

70664-1

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NO. 70664-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION I

LANGDON HALL LAND, LLC,
Plaintiff/Appellant,

v.

LANGDON HALL LAND, INC.; ALBERT RUMPH;
JAMES McCLAIN; and JOHN FRANKENFELD,
Defendants/Respondents.

BRIEF OF RESPONDENT JAMES McCLAIN

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. ISSUES PRESENTED.....	3
III. STATEMENT OF FACTS.....	4
A. Background of Dispute and Florida Arbitration Award.....	4
B. Appellant Langdon Hall Land LLC Confirms Arbitration Award in Washington.....	6
C. Appellant Langdon Hall Land LLC's Misrepresentation to the Trial Court Regarding Subject Matter Jurisdiction.....	7
D. The Trial Court Grants McClain's Motion to Vacate Due to Lack of Subject Matter Jurisdiction.....	8
IV. ARGUMENT.....	9
A. Standard of Review.....	9
B. Lack of Subject Matter Jurisdiction May Be Raised at Any Time.....	10
C. The Trial Court's Ruling on Subject Matter Jurisdiction Was Proper.....	11

1.	Washington’s Uniform Arbitration Act Does Not Confer Subject Matter Jurisdiction to Washington Courts to Confirm an Arbitration Award Rendered in Florida When Parties Agreed to Arbitrate in Florida	11
2.	Courts in Other States Have Consistently Held that Arbitration Awards Can Only be Confirmed in the State Designated in the Arbitration Agreement	14
3.	Official Comments to the Uniform Arbitration Act Provide that Washington Courts Lacked Subject Matter Jurisdiction	16
4.	No Washington Court has Interpreted RCW 7.04A.260	18
D.	The Federal Arbitration Act Does Not Preempt the Trial Court’s Application of Washington’s Uniform Arbitration Act	19
1.	Appellants Have Admitted that Chapter 7.04A RCW Applies	19
2.	The Arbitration Award Does Not Fall Within the Federal Arbitration Act	20

3.	The Trial Court’s Interpretation of Chapter 7.04A RCW is Not Contrary to the Federal Arbitration Act	21
i.	The Federal Arbitration Act Permits the Award to be Confirmed in Hillsborough County Courts	23
ii.	If No Court was Specified, the Federal Arbitration Act Permits the Award to be Confirmed in U.S. District Court of the Middle District of Florida	24
V.	CONCLUSION	25

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Allied-Bruce Terminix Companies, Inc. v. Dobson</i> , 513 U.S. 265, 270, 115 S. Ct. 834, 130 L. Ed. 2d 753 (1995).....	20
<i>Angelo Prop. Co., LP v. Hafiz</i> , 167 Wn. App. 789, 274 P.3d 1075, review denied, 175 Wn.2d 1012, 287 P.3d 594 (2012).....	10
<i>Chicago Southshore & S. Bend R.R. v. N. Indiana Commuter Transp. Dist.</i> , 184 Ill. 2d 151, 703 N.E.2d 7 (1998).....	14-15
<i>Chicanos Por La Causa, Inc. v. Napolitano</i> , 558 F.3d 856 (9th Cir. 2009).....	21
<i>Dean v. McFarland</i> , 81 Wn.2d 215, 500 P.2d 1244 (1972).....	13-14
<i>Dougherty v. Dep’t of Labor & Indus. for State of Washington</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003).....	9-10
<i>Dougherty v. Dep’t of Labor & Indus. for State of Washington</i> , 112 Wn. App. 322, 48 P.3d 390 (2002), rev’d sub nom. <i>Dougherty v. Dep’t of Labor & Indus. for State of Washington</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003).....	10
<i>Equity Group, Inc. v. Hidden</i> , 88 Wn. App. 148, 943 P.2d 1167 (1997).....	14, 18

<i>In re Personal Restraint Petition of Dalluge</i> , 152 Wn.2d 772, 100 P.3d 279 (2004).....	10
<i>Inland Foundry Co., Inc. v. Spokane Cnty. Air Pollution Control Auth.</i> , 98 Wn. App. 121, 989 P.2d 102 (1999).....	11
<i>Landerton Co. v. Pub. Serv. Heat & Power Co.</i> , 118 N.Y.S.2d 84 (Sup. Ct. 1952).....	15
<i>Motion Picture Laboratory Technicians Local 780, I.A.T.S.E. v. McGregor and Werner, Inc.</i> , 804 F.2d 16 (1986).....	24-25
<i>Neilson v. Vashon Island Sch. Dist. No. 402</i> , 87 Wn.2d 955, 558 P.2d 167 (1976).....	19
<i>Optimer Int'l, Inc. v. RP Bellevue LLC</i> , 151 Wn. App. 954, 214 P.3d 954 (2009).....	11
<i>Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.</i> , 172 Wn. App. 799, 292 P.3d 147, review granted, 177 Wn.2d 1019, 304 P.3d 115 (2013).....	13
<i>Perkins Coie v. Williams</i> , 84 Wn. App. 733, 929 P.2d 1215 (1997)..	10
<i>Satomi Owners Ass'n v. Satomi, LLC</i> , 167 Wn.2d 781, 225 P.3d 213 (2009).....	20-21
<i>State ex rel. Tri-County Constr. Co. v. Marsh</i> , 668 S.W.2d 148 (Mo. Ct. App. 1984).....	14-16
<i>Tru Green Corp. v. Sampson</i> , 802 S.W.2d 951 (Ky. Ct. App. 1991)	14-15

<i>United Artists' Corp. v. Gottesman</i> , 135 Misc. 92, 236 N.Y.S. 623 (Sup. Ct. 1929).....	15
STATUTES	
9 U.S.C § 1.....	20
9 U.S.C § 2	20
9 U.S.C § 9	22-25
RCW 2.08.010.....	13-14
RCW 4.28.200.....	10-11
RCW 7.04A.010.....	12
RCW 7.04A.030.....	12
RCW 7.04A.050.....	9, 12
RCW 7.04A.260.....	12, 18-19
RCW 7.04A.270.....	12
RULES	
CR 60.....	10-11
OTHER SOURCES	
Laws of 2005, ch. 433.....	11
Uniform Arbitration Act § 26, Comment 3.....	16-17, 19

I. INTRODUCTION

This appeal addresses the question of whether the King County Superior Court has subject matter jurisdiction to confirm a Florida arbitration award where: (1) the arbitration agreement was undisputedly signed in Florida, not Washington; (2) the parties agreed to arbitrate in Florida; (3) the arbitration actually occurred in Florida; and (4) the parties specifically consented to jurisdiction in Hillsborough County, Florida for the purpose of confirming any arbitration award. Judge Richard Eadie correctly vacated the court's prior Order that had confirmed the Florida arbitration award.

The original Order Confirming Award was based upon Appellant Langdon Hall Land LLC's misrepresentation that the underlying Stock Purchase and Securities Agreement (the "Agreement") was made in Washington. In fact, the arbitration occurred in Florida and the underlying Agreement was made in Florida, provided that Florida law governed the arbitration proceeding, and required the arbitration to occur in Florida. The parties to the Agreement specifically consented to jurisdiction in Hillsborough County, Florida for the purpose of confirming the award. Suspiciously, Appellant Langdon Hall Land LLC did not enter the Agreement into the trial court's record when it filed its Motion to Enter Judgment on Arbitration Award. The reason is quite obvious: had the

trial court been able to review the Agreement, it would have recognized that it did not have subject matter jurisdiction, and, thus, was unable to confirm the award.

In order to have a legally enforceable judgment of a Florida arbitration award in Washington, Appellant Langdon Hall Land LLC should have first confirmed the award with a Florida court and then domesticated it in Washington. Although Appellant Langdon Hall Land LLC filed a Complaint to Confirm the Arbitration Award in Florida, it did not obtain an order from a Florida court, and that case was dismissed for want of prosecution. If Appellant Langdon Hall Land LLC had confirmed the award in Florida, it then could have domesticated the judgment in Washington.

It begs the question why Appellant Langdon Hall Land LLC did not confirm the arbitration award in Florida. The only logical explanation is that Appellant Langdon Hall Land LLC preferred to confirm the arbitration award in Washington, which is a blatant forum shopping violation. In so doing, Appellant Langdon Hall Land LLC did not follow the simple procedure of confirming the arbitration award in a court with subject matter jurisdiction. Instead, Appellant Langdon Hall Land LLC misrepresented that the Agreement was made in Washington, not Florida, to mislead the trial court into believing it had subject matter jurisdiction.

Appellant Langdon Hall Land LLC's Order Confirming Award is void because it was entered by a court that lacked subject matter jurisdiction. In ruling on McClain's Motion to Vacate the Order Confirming Award, the trial court agreed. The trial court stated that Chapter 7.04A RCW "does not allow for [Appellant Langdon Hall Land LLC] to take a Florida arbitration award, arbitrated in Florida, contracted in Florida, parties in Florida, and confirm the award in the state of Washington." Supplemental Report of Proceedings at p. 19, lns. 16-19. The trial court properly granted McClain's Motion to Vacate based on the trial court's lack of subject matter jurisdiction. Therefore, the Respondent respectfully requests that this Court affirm.

II. ISSUES PRESENTED

- A. May a party challenge a judgment for lack of subject matter jurisdiction as void at any time?
- B. Under Chapter 7.04A RCW, does a Washington court lack subject matter jurisdiction to confirm a Florida arbitration award where the arbitration was held in Florida and underlying agreement was entered into in Florida, consented to jurisdiction in Florida, provided that Florida law governed, and required arbitration to occur in Florida?

- C. Does the Federal Arbitration Act preempt the trial court's interpretation of Chapter 7.04A RCW in this case where appellant admitted that Chapter 7.04A RCW applies, the underlying Agreement concerned purely intrastate matters, and Section 9 of the Federal Arbitration Act does not confer jurisdiction to Washington courts?

III. STATEMENT OF FACTS

A. Background of Dispute and Florida Arbitration Award.

This dispute involves a transaction to provide funding for an assisted living facility in Bradenton, Florida. On December 30, 2005, Appellant Langdon Hall Land LLC entered into a Stock Purchase and Subscription Agreement (“Agreement”) with Langdon Hall, Inc. (as principal obligor), Albert Rumph, John Frankenfield, and James McClain (collectively, “Respondents”) to provide funding for the assisted living facility. CP 343-73. Albert Rumph, John Frankenfield, and Respondent James McClain secured the Agreement with personal guarantees. CP 377-79. The Agreement and personal guarantees were essentially a loan for \$630,000.00 from Appellant Langdon Hall Land LLC for the Florida assisted living facility. *Id.*

Both of the Langdon Hall entities are, for all practical purposes, the alter ego of John Bredvik (“Bredvik”).¹ Appellant Appellant Langdon Hall Land LLC is a Washington limited liability company, whose sole manager, member, and registered agent is Bredvik. CP 185-86. Similarly, Respondent Langdon Hall, Inc. is a Florida corporation, whose sole officer and director is Bredvik. CP 188-89.

Eventually, a dispute arose regarding the repayment of the loan for the assisted living facility and the dispute was arbitrated in Tampa, Florida pursuant to the Agreement. On February 21, 2008, in a 2-1 decision, the arbitrators awarded Appellant Langdon Hall Land LLC:

[t]he sum of Eight Hundred Ninety seven thousand Four Hundred and Eighty Seven and 87/100 Dollars (\$897,487.87) plus the sum of Two Hundred and Seventy and 50/100 (\$270.50) for each day after January 31, 2008 to the date of this award. The Award shall bear Interest at the rate of 11% per year after the date of this award.

CP 176. Appellant Langdon Hall Land LLC was also awarded another \$4,000 for a portion of the arbitration fees and costs in excess of the apportioned costs previously incurred by Appellant Langdon Hall Land LLC. *Id.*

¹ Bredvik is a man with a troubling past. He was a licensed attorney (WSBA #8826) until he was disbarred on October 16, 1991. CP 191. Around that time, Bredvik was involved in a major drug operation, for which he served a two-year prison sentence. CP 194-98.

B. Appellant Langdon Hall Land LLC Confirms Arbitration Award in Washington.

On April 3, 2008, Appellant Langdon Hall Land LLC filed a Complaint in Manatee County, Florida to confirm the arbitration award.² CP 226-27. On May 21, 2008, Appellant Langdon Hall Land LLC filed an identical lawsuit before the King County Superior Court to confirm the Florida arbitration award, despite having filed an action in Manatee County, Florida to confirm the same award. CP 236-38. On September 10, 2008, James H. Clark filed a Notice of Appearance on behalf of James McClain (“McClain”) in the King County action, which specifically did not waive any objections to “improper service, venue or jurisdiction.” CP 76-77. Five days later, Appellant Langdon Hall Land LLC filed a Motion to Enter Judgment on Arbitration Award. CP 78-82. A hearing was held on September 24, 2008, at which the Court signed an Order Confirming Award and Entering Judgment (“Order Confirming Award”):

in favor of Plaintiffs LANGDON HALL LAND, LLC, against LANGDON HALL, INC, Albert Rumph; James McClain and John Frankenfeld, in the amount of \$897,487.87, plus \$5,510.00 with interest at 11% until judgment is paid in full. Pursuant to the award, Plaintiff is further awarded \$4,000.00 for reimbursement of costs.

² Ultimately, on November 29, 2012, Langdon Hall LLC’s Florida lawsuit to confirm the arbitration award was dismissed for failure to prosecute. CP 228.

CP 319. McClain was not present at this hearing, and the motion was unopposed. CP 131.

C. Appellant Langdon Hall Land LLC's Misrepresentation to the Trial Court Regarding Subject Matter Jurisdiction.

Throughout its attempt to confirm its award against McClain, Appellant Langdon Hall Land LLC has repeatedly misrepresented key facts regarding the jurisdiction of the King County Superior Court. Under the subsection "Jurisdiction and Venue" of its Complaint, Appellant Langdon Hall Land LLC stated:

2.1 This lawsuit is brought to confirm an arbitration award entered pursuant to written arbitration agreement pursuant to RCW 7.04A et seq. and to collect on that award. The Superior Court has subject matter jurisdiction over the matter.

2.2 Venue is proper in King County because one of the plaintiff [sic] and one of the defendants are located in King County and the contract that forms the basis of the arbitration award was made in King County, Washington.

CP 237 (emphasis added). Similarly, in its Motion to Serve by Mail, Appellant Langdon Hall Land LLC stated that "[t]he contract which is the basis for the arbitration award was entered into in Washington..." CP 245 (emphasis added). To the contrary, as confirmed by the notaries' sworn statements, the Agreement was negotiated and signed in Florida. CP 160-63. Thus, the Agreement was entered into in Florida, not Washington.

At no point during its attempt to confirm the arbitration award did Appellant Langdon Hall Land LLC present the trial court with a copy of the Agreement. If it had, the trial court would have seen that the parties agreed that any dispute, controversy or claim relating to the Agreement “shall be settled by binding arbitration held in Tampa, Florida...” and “shall be construed and interpreted according to the internal laws of the State of Florida...,” and that:

[j]udgment upon the award rendered by the arbitrator(s) may be entered in any court having *in personam* and subject matter jurisdiction. The parties hereby submit to *in personam* jurisdiction of the Federal and State courts in Hillsborough County, for the purposes of confirming any such award and entering judgment thereon.

CP 154-55. The misrepresentation that the Agreement was signed in Washington, which eventually formed the basis of the trial court’s finding that jurisdiction existed, is reason alone to vacate the Judgment against McClain.

D. The Trial Court Grants McClain’s Motion to Vacate Due to Lack of Subject Matter Jurisdiction.

On May 13, 2013, McClain filed a motion in King County Superior Court to vacate the Order Confirming Award based, in part, upon lack of subject matter jurisdiction of the trial court. CP 115. In response, Appellant Langdon Hall Land LLC raised the same issues that are being

argued in this appeal. CP 320-34. At a hearing on June 19, 2013, the Honorable Richard D. Eadie granted McClain's motion, holding that the trial court lacked subject matter jurisdiction to confirm the Florida arbitration award. CP 500. In reaching this conclusion, he stated, in part, that:

I think that 7.04A 050 is pretty specific and does not provide this as an open forum to confirm an arbitration award in any other state.

* * *

my reading of [RCW Ch. 7.04A] is that it does not allow for you to take a Florida arbitration award, arbitrated in Florida, contract in Florida, parties in Florida, and confirm the award in the state of Washington.

Supplemental Report of Proceedings, p. 18, ln. 25; p. 19, lns. 1-2; p. 19, lns. 16-19. Because the trial court found that it lacked subject matter jurisdiction, the trial court did not reach any of McClain's alternative arguments. An order was entered vacating the September 24, 2008 Order Confirming Award. CP 499-501.

IV. ARGUMENT

A. Standard of Review.

"Whether a court has subject matter jurisdiction is a question of law reviewed de novo." *Dougherty v. Dep't of Labor & Indus. for State of Washington*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). Questions of

statutory interpretation are also subject to de novo review. *Perkins Coie v. Williams*, 84 Wn. App. 733, 736, 929 P.2d 1215 (1997).

B. Lack of Subject Matter Jurisdiction May be Raised at Any Time.

Appellants argue that McClain's Motion to Vacate Judgment was untimely under RCW 4.28.200 and CR 60(b). A motion to vacate based upon the court's lack of subject matter jurisdiction, however, "does not depend on procedural rules." *Dougherty*, 150 Wn.2d at 315. "A judgment entered by a court lacking subject matter jurisdiction is void; and a party may challenge such judgment at any time." *Angelo Prop. Co., LP v. Hafiz*, 167 Wn. App. 789, 808, 274 P.3d 1075, *review denied*, 175 Wn.2d 1012, 287 P.3d 594 (2012); *see also, Dougherty v. Dep't of Labor & Indus. for State*, 112 Wn. App. 322, 332, 48 P.3d 390 (2002), *rev'd sub nom. Dougherty*, 150 Wn.2d 310 ("a judgment entered upon an appeal adjudicated in the wrong county is void, and subject to vacation at any time, even if the erroneous choice of forum is not raised as an issue until long after judgment.") The trial court's lack of subject matter jurisdiction cannot be waived. *In re Personal Restraint Petition of Dalluge*, 152 Wn.2d 772, 100 P.3d 279 (2004). Instead, where the trial court lacks subject matter jurisdiction, the only permissible action is to dismiss the

action. *Inland Foundry Co., Inc. v. Spokane Cnty. Air Pollution Control Auth.*, 98 Wn. App. 121, 123-24, 989 P.2d 102 (1999).

In this case, the original Order confirming the Florida arbitration award was void because the King Court Superior Court lacked the subject matter to confirm the award. McClain's Motion to Vacate was based on the trial court's lack of subject matter jurisdiction, which can be raised at any time and cannot be waived. Such a motion does not depend on procedural rules, such as RCW 4.28.200 or CR 60(b). Therefore, McClain's Motion was not untimely.

C. The Trial Court's Ruling on Subject Matter Jurisdiction Was Proper.

1. Washington's Uniform Arbitration Act Does Not Confer Subject Matter Jurisdiction to Washington Courts to Confirm an Award Rendered in Florida When the Parties Agreed to Arbitrate in Florida.

In 2005, the Washington legislature adopted the Uniform Arbitration Act of 2005 (Chapter 7.04A RCW) ("Act") and repealed the prior statute (Chapter 7.04 RCW). *Laws of 2005*, ch. 433. The Act is based on the Uniform Arbitration Act adopted in 2000 by the National Conference of Commissioners on Uniform State Laws. *Optimer Int'l, Inc. v. RP Bellevue LLC*, 151 Wn. App. 954, 960, 214 P.3d 954 (2009). The

Act applies retroactively to all arbitration agreements, including the Agreement at issue here. RCW 7.04A.030(2).

The Act contains several provisions that, when read together, make clear that the King County Superior Court lacked subject matter jurisdiction to confirm the Florida arbitration award. Under RCW 7.04A.050(1), “an application for judicial relief under this chapter must be made by motion to the court and heard in the manner and upon the notice provided by law or rule of court for making and hearing motions.” “Court” means “a court of competent jurisdiction in this state.” RCW 7.04A.010(4). RCW 7.04A.260 provides:

- (1) A court of this state having jurisdiction over the dispute and the parties may enforce an agreement to arbitrate.
- (2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

(Emphasis added.) Furthermore, RCW 7.04A.270 states:

A motion under RCW 7.04A.050 must be filed in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion must be filed in any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be filed in the court hearing the initial motion unless the court otherwise directs.

(Emphasis added.)

In this case, the arbitration occurred in Florida, as required under the arbitration clause of the Agreement. Appellant Langdon Hall Land LLC admits that had the Agreement specified Washington as the jurisdiction to arbitrate, then Washington would have had exclusive jurisdiction. The Agreement, however, specified Florida as the jurisdiction to arbitrate, and the parties arbitrated in Manatee County, Florida. CP 154. Under the clear language of the Act (and the Agreement), therefore, Florida courts are the exclusive jurisdiction to enter confirmation of the arbitration award. Appellant Langdon Hall Land LLC failed to confirm the award in Florida, and no other court had jurisdiction, including the King County Superior Court.

Appellant Langdon Hall Land LLC's position that the trial court should be presumed to have subject matter jurisdiction based upon RCW 2.08.010 is not supported by Washington law. "Once challenged, the party asserting subject matter jurisdiction bears the burden of proof on its existence." *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wn. App. 799, 807, 292 P.3d 147, *review granted*, 177 Wn.2d 1019, 304 P.3d 115 (2013). Establishing a presumption of subject matter jurisdiction would inappropriately shift the burden to the party objecting to subject matter jurisdiction. In addition, between Chapter 7.04A RCW and RCW 2.08.010, the court should look to the more specific statute. *Dean v.*

McFarland, 81 Wn.2d 215, 221, 500 P.2d 1244 (1972) (“general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by the specific terms.”). Therefore, in this case, RCW 2.08.010 does not establish subject matter jurisdiction.

2. Courts in Other States Have Consistently Held that Arbitration Awards Can Only be Confirmed in the State Designated in the Arbitration Agreement.

Although no Washington court has addressed whether a Washington court can confirm an arbitration award from a different state under the current Act,³ courts from other jurisdictions have overwhelmingly held that if the parties’ agreement designates a location for the arbitration (as the Agreement here did), then that designated state has exclusive jurisdiction to confirm the award.⁴ See *Chicago Southshore & S. Bend R.R. v. N. Indiana Commuter Transp. Dist.*, 184 Ill. 2d 151, 703 N.E.2d 7 (1998); *State ex rel. Tri-County Constr. Co. v. Marsh*, 668 S.W.2d 148 (Mo. Ct. App. 1984); *Tru Green Corp. v. Sampson*, 802 S.W.2d 951, 952 (Ky. Ct. App. 1991) (holding that Kentucky lacked

³ The only Washington case to address whether a foreign arbitration award may be confirmed by a Washington court was a Division II Court of Appeals case from 1997, prior to the legislature adopting the Uniform Arbitration Act in 2005. *Equity Group, Inc. v. Hidden*, 88 Wn. App. 148, 153-54, 943 P.2d 1167 (1997). This case is distinguished in detail below.

⁴ All out-of-state cases cited herein are included in CP 301-16.

subject matter jurisdiction to confirm an arbitration award rendered in Ohio); *Landerton Co. v. Pub. Serv. Heat & Power Co.*, 118 N.Y.S.2d 84 (Sup. Ct. 1952) (holding that New York lacked jurisdiction to confirm an arbitration award made in and subject to the law of Connecticut); *United Artists' Corp. v. Gottesman*, 135 Misc. 92, 236 N.Y.S. 623 (Sup. Ct. 1929) (holding that New York lacked jurisdiction to confirm an arbitration award made in Massachusetts).

In *Chicago Southshore & S. Bend R.R.*, the parties' agreement contained a clause which provided that arbitration was to take place in Indiana, but the parties verbally agreed to convene the arbitration in Illinois for their convenience. 184 Ill. 2d 151. The Illinois Supreme Court held that Illinois courts did not have subject matter jurisdiction to enter judgment on the award because the parties' agreement provided that arbitration was to take place in Indiana, regardless of the parties' informal, non-contractual agreement to convene the arbitration in Illinois. *Id.* at 399.

Further, in *State ex rel. Tri-County Constr. Co.*, the Missouri Court of Appeals held that the parties to an arbitration hearing were required to confirm the resultant arbitration award in the state that the arbitration was held, rather than in the state where the arbitration agreement was signed. 668 S.W.2d 148. The court provided that:

[E]very state that has considered the question of jurisdiction to confirm the award has focused on the place of arbitration and not the locus of the contract.

* * *

[T]he place of contracting is not always, or even frequently, the convenient location for arbitration. Modern business operates in a multi-state environment, and the parties should be permitted to choose the place of arbitration and confirmation upon consideration of convenience, and not upon artificial concepts of the place of contracting.

Id. at 152.

Here, the parties all signed the Agreement in Florida, agreed to arbitrate in Florida, and actually arbitrated in Florida. CP 160-63; 154-55; 176-77. Thus, based on jurisdictions interpreting the exact same language of the Washington Act, Florida was the exclusive jurisdiction to confirm the arbitration award because the Agreement specified arbitration was to occur there, and the parties arbitrated in Florida.

3. Official Comments to the Uniform Arbitration Act Provide that Washington Courts Lacked Subject Matter Jurisdiction.

Comment 3 to the Uniform Arbitration Act § 26, which contains the exact same language of the Washington Act, provides that only the state where the arbitration was held can confirm the arbitration award. Comment 3 to the Uniform Arbitration Act § 26 states that:

if the parties in their agreement designate a place for the arbitration proceeding, then that State has exclusive jurisdiction ... to prevent forum-shopping in confirmation proceedings and to allow autonomy in the choice of the location of the arbitration and its subsequent confirmation proceeding.

Uniform Arbitration Act § 26, Comment 3 (emphasis added).⁵ Other Courts have also recognized the need to prevent forum shopping.⁶

Here, Appellant Langdon Hall Land LLC has engaged in the exact forum shopping that the Act attempts to prevent. Appellant Langdon Hall Land LLC cannot pick and choose which jurisdiction to confirm the arbitration award when the Agreement specified Florida. The Agreement specified that arbitration of any dispute would be settled by binding arbitration in Florida, and the dispute was, in fact, arbitrated in Florida. CP 154. Moreover, the Agreement provided that the parties specifically consented to Hillsborough County, Florida as the jurisdiction to confirm the award. CP 155. Permitting Appellant Langdon Hall Land LLC to confirm the Florida award in King County disregards well-settled case law and would set dangerous precedent by allowing parties to confirm an arbitration award in any state with the most preferential arbitration laws

⁵ Full text of Comment 3 to the Uniform Arbitration Act § 26 is included at CP 318-19.

⁶ In *United Elec. Radio & Mach. Workers of Am. (UE) v. Gen. Elec. Co.*, the court held that “[i]f the courts of this State may be utilized to specifically enforce the terms of an arbitration award rendered in another State, incentive is given to the parties to shop about for the jurisdiction in which the most advantageous conditions obtain.” 193 Misc. 146, 148, 83 N.Y.S.2d 768 (1948).

despite their explicit agreement to arbitrate in another state. Thus, under Washington's Uniform Arbitration Act, and consistent with other jurisdictions' interpretations, Florida had exclusive jurisdiction to confirm the arbitration award because that is where the parties agreed to arbitrate, actually did arbitrate, and agreed to personal and subject matter jurisdiction.

4. No Washington Court has Interpreted RCW 7.04A.260.

Although Division II of the Washington Court of Appeals, in *Equity Group, Inc. v. Hidden*, provided that an arbitration award from Oregon could be confirmed in Washington, that case is factually distinguishable. First, the arbitration agreement in *Equity Group* did not specify the place for arbitration to occur. 88 Wn. App. 148, 943 P.2d 1167 (1997). In addition, Division II was also interpreting former RCW 7.04, which contained a less restrictive jurisdictional requirement. *Id.*

Here, the Agreement and Guaranty Agreement were both signed in Florida, the assisted living facility property was in Florida, the Agreement provided that any arbitration "shall be settled by binding arbitration held in Tampa, Florida," interpreted under Florida law, and the arbitration award was from Florida. CP 154. Further, the current Washington Act provides that "an agreement to arbitrate providing for arbitration in this

state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.” RCW 7.04A.260(2) (emphasis added).

Thus, no Washington court has interpreted this jurisdiction provision, but numerous courts in other states have interpreted the identical language from the Uniform Arbitration Act. Appellant Langdon Hall Land LLC does not dispute that the majority of jurisdictions that have adopted the Uniform Arbitration Act have held that the exclusive jurisdiction to confirm an arbitration award is where the Agreement specifies that the arbitration occur or that Comment 3 to the Uniform Arbitration Act § 26 also compels the same result. The Agreement here provides for arbitration in Florida (and the parties actually arbitrated there), not Washington. Florida, therefore, was the exclusive jurisdiction to confirm the award.

D. The Federal Arbitration Act Does Not Preempt the Trial Court’s Application of Washington’s Uniform Arbitration Act.

1. Appellants Have Admitted that Chapter 7.04A RCW Applies.

As a preliminary matter, “[a] statement of fact made by a party in [a] pleading is an admission the fact exists as such and is admissible against him in favor of his adversary.” *Neilson v. Vashon Island Sch. Dist. No. 402*, 87 Wn.2d 955, 958, 558 P.2d 167 (1976). Here, Appellant

Langdon Hall Land LLC's own Complaint provides that "[t]his lawsuit is brought to confirm an arbitration award entered pursuant to written arbitration agreement pursuant to RCW 7.04A et seq. and to collect on that award." CP 2. Thus, Appellant Langdon Hall Land LLC sought to confirm the arbitration award based on the Washington Act, as indicated in its own Complaint, and may not argue otherwise because it alleged, thereby admitting, that its basis for filing its Complaint in King County was pursuant to Chapter 7.04A RCW.

2. The Arbitration Award Does Not Fall Within the Federal Arbitration Act.

The Federal Arbitration Act ("FAA") applies to a written arbitration provision in "a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. Commerce is defined as "commerce among the several States." 9 U.S.C. § 1. The requirement that the underlying transaction involve commerce is construed "as reaching to the limits of Congress' Commerce Clause power." *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 270, 115 S. Ct. 834, 837, 130 L. Ed. 2d 753 (1995). "In other words, the FAA applies to transactions involving an economic activity that, in the aggregate, represent a general practice subject to federal control that bears on interstate commerce in a substantial

way.” *Satomi Owners Ass’n v. Satomi, LLC*, 167 Wn.2d 781, 799, 225 P.3d 213 (2009).

Here, the arbitration provision was not part of an agreement involving interstate commerce. Appellant Langdon Hall Land had the burden to prove that the FAA applied, yet produced no evidence that the Agreement implicated interstate commerce. Contrary to Appellant Langdon Hall Land LLC’s representation, the Agreement is for an *intrastate* loan, not interstate security. The loan was related to an assisted living facility located in Bradenton, Florida. Thus, the FAA does not apply.

**3. The Trial Court’s Interpretation of Chapter 7.04A
RCW is Not Contrary to the Federal Arbitration Act.**

“Where it applies to a transaction, the FAA may preempt a state statute governing the transaction by conflict preemption. Conflict preemption occurs where (1) it is impossible to comply with both state and federal law or (2) state law ‘stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.’” *Satomi Owners Ass’n*, 167 Wn.2d at 800 (internal citations omitted). “[T]he conflict must be an actual conflict, not merely a hypothetical or potential conflict.” *Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 863 (9th Cir. 2009).

Appellant Langdon Hall Land LLC claims that application of Chapter 7.04A RCW to confer exclusive jurisdiction to the Florida courts in this case is in conflict with Section 9 of the FAA. Here, no matter how you construe the arbitration provision of the Agreement, the plain language of Section 9 of the FAA is consistent with the trial court's interpretation of Chapter 7.04A RCW. Section 9 of the FAA states, in part:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.

9 U.S.C § 9 (emphasis added). Appellant Langdon Hall Land LLC omits the second sentence of Section 9 of the FAA, quoted above, which is crucial for interpreting the provision.

Under the Section 9 of the FAA, either the arbitration clause of the Agreement specified Hillsborough County, Florida as the court in which to confirm the award or it did not. If it did, Section 9 of the FAA would permit Appellant Langdon Hall Land LLC to confirm its award there. If it

did not, Section 9 of the FAA would permit Appellant Langdon Hall Land LLC to confirm its arbitration award in the U.S. District Court for the Middle District of Florida. In neither case does Section 9 specifically allow the King County Superior Court to confirm the award. Thus, the trial court's conclusion that Chapter 7.04A RCW prohibits the King County Superior Court from confirming the arbitration award is not in conflict with the FAA.

i. The Federal Arbitration Act Permits the Award to be Confirmed in Hillsborough County Courts.

Section 9 is perfectly consistent with conferring exclusive jurisdiction to the Hillsborough County, Florida court, which is "the court so specified" in the arbitration provision of the Agreement. Appellant Langdon Hall Land LLC argues that the Agreement did not specify the court in which to confirm the award because the Agreement allows judgment to be entered against McClain in any court that has proper jurisdiction, but ignores the sentence of the Agreement that specifically consents to jurisdiction in Hillsborough County, Florida "for the purpose of confirming any such award and entering judgment thereon." CP 155.

McClain is not arguing that Chapter 7.04A RCW hypothetically "precludes confirmation of an arbitration award resulting from arbitration in another state" as Appellant Langdon Hall Land LLC asserts. Brief of

Petitioner at p. 15. Instead, McClain reads Chapter 7.04A RCW as precluding Washington courts, in this case, from confirming a Florida arbitration award that was awarded pursuant to the Agreement in which the parties specifically consented to jurisdiction in Florida for the purpose of confirming the award, required the arbitration to occur in Florida, and agreed that the dispute would be governed by the laws of Florida. Neither Division II nor any other jurisdiction has ruled that the FAA preempts their state's Uniform Arbitration Act in these circumstances.

ii. If No Court is Specified, the Federal Arbitration Act Permits the Award to be Confirmed in U.S. District Court for the Middle District of Florida.

Even if the arbitration provision of the Agreement does not specify Hillsborough County as the court in which to confirm an award, a proposition McClain disputes, Section 9 of the FAA allows for the award to be confirmed in “the United States court in and for the district within which such award was made.” 9 U.S.C. § 9. This provision would have permitted Appellant Langdon Hall Land LLC to seek confirmation of the arbitration award in the U.S. District Court for the Middle District of Florida, which serves Hillsborough County, because that is the district in which the award was made. *See, e.g., Motion Picture Laboratory Technicians Local 780, I.A.T.S.E. v. McGregor and Werner, Inc.*, 804 F.2d

16 (1986) (Florida was the jurisdiction to confirm arbitration award under 9 U.S.C. § 9 despite arbitrator issuing decision from New York because the dispute was located in Florida, the arbitration occurred in Florida, and the court had an interest in discouraging forum shopping). In either case, Section 9 does not confer subject matter jurisdiction to the King County Superior Court to confirm the arbitration award. Thus, the trial court's interpretation of Chapter 7.04A RCW does not conflict with the FAA.

V. CONCLUSION

Appellant Langdon Hall Land LLC's Order Confirming Award was entered by a court that lacked subject matter jurisdiction. The trial court did not err in vacating this void Order Confirming Award. The Respondent respectfully requests that this Court affirm. Even if this Court reverses the trial court's ruling, this matter must be remanded for further proceedings because, having found that it lacks subject matter jurisdiction, the trial court did not rule on McClain's alternative arguments raised in its Motion to Vacate.

DATED: This 5th day of November, 2013.

AHLERS & CRESSMAN PLLC

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DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury, under the laws of the State of Washington, that on November 5, 2013, I caused service of the foregoing pleading on each and every attorney of record herein:

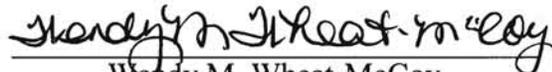
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