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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court No. 20160386
Ward County Civil No. 51-2014-CV-00478

Gary Kramlich and Glory Kramlich,	)
	)
Plaintiff-Appellant,	)
	)
vs.	)
	)
Robert Hale and Susan Hale, individually, Somerset Court Partnership, Somerset-Minot LLC, Vision Management, Bullwinkle Builders LLC,	)
	)
Defendants-Appellee.	)

APPELLEE AND CROSS APPELLANT'S BRIEF

ON APPEAL FROM ORDER DATED NOVEMBER 8, 2016, DOCKET NO. 248, THE HONORABLE DOUGLAS L. MATTSON PRESIDING IN WARD COUNTY DISTRICT COURT, NORTH CENTRAL JUDICIAL DISTRICT

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¶1 STATEMENT OF THE ISSUES

¶2 The first two issues are raised by the Kramlich's, and the third issue is raised by the Hales.

> **Issue 1.** Where a controversy relates to two interrelated entities and an arbitration clause exists as to only one of two interrelated entities, does the arbitration clause apply to both entities?
>
> **Issue 2.** Whether the lower court's decision to send the partnership entity to arbitration violates the Kramlichs' Demand for Jury Trial.
>
> **Issue 3.** Did the lower court err in denying the hales' motion to dismiss the case as moot or unfounded?

¶3 STATEMENT OF FACTS

¶4 The parties did not stipulate any particular facts, but instead stipulated to the court the admission of (for the purpose of these motions) all the affidavits and evidence previously submitted in resolving the pending motions without an evidentiary hearing and accepting. A. 70, lines 14-16.

¶5 Somerset Court is a retirement living facility owned by Robert and Susan Hale directly or through various legal entities. A. 57. Unlike other partners, Kramlichs did not provide one dollar to the Hales in regards to receiving gratis a 25% minority shares in Somerset Court LLC and 13.75% partnership in Somerset Partnership. AA. [signifying Appellee and cross-Appellants Appendix] 34-35, 62. There was an expectation that Gary Kramlich would be of assistance to the two legal entities, but within a short time it was obvious to the Hales that Gary Kramlich was unable to perform even the simplest of tasks requested. AA. 35. When the Hales did request an infusion of cash into the business, the Kramlichs refused. AA. 35.

¶6 This case originated due to the Hales wanting to buy out the Kramlichs shares and partnership portion so they no longer had to deal with them as minority shareholders and minor limited partners. The other minority shareholders and limited partners were bought out based on a

business appraisal, which the Kramlichs rejected. AA. 16, 24. The Kramlichs sued asking for determination and division of the property and assets, even though Kramlichs only owned the value of the shares and partnership interest. A. 11-28/

¶7 The Hales withdrew the offer, therefore placing the Kramlich's back to their original position as limited partners and shareowners, and nothing more. AA. 7.

¶8 The corporate and partnership documents of the two entities control the relationship between the Kramlichs and the Hales. Under those documents, the Kramlichs do not have a right to anything other than receipt of dividends when they are issued, or the right to sell the interest they have in the corporation and partnership to a third person. AA. 11 (3.5.2) & 13-14 (8.1); AA. 18 (3.5.2) & 20-21 (8.1); AA. 26 (4.1) & AA. 27 (art. IX).

¶9 Although the Kramlichs sued the Hales and four different entities, there are only two entities at issue in this matter, Somerset Court Partnership and Somerset-Minot, LLC. AA. 62.The Kramlichs have no any legal interest in any other entities.

¶10 It is essential to this case to realize that the two entities that are at issue – Somerset Court Partnership and Somerset-Minot, LLC – are

thoroughly interrelated. One of the entities owns the building (Somerset Court Partnership, hereinafter "partnership") and the other entity runs the business (Somerset-Minot, LLC, hereinafter "corporation"). A. 57, AA 65.

¶11 Gary and Glory Kramlichs have a 25% interest in the partnership as limited partners and Gary Kramlich has a 13.75% interest in the limited liability company. (Vision Management was previously, at the request of the Kramlichs, subdivided into two entities, one relating to the Minot facility and the other related to the Rapid City facility, of which the Kramlichs have no interest. Bullwinkle Builders was the entity used for the construction phase, which also no longer exists or is devoid of assets.)

¶12 The two entities are clearly interrelated. One of the entities owns the building and the other entity runs the business. A. 57. Moreover, as shown by the fact that both entities were sued out by the Kramlichs and the facts and claims asserted in the complaint related to both entities, it is clear that "the controversy" relates to both entities. A. 11-13.Indeed, the Kramlichs admit that these two entities are "interlocking business entities." Appellant's Brief, ¶ 9.

¶13 The corporate entity has the following paragraph relating to arbitration:

> 11.1 **Arbitration** Any dispute, claim, or controversy arising out of or relating to this agreement or the breach thereof shall be settled by arbitration in accordance with the then current rules of the American Arbitration Association. Judgment upon the award rendered by said arbitration may be entered in any court having jurisdiction. Costs of arbitration shall be borne equally.

AA. 22.

¶14 It should be noted that this specific arbitration clause was previously applied to the partnership agreement in regards to the buyout of the general partner who actually contributed funds to the legal entity (as noted above, Kramlich is a limited partner, and contributed no funds). AA. 65. At the time this Odegaard lawsuit and arbitration occurred, the Kramlichs had the same legal interest in the entities at the time the case was sued out by the general partner and sent to arbitration by Judge Hager (AA. 45-55); the matter was resolved through binding arbitration with James Hill serving as the arbitrator (AA. 56-61). The Kramlich's had knowledge of that lawsuit, knowledge of the decision that it be sent to arbitration, and knowledge of the arbitrator's decision.

¶15 On May 12, 2016, the Hales withdrew their offer to buy out the Kramlichs' interest in the two legal entities:

> TO THE PLAINTIFFS: YOU ARE HEREBY NOTIFIED that the Hales hereby withdraw the proffered buy-out to the Kramlichs of their interest in Somerset Court Partnership and Somerset-Minot LLC and note that the pending case is therefore moot, leaving the Kramlichs with what they presently own – an interest in the two business entities.

AA. 72. The Kramlichs agreed that the Hales had the right to withdraw the offer:

> [**¶1**] Concerning Hales' Withdrawal of his [sic] offer there is no problem since the Plaintiffs never believed it was even an offer. . . .
>
> [**¶2**] If this offer can be considered an offer to settle we certainly agree that the Hales have every right to withdraw the offer and have done so by his [sic] instruments [sic] which he [sic] has served on the Kramlichs. . . .

AA. 73, 74. Once the offer to purchase the Kramlich interest was withdrawn, there was no need to do an accounting or evaluate the value of the two entities because the value of the entities is no longer relevant and that issue became moot. A determination of the value of the two legal entities relates only to a buy-out situation, which no longer exists. AA. 20-21 (corporation) & AA. 27 (partnership). The originating documents now control and the Kramlichs rights are limited to those rights in the originating documents. This means they have a right to receive dividends when dividends are issued, and the right to sell their interest (shares or their portion of the partnership) to a third party, nothing more. AA. 18, 26.

¶16 The Kramlichs assert the partnership, which does not have an arbitration provision, is the entity that holds title to the "vast majority of the assets at stake." **Appellants' Brief at Para. 6(b).** This is both irrelevant and simply not true. The comparative value of the two entities is irrelevant

because, as shown below, where the two entities are interrelated to the controversy and one of the entities has an arbitration clause, that clause applies to both entities. The Kramlichs' comparative value is also incorrect. The Kramlichs assert that the partnership owns in excess of 90% of the assets at stake, and that the corporation therefore has less than 10% of the assets of the two entities. *First*, as noted above, the Kramlichs do not own any of the assets of the entities. The entities own the assets. The Kramlichs only own shares in the corporation and a percentage of the partnership. AA. 64-65. Because the Kramlichs own none of these assets but only the value of their shares of the corporation or the value of the percentage of the partnership if sold to a third party. *Second*, the two entities are interrelated, hand in glove, as one entity owns the building and the other entity owns the operation. As such, the percentage of value of the two entities is irrelevant. *Third*, in regards to the actual comparative value of the two companies, as shown by the business appraisals used as the basis of the Hales' offer to the Kramlichs (the only appraisals done in this case), the correct percentage would be 74% partnership and 26% corporation. **Doc. Nos. 131 & 132.**

¶17 Additional facts relate to the cross appeal. We assert below that the lower court should have dismissed this entire case due to the fact that the relief requested cannot be had, that the case itself is entirely moot, and that

the basis of relief is unfounded. Under the originating documents, the value of the shares or percentage of the partnership comes into play only if the Hales are exercising the buy-out provision. Once withdrawn, the parties revert to the original originating documents, and the Kramlichs only have the right to distributions (as allowed under the operating agreements) or the right to sell their interest in the two entities to a third party. The claims listed in the complaint no longer apply, and the relief requested can no longer be had.

¶18 ARGUMENT

¶19 ISSUE 1 –Where a Controversy Relates to Two Interrelated Entities and an Arbitration Clause Exists as to Only One of Two Interrelated Entities, Does the Arbitration Clause Apply To Both Entities?

¶20 Under North Dakota law, arbitration can be ordered not only when an agreement to arbitrate exists, but also where a controversy is subject to an agreement to arbitrate. In this case, the agreement for arbitration exists as to one entity, and there is a controversy that is subject to both entities, and as such the agreement to arbitrate in the first entity applies as to the second

entity. The Kramlichs argue that the lower court erred in applying the arbitration clause to both entities. In other words, the Kramlichs argued that the entity without the arbitration clause cannot be subject to arbitration. However, such an interpretation of the law would entirely nullify the second part of Section 32-29.3-06, subdivision two:

> **32-29.3-06. Validity of agreements to arbitrate.**
> 1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.
>
> **2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate**.
>
> 3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
>
> 4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Emphasis added. As stated above, the partnership owns the building and the corporation runs the business. The two entities are therefore clearly interrelated. Moreover, as shown by the fact that both entities were sued out by the Kramlichs and the facts and claims asserted in the complaint related to both entities, it is clear that "the controversy" relates to both entities.

Indeed, the Kramlichs admit that these two entities are "interlocking business entities." Appellant's Brief, ¶ 9.

¶21 The Kramlichs position would render the second half of subdivision 2 ineffective:

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

Section 32-29.3-06(2) emphasis added. The lower court decided that an agreement to arbitrate exists as to the corporation. Thus, the first half of subdivision 2 required arbitration as to that entity. But the statute does not stop there. Subdivision 2 also provides that the court shall decide whether there is a controversy that is subject to an agreement to arbitrate. It is clear that "the controversy" relates to both entities. Both entities were sued out by the Kramlichs and the facts and claims asserted in the complaint related to both entities. Indeed, the Kramlichs admit that these two entities are "interlocking business entities." Appellant's Brief, ¶ 9.

¶22 The position taken by the Kramlichs—that arbitration can be ordered as to a legal entity only if that particular entity has an arbitration clause—results in making the second part of Section 32-29.3-06(2) ineffective. North Dakota rules of interpretation do not allow such a result:

> **1-02-38. Intentions in the enactment of statutes.**

> In enacting a statute, it is presumed that:
> 1. Compliance with the constitutions of the state and of the United States is intended.
> 2. **The entire statute is intended to be effective.**
> 3. A just and reasonable result is intended.
> 4. A result feasible of execution is intended.
> 5. Public interest is favored over any private interest.

Emphasis added. The corporation has a partnership agreement, and as a result is clearly subject to arbitration. But arbitration as to the partnership is also allowed where "a controversy is subject to an agreement to arbitrate." Section 32-29.3-06(2). In this case, the controversy before this court and before the lower court involved both legal entities, is clearly shown by the corporation selected to be sued by the plaintiffs, as well as the plaintiffs admission that these two entities are "interlocking business entities." Appellant's Brief, ¶9. As a result, the lower court was correct in concluding that arbitration could be ordered as to both entities, and the entire controversy.

¶23 If subdivision six, subpart two, had ended at the word "exists "then perhaps the Kramlich's would have a point. But the statute does not end there and continues beyond the requirements that there must exist an agreement to arbitrate and allows arbitration where an agreement to arbitrate does exist as to the parties and where a controversy between those exists. That is clearly the case here.

¶24 Thus, the statute clearly allows the lower court authority in this controversy to require arbitration as to both legal entities. The plain reading of the words contained in Section 32-29.3-06(2) support the lower court's decision to send both entities to arbitration.

¶25 The Kramlichs' assertion that the lower court merely "bootstrapped" the arbitration provision of one legal entity onto the other, as alleged in ¶11 of the Kramlichs Appellants' brief, is incorrect. The lower court simply applied the statute to the facts of this case: The controversy involves both legal entities, and arbitration is appropriate under Section 32-29.3-6.

¶26 Beyond the application of the plain language of the statute, we note that this Court's case law also justifies such a conclusion. The same "controversy" language is employed by this Court in its **Schwarz** decision, in which this court specifically quotes the language of the statute at Para. 11:

> [¶11] Chapter 32-29.3, N.D.C.C., contains the North Dakota Uniform Arbitration Act. When an arbitration clause is at issue, "[t]he court shall decide whether an agreement to arbitrate exists **or a controversy is subject to an agreement to arbitrate**." N.D.C.C. § 32-29.3-06(2).

Schwarz v. Gierke, 2010 ND 166, **¶11,** 788 NW2d 302 (emphasis added).

This Court also recognized, the the same paragraph in which the Court quoted section 32-29.3-06(2), the strong policy favoring the arbitration process:

> Further, recognizing a strong state and federal public policy favoring the arbitration process, this Court resolves any doubts concerning the scope of arbitrable issues in favor of arbitration when there is a broad arbitration clause and no exclusion clause.

Schwarz v. Gierke, 2010 ND 166, **¶11,** 788 NW 2d 302.

¶27 The Kramlich's go on to suggest to this court that it should ignore the plain language of the statement as well as the **Schwarz** decision, and instead apply a case that it asserts "more squarely fits," citing **26th Street Hospitality v. Real Builders**, 2016 ND 95, 879 NW2d 37. Appellant's Brief, ¶9. The Kramlich's assert that there was a failure of mutual intention of the parties *as to the second entity* at the time of contracting in regards arbitration. However, under North Dakota law —and specifically under Section 32-29.3-06(2) —one need only have a single agreement as to arbitration and that such single agreement can be applied to the entire controversy, which in this case includes the second entity.

¶28 The Kramlich's also incorrectly assert that Judge Mattson failed to "rest" his decision "upon any factual findings," as required in **26th Street Hospitality v. Real Builders,** 2016 ND 95, 879 NW2d 437. Appellant's Brief, ¶13.

> [¶11] **An order granting a motion to compel arbitration is reviewed de novo on appeal, unless the district court's decision was based on factual findings, which will only be reversed on**

> **appeal if they are clearly erroneous**. See Schwarz v. Gierke, 2010 ND 166, ¶ 11, 788 N.W.2d 302. In this case, the district court's decision **does not rest upon any factual findings; rather, it is based on the court's interpretation of the Partnership Agreement. The interpretation of a written contract to determine its legal effect is a question of law, which is fully reviewable on appe**al. Id.

Appellant's Brief, ¶13 (emphasis used by Appellants retained). But the lower court did make sufficient and specific findings that justify sending both entities to arbitration.

¶29 We summarize the following factual findings that Judge Mattson made in his decision:

> 1. The action involves the ownership interests of the Kramlichs in certain business entities owned by Robert Hale [**Court's Order, Paragraph 1]**; A.57
>
> 2. The court lists the entities in the caption itself, including the partnership and the corporation [**Court's Order, Caption]**; A.57
>
> 3. The partnership owns the land and building and leases to the corporation [**Court's Order, Paragraph 2]**; A.57
>
> 4. The corporation is the operating company that rents from Somerset Court Assisted Living facility, and the operating agreement covers the operation and profits generated from the corporation, and the Kramlich's alleged they have a 13.75% interest in the corporation [**Court's Order, Paragraph 3]**; A.58
>
> 5. The corporation was organized for the purpose of managing the facility, and the Kramlich's allege they have a 25% interest in the corporation [**Court's Order, Paragraph 4]**. A.58

6. The operating agreement for the corporation contains an arbitration clause, but the partnership agreement does not contain an arbitration provision[**Court's Order, Paragraph 22]**. A.62

7. The lower court acknowledged the assertion made by the Kramlich's that the partnership holds title to over 90% of the assets [**Court's Order, Paragraph 29]**. A.63-64

8. The lower court acknowledged that the Supreme Court has not had occasion to address multiple corporate or partnership agreements, some of which contain arbitration clauses and some which do not. [**Court's Order, Paragraph 33]** A.64

9. The lower court noted that in deciding whether the claims are so interrelated that all the claims should be arbitrated, it had difficulty in determining which business entities were implicated in the various allegations in the complaint because some allegations make specific reference to one or more of the entities and agreements, but many do not [**Court's Order, Paragraph 35].** A.65

10. The lower court noted that the Complaint in this action is "not a model of clarity," that it includes a mix of allegations, some of which are pertinent and some of which are not, and that "it is often difficult to determine which of the entities involved in this action are implicated in the various causes of actions." The court concluded that "any lack of clarity in the *Complaint* and any confusion of issues falls squarely at the feet of the [Kramlichs]." [**Court's Order, Paragraph 36]** A.65

11. In determining to send both entities to arbitration, the lower court applied the strong state and federal policy favoring the arbitration process. [**Court's Order, Paragraph 35] A. 65**

These findings support the lower courts conclusion that the two entities are interrelated, that a controversy relates to both entities, and that the percentage or valuation of the two entities is not determinative, and as such Section 32-29.3-06 can be applied to both entities.

¶30 Finally, we note that Judge Mattson's interpretation of Section 32-29.3-06(2) comports with the uniform arbitration law from which Section 32-29.3-06 is derived. According to Section 1-02-13, statutes derived from a uniform code are to be construed in a manner towards making the laws of those states that have enacted it uniform:

> **1-02-13. Uniform laws interpreted to effect purpose.**
> Any provision in this code which is a part of a uniform statute must be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 1-02-13. We note that **Section 6(b) of the Uniform Arbitration Act (2000)** contains the exact same language as North Dakota Section 32-29.3-06(2).

¶31 ISSUE 2 – Whether the lower court's decision to send the partnership entity to arbitration violates the Kramlichs' Demand for Jury Trial.

¶32 The Kramlichs assert that sending the partnership entity to arbitration unconstitutionally deprives them of their right to a jury trial. This contention should be rejected by this Court for the following reasons. *First*, we do not recall this issue ever being raised below. We have reviewed the primary

briefs submitted by the Kramlichs (Doc. No. 64, 111, 144, 184, 211, 234, 244, and 245) and fail to find any such argument being made below. Indeed, we cannot even find the word "jury" in any of those briefs. We do not find any reference in any of the Kramlich's briefs asserting a violation of the Kramlich's right to a jury trial where arbitration applies. *Second*, it is axiomatic that if one agrees to arbitration then that party waives the right to a jury trial. See **7 Uniform Acts Arbitration, Commissioners' Notes to Section 6**, last para., page 30. *Third*, if Section 32-29.3-06 does indeed result in arbitration applying to both entities because of the agreement to arbitrate in the first entity, then any right to a jury is waived by the agreement to allow arbitration in the first entity. And *fourth*, if the mater were remanded for a jury trial, it appears the issue to be addressed would be only if there is an agreement for arbitration that relates to the second entity or a controversy relating to both entities. See **3 Fed. Proc. Lawyers Ed *Arbitration* Section 4:47** at 51-52: "If the jury finds . . . that an agreement for arbitration was made in writing, . . . the court is to make an order summarily directing the parties to proceed with the arbitration in accordance with its terms. A party resisting arbitration bears the burden of showing that he or she is entitled to a jury trial." Citing 9 U.S.C.A. Section 4 and **Doctor's Associates, Inc. v. Distajo**, 107 F.3rd 126 (2nd Cir. 1997).

¶33 ISSUE 3 – Did the Lower Court Err in Denying the Hales' Motion To Dismiss the Case as Moot or Unfounded?

¶34 On May 12, 2016, the Hales withdrew their offer to buy out the Kramlichs' interest in the two legal entities:

> TO THE PLAINTIFFS: YOU ARE HEREBY NOTIFIED that the Hales hereby withdraw the proffered buy-out to the Kramlichs of their interest in Somerset Court Partnership and Somerset-Minot LLC and note that the pending case is therefore moot, leaving the Kramlichs with what they presently own – an interest in the two business entities.

AA. 72. The Kramlichs agreed that the Hales had the right to withdraw the offer:

> [**¶1**] Concerning Hales' Withdrawal of his [sic] offer there is no problem since the Plaintiffs never believed it was even an offer. . . .
>
> [**¶2**] If this offer can be considered an offer to settle we certainly agree that the Hales have every right to withdraw the offer and have done so by his [sic] instruments [sic] which he [sic] has served on the Kramlichs. . . .

AA. 73, 74. Once the offer to purchase the Kramlich interest was withdrawn, there was no need to do an accounting or evaluate the value of the two entities because the value of the entities is no longer relevant and that issue became moot. A determination of the value of the two legal entities relates only to a buy-out situation, which no longer exists. The originating documents now control and the Kramlichs rights are limited to those rights

in the originating documents. This means they have a right to receive dividends when dividends are issued, and the right to sell their interest (shares or their portion of the partnership) to a third party, nothing more.

¶35 The Kramlichs, in their Complaint, listed various claims for relief, all of which became moot or were unfounded. The Hales asserted to the lower court that the following claims for relief were either moot or unfounded:

- that Claim for Relief 1 (Percentage of ownership of legal entities) is moot or not subject to dispute and is a matter of fact based on the originating documents;
- that Claim for Relief 2 (appraisal value of entities) is moot;
- that Claim for Relief 3 (request for cash judgment) is moot;
- that Claim for Relief 4 (request for appointment of a receiver) is moot and has no factual basis on this record – dismissal would be without prejudice to bring a proper action for receivership;
- that Claim for Relief 5 (rejection of originating documents and replaced with general partnership and corporate statutes) has no basis in law even accepting the facts alleged;
- that Claim for Relief 6 (equal distributions) has no basis in law even accepting the facts alleged; and
- that Claim for Relief 7 (attorney fees) has no basis in this case under the American rule, contract law, or statutory basis.

Doc. No. 240. We will address each claim, noting why that claim is now moot or unfounded, thus supporting our view that the lower court erred in not dismissing this action (instead of sending it to arbitration).

¶36 First Claim for Relief in Wherefore Clause: Determination of percentage of companies owned. The determination of percentage of ownership is moot once the offer has been withdrawn; whatever ownership exists is found in the originating documents of the legal entities and the value is irrelevant. Now that the offer has been withdrawn, this issue is moot. Henceforth, the partnership and corporation will follow the originating documents and make any such distributions in accordance to the decisions of those in charge of the two legal entities.

¶37 Second Claim for Relief in Wherefore Clause: Request for Judgment as to appraised value of the two legal entities. The value of the two legal entities relates only to a buy-out situation, which no longer exists. As such, the issue of the value of the two entities is moot.

¶38 Third Claim for Relief in Wherefore Clause: Request for cash Judgment. Now that there is no offer for a buy-out, no cash Judgment would apply; the Kramlichs will be subject to the partnership and corporate originating documents as to any distributions that would be issued by either

of the two entities. As such, and demand for a cash Judgment is, following the withdraw of the offer, moot.

¶39 Fourth Claim for Relief in Wherefore Clause: Request for appointment of receiver. The Kramlichs have failed to provide any valid basis for appointment of a receiver. Now that the offer has been rescinded, any request for a receiver should be made in accordance to the specific statutory provisions that apply and should be left to a separate lawsuit in which the Kramlichs follow the statutory requirements in requesting a receiver. There is no basis for the allegations or the request for a receiver. Now that the offer has been withdrawn, this issue is moot; the Kramlich have only the right to distributions in accordance with the originating documents.

¶40 Fifth Claim for Relief in Wherefore Clause: Request that the Court disregard the originating documents and apply instead general partnership and corporate law. The Kramlichs seem to think that the lower court had the option of ignoring the originating documents and replace them with general partnership and corporate law. There is simply no basis for demanding that the originating documents be ignored, or for ignoring North Dakota partnership and corporate law. The lower court should have dismissed this claim for relief as having no basis in law.

¶41 Sixth Claim for Relief in Wherefore Clause: Request for Equal Distributions. The Kramlichs next assert (by using the word equalized) that any distributions made to the Hales should be equally made to the Kramlichs, although they also refer to getting their "share." The Kramlichs own a different percentage of the two entities. Distributions are made in accordance to the originating documents and based on the percentage owned. There is simply no basis for demanding that the originating documents be ignored, or for ignoring North Dakota partnership and corporate law. In addition, the general partner and the majority shareholders have the option to decide that no distributions can be made until the loans and other financial requirements have been met. The persons who actually invested in the two entities and paid for the land, buildings, and all the operating expenses, have the option of insisting that they get repaid before any distributions are issued. Once the loans have been paid off, the owners of the two entities will get dividends as determined by the controlling agents of the two entities.

¶42 Seventh Claim for Relief in Wherefore Clause: Request for Attorney Fees. The Kramlichs provide no basis for this demand. Under the American Rule, each party pays for his or her own attorney. Only if there is a contractual or statutory basis for an award of attorney fees would there be

any basis for this request. There is no contractual or statutory basis for such an award and the lower court should have dismissed this claim for relief.

¶43 CONCLUSION

¶44 For the reasons stated above, Robert and Susan Hale request that this Court reverse the lower court's decision not to grant their motion to dismiss the case as moot or unfounded, thus ending this case. In the alternative, Robert and Susan Hale request that this court affirm the lower court's decision to send the entire matter to arbitration.

¶45 Dated this 15th day of May, 2017.

_____/s/_____
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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court No. 20160386
Ward County Civil No. 51-2014-CV-00478

Gary Kramlich and Glory Kramlich,	)
	)
Plaintiffs, Appellants and Cross-Appellees,	)
	)
-vs-	)
	)
Robert Hale and Susan Hale, individually,	)
Somerset Court Partnership, Bullwinkle	)
Builders, LLC, Somerset-Minot, LLC,	)
Vision Management Services, LLC	)
and Spectrum Care, LLC	)
	)
Defendants, Appellees and Cross-Appellants.	)

APPELLEE AND CROSS-APPELLANT'S CERTIFICATE OF SERVICE

ON APPEAL FROM ORDER DATED NOVEMBER 8, 2016, DOCKET NO. 248, THE HONORABLE DOUGLAS L. MATTSON PRESIDING IN WARD COUNTY DISTRICT COURT, NORTH CENTRAL JUDICIAL DISTRICT

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¶1 Defendant-Appellees Robert and Susan Hale have served the following document:

1) Appellee and Cross-Appellants' Brief 5-15-17 (WORD)
2) Appellee and Cross-Appellants' Brief 5-15-17 (PDF)
3) Appellee and Cross-Appellants' Appendix, Part 1 5-15-17 (PDF)
4) Appellee and Cross-Appellants' Appendix, Part 1 5-15-17 (PDF)
5) Certificate of Service 5-15-17
5) Appellee and Cross-Appellants' Appendix Cover Page 5-15-17 (WORD)
6) Appellee and Cross-Appellants' Appendix Cover Page 5-15-17 (PDF)

The aforementioned documents were served on the 15th day of May, 2017, by email to the following:

Michael Ward
Attorney at Law
Michael Ward mike.9273@yahoo.com

¶2 Dated this 15th day of May, 2017.

_____/s/_____
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