 transaction, that settlement, that global release, premised on  
13 the fact his wife hadn't signed. So with that track history  
14 these were documents in there. It was critically important  
15 that the wife sign, because we knew that the last major  
16 settlement that he was involved in, he'd used that for  
17 rescission. And he testified that eight years later he still  
18 had that Dutch Shipyard tied up in litigation over the wife  
19 issue and his French bankruptcy.

20 Then he showed up at the hearing with a liquidacione  
21 fiduciare [phonetic], a personal bankruptcy filing that he had  
22 in France. And he testified that this litigation involved his  
23 -- his -- he said it was his corporate bankruptcy in France,  
24 so we, having been alerted to that, as with anyone, as if --  
25 if he'd been in bankruptcy in Oklahoma and the consideration



1 that he paid for the interest was in litigation in bankruptcy  
2 court, we asked for an order from the court verifying that  
3 they had no interest -- this was subsequently, but, I mean,  
4 yeah, we wanted it free and clear, and one of the things was  
5 free and clear of the bankruptcy interest.

6 "Mr. Lee: With regard to the spouses issue --" at  
7 page 12, line 6 "-- we can work out the form of the details.  
8 I'm not concerned about this." This is in response to  
9 Arbitrator Hale's, "We may want spouses to sign."

10 So it wasn't even an issue. It wasn't an issue  
11 until four days later, when Mr. Lee said the spouses weren't  
12 going to sign. And that's where the problems started, when  
13 the plaintiff immediately reneged on the agreement and how has  
14 come in and said, well, gee, the arbitrator wrote a form  
15 that's completely inconsistent with everyone's understanding  
16 and the record and we're going to cram that down your throat,  
17 we're not going to have the spouses sign, we're not going to  
18 provide clear title to the LLC interests, we're going to give  
19 you an assignment subject to rights of first refusal that will  
20 guarantee the liquidation of your entities.

21 There's another provision in the LLC agreements that  
22 provides on the resignation that the LLC shall dissolve. So  
23 without -- they prepared a separate resignation form to  
24 guarantee that they would have that resolved.

25 So the defendants are asked to transfer what

1 arguably could be millions of dollars in assets and in  
2 consideration for nothing. And that was not the  
3 understanding.

4           Then once again I point at page 12, lines 16 and 17,  
5 "That is fine. That can be in the settlement agreement."  
6 Once again we're talking about the settlement agreement. This  
7 is page 12, lines 16 and 17, when I'm talking about the  
8 warranties and satisfaction. So the notion that this was not  
9 a settlement agreement, we're calling it a settlement  
10 agreement, here it's the settlement agreement, everybody knew  
11 there was going to be a settlement agreement -- no one in  
12 their wildest imaginations dreamed that something would be  
13 concocted completely inconsistent with this, denying the  
14 defendants any of the benefits that they'd negotiated for.

15           At the next page, page 13, line 22, "We want to do  
16 an allocation of the purchase price." If we were transferring  
17 five and a half million dollars or more in assets and there  
18 was potentially rights of first refusal, we couldn't have the  
19 situation which the defendants have intentionally engineered.  
20 Big Springs Ranch, for instance. There's a recital that  
21 \$250,000 is to go for the waiver of the Big Springs Ranch  
22 issue. There are four members -- or there -- of Big Springs  
23 Ranch, arguably. If you just waived the interest, then all  
24 those members, even Mr. Abershombie, who's not a party to the  
25 litigation and not paying any consideration, would be the

1 beneficiary of that grandess.

2           The parties paid \$2.8 million for that property, and  
3 to say, well, we're going to allocate a \$250,000 value? No.  
4 I mean, for tax purposes, for basis purposes it was important  
5 that the consideration that the defendants were tendered would  
6 be allocated and there'd be some correlation between the  
7 values and the allocation made. What do we get? \$250,000 for  
8 a waiver of the Big Springs Ranch interest. So that in effect  
9 gives us nothing. It permits the other partner to, arguably,  
10 I guess, under that resolution exercise a right of first  
11 refusal, which would allow him to buy an interest for a  
12 fraction of what it cost three years previously. "Mr. Lee:  
13 You can allocate anything you want to." "Mr. Netzorg: That  
14 is good, as long as you understand." It was important to us.

15           And then finally, on page 14 -- and I'd mentioned  
16 the candy's been excellent because the arbitrator had candy  
17 there and we were going on and on, eating this candy. "And  
18 then there is -- with the understanding that those items --  
19 thank you very much for the excellent job you did."

20           Your Honor, I've said those items were all important  
21 to us. This is a part and parcel of our consideration. We  
22 have not been provided it. There have been quitclaim deeds,  
23 there've been grant, bargain and sale deeds. There's no  
24 spouses. The assignments contained -- are subject to rights  
25 of first refusal. So obviously, Your Honor, there was no

1 meeting of the minds. The plaintiff steadfastly refuses to  
2 perform any of those. And this is -- these were material  
3 consideration which was not provided.

4           When we filed -- and under the rules, Your Honor,  
5 there's a requirement that you file within 20 days of the  
6 decision. All of a sudden here comes the decision. So --

7           THE COURT: Which one? Because I've got three.

8           MR. NETZORG: The first one.

9           So within 20 days you have to move to modify under  
10 the rules. That's what we did. We put our motion to modify  
11 in, it was delivered to the arbitrator's office, and an hour  
12 later we had a decision denying our motion. There was never a  
13 settlement agreement.

14           Then there was a motion to enforce the award. The  
15 arbitrator correctly said he had no authority to enforce the  
16 award, take it to District Court, I believe was --

17           And then finally there was a motion to implement the  
18 award. It went under advisement. Out of the blue here comes  
19 an implementation order from the plaintiff, which doesn't deal  
20 with the spouses, doesn't deal with our rights of first  
21 refusal, doesn't deal with the fact that the LLCs will be  
22 dissolved by the documents that have been prepared, doesn't  
23 even address our request that they sign our form assignment  
24 provision and get the consent. And the next day that comes  
25 back basically signed by the arbitrator.

1           Now we have these motions in here, and we're  
2 pretending the apples are oranges. It was a settlement  
3 agreement, everyone knew it was a settlement agreement, the  
4 settlement's put on the record. Even today the argument is  
5 they put the settlement on the record. And the plaintiffs  
6 haven't performed.

7           So if we were to stuff this down the defendants'  
8 throats and give them nothing when their intention was clearly  
9 to the contrary, then these are the very items which are  
10 reviewable under NRS Chapter 38. You look for modification of  
11 the award; was there an evident mathematical miscalculation or  
12 an evident mistake in the description of a person, thing or  
13 property; the arbitrator's made a award on a claim not  
14 submitted to him; the award is imperfect in matter of form not  
15 affecting the merits. "The motion to modify or correct an  
16 award pursuant to this section may be joined with a motion to  
17 vacate the award."

18           Well, the reason that you put things on the record  
19 is so you have a record of it. And that reflects what the  
20 parties' intentions were. And the other, later items do not.  
21 There wasn't any substantive changes. There is a  
22 misinterpretation of that which was clear and unambiguous.  
23 And it's so one-sided. Why are these requirements that we  
24 transfer our assets free and clear and they transfer them to  
25 us -- well, they don't even transfer them to us. They give us

1 their title subject to third parties' rights and interests and  
2 potentially bankruptcy court's ownership.

3           And, Your Honor, also, additionally, if you look at  
4 it, I mean, just for the purposes of doing the analysis on the  
5 vacation, the process itself, you know, was there fraud or was  
6 this an undue process. Well, this was an undue process. You  
7 don't have people do a settlement, tell them it's a  
8 settlement, tell them there's going to be a settlement  
9 agreement, and then say, oh, here's an award -- here's an  
10 award and we're going to treat this as if I'd actually  
11 conducted the trials.

12           The defendants had numerous witnesses that they were  
13 going to call. None of them were called. One of the  
14 plaintiffs' witnesses was -- the plaintiff was called and  
15 direct examination. There was no testimony from the other  
16 witnesses. There was no testimony by the defendants.

17           So, Your Honor, for these reasons there just has  
18 been no meeting of the minds. And this is reflected -- the  
19 statutory grounds for the vacation are met. This settlement  
20 has not been fulfilled. And, Your Honor, basically we had a  
21 mediation, obviously there was not a meeting of the minds and  
22 material consideration. We would ask that the matter be  
23 reverted with a new arbitrator. Because if the parties  
24 haven't decided, then let them go arbitrate. If all these  
25 plaintiffs are going to give us is clouded title to the assets

1 that we were to pay five and a half million dollars for, then  
2 obviously there's no meeting of the minds, go arbitrate.

3 Under the circumstances, Your Honor, it should be in  
4 front of a new arbitrator because of the involvement in the  
5 mediation. And the other bases are articulated in our motion.  
6 And the other issues that this -- you know, the fact that for  
7 some reason why when we submitted our documents they were  
8 summarily denied without even consideration and without -- we  
9 do our motion for -- to modify, we have our form assignment  
10 agreement with no oppositions filed, nothing, just, bam,  
11 denied. You know, we have our final motion, implementation,  
12 which we consider as under consideration raising many of these  
13 issues. I mean, how can we just arbitrarily not comply with  
14 federal law? How can we leave the spouses out? How can we  
15 ignore the rights of first refusal? We can't. That  
16 invalidates the procedure.

17 The only question is what's the remedy. And the  
18 remedy under the circumstances where the arbitrator has  
19 performed a mediation is to send it to a new arbitrator and  
20 let the parties finalize it, give the defendants an  
21 opportunity to testify. The defendants have not. The  
22 defendants were told repeatedly the settlement, settlement,  
23 this is a settlement, there'll be an agreement, put your items  
24 at the end. They were put there at the end without objection,  
25 and then summarily eliminated, the very consideration that

1 formed the basis of the settlement removed.

2 So the defendants were denied under the statutes,  
3 NRS 38, basically what amounts to their day in court. And  
4 there's no pretense that this was a complete, full and fair  
5 hearing, nor did the parties intend that it be such. They  
6 settled it, they put the settlement on the record. The  
7 plaintiffs are now disagreeing and started immediately, our  
8 spouses won't sign, that'll be confusing. Well, we didn't get  
9 the benefit -- had they notified us the day that we were  
10 putting it on the record, it never would have happened.

11 And the other items I detailed in my opposition to  
12 their motion and their reply. So thank you, Your Honor.

13 THE COURT: Okay.

14 MS. FIC: Your Honor, I have a suggestion, okay.  
15 Because what I keep hearing is settlement, settlement,  
16 settlement. We agree there was a settlement. I did say  
17 settlement, okay. But the settlement terms were -- the terms  
18 -- essential terms were put in -- recorded by a -- on the  
19 transcript by the court reporter. So we have the essential  
20 terms, okay.

21 THE COURT: You do.

22 MS. FIC: What I'm hearing is --

23 THE COURT: And you're missing some of the things in  
24 the documents you have as to those essential terms.

25 MS. FIC: Okay. And that's -- okay, Your Honor, so



1 fine. So if we have the essential terms, if we've got  
2 disputes with this, why don't we -- okay. I don't want to do  
3 a new arbitrator, because that's going to be costs to both  
4 parties. It's not going to be efficient. Arbitrator Hale was  
5 agreed to --

6 THE COURT: I'm going to solve your problem. It's  
7 really easy. I'm going to refer the matter back to Floyd Hale  
8 for further proceedings, consistent with the 9/8/06  
9 transcript. Those will include getting the mechanism for the  
10 spouses of the parties to sign the documents, getting a  
11 mechanism for the waiver of the release of the rights of first  
12 refusal that exist, entering into the settlement agreement the  
13 parties entered into. If he is unable to reach an agreement  
14 among the parties, then I will have the final word. I --

15 MS. FIC: Because, Your Honor --

16 THE COURT: Wait, wait, wait. I'm not done.

17 MS. FIC: Okay. Sorry, Your Honor.

18 THE COURT: Okay. I recommend -- this is not an  
19 order -- that an escrow be opened for the transfers of the  
20 real property. If you are merely transfer interests in an  
21 LLC, which has different tax consequences to both of your  
22 clients, I don't think it's necessary for an escrow to be  
23 opened. But if you're transferring real property, which is  
24 what it currently looks like to me you were trying to do based  
25 upon the settlement, then an escrow needs to be opened.

1 I'm referring it back to Mr. Hale, since I would  
2 typically in a case where a settlement was reached and there  
3 was a mediator or arbitrator involved refer it to that  
4 individual for some additional work with you to try and  
5 resolve those disputed issues, since they were there at the  
6 time you reached the settlement. Hopefully I have a  
7 transcript that helps me. If you are unable to reach an  
8 accommodation after speaking to Mr. Hale, then I will reach an  
9 accommodation, because I have a transcript, and I'll make a  
10 decision. And it won't be one that anybody's tax benefits are  
11 in favor of, because there's no indication in the transcript  
12 that you're going to work together to minimize tax  
13 consequences to each other, which sometimes I see in  
14 settlement agreements. And I didn't see that in this one.

15 MS. FIC: Yeah. 'Cause the only concern was I  
16 didn't want to have like maybe one wife not sign, because  
17 there's a lot of -- you know, one wife not signing upset the  
18 whole thing.

19 THE COURT: The wives have to sign. That was part  
20 of the deal you guys cut. You cut a deal the wives are going  
21 to sign. The wife's have got to sign.

22 MS. FIC: We --

23 THE COURT: That was part of the discussion on  
24 September 8th during the --

25 MS. FIC: Floyd Hale said that, but then it was not

1 added to at the end of it that we were required to have all  
2 the wives sign. Because here's the thing, they're non-  
3 parties. And what happens if one --

4 THE COURT: How are you going to -- wait now. This  
5 is just really common sense.

6 MS. FIC: Okay.

7 THE COURT: How are you going to transfer an  
8 interest in real property which may be owned by both of the  
9 people and the wife has a claim, especially in places where it  
10 is voidable if you do not have the spouse sign? How are you  
11 going to transfer that property free and clear?

12 MS. FIC: Because the husbands -- I mean, there's  
13 NRS statutes --

14 THE COURT: Okay. I'm going to send you back to Mr.  
15 Hale, and the wives need to sign. Spouses need to sign, and  
16 the people who have the first right of refusal need to waive.

17 MS. FIC: So we'll come back to you if one of the  
18 wives refuse. That's the only thing. I just don't want to --

19 THE COURT: You're going to come back to me if you  
20 are unable to reach an agreement, if you need me to confirm an  
21 order. You are also going to come back to me if there is any  
22 problem in the implementation of the agreement.

23 But you reached a settlement, it was put on the  
24 record. You've got to have a settlement agreement. I know  
25 that Mr. Hale drafted an arbitration award, because he

1 conducted a portion of the arbitration. And I don't really  
2 have a problem with that, but we need to have the  
3 documentation consistent with the discussions that were --  
4 that occurred on September 8th, 2006, which are a part of the  
5 actual record the court reporter made, at which time both  
6 parties stipulated in front of the arbitrator that they had  
7 agreed to go to as part of the extrajudicial proceedings,  
8 which in my mind makes it an enforceable settlement. Okay.

9 MR. NETZORG: Thank you, Your Honor.

10 THE COURT: Have a lovely day.

11 MR. NETZORG: We appreciate it. Happy New Year.

12 MS. FIC: Thank you, Your Honor.

13 MR. NETZORG: Happy to have business court back.

14 THE COURT: Any more business court cases you want  
15 to send me, send them along.

16 (Off-record colloquy)

17 THE PROCEEDINGS CONCLUDED AT 9:59 A.M.

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION OF ANY PERSON OR ENTITY.

FLORENCE HOYT  
LAS VEGAS, NEVADA 89146  
(702) 221-0246

*Florence M. Hoyt*

\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

1/16/07  
DATE

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Order on Motion to Confirm Arbitration Award and Motion to Vacate  
Arbitration Award

(Title of Document)

filed in District Court Case number A511131

Does not contain the social security number of any person.

-OR-


Contains the social security number of a person as required by:

A. A specific state or federal law, to wit: \_\_\_\_\_

\_\_\_\_\_  
(State specific law)

OR-

B. For the administration of a public program or for an application for a federal or state grant.

  
Signature

January 17, 2007  
Date

Michael A. Reynolds, Esq.  
Print Name

Attorney for Plaintiff, Gholamrez Zandian  
Title

WFZ0312

JM\_1283