

## SUPREME COURT OF NEVADA

# Willis of Arizona, Inc. v. Hakkasan USA, Inc.

Willis · No. Nos. 82829 and 82833 · Decided August 4, 2022

### SUMMARY

The Nevada Supreme Court consolidated an appeal concerning a motion to compel arbitration with a petition for a writ of mandamus challenging the denial of a motion to strike a jury demand. The court held that the parties' broker terms and conditions did not apply to Hakkasan's tort claims concerning Willis's alleged interference with an insurance claim because those allegations fell outside Willis's insurance-placement services. The court denied the writ petition in Docket No. 82833 and affirmed the denial of the motion to compel arbitration in Docket No. 82829.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nevada                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Chief Justice Parraguirre; Justice Hardesty; Justice Stiglich; Justice Cadish; Justice Silver; Justice Pickering; Justice Herndon                                                                                                                            |
| JURISDICTION          | Nevada                                                                                                                                                                                                                                                       |
| DECIDED               | August 4, 2022                                                                                                                                                                                                                                               |
| DOCKET                | Nos. 82829 and 82833                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | In Docket No. 82829, Willis appealed the denial of its motion to compel arbitration. In Docket No. 82833, Willis petitioned for a writ of mandamus challenging the district court's refusal to strike Hakkasan's jury demand. The matters were consolidated. |
| STANDARD OF REVIEW    | The court reviews issues of law, including contract and statutory interpretation, de novo. A writ of mandamus may issue to compel performance of a legally required duty or to control an arbitrary or capricious exercise of discretion.                    |
| PRECEDENTIAL VALUE    | Published Nevada Supreme Court opinion                                                                                                                                                                                                                       |
| PARTIES               | Willis of Arizona, Inc., Willis Towers Watson Insurance Services West, Inc. v. Hakkasan USA, Inc.                                                                                                                                                            |

### TOPICS

arbitration

contract interpretation

insurance

appellate procedure

commercial litigation

## PRACTICE AREAS

Contract law

Arbitration

Insurance

Civil procedure

Appellate procedure

Commercial litigation

## QUESTIONS PRESENTED

1. Whether the district court acted arbitrarily or capriciously by refusing to strike Hakkasan's jury demand because Hakkasan's claims were outside the scope of the Broker Terms, Conditions and Disclosures.
2. Whether the Nevada Supreme Court had appellate jurisdiction over an appeal from an order that expressly denied a motion to strike a jury demand but necessarily denied a motion to compel arbitration.
3. Whether the Broker Terms, Conditions and Disclosures required arbitration of Hakkasan's underlying tort claims.

## HOLDINGS

1. The dispute-resolution provision did not apply because Hakkasan's tort claims did not arise out of or relate to services Willis provided under the Broker Terms, Conditions and Disclosures. The district court therefore did not act arbitrarily or capriciously in refusing to strike the jury demand.
2. The court had jurisdiction because the district court's conclusion that Hakkasan's claims fell outside the terms, together with its denial of Willis's motion, necessarily denied the request to compel arbitration.
3. The district court properly denied the motion to compel arbitration because the Broker Terms, Conditions and Disclosures did not govern Hakkasan's underlying claims.

## KEY QUOTATIONS

*“This court initially determines whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written.” (at 2)*

*“Thus, Willis's actions thereafter in allegedly disclosing Hakkasan's upcoming Covid-19 claim to Sompco fell outside of its services in assisting Hakkasan with purchasing insurance for 2019-2020.” (at 3)*

## FACTUAL BACKGROUND

Hakkasan purchased an insurance policy for April 2019 through April 2020 through Willis. The parties' relationship was governed by Willis's Broker Terms, Conditions and Disclosures, which contained a jury-trial waiver and an arbitration provision that applied if the waiver was unenforceable. After the COVID-19 pandemic affected Hakkasan's business, Hakkasan alleged that Willis disclosed its anticipated claim to the insurer and worked with the insurer to adopt and postdate a limit on Hakkasan's recovery. Hakkasan sued Willis in tort, asserting that the alleged conduct occurred after Willis's insurance-placement services were complete.

## PROCEDURAL HISTORY

Hakkasan sued Willis in tort and demanded a jury trial. Willis moved to strike the jury demand or, alternatively, to compel arbitration under dispute-resolution provisions in Willis's Broker Terms, Conditions and Disclosures.

The district court denied the motion after concluding that Hakkasan's claims fell outside the scope of those terms. The Nevada Supreme Court denied the mandamus petition and affirmed the denial of the motion to compel arbitration.

#### DISPOSITION

affirmed

#### CASES CITED

- Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008)
- Lowe Enters. Residential Partners, L.P. v. Eighth Judicial Dist. Court, 118 Nev. 92, 97, 40 P.3d 405, 408 (2002)
- State, Dep't of Transp. v. Eighth Judicial Dist. Court, 133 Nev. 549, 553, 402 P.3d 677, 681 (2017)
- Nev. State Educ. Ass'n v. Clark Cty. Educ. Ass'n, 137 Nev. 76, 83, 482 P.3d 665, 673 (2021)

#### OPINION

Willis Of Ariz., Inc. v. Hakkasan Usa, Inc. C/W 82833

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS OF ARIZONA, INC., AN No. 82829

ARIZONA CORPORATION; AND

WILLIS TOWERS WATSON

INSURANCE SERVICES WEST, INC., A FILE

CALIFORNIA CORPORATION,

Appellants, AUG 0 4 2022

vs. ELIZABETH A. BROWN

CLERK QFPVPREME COURT

HAKKASAN USA, INC., A DELAWARE By • Y

DEPUTY CLERK

CORPORATION,

Res sondent.

WILLIS OF ARIZONA, INC.; AND No. 82833

WILLIS TOWERS WATSON

INSURANCE SERVICES WEST, INC.,

Petitioners, vs.

THE EIGHTH JUDICIAL DISTRICT

COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF

CLARK; AND THE HONORABLE

ELIZABETH GOFF GONZALEZ,  
DISTRICT JUDGE,  
Respondents, and  
HAKKASAN USA, INC.; ENDURANCE  
AMERICAN SPECIALITY INSURANCE  
COMPANY; AND SOMPO  
INTERNATIONAL HOLDINGS, LTD.,

Real Parties in Interest.

ORDER OF AFFIRMANCE IN DOCKET NO. 82829

AND ORDER DENYING PETITION FOR A WRIT OF MANDAMUS IN  
DOCKET NO. 82833

Docket No. 82833 is an original petition for a writ of mandamus challenging a district court's refusal to enforce a contractual jury waiver agreement and is consolidated with Docket No. 82829, which is an appeal

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OF from a district court order denying a motion to compel arbitration under the  
NEVADA

( 19.17A 3T. 4,41, cwiLi69 same contract. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. Respondent/real party in interest Hakkasan USA, Inc., purchased an insurance policy from real party in interest Sompo International Holdings, Ltd., for April 2019 through April 2020 through insurance brokers, appellants/petitioners Willis of Arizona, Inc., and Willis Towers Watson Insurance Services West, Inc. (collectively, Willis). Hakkasan and Willis's relationship was governed by Willis's Broker Terms, Conditions and Disclosures (T&Cs), which included a dispute resolution clause waiving the parties' rights to a jury trial and if that wavier was unenforceable then providing the dispute would be resolved through arbitration. When the Covid-19 pandemic affected Hakkasan's business, Hakkasan informed Willis it was going to make a claim to Sompo. Hakkasan alleges Willis worked with Sompo to adopt and postdate a limit on the amount Hakkasan could recover under the 2019-2020 policy. Hakkasan filed a tort action against Willis and demanded a jury trial. Willis moved to strike the jury demand or in the alternative to compel arbitration. The district court denied Willis's motion concluding that Hakkasan's claims against Willis did not fall under the scope of the T&Cs. Willis then filed the petition for a writ of mandamus in Docket No. 82833 challenging the denial of the motion to strike the jury demand and an appeal in Docket No. 82829 challenging the denial of the motion to compel arbitration. Docket No. 82833 A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, SUPREME COURT 197, 179 P.3d 556, 558 (2008). This court has previously concluded that the OF

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2 :11) .4;rp issue of a denial to strike a jury demand is properly raised in a writ petition. *Lowe Enters. Residential Partners, L.P. v. Eighth Judicial Dist. Court*, 118 Nev. 92, 97, 40 P.3d 405, 408 (2002). "Even in a writ petition, this court reviews de novo issues of law, such as contract and statutory interpretation." *State, Dep't of Transp. u. Eighth Judicial Dist. Court*, 133 Nev. 549, 553, 402 P.3d 677, 681 (2017). "This court initially determines whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written." *Nev. State Educ. Ass'n. v. Clark Cty. Educ. Ass'n.*, 137 Nev. 76, 83, 482 P.3d 665, 673 (2021) (internal quotation marks omitted). The four claims Hakkasan asserted against Willis are not contractual claims and do not concern the purchase of insurance. They concern the allegation that Willis interfered with Hakkasan's recovery under a claim. The dispute resolution section in the T&Cs applies to "any disputes arising out of or in connection with the services provided under these" T&Cs. Willis only provided the service of assisting Hakkasan with purchasing insurance, and once the purchase was complete, Willis was no longer providing Hakkasan any services. Thus, Willis's actions thereafter in allegedly disclosing Hakkasan's upcoming Covid-19 claim to Sompo fell outside of its services in assisting Hakkasan with purchasing insurance for 2019-2020. The T&Cs are not ambiguous and Willis's alleged actions do not arise out of or in connection with the purchase of insurance for the 2019- 2020 year. Thus, the district court did not arbitrarily or capriciously conclude that the T&Cs did not govern Hakkasan's underlying claims, and we deny the petition for a writ of mandamus in Docket No. 82833) 'The district court did not directly consider whether the jury waiver clause was enforceable and because the T&Cs do not govern the dispute, we

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need not consider that issue. Further, the district court's prior order OF

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Docket No. 82829 Next, Hakkasan argues this court lacks jurisdiction over the appeal in Docket No. 82829 because the district court did not enter an order denying a motion to compel arbitration, as the court only specifically denied the motion to strike the jury demand. We disagree. By concluding that Hakkasan's claims fall outside of the scope of the T&Cs, which includes the arbitration clause, and by denying the motion outright, the district court necessarily denied Willis's request to compel arbitration. Thus, we have jurisdiction over the appeal. See NRS 38.247(1) (permitting appeals from orders denying motions to compel arbitration). Nevertheless, as we concluded above, the district court properly concluded that the T&Cs did not govern Hakkasan's underlying claims, and thus, we affirm the denial of the motion to compel arbitration. Accordingly, we ORDER the petition DENIED in Docket No. 82833 and the judgment of the district court AFFIRMED in Docket No. 82829. CLA.A , C.J. Parraguirre J. , J. Hardesty Stiglich , J. J. Cadish Silver l'elk\_vtAAA/) , J. Pickering Herndon directing the matter to mediation, did not preclude the district court from SUPREME COURT later concluding that the T&C's do not govern the

underlying matter. OF

NEVADA

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cc: Chief Judge, Eighth Judicial District Court Hon. Ellie Roohani, District Judge Saul Ewing  
Arnstein & Lehr, LLP Brownstein Hyatt Farber Schreck, LLP/Las Vegas Quinn Emanuel Urquhart  
& Sullivan, LLP Santoro Whitmire Carlton Fields, P.A. Clyde & Co. US LLP Eighth District  
Court Clerk

SUPREME COURT

OF

NEVADA

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