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Court of Appeals
Division I
State of Washington

73199-8

NO. 73199-8-I

KING COUNTY CAUSE NO. 15-2-04826-1 SEA

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF SEATTLE, INC., a California corporation,
plaintiff,
Appellant,

v.

YATES, WOOD & MACDONALD, INC.,
a Washington corporation, defendant,
Respondent.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. INTRODUCTION

Appellant Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("Marcus & Millichap") is a real estate brokerage firm which listed and sold an apartment complex in Seattle after execution of an Exclusive Representation Agreement with the seller. The property was not listed with any multiple listing services and no agreement exists for payment of any commission or fee to third parties. Following the sale, Respondent Yates, Wood & MacDonald, Inc. ("Yates") initiated an arbitration proceeding with the Commercial Brokers Association ("CBA") claiming Marcus & Millichap owed Yates a portion of the commission.

This appeal arises from the trial court's erroneous decision to compel arbitration of a dispute between Marcus & Millichap and Yates **despite the absence of a "record" containing a valid contractual arbitration provision between the parties**. The trial court erred by ignoring the threshold requirement that parties seeking to compel arbitration under the Uniform Arbitration Act, RCW Chapter

7.04A, must establish the existence of an enforceable "agreement to arbitrate" in a "record". *See* RCW 7.04A.060(1).

If adopted, the rule of the trial court would effectively rewrite the Uniform Arbitration Act by eviscerating the requirement of establishing a valid "agreement to arbitrate" contained in a "record"—contrary to the plain language of the Uniform Arbitration Act. *See* RCW 7.04A.010(7). Such a ruling would replace the clear, bright line statutory requirement that a party seeking to compel arbitration must produce a "record" of the purported arbitration agreement that is "retrievable in perceivable form" with an ambiguous rule requiring fact intensive, case-by-case analysis that would almost certainly result in non-uniform application and needless litigation on the arbitrability of disputes. *See* RCW 7.04A.010(7).

Accordingly, Marcus & Millichap respectfully request that this Court reverse and vacate the trial court's March 16, 2015 Order Denying Plaintiff's Motion to Stay Arbitration (CP 235-36) (Appendix A) and Order Granting Defendant's Motion to Compel Arbitration and Dismissing Case (CP 237-38) (Appendix B). Marcus & Millichap further requests that this Court remand

with instructions directing the trial court to enter an order staying arbitration of the parties' dispute.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error.

1. The trial court erred by entering its March 16, 2015 Order Denying Plaintiff's Motion to Stay Arbitration (CP 235-36) (Appendix A).

2. The trial court erred by entering its March 16, 2015 Order Granting Defendant's Motion to Compel Arbitration and Dismissing Case (CP 237-38) (Appendix B).

B. Issues Pertaining To Assignments Of Error.

1. Whether this Court should reverse the trial court's decision to compel arbitration proceedings under RCW 7.04A.070 where no contractual arbitration provision exists between the parties to the dispute. (*See* Section IV, *infra*)

2. Whether this Court should award Marcus & Millichap costs on appeal pursuant to RAP 14.1 *et seq.* and RAP 18.1 (*See* Section V, *infra*)

III. STATEMENT OF THE CASE

Marcus & Millichap is a real estate brokerage firm specializing in real estate investment sales and financing. *See* Decl. Deis, ¶ 3. (CP 24) Its principal offices are located in Seattle, WA. *Id.* (CP 24-25)

On approximately July 31, 2014 Marcus & Millichap entered into an exclusive representation agreement ("Exclusive Representation Agreement") with Goetzinger Family LLP ("Seller") to sell the Ticino Apartments located in Seattle, WA (the "Property"). *See* Decl. Deis, ¶ 8. (CP 26)

Following execution of the Exclusive Representation Agreement, Marcus & Millichap marketed the Property in-house directly to its list of potential buyers. *See* Decl. Deis, ¶ 9. (CP 26) It did not list the Property with any multiple listing service. *Id.* (CP 26) Neither the Seller nor Marcus & Millichap executed any agreement for cooperate brokerage of the Property. *See* Decl. Deis, ¶ 11. (CP 27); Decl. Morasch, ¶ 12. (CP 210)

In response to its efforts, Marcus & Millichap received offers for the Property. *See* Decl. Deis, ¶¶ 9-10. (CP 26-27) After further direct marketing efforts and discussions with the Seller

related to the offers, the Seller accepted an offer to purchase from the assignee of BriarBox LLC. (CP 114) Marcus & Millichap earned a commission upon closing of the sale on approximately November 24, 2014. *See* Decl. Deis, ¶ 10. (CP 27)

Following the sale of the Property by Marcus & Millichap, Yates made a claim seeking one half of the commission earned by Marcus & Millichap.[1] *See* Decl. Moll, ¶ 9. (CP 179) However, Yates had no agreement with the Seller to broker the Property and had no agreement with Marcus & Millichap for cooperate brokerage of the Property. *See* Decl. Moll, ¶ 9. (CP 179)

Of paramount importance, no arbitration agreement exists between Marcus & Millichap and Yates. *See* Decl. Moll, ¶ 9. (CP 179) Despite the lack of an arbitration agreement between the parties, Yates initiated an arbitration proceeding with the Commercial Brokers Association seeking a portion of the commission. *See* Decl. Moll, ¶ 9. (CP 179) CBA is a commercial real estate multiple listing service. *See* Decl. Mills

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[1] Respondent Yates is a real estate brokerage and property management firm. (CP 23, 117) Yates was the property manager for the Property at the time Marcus & Millichap entered into the Exclusive Representation Agreement with the Seller. (CP 117)

Clement, ¶ 2. (CP 66) The Property which is the subject of this action was not listed with CBA. *See* Decl. Deis, ¶ 9. (CP 26)

Over Marcus & Millichap's objection, CBA scheduled an arbitration proceeding for March 23, 2015. *See* Decl. Deis, ¶ 15. (CP 28) Marcus & Millichap requested a copy of any agreement providing CBA with the jurisdiction to arbitrate Yates' claim. *See* Decl. Mott., ¶ 3 (CP 29-30). No agreement was produced. To preserve its rights Marcus & Millichap also submitted an Answer in the proceedings while continuing to request a copy of any agreement. (CP 116-21) Upon confirming the lack of any arbitration agreement Marcus & Millichap demanded that CBA terminate any arbitration proceeding. *See* Decl. Deis, ¶ 15. (CP 28) Moreover, in response to Marcus & Millichap's request for evidence of an agreement to arbitrate the dispute, CBA threatened litigation to compel Marcus & Millichap to proceed with the arbitration of Yates' claim and threatened further punitive action against Marcus & Millichap agents. *See* Decl. Mott., ¶ 5 and Ex. A. (CP 30-35)

Marcus & Millichap thereafter initiated a declaratory action in King County Superior Court seeking an order from the

court to stay the arbitration proceeding initiated by Yates on the grounds that no valid arbitration agreement exists between the parties and that CBA lacked jurisdiction over the parties and the transaction which is the subject of this dispute. (CP 1-5) On March 16, 2015, the trial court entered orders compelling arbitration and denying Marcus & Millichap's motion to stay arbitration. (CP 235-38) Marcus & Millichap timely appealed these rulings. (CP 232-33)

IV. ARGUMENT

A. This appeal is subject to de novo review.

Trial court decisions to compel or deny arbitration are reviewed de novo. *Saleemi v. Doctor's Associates, Inc.*, 176 Wash. 2d 368, 375, 292 P.3d 108, 111 (2013)(citations omitted).[2]

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[2] The burden of proof is on the party seeking to avoid arbitration. *Townsend v. Quadrant Corp.*, 153 Wash. App. 870, 878, 224 P.3d 818, 824 (2009) *aff'd on other grounds,* 173 Wash. 2d 451, 268 P.3d 917 (2012)(citing *Zuver*, 153 Wash. 2d, 302).

B. The trial court erred by compelling arbitration where there is no "record" containing an agreement between Marcus & Millichap and Yates or CBA that would obligate Marcus & Millichap to arbitrate this dispute.

The arbitrability of a dispute is determined by examining the parties' agreement to arbitrate. *In re Marriage of Pascale*, 173 Wash. App. 836, 842, 295 P.3d 805 (2013). A party cannot be required to arbitrate any dispute unless bound by an enforceable agreement to arbitrate (providing that the parties agree to submit the dispute to arbitration). *Hill v. Garda CL Nw., Inc.*, 179 Wash. 2d 47, 53, 308 P.3d 635, 637 (2013) *cert. denied,* 134 S. Ct. 2821, 189 L. Ed. 2d 785 (U.S. 2014).[3] Whether a party is bound by a purported "agreement to arbitrate" is a legal question determined by the courts without considering the underlying merits of the controversy.[4] *See* RCW 7.04A.060(2);[5]

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[3] *See also Satomi Owners Ass'n v. Satomi, LLC*, 167 Wash. 2d 781, 809, 225 P.3d 213 (2009) (internal citations and quotation marks omitted) (quoting *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002)).

[4] In contrast, "[a]n arbitrator shall decide [...] whether a contract containing a valid agreement to arbitrate is enforceable." *See* RCW 7.04A.060(3) (bracketed text added).

Woodall v. Avalon Care Ctr.-Fed. Way, LLC, 155 Wash. App. 919, 923, 231 P.3d 1252, 1254 (2010); *Stein v. Geonerco, Inc.*, 105 Wash. App. 41, 45, 17 P.3d 1266 (2001).

The Uniform Arbitration Act, RCW Chapter 7.04A, governs "agreements to arbitrate" in Washington. *See* RCW 7.04A.030(2). The section of the Act titled "Validity of agreement to arbitrate", RCW 7.04A.060(1), provides as follows:

> 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 contract.

To emphasize, a party seeking to compel arbitration must, as a threshold matter, establish the existence of an enforceable agreement to arbitrate and that agreement must be "**contained in a record**."[6] *See* RCW 7.04A.060(1). The Uniform Arbitration Act specifically defines "record" as "information that is inscribed

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[5] RCW 7.04A.060(2) provides: "The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate."

[6] The rule effectuates the policy that parties must **voluntarily** choose to submit their disputes to arbitration. *Davidson v. Hensen*, 135 Wash. 2d 112, 118, 954 P.2d 1327, 1330 (1998).

on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." *See* RCW 7.04A.010(7).

In other words, a party seeking to compel arbitration must produce a "record", *i.e.*, a writing, which contains an enforceable agreement to arbitrate. *Id.* Despite ample opportunity, Yates cannot satisfy this threshold requirement. CBA has confirmed there is no record of an agreement with Marcus & Millichap authorizing it to arbitrate disputes with other brokers. *See* February 13, 2013 9:45 a.m. E-mail from Osborn to Mott (CP 33); *see also* Decl. Moll, ¶ 9. (CP 179) Marcus & Millichap requested evidence of any such agreement from CBA when Yates initiated the arbitration proceedings. *See* February 11, 20-15 2:06 p.m. E-mail from Mott to Osborn (CP 34). No such agreement to arbitrate has been produced. *See* Decls. Deis, ¶ 12 (CP 27), Morasch, ¶ 5 (CP 208), *and* Mott, ¶ 4, Ex. A (CP 30, 33).

Yates argued to the trial court that "CBA's arbitration provision is clearly in a record within the meaning of RCW 7.04A.010(7) and RCW 7.04A.060." *See* Reply in Support of

Defendant's Motion to Compel Arbitration at 2 (CP 192). In doing so, Yates points to the CBA Bylaws and Rules and Regulations on its website, which provides in part, as follows:

> X. ARBITRATION
>
> A. Duty to Arbitrate. It is the duty of the members of this Association (and each so agrees) to submit all controversies involving commissions, between or among them to binding arbitration by the Association, rather then to bring a suit to law. The foregoing includes controversies which arose prior to one of the parties becoming a member.
>
> * * *
>
> Accordingly, no members may institute legal action involving such a controversy against any other member without the prior approval of the Board of Directors.

See Decl. Clement, ¶¶ 4-5 and Ex. 1, § X(A) (CP 67, 77-78); *see also* Defendant's Motion to Compel Arbitration and Response to Plaintiff's Motion to Stay Arbitration at 5 (CP 55).

In so arguing, Yates claims the "record" is the information on CBA's website. However the website does not contain an agreement to arbitrate, as required. *See* RCW 7.04A.060(1). It merely sets forth CBA's bylaws, regulations and rules. Mr. Deis, the Regional Manager of Marcus & Millichap, has never seen, let alone executed, a CBA application form in which applicants

allegedly consent to CBA jurisdiction for broker disputes. *See* Decl. Deis, ¶¶ 6-7 (CP 25-26).

Similarly, the two Marcus & Millichap agents involved in the transaction have never seen or executed any agreement with CBA. *See* Decls. Moll, ¶¶ 5-6 (CP 178) *and* Morasch, ¶ 5 (CP 208). Further, in the many years that Marcus & Millichap and its agents have provided brokerage services in the greater Seattle area, CBA has never provided such a form to sign or otherwise requested consent to its arbitration provisions. *See* Decls. Mott, ¶¶ 4-5 (CP 30), Deis, ¶ 7 (CP 26) *and* Morasch, ¶ 5 (CP 208).

Notably, an agreement to arbitrate is typically a bilateral contract. *In re Marriage of Pascale*, 173 Wash. App., 839; *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wash. 2d 293, 103 P.3d 753 (2004). Whether it be a CR 2A agreement in the Washington Supreme Court case *In re Marriage of Pascale*, or an adhesion employment contract as in *Zuver v. Airtouch Communications, Inc.*, "arbitration agreements" are typically bilateral, with both parties assenting to the arbitration clause. *Id.*

Likewise, in *Townsend v. Quadrant Corp.*, 173 Wash. 2d 451, 460-61, 268 P.3d 917, 922 (2012), the Washington Supreme Court

emphasizes that to be valid an agreement to arbitrate must generally be signed:

> As a general rule, nonsignatories are not bound by arbitration clauses. In *Satomi*, we held that " ' "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." ' "

Townsend, 173 Wash. 2d, 460-61(italicization in original).

Here, not only is there no signed contract, there is no record whatsoever: no written agreement, no draft agreement, no e-mail referring to an agreement. The record is devoid of even the application which Yates claims constitutes an agreement. Simply put, the lack of any written record containing an agreement to arbitrate this dispute prevents Yates from compelling arbitration. *Hill*, 179 Wash. 2d, 53. Therefore, the trial court erred by compelling arbitration. *Id.*

C. Yates is not entitled to compel arbitration based on the bald-faced allegation (which Marcus & Millichap denies) that there was once a written agreement to arbitrate but Yates cannot produce it.

As set forth in Section IV(B), *supra*, the trial court erred by compelling arbitration based on the lack of an express agreement to arbitrate contained in a "record". *See* RCW 7.04A.060(1). Acknowledging the requirement that it must produce a written

agreement to arbitrate, Yates alleges that it once had a copy of such an agreement but failed to retain it. Ultimately, Yates' supposed failure to retain a copy of the purported written agreement to arbitrate (the existence of which is disputed by Marcus & Millichap) is contrary to the clear, uniform statutory requirement that the "record" containing an arbitration agreement must be "retrievable in perceivable form." *See* RCW 7.04A.010(7).

In other words, the Uniform Arbitration Act imposes a record keeping requirement on a party seeking to compel arbitration. *Id.* Because Yates or CBA failed to retain a "retrievable" and "perceivable" copy of the purported agreement to arbitrate, Yates is not entitled to compel arbitration under RCW 7.04A.060.

The propriety of the record keeping requirement is consistent with the principle that the failure to agree on mere details will not vitiate a contract, but the failure to prove agreement on material terms will. *Sea-Van Investments Associates v. Hamilton*, 125 Wash. 2d 120, 128, 881 P.2d 1035 (1994). An arbitration provision giving up a party's right to a jury trial and appeal is clearly a material term which requires evidence of mutual assent. No evidence of such mutual assent exists here. Yates' bald faced (and disputed)

allegation that there once existed an agreement to arbitrate is insufficient as a basis on which to establish the validity of an agreement to arbitrate and falls short of the record keeping requirements of the Uniform Arbitration Act.

To emphasize, CBA's explanation that it does not keep copies of any records, including membership agreements, past 2009 does not allow it to speculate as to whether Marcus & Millichap executed any agreement or what the terms of such agreement might have been. Even if true, in the 22 years since CBA alleges Marcus & Millichap has been a member it has apparently never sought an update for its records or agreements. If CBA (and Yates) intend to enforce provisions of any purported arbitration contract with its alleged members, it is obligated to retain copies of such agreement. Otherwise parties are left to guess as to the terms of any alleged agreement between CBA and Marcus & Millichap. Without any written agreement the statutory requirements are not met and the terms of any agreement are purely speculative. Yates has simply failed to meet its burden of proof to show the existence or terms of a contract as required by the statute.

D. Marcus & Millichap did not (and could not have) impliedly agreed to the purported agreement to arbitrate by using CBA's member services.

Attempting to side step the requirement of producing a written agreement to arbitrate, in the trial court Yates argued that "[b]y applying for and becoming CBA members, and by accepting the attendant privileges and benefits of their CBA membership, [Marcus & Millichap] and Morasch each agreed" to be bound by the Arbitration provision set forth in the Bylaws. (CP 54) Again, the argument ultimately fails because as even Yates acknowledges, the Uniform Arbitration Act requires a written "record" containing the purported agreement to arbitrate. Here, no application, past or present, has been produced. In other words, the plain language of the Act precludes the possibility that a party could impliedly agree to an arbitration provision, as Yates argues.

Even assuming (but not conceding) that a party could potentially be bound by an implied-in-fact agreement to arbitrate, Yates fails to establish the existence of such an agreement. In this regard, Washington follows the objective manifestation test for contracts. *Wilson Court Ltd. P'ship v.*

Tony Maroni's, Inc., 134 Wash. 2d 692, 699, 952 P.2d 590 (1998). Accordingly, for a contract to form, the parties must objectively manifest their mutual assent to all material terms of the agreement. *P.E. Sys., LLC v. CPI Corp.*, 176 Wash. 2d 198, 209, 289 P.3d 638, 644 (2012). Moreover, the terms assented to must be sufficiently definite. *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wash. 2d 171, 177-78, 94 P.3d 945, 949 (2004).

Here, again, there is no evidence that Marcus & Millichap consented to the mandatory terms of CBA's arbitration provisions. There is no evidence that any agreement related to arbitration was presented to Marcus & Millichap, discussed or consented to in any fashion. Again, despite Yates's claims that every CBA member is required to complete an application which includes the applicant's agreement to arbitrate, Yates has failed to produce even **one** agreement to arbitrate completed by **any** Marcus & Millichap agent. Surprisingly, it has also failed to produce any agreement between Yates and CBA under which it agreed to arbitrate disputes.

It is noteworthy that Marcus & Millichap subscribes to a variety of methods and services to advertise its property listings

including direct marketing through the Internet and use of multiple listing services. Loopnet, CBA, E-Property Blast, CoStar and LinkedIn are examples of the services used by Marcus & Millichap that provide multiple listing services or other advertising for brokers. (CP 25) While disputes among brokers using these services are certainly possible, it is illogical to assume that any dispute related to a transaction using these other real estate listing services is automatically subject to CBA's arbitration provisions simply because Marcus & Millichap agents may pay a fee to occasionally use CBA. Yet this is exactly what Yates is attempting to force Marcus & Millichap to do in this matter. Given the lack of an agreement to arbitrate, and fact that this sale is unrelated to CBA, this dispute should not be subject to CBA arbitration.

In addition to the lack of any agreement to arbitrate, the Property which is the subject of this action and for which Yates seeks a commission was never listed with CBA. (CP 20) Moreover, CBA had no involvement with the listing of the Property and no involvement in the sale of the Property whatsoever. (CP 20) CBA's rules and regulations related to

arbitration of commission disputes between brokers cannot apply when Marcus & Millichap has not contracted with CBA for this purpose and the Property subject to this claim was never listed with CBA. Thus, any argument that there was an implied-in-fact agreement is unavailing.

In this regard, Marcus & Millichap's agents are independent contractors that are hired and paid on a contractual basis. *See* Decls. Deis, ¶ 3 (CP 25), Moll Decl., ¶ 3 (CP 177), *and* Morasch, ¶ 3 (CP 207-08). As independent contractors, Marcus & Millichap's agents choose to be members of a variety of real estate organizations. *Id.* Some agree to be members of CBA. Others do not. For example, Marcus & Millichap has 29 agents listed in the Seattle office. *See* www.marcusmillichap.com.[7] Of those 29 agents, only 18 were listed as members of CBA as of March 5, 2015. *See* Decl. of Clement, ¶ 8 and Ex. 5. (CP 68, 105-08) CBA stated it would terminate the CBA memberships of all Marcus & Millichap

[7] The Court can take judicial notice of such factual information available on the internet. *O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224-25 (10th Cir. 2007); *Gildon v. Simon Prop. Grp., Inc.*, 158 Wash. 2d 483, 145 P.3d 1196 (2006).

agents and accordingly terminated the agents' CBA listings and removed access to CBA's systems. *See* Decl. Mott, ¶ 5 and Ex. A. (CP 30-32)

Further, even had they signed agreements with CBA (which they did not), Marcus & Millichap agents have no authority to bind Marcus & Millichap to CBA rules simply because of their membership with CBA. Mr. Morasch, one of two Marcus & Millichap agents that earned a commission in this transaction, previously paid a fee to use the CBA listing services, *i.e.*, prior to his termination from CBA. *See* Decl. Mott, ¶ 5 and Ex. A. (CP 30-32) However there is no evidence that he has ever signed an application or other agreement with CBA, has ever been advised that his membership obligates him to arbitrate disputes and has ever been provided or reviewed CBA's bylaws, rules or regulations. Consequently there is no evidence that Mr. Morasch has agreed through his limited use of CBA's resources to be bound by its arbitration provisions.

In the trial court, Yates omitted the fact that the other Marcus & Millichap agent representing the seller in the disputed transaction (Kellan Moll) is not a member of CBA. (CP 178)

Nevertheless, despite the lack of any arbitration agreement Yates seeks to exert CBA jurisdiction over Mr. Moll's commission as well. Mr. Moll is not a CBA member and likewise never agreed to submit any disputes to CBA arbitration. *See* Moll Decl. (CP 177-179)

In the trial court, Yates misplaced reliance on *Keith Adams & Associates, Inc. v. Edwards*, 3 Wash. App. 623, 477 P.2d 36 (1970) *disapproved of by Godfrey v. Hartford Cas. Ins. Co.*, 142 Wash. 2d 885, 16 P.3d 617 (2001), and *Elbadramany v. Stanley*, 490 So. 2d 964 (Fla. Dist. Ct. App. 1986). (CP 55-57) In both cases, real estate brokers had executed written membership applications with their associations which included their agreement to abide by the organization's rules and regulations including submission of member disputes to arbitration. Here, no evidence exists of Marcus & Millichap's execution of any membership application and no evidence that Marcus & Millichap agreed to the terms of any membership application. Yates has even failed to produce evidence that *it* signed an agreement with CBA to arbitrate disputes.

In short, Marcus & Millichap has not agreed to arbitrate this dispute. Arbitration is a matter of contract and a party

cannot be required to submit to arbitration any dispute which it has not agreed so to submit. *Hill*, 179 Wash. 2d, 53.

V. COSTS ON APPEAL

Marcus & Millichap seeks an award of costs on appeal pursuant to RAP 14.1 *et seq.* and RAP 18.1.

VI. CONCLUSION

The role of the trial court was to determine whether a valid arbitration agreement exists between Marcus & Millichap and Yates, the parties to the dispute. Yet no agreement exists under which Marcus & Millichap agreed to arbitrate all disputes with CBA. Further, CBA has no relationship whatsoever to the underlying claim as the Property at issue was never even listed with CBA. The claim that parties in the Yates' position have far reaching authority to arbitrate claims for which there is no "record" of an agreement to arbitrate is not supported by any contract, common sense, or the Uniform Arbitration Act. The ruling of the trial court is contrary to the Act's stated purpose to promote uniformity of the Act.

Under these circumstances, the trial court erred by compelling Marcus & Millichap to participate in the arbitration

proceedings commenced by Yates with CBA. Consequently, this Court should reverse the trial court's March 16, 2015 Order Denying Plaintiff's Motion to Stay Arbitration (CP 235-36) (Appendix A) and Order Granting Defendant's Motion to Compel Arbitration and Dismissing Case (CP 237-38) (Appendix B).

Respectfully submitted this 22nd day of June, 2015.

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APPENDIX A

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF SEATTLE, INC., a California corporation,

Plaintiff,

v.

YATES, WOOD & MACDONALD, INC., a Washington corporation,

Defendant.

The Honorable Jean Rietschel

NO. 15-2-04826-1 SEA

ORDER DENYING PLAINTIFF'S MOTION TO STAY ARBITRATION

THIS MATTER, having come on regularly before the undersigned Judge on the motion of plaintiff to stay arbitration, the Court having reviewed and considered that motion, the declarations of Seth Mott, Michael Callan, Joel Deis, Michelle Mills Clement and Natalia Beran, defendant's response, and any reply, and all evidence presented, having reviewed and considered the files and records herein, and being otherwise fully advised in the premises, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Stay Arbitration is DENIED. THIS ORDER AFFECTS A SUBSTANTIVE RIGHT IN A CIVIL ACTION AND CONSTITUTES AN ORDER THAT DETERMINES THE ACTION.

DATED this 16 day of March, 2015.

The Honorable Jean Rietschel

ORIGINAL CP 235

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APPENDIX B

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF SEATTLE, INC., a California corporation,

Plaintiff,

v.

YATES, WOOD & MACDONALD, INC., a Washington corporation,

Defendant.

The Honorable Jean Rietschel

NO. 15-2-04826-1 SEA

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISSING CASE

(Clerk's Action Required)

THIS MATTER, having come on regularly before the undersigned Judge on the motion of defendant to compel arbitration, the Court having reviewed and considered that motion, the declarations of Michelle Mills Clement and Natalia Beran, and any response and reply, and all evidence presented, having reviewed and considered the files and records herein, and being otherwise fully advised in the premises, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Compel Arbitration is GRANTED; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff is ordered and compelled to arbitration pursuant to RCW 7.04A.070 for resolution of defendant's claims currently pending in arbitration before the Commercial Broker's Association; and it is further

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ORDERED, ADJUDGED AND DECREED that this action is hereby dismissed with prejudice.

DATED this 16 day of March, 2015.

THIS ORDER AFFECTS A SUBSTANTIAL RIGHT IN A CIVIL ACTION AND CONSTITUTES AN ORDER THAT DETERMINES THE ACTION.

The Honorable Jean Rietschel

Presented by:

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NO. 73199-8-I

KING COUNTY CAUSE NO. 15-2-04826-1 SEA

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF SEATTLE, INC., a California corporation, plaintiff, Appellant,

v.

YATES, WOOD & MACDONALD, INC., a Washington corporation., defendant, Respondent,

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DECLARATION OF SERVICE

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I, Jenny Lebeau, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am employed with the law firm of Peterson Russell Kelly PLLC, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to this action, and am competent to be a witness herein.

I hereby certify that on June 22, 2015, I caused to be served a copy of the following pleadings to the following party and/or attorney(s) at their last known address via the method(s) indicated below:

1. Appellant Marcus & Millichap's Opening Brief; and
2. Declaration of Service.

	Via Stipulated E-Service Agreement
Shannon J. Lawless,	Via Email:
WSBA#43385	Lawless@ryanlaw.com
Bryan C. Graff, WSBA#38553	Graff@ryanlaw.com
Roger J. Kindley, WSBA#11875	Kindley@ryanlaw.com;
Ryan, Swanson & Cleveland, PLLC	Dominique@ryanlaw.com;
1201 3rd Avenue, Suite 3400	Fisher@ryanlaw.com
Seattle, WA 98101-3034	

Attorney for Defendant Yates, Wood & MacDonald, Inc.

Dated: June 22, 2015, at Bellevue, Washington.

Jenny Lebeau, Paralegal