10/19/23

NO. 23-487

IN THE SUPREME COURT OF
THE UNITED STATES

DR. APARNA VASHISHT-ROTA, an individual,

Petitioner,

v.

HOWELL MANAGEMENT SERVICES,

Respondents.

PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

QUESTIONS PRESENTED

1. Whether pursuant to 42 U.S.C. §1981, failure to provide Appellants' contractual dues is discriminatory?
2. Whether Appellant's exercise of §925B to compel Utah to use California law retroactive to July 23, 2019 when the parties modified the employment to revert to California law means that Cal. Civ. Proc. Code §904.1 applies making the Orders final and appealable?
3. Whether Appellant's inability to counter the Costs motion at trial Court prejudicial in light of the fact that she won the costs motion at the Court of Appeals on January 19, 2023 and URAP Rule 34 (D) allows a party to file a response?
4. Whether §925C allows Appellant to get attorney's fees and injunctive relief for defending California employment in an out of state forum.
5. Whether under URAP 5, the November 1, 2022 items mentioned at paragraph 5 b in the June 9th, 2023 Order arose from the interlocutory appeal means that the Court of Appeals still has jurisdiction under URAP Rule 5 and as the June 9th, 2023 Order was used to restrict Petitioner from filing the costs on appeal win from the interlocutory appeal, does that mean that the Court of Appeals still has jurisdiction?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Aparna Vashisht-Rota respectfully requests the issuance of a writ of certiorari to review the judgment of the Utah Courts.

DECISION BELOW

The decision of the Supreme Court published on October 10, 2023 for the June 13th, 2023 Order.

JURISDICTION

The trial Court entered judgment on October 10, 2023 . This Court's jurisdiction is invoked under 28 U.S.C. §1257. The trial Court entered judgment on September 25, 2023. This Court's jurisdiction is invoked under 28 U.S.C. §1257) as per California

California §904.1 (A)(11); (A)(12); and §904.1 (A)(13); California Labor Code §925B

STATE RULES INVOLVED

U.R.C.P. Rule 37 Statement of Discovery Issues:

See (2) Statement of discovery issues length and content. The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order:

(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in person or by telephone in an effort to resolve the dispute without court action;

(C) a statement regarding proportionality under Rule 26(b)(2); and

(D) if the statement requests

extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

Rule 83: See 22-276

California Labor Code §925: California Labor Code §925 B. LABOR CODE Section 925

925. (a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing his or her rights under this section reasonable attorney's fees.

(d) For purposes of this section, adjudication includes litigation and

arbitration.

(e) This section shall not apply to a contract with an employee who is in fact individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

(f) This section shall apply to a contract entered into, modified, or extended on or after January 1, 2017.

(Added by Stats. 2016, Ch. 632, Sec. 1. (SB 1241) Effective January 1, 2017.)

Section 904.1 - Appeal to court of appeal

(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), or a judgment of contempt that is made final and conclusive by Section 1222.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(13) From an order granting or denying a special motion to strike under Section 425.16.

(14) From a final order or judgment in a bifurcated proceeding regarding child custody or visitation rights.

(b) Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the

discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

Ca. Civ. Proc. Code § 904.1

U.R.A.P. 37: Rule 37. Suggestion of mootness; voluntary dismissal. ***Effective: 11/1/2022***

(a) Suggestion of mootness. Any party aware of circumstances that render moot one or more of the issues presented for review must promptly file a "suggestion of mootness" in the form of a motion under Rule 23.

(b) Voluntary dismissal. At any time prior to the issuance of a decision an appellant may move to voluntarily dismiss an appeal or other proceeding. If all parties to an appeal or other proceeding agree that dismissal is appropriate and stipulate to a motion for voluntary dismissal, the appeal will be promptly dismissed. The stipulation must specify the terms as to payment of costs and fees, if any.

(c) Affidavit or declaration. If the appellant has the right to effective assistance of counsel, a motion to voluntarily dismiss the appeal for reasons other than mootness must be accompanied by appellant's personal affidavit or declaration demonstrating that the appellant's decision to dismiss the appeal is voluntary and is made with knowledge of the right to an appeal and the consequences of voluntary dismissal. If counsel for the appellant is unable to obtain the required affidavit or declaration from the appellant, the motion must be accompanied by counsel's affidavit or declaration stating that, after reasonable efforts, counsel is unable to obtain the required affidavit or declaration and certifying that counsel has a reasonable

factual basis to believe that the appellant no longer wishes to pursue the appeal.

URAP Rule 5. Discretionary appeals from interlocutory orders.

Effective: 5/1/2023

(a) Petition for permission to appeal. Any party may seek an appeal from an interlocutory order by filing a petition for permission to appeal from the interlocutory order with the appellate court with jurisdiction over the case. The petition must be filed and served on all other parties to the action within 21 days after the entry of the trial court's order. If the trial court enters an order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the trial court's entry that is not a Saturday, Sunday, or legal holiday. A timely appeal from an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is not final may, in the appellate court's discretion, be considered by the appellate court as a petition for permission to appeal an interlocutory order. The appellate court may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of this rule.

(b) Fees and filing of petition. The petitioner must file the petition with the appellate court clerk and pay the fee required by statute within seven days of filing. The petitioner must serve the petition on the opposing party and notice of the filing of the petition on the trial court. If the appellate court issues an

order granting permission to appeal, the appellate court clerk will immediately give notice of the order to the respective parties and will transmit the order to the trial court where the order will be filed instead of a notice of appeal.

42 U.S. Code § 1981 - Equal rights under the law (a)Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b)"Make and enforce contracts" defined For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c)Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

URAP Rule 34 Costs: (a) To whom allowed. Costs are awarded only in civil cases. Except as otherwise provided by law or court order: (1) if an appeal is dismissed, costs must be awarded for the appellee unless the parties agree otherwise; (2) if a judgment or order is affirmed, costs must be awarded for the appellee; (3) if a judgment or order is reversed, costs must be awarded for the appellant; (4) if a judgment or order is affirmed or reversed in part, or is vacated, costs are awarded only as the court orders. (c) Costs on appeal. The following costs may be awarded: (1) $3.00 per page of a printed brief and attachments; (2) actual costs incurred in preparing and transmitting the record, including costs of the reporter's transcript unless the court orders otherwise; (3) premiums paid for supersedeas or cost bonds to preserve rights pending appeal; and (4) fees for filing and docketing the appeal.

(d) Bill of costs awarded after remittitur. A party claiming costs must, within 14 days after the remittitur is filed with the trial court clerk, serve on the adverse party and file with the trial court clerk an itemized and verified bill of costs. The adverse party may, within seven days of service of the bill of costs, serve and file a notice of objection, together with a motion to have the trial court award costs. If there is no objection to the cost bill within the allotted time, the trial court clerk must award the costs as filed and enter judgment for the party entitled thereto, which judgment will be entered in the judgment docket with the same force and effect as in the case of other judgments of record. If the cost bill of the prevailing party is timely opposed, the clerk, upon reasonable notice and hearing, must award the costs and enter a final determination and judgment in the docket with the same force and effect as in the case of other judgments of record. The clerk's determination will be reviewable by the trial court upon the request of either party made within seven days of the entry of the judgment.

CITATION TO OPINION OF THE COURT OF APPEALS/TRIAL COURT

"An order is final only if it disposes of the case as to all parties and "finally disposes of the subject, matter of the litigation on the merits of the case." *Bradbury v. Valencia*, 2000 UT 50, 9, 5 P.3d 649 (citation omitted). **Jul 28, 2023.**

"2. The Utah Court of Appeal granted Defendants a stay of this action in the district court on the condition that Defendants pay a supersedeas bond in the amount of $21,701 to effectuate the stay [D.E. 571].

3. Defendants deposited the supersedeas bond in the amount of $21,701 with this Court on February 22, 2021 [D.E. 575].

4. On appeal, the Utah Court of Appeals affirmed the Sanctions Order and Amendment Order by dismissing Defendants' interlocutory appeal based on Rota's frequent misconduct, refusal to follow the rules of procedure, and inclusion of entirely inappropriate material and arguments during the appeal [D.E. 600]."

June 13th, 2023 Order

"Three days later, Rota filed a document captioned "Appellant's Motion for Suggestion of Mootness Pursuant to Rule 37(A)" page 3, **November 1, 2022 Order.**

"With respect to Rota's LLC, we can see no basis for concluding that it has claims independent of Rota's, and because of this, we dismiss its interlocutory appeal too. Although its counsel, who is Rota's counsel, declined the

opportunity to voluntarily withdraw the LLC's appeal, he acknowledged the unity of interest between Rota and the LLC."
November 1, 2022 Order.

Utah Rule of Appellate Procedure 34 provides that "if an appeal is dismissed costs must be awarded for the appellee ... " Utah R. App. P. 34(a)(l). The Rule further provides that "premiums paid for supersedeas or cost bonds to preserve rights pending appeal" may be awarded. Utah R. App. P. 34(c)(3). A "party claiming costs must, within 14 days after the remittitur is filed with the trial court clerk, serve on the adverse party and file with the trial court clerk an itemized and verified bill of costs." Utah R. App. P. 34(d).
June 13th, 2023 Order "LEGAL STANDARD" (page 46)

COURSE OF PROCEEDINGS AND DISPOSITIONS IN OTHER COURTS

170100325

1. On November 2, 2017, HMS sued Appellant in Utah alleging certain causes of action.

2. On July 2018, Hon. Judge Allen declared Utah as the controlling agreements.

3. On July 23, 2019, Appellants voided Utah in person due to the SODI Order to appear before July 31, 2019.

4. On August 12, 2019, Appellants won her AAA trial against Hernandez.

5. On October 21, 2019, HMS filed a motion to oppose Defendants from damages calculations having never completed discovery at all. HMS refused to provide relevant discovery with or without counsel [R.3389].

6. In early 2020, the trial Court coerced Appellant to attend a mediation to accept less money than owed by contract and statute. Appellant refused.

7. The trial Court defaulted Appellant on September 2, 2020 without a hearing and on the wrong motion filed by HMS despite HMS' express note that the parties should follow the stipulated Protective Order.

8. From July 2021 to December 2021, Court of Appeals and trial court delayed the trial court record to advance 20010119 and then used that in 170100325 even though facts changed on August 31, 2020 and Rota filed misappropriation of trade secrets under Utah law on April 18, 2020. The trial Court dismissed all claims from Rota due to HMS' refusal to follow the Protective Order and issue an SODI first.

9. On April 29, 2022, Rota won the non-record items at appeal.

10. HMS moved to 'clarify' and it was able to add non-record items back for both parties on June 7, 2022.

11. The Court of Appeals refused to do the same for Rota as noted in 5b of the June 9th, 2023 Order.

12. Rota thought the appeal is voluntarily dismissed as per URAP 37 due to pending issues at trial Court for the Order on appeal.

13. Rota won her costs motion on appeal on January 19, 2023 that HMS filed on December 28, 2022. It failed to mention URAP Rule 34 of the dismissed appeal.

14. Rota went through the appeals process at the Supreme Court to learn that rarely does the Supreme Court pick trial Court issues. No review is possible.

15. On June 8th, 2023, the remittitur issued.

16. On June 9th, 2023, the trial Court restricted her even though she won costs on appeal and as she has meritorious arguments for the confidential stamps and she is the producing party of 2 of the documents at issue. The documents are from a CA AAA trial. On June 13th, the trial Court entered this instant order without a response from Appellant using the June 9th, 2023 Order.

I. STATEMENT OF CASE: This instant petition is from a June 13th, 2023 Order in 170100325 on costs on appeal pursuant to URAP Rule 34. Petitioner won the motion on costs on appeal on January 19, 2023. The trial Court did not file the Order from the Court of Appeals using the June 9th, 2023 Order and awarded HMS the money. The appeal was dismissed voluntarily as per URAP Rule 37 A so HMS did not win on appeal. Thus, the trial Court's refusal to file the Jan 19, 2023 is prejudicial and the decision to restrict Petitioner on June 9th, 2023 wrong because if Petitioner has won on appeal, she is victorious, not vexatious.

ARGUMENT

A.) **Misapplication of URAP Rule 34:**

a) As per URAP Rule 34 (A)(1), if an appeal is dismissed, the costs must be awarded to the appellee unless the parties agree otherwise. Appellant won the costs motion on January 19, 2023 so the parties litigated that issue and Appellant won.

b) In the alternative, as per URAP Rule 34 (A)(3), it is Appellant that won because of mootness. There was a suggestion of mootness filed as per URAP Rule 37 (A) in the appeal so the appellee lost because it means that the appeal was not worth pursuing due to both parties having filed the same declaration that the sanctions were litigated in AAA. The September 2, 2020 Order is reversed if the appeal is dismissed as per URAP Rule 37 (A). There was no stipulation to dismiss as per URAP Rule 37 (B). Her counsel did not file an affidavit as per Rule 37 (C). Thus, the appeal was dismissed as per Rule 37 (A).

i. Appellant won the costs motion on appeal on January 19, 2023 pro se. HMS failed to raise Rule 34 at that time, thus, it forfeits the argument it did not make at the appeals.

ii. Appellant has Cal. Lab. Code §925C that allows her to claim attorneys' fees in defending California employment. The Hernandez AAA trial was in CA and both HMS and Hernandez matter fall under §925 as employment modified after January 1, 2017.

iii. The Order on appeal in 22-758 (2000713-CA/170100325 interlocutory

appeal) issued on September 2, 2020 was upheld when the Court of Appeals voluntarily dismissed in September 2022 based on Appellant's email but upon such a dismissal, the Court of appeals loses jurisdiction. The Court of Appeals entered the November 1, 2022 Order without jurisdiction (See June 9th, Order Petition). That Nov 1, 2022 Order was used to restrict her from filing these points at trial Court.

iv. Appellant won the nonrecord motion on appeal on April 29, 2022. The Court of Appeals allowed nonrecord items on June 7th, 2023 at HMS' request, thus Appellant had to dismiss the appeal to pursue an SODI motion per URCP 37.

v. Appellant is the producing party of 2 of 3 documents at issue. HMS had failed to file an SODI first to contest the CONFIDENTIAL stamps in 22-758. Appellant's move to dismiss the appeal is the correct move. Appellant won because HMS did not file the right motion as per the Protective Order.

B. Prejudicial Unilateral Trial:

The matter belongs in California and in arbitration. Appellant could not get heard on the merits. Her counsel filed paperwork, the trial Court still didn't hold any hearings, issued wild defaults for minor issues on HMS' wrong motion. HMS should have filed an SODI first and did not so the trial Court produce an prejudicial trial in which Appellant did not get heard on the merits either by a hearing or by moving papers

using technicalities and extra procedures the simple contract dispute does not need.

"Section 1286.2, subdivision (a)(5) provides that the trial court "shall vacate" an arbitration award if "The rights of the party were substantially prejudiced by ... the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title." The statute thus presents a two-part inquiry: (1) Did the arbitrators refuse to hear evidence material to the controversy or engage in other conduct contrary to the provisions of the CAA? (2) If so, were the rights of the party seeking to vacate the award substantially prejudiced?

We consider the threshold inquiry regarding the arbitrators' conduct first. Section 1286.2, subdivision (a)(5) includes "refusal of the arbitrators to hear evidence material to the controversy" among the grounds for vacating an arbitration award. Another provision of the CAA, section 1282.2, subdivision (d), provides that, unless they agree otherwise, "[t]he parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. On request of any party to the arbitration, the testimony of witnesses shall be given under oath." Section 1282.2, subdivision (d) is incorporated into section 1286.2, subdivision (a)(5) by the phrase "other conduct of the arbitrators contrary to the provisions of this title."

Both statutes codify within the CAA the fundamental principle that "[a]rbitration should give both parties an opportunity to be heard." (Cheng–

Canindin v. Renaissance Hotel Associates (1996) 50 Cal.App.4th 676, 689, 57 Cal.Rptr.2d 867.) The parties may be heard on the papers rather than at a live hearing (*Schlessinger v. Rosenfeld, Meyer & Susman* (1995) 40 Cal.App.4th 1096, 1105, 47 Cal.Rptr.2d 650), but the opportunity to be heard must be extended to all parties equitably. That requirement was violated here. Both parties to the expungement were permitted to submit written evidence, but only Royal Alliance was given the opportunity to offer oral evidence at the expungement proceeding. The arbitrators barred Liebhaber from doing so.

The arbitrators also foreclosed Liehaber's efforts to question Tarr. Regardless of whether the FINRA rules applicable to expungement hearings expressly contain or somehow incorporate the right to cross-examination, section 1282.2, subdivision (d) "entitles a party to cross-examine witnesses *if* they appear at a hearing." (*Schlessinger v. Rosenfeld, Meyer & Susman* , *supra* , 40 Cal.App.4th at p. 1106, 47 Cal.Rptr.2d 650 ; see § 1282.2, subd. (d).) Liebhaber was a party to the proceeding, and Tarr appeared at opposing party Royal Alliance's behest to "offer any additional testimony" for the arbitrators. Although she did not technically "testify" for purposes of California law, as she was not under oath (see § 17, subd. (b)(5)(B)), Tarr appeared and acted as a witness by submitting oral evidence for the arbitrators' consideration. (Cf. § 1282.2, subd. (d) [suggesting that a person may be a witness during an arbitration without being sworn: "On request of any party to the arbitration, the testimony of witnesses shall be given under oath."].) Yet the arbitrators denied Liebhaber any opportunity to question Tarr.

Although section 1282.2, subdivision (d) also provides that "rules of evidence and rules of judicial procedure need not be observed," the procedural flexibility of the arbitral forum does not override participants' fundamental, common law right to a fair proceeding. (See *Graham v. Scissor – Tail, Inc.* (1981) 28 Cal.3d 807, 826, fn. 23, 171 Cal.Rptr. 604, 623 P.2d 165.) It is one thing to establish reasonable time limits for the parties' presentation and rebuttal of evidence, which is well within an arbitrator's discretion. It is another to curtail one party's oral presentation and exploration of evidence because the arbitration panel does not want "to be here for another two hours." (Cf. *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 290–291, 77 Cal.Rptr.3d 305 [finding reversible error where trial judge "display[ed] ill-disguised impatience" with a litigant, "repeatedly threaten[ed] a mistrial if the proceedings were not concluded quickly enough," and "abruptly ended the trial before [the litigant] had finished his presentation"].) Liebhaber initiated the proceedings that culminated in Tarr's expungement request and was named as a party to the expungement proceedings; she had an interest in the outcome of the proceedings and the right to be treated fairly and in accordance with statutory law during their pendency.

a. Liebhaber's rights were substantially prejudiced.

The second question presented by section 1286.2, subdivision (a)(5) is whether the rights of a party to the arbitration "were substantially prejudiced." This prejudice criterion was satisfied here.

"Where, as here, a party complains of excluded material evidence, the reviewing court should generally

focus first on prejudice, not materiality." (*Hall , supra ,* 18 Cal.App.4th at p. 439, 22 Cal.Rptr.2d 376.) A party's mere disappointment with an arbitration decision is not sufficient to prove substantial prejudice. (*Taheri Law Group, A.P.C. v. Sorokurs* (2009) 176 Cal.App.4th 956, 964, 98 Cal.Rptr.3d 634.) "To find substantial prejudice, the court must accept, for purposes of analysis, the arbitrator's legal theory and conclude that the arbitrator might well have made a different award had the evidence been allowed." (*Hall , supra ,* 18 Cal.App.4th at p. 439, 22 Cal.Rptr.2d 376.) The prejudice query under section 1286.2, subdivision (a)(5) is not, as Royal Alliance suggests, "ultimately a question of the sufficiency of evidence," an inquiry generally outside the permissible scope of review of arbitration awards. Rather, it is an examination of the proffered but rejected evidence to determine the impact of its omission under the theory adopted by the arbitrators.

The arbitrators' legal theory in this case was that Liebhaber's contentions were false and clearly erroneous because Royal Alliance and Tarr said they were, and Liebhaber failed to refute these claims or offer any evidence to the contrary. However, the arbitrators did not afford Liebhaber the opportunity to present evidence orally, despite extending such an opportunity to Royal Alliance. Although the arbitrators told Liebhaber that her oral evidence and proposed cross-examination were unlikely to "dramatically impact" their deliberations, they nonetheless relied on the absence of such evidence to support their ruling, mentioning the inadequacy of Liebhaber's presentation at least four times in the written award. The arbitrators also relied on the credibility of the statements Tarr made at the hearing, even though they acknowledged

that "Ms. Tarr didn't say anything substantive that is not already on the record on her behalf with respect to the declaration." Accordingly, we conclude that "the arbitrator[s] might well have made a different award" (*Hall , supra* , 18 Cal.App.4th at p. 439, 22 Cal.Rptr.2d 376) if they had allowed Liebhaber to tell her side of the story or question Tarr's.

Royal Alliance correctly notes that the arbitration panel received documentary evidence from both sides. It fails to acknowledge, however, that only Liebhaber was deprived of the opportunity to supplement that cold record with contemporaneous oral comments. The arbitrators permitted Royal Alliance to present Tarr's oral statements, deemed them credible, and relied on them to conclude that she recommended appropriate investments for Liebhaber. But the arbitration panel could not fully weigh the credibility of Tarr's statements due to the absence of cross-examination; " '[o]ne cannot "consider" what one has refused to "hear." ' " (*Burlage v. Superior Court , supra* , 178 Cal.App.4th at p. 531, 100 Cal.Rptr.3d 531.) During the expungement proceedings, Liebhaber's counsel placed on the record several lines of questioning he intended to explore with Tarr: "how she came to meet Ms. Liebhaber, what advice she gave her, questions about the suitability of the investments, whether she considered certain factors about these investments that she was recommending, how much time she spent giving her the advice she gave her and what she told her about whether she should take this early retirement at age 47." All of these areas of inquiry were aimed at the ultimate question of whether expungement was warranted because Liebhaber's complaints against Tarr were false or erroneous, and could well have affected the arbitrators' perfunctory conclusion that "the statements offered by non-party

Kathleen Tarr during the telephonic hearing were credible." As Liebhaber argued to the trial court, she was not given the opportunity "to show to the panel that ... what [Tarr] is saying is not exactly accurate." Simply put, the hearing was not fair. The arbitrators gave Royal Alliance an unfettered opportunity to bolster the written record but denied Liebhaber even a limited chance to do the same. Liebhaber's rights as a party to the arbitration proceedings were substantially prejudiced within the meaning of section 1286.2, subdivision (a)(5), and the arbitration order properly was vacated as a result."

Like in *Royal* noted above, Hon. Judge Fonnesbeck, executing 'declaratory relief of no money, and criminal sanctions' denied Plaintiff basic forum rights when she defaulted Appellant on September 2, 2020. The Court of Appeals similarly on appeal tossed out the appeal for filing errors and ruled in Appellant's favor for costs. HMS did not file its claim for Rule 34 at its motion for costs on appeal, therefore, it lost its ability to do that. The interlocutory appeal was voluntarily dismissed as per URAP Rule 37 A, so no one won, URAP Rule 34 (a)(4) notes that it would be as per the Court Orders and the Court did not Order costs on appeal on January 19th, 2023.

C) Lack of Jurisdiction:

a) Utah Void as of July 23, 2019: Defendants have voided Utah and as a classified employee, moves to apply §925B retroactively rendering all orders in 20010119 and 170100325 moot. The Court may consider using Rule 2 to invite briefings on the issue.

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of 202. "All right, so I understand your position is that things should be rolled back to the August agreement (August 3, 2016 Second Agreement), but let me address the third agreement frankly given the status of the case."

"The introductory clause of subdivision (c) recognizes that the parties may prevent enforcement of executory oral modifications by providing in the written contract that it may only be modified in writing.... Such a provision would not apply to an oral modification valid under subdivision (b)." (Cal. Law Revision Com. com., 9 West's Ann. Civ. Code (2011 ed.) foll. § 1698, p. 458, italics added.) The Law Revision Commission comments thus clarify that where, as here, a written agreement prohibits oral modifications, an oral modification nevertheless is enforceable to the extent it has been executed by the parties. Due to unilateral exercise of §925B, the Utah trial Court must use dépeçage—i.e., the conflict of laws doctrine applying the law of different states to resolve different issues in the same case. See generally *Ewing v. St. Louis-Clayton Orthopedic Grp., Inc.*, 790 F.2d 682, 686–87 (8th Cir. 1986); Dépeçage, Black's Law Dictionary (11th ed. 2019).

"We set forth the pertinent rules of statutory construction that inform our interpretation of section 925 and relevant sections of the Code of Civil Procedure. When interpreting statutory language, " '[w]e begin with the fundamental rule that our primary task is to determine the lawmakers' intent.' " [Citation.] The process of interpreting the statute to ascertain that intent may involve up to three steps. [Citations.] ... We have explained this three-step sequence as follows: 'we first look to the plain meaning of the statutory language, then to its legislative history and finally to the

reasonableness of a proposed construction.' " (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082 (*MacIsaac*).) "In the first step of the interpretive process we look to the words of the statute themselves. [Citations.] The Legislature's chosen language is the most reliable indicator of its intent because ' "it is the language of the statute itself that has successfully braved the legislative gauntlet." ' [Citation.] We give the words of the statute 'a plain and commonsense meaning' unless the statute specifically defines the words to give them a special meaning." (*MacIsaac, supra,* 134 Cal.App.4th at pp. 1082—1083.) " 'It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed.' " (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 (*Security Pacific*).)

Furthermore, we are not empowered to insert language into a statute, as "[d]oing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes." (*Security Pacific, supra,* 51 Cal.3d at p. 998.; see also Code Civ. Proc., § 1858 ["[i]n the construction of a statute ..., the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted ...."].) "If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction. [Citations.] In such a case, there is nothing for the court to interpret or construe." (*MacIsaac, supra,* 134 Cal.App.4th at p. 1083.) *LGCY Power, LLC v. Superior Court*, 75 Cal. App. 5th 844 (2022); *Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp.*, No. 21-55126, 2022 U.S. App. LEXIS 6463 (9th Cir. Mar. 14, 2022).

b) **Waiver of defenses.** A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the *parties or otherwise that the court lacks jurisdiction of the subject matter, the court must dismiss the action.* The objection or defense, if made at the trial, must be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received. We review a dismissal under Rule 12(b)(6) de novo." *Wark v. United States,* 269 F.3d 1185, 1190 (10th Cir. 2001). Our "`function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted.'" *Sutton v. Utah State Sch. for the Deaf Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999) (quoting *Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991)). HMS complaint does not meet 12 (B)(6).

As of August 31, 2020, the facts changed in the case as well. Utah did not have jurisdiction and had it reverted to California, Appellant would have a full trial on her harassment/wages, and AAA claims now barred due to Utah's refusal to accept change of jurisdiction. Appellant's counsel at D.E. 224 also noted that the claims belong in arbitration and California since early 2019.

HMS mom knows the Court.

D) Grades of and Money due as per Contracts:

Attribute	Federal	AAA	Superior Court	SCOTUS	Ninth	Tenth	Utah Trial Court
Filing	Yes	Yes	Yes	Yes	Yes	No	No
Staff courteous	Yes	Yes	Yes	Yes	Yes	No	No
Easy to deal with	Yes	Yes	Yes	Yes	Yes	No	No
Adversarial?	Yes	Yes	Yes	Yes	Yes	Hostile	Hostile
Made mistakes in filings?	Yes	No	Yes	Yes	Yes	Yes	Yes
Pro se bias	No	No	No	No	Slight	Yes	Yes
Efficient	Yes	Yes	Yes	Yes	Yes	No	No
Grade	A+	A+	A+	A+	A+	F	F

Utah Litigation Value		Source
Intro to Hernandez 1.3.2 (d)/8 d First/Second	**$2,000,000**	Expert Reports in the case
Agents 1.3.3 and 9 First/Second Agreements	**$2,000,000**	Expert reports and agents delivered students to *HMS $50 million lifetime value*
Third Agreement	2,000 students thus far.	HMS disclosed 416 students eligible in 2019 out of 830. Estimated 2K till 2023. Lifetime value for 30 years, 8,000 students. *$14 million LTV*
1.3.3 c	$1,250	Amount due as per contract for life
1.3.3 d	$500	Amount due as per contract for life
	$2,500,000	2,000 * $1,250 (due now)
	$1,000,000	2,000 * $500 (due now)
Wages		
$3 million/year at 250 students/year @$12,000	**$24,000,000**	For 8 years
Harassment	**$500,000**	As filed in 3-20-0512 due to immediate loss of $500K.
Attorney's fees and costs	**$2,000,000**	Approximate
Competition		
1,000 students/year (HUST)	**$96M for 8 years** *360,000,000 LTV*	1,000 students/year for 30 years (30,000 students times $12,000)
3,000 students/year (OU)	**$288M for 8 years** *1,080,000,000 LTV*	3,000 students/year for 30 years (90,000 students times $12,000)
HUST + OU	*$2,880,000,000*	HUST and OU CPT trade value;
	$2,914,848,000 LTV	
Treble Actual Damages	**Due Now: $1,248,000,000** *$8,744,544,000 LTV*	8 years actual damage X 3 plus costs and attorney's fees of $2M to be added.

IV. CONCLUSION

For the foregoing reasons, Petitioner moves the Court to ask the trial Court to file the Jan 19, 2023 Order in favor of Petitioner in the amount if $21,701, as per §925B, use CA law, and as per §925C attorney's fees for defending CA employment.

DATED* October 10, 2023 Corrected: November 1, 2023

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