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ORIGINAL

No. 63701-1-I

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

OTAN INVESTMENTS, LLC and OTAN INVESTMENTS, LLC,

Appellants,

v.

INTERASCO (GENEVA) S.A., INC.,

Appellee.

OTAN INVESTMENTS, LLC'S REPLY BRIEF

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I. INTRODUCTION

Having commenced arbitration against Appellant Otan Investments, LLC (“Otan”) and argued in that forum that Otan lacks standing to pursue counterclaims, Respondent Interasco (Geneva) S.A., Inc. (“Interasco”) cannot reverse its position and re-cast its argument as a challenge to the arbitrator’s authority to determine questions of “arbitrability” and an alleged absence of a contractual relationship. None of the cases Interasco relies upon stands for the proposition that a Court may ignore a party’s past acts of invoking the arbitral tribunal’s authority, presenting its procedural defenses to that arbitral tribunal, and then, upon receiving an adverse decision, seeking judicial intervention on the basis that the arbitral tribunal lacked the authority to address the issue.

Environmental Barrier is on all fours with this case. The existence of a contract is not at issue here. Unlike the cases upon which Interasco relies, the question here is not one of assent to the underlying contract, but rather whether Interasco, a signatory to Contract No. 2 (the contract at issue), can now avoid arbitration by raising a “standing” argument after having treated the arbitration agreement as valid and enforceable and subject to the arbitral tribunal’s authority. Otan respectfully requests reversal of the trial court’s order staying arbitration and dismissal of this matter so that the arbitral tribunal, the ICC International Court of Arbitration (“ICC”) may resume its work in this dispute.¹

¹ Otan in advertently neglected to include assignments of error in its Opening Brief. They are: (1) did the trial court improperly stay

II. ARGUMENT

A. The Standard of Review Is De Novo.

The standard of review for a question of interpretation of an arbitration agreement is de novo. *Heights at Issaquah Ridge Owners Ass'n v. Burton Landscape Group, Inc.*, 148 Wn.App. 400, 404, 200 P.3d 254 (2009). Even if Interasco's challenge to the arbitration agreement is deemed one of arbitrability,² as opposed to standing, no deference is afforded the trial court's determination on arbitrability. *Local Union No. 77, Int'l Brotherhood of Electrical Workers v. PUD No. 1, Grays Harbor County*, 40 Wn.App. 61, 62, 696 P.2d 1264 (1985).

arbitration in order to determine an objection based on lack of standing, where standing is a procedural issue for the arbitrator to decide and the objecting party invoked the arbitration court's jurisdiction to decide the standing issue and subsequently sought judicial intervention after receiving an adverse ruling, and (2) in the alternative, if Interasco's standing argument raises a question of arbitrability, does the parties' agreement stating "no recourse to law courts being permitted" and incorporating the ICC Rules of Arbitration show a clear intent to submit such disputes to the arbitrator.

² Interasco has moved to strike certain portions of Otan's argument that the contract provides for arbitration of "arbitrability" disputes. Otan is responding on the merits to Interasco's motion via separate pleading, however it presumes for the purpose of this Reply that Interasco's motion will be denied since it is a jurisdictional argument that may be raised at any time, and in this case was in fact raised before the trial court. *See* Otan's Response to Motion to Strike.

B. Interasco’s “Question of Arbitrability” Argument Is A Reversal of Its Position Adopted Before the Arbitral Tribunal Rejected its Standing Challenge.

Interasco claims that Otan’s reliance on *Environmental Barrier Co., LLC v. Slurry Systems, Inc.*, 540 F.3d 598 (7th Cir. 2008) is misplaced because it involved a different procedural background, but Interasco fails to show how its conduct in this matter is distinguishable. In *Environmental Barrier*, 540 F.3d 598 (7th Cir. 2008), SSI alleged that the other party, EBC, lacked standing to bring claims in arbitration. After losing in arbitration, SSI re-cast its standing argument “as a challenge to arbitrability, based on the fact that SSI agreed to arbitrate only with EBC’s predecessor-in-interest, not with EBC itself.” *Environmental Barrier*, 540 F.3d at 599. The Eighth Circuit rejected SSI’s untimely objection, stating, “This is a major shift from the way SSI presented its case first to the arbitrator and later to the district court, where it framed the issue in terms of EBC’s standing to pursue this arbitration. The difference is crucial-indeed, on these facts, fatal-to SSI’s claim.” *Id.* Interasco’s presentation of its “standing” objection to Otan’s counterclaims is no different. Its “major shift” from its strategy before the ICC is fatal to its claim that the objection it brought to the trial court was an arbitrability objection. And *Environmental Barrier* concluded unequivocally that “standing is a matter for the arbitrator to resolve, even though ... arbitrability is usually an issue for the court.” *Id.* at 605.

Interasco does not dispute that it initially raised to the ICC its objection that Otan lacked standing, and that it characterized its objection

as a challenge based on “standing” not arbitrability. In at least three letters dated December 2, 2008, December 3, 2008, and January 16, 2009, Interasco objected to Otan’s “locus standi” to bring claims against Interasco after Interasco had withdrawn its claims in chief. *See* CP 114-15; 177-184. “Locus standi” is the common law doctrine of standing. *In re African-American Slave Descendants Litigation*, 304 F. Supp.2d 1027 (N.D. Ill. 2004). It concerns “whether an individual has the legal capacity to institute proceedings.”

Specifically, Interasco stated,

In the circumstances, it would appear to be appropriate to inform the Court of Arbitration that until such time as [Summit Law Group] has adequately and satisfactorily answered the queries raised in Interasco’s letter of 02-Dec-08 and relating to Otan Investment LLC’s *locus standi*, Interasco may be compelled to seek relief from the courts to prevent [Summit Law Group] from pursuing this matter any further

...

CP 186 (1/16/09 letter from Interasco to ICC) (emphasis added). The objection Interasco has raised is one of standing, not arbitrability.

Shortly thereafter, the ICC responded via letter dated January 27, 2009, stating “we note Claimant’s inquiries, by which, we understand, Claimant raises jurisdictional objections pursuant to Article 6(2) of the ICC Rules.” CP 189; *see also* Appendix B (ICC Rules). Both parties then submitted the question of Otan’s standing to the ICC “to make a decision as to whether this matter shall proceed or not...” CP 189. At no time did Interasco condition its submission of its standing challenge with a

disclaimer of waiving its right to a later determination by a court.

Interasco's actions were consistent with its initial act of submitting to the ICC's jurisdiction by filing a Request for Arbitration against Otan.

Otan submitted comments to the ICC on March 10, 2009. Otan's comments addressed two concerns: (1) that Interasco's standing objection was a procedural defense, not a jurisdictional challenge; and (2) that Otan is a validly formed LLC and that the gap in its corporate status did not affect its authority to pursue counterclaims, which it was asserting as a legal successor in interest and assignee. CP 199-200.

On May 7, 2009, more than six months after Interasco began claiming that Otan lacked standing, the ICC rendered a ruling that the arbitration would proceed. Under Rule 6(2) of the ICC Rules of Arbitration, a party may raise an objection to the ICC's jurisdiction on the basis of a dispute regarding the existence of an arbitration agreement, but if the ICC is satisfied that prima facie evidence of an arbitration agreement exists, the matter proceeds to the merits before the Arbitral Tribunal. In any event, the Arbitral Tribunal makes the final decision on the merits, including jurisdictional objections. *See* Rule 6(2) at Appendix B.

Interasco waited until after it received this decision to begin a lawsuit in King County Superior Court challenging the ICC's jurisdiction. In that lawsuit, Interasco has re-cast its "locus standi" argument a question of arbitrability. This is expressly contrary to its previous position before the ICC and an unjustified and meritless reversal of its prior positions. As the Court of Appeals held in *Hanson v. Shim*, 87 Wn.App. 538, 943 P.2d

322 (1997), having sought arbitration and invoking the arbitrator's authority to determine an issue, whether based upon standing or a jurisdictional challenge, a party that receives an unfavorable result cannot subsequently claim that the arbitrator exceeded his or her jurisdictional authority. *Id.* at 550. *See also Power Agent, Inc. v. Electronic Data Systems Corp.*, 358 F.3d 1187, 1192 (9th Cir. 2004) (a party's invocation of arbitrator's authority precludes that party from challenging in a court the arbitrator's authority on that issue).

Interasco's jurisdictional challenge, brought after the parties briefed the issue before the ICC and after the ICC ruled that the matter would proceed on the merits to the Arbitral Tribunal, is not timely. *See e.g., Orion Pictures Corp. v. Writers Guild of Am., West, Inc.*, 946 F.2d 722, 725 (9th Cir. 1991). ("By its own admission, then, Orion has gone too far down the slippery slope in submitting its dispute to arbitration.") Interasco had several options in this dispute. It could have commenced litigation at the outset, at which point Otan would have been forced to invoke the arbitration clause and this matter would have been addressed on a motion to compel arbitration. Interasco could have sought judicial intervention in November 2008 after Otan asserted its counterclaims. Instead, Interasco presented its objections to the ICC on multiple occasions, forced Otan to incur legal fees and to pay an advance fee deposit to the ICC, and waited until receiving an adverse decision from the ICC before seeking judicial review. Under these circumstances, it cannot be said that Interasco raised a timely objection to the ICC's jurisdiction.

To the extent that Interasco maintains an objection based upon standing, that objection can be reviewed after the arbitration is complete. *Cf. ML Park Place Corp. v. Hedreen*, 71 Wn.App. 727, 862 P.2d 602 (1994) (party objecting to consideration of arbitrability issue in arbitration may seek later determination on the award).

C. Interasco’s Factual Assertions Are Not Contained in Or Supported By the Record.

In addition to being untimely, Interasco’s defense on appeal relies almost exclusively upon the unfounded assumption that there is no relationship between “Otan I” and “Otan II.” This assumption is unfounded for at least three significant reasons.

First, there are no facts in the record upon which to base this assumption. The facts are simply not in the record for either the trial court or this Court to address the parties’ relationship during the period of the corporate gap. No discovery has been conducted and no development of the record on this point has occurred in the trial court.

Second, the reason why the facts are not in the record is that this proceeding is not the proper venue for making such determinations. The arbitration that Interasco commenced and in which the parties have already argued this question is the proper venue. The ICC issued a preliminary ruling that it was satisfied under ICC Rule 6(2) that the matter could proceed. CP 201-02. The place where the factual record should be developed is in the arbitration, not the courts.

Third, even on the basis of the limited factual record, there are numerous reasons to support Otan's assertion of the right to enforce Contract No. 2 against Interasco. Unlike the non-existent LLCs in *Chadwick Farms Owners Ass'n v. FHC, LLC*, 166 Wn.2d 178, 207 P.3d 1251 (2009) and *Maple Court Seattle Condominium Ass'n v. Roosevelt, LLC*, 139 Wn.App. 257, 262, 160 P.3d 1068 (2007), Otan is a registered LLC in good standing and may assert legal claims. CP 3. Even if Otan was not in good standing at the time the agreement was entered into or performed, this does not invalidate the contract. *See White v. Dvorak*, 78 Wn.App. 105, 896 P.2d 85 (1995) ("The absence of authority to enter into contracts, however, does not invalidate the contracts."). Having two different UBI numbers does not necessarily mean that there are two different entities. *See* CP 114 ("As Interasco well knows, Otan was reinstated on August 27, 2008."). Nothing in Washington law precludes an LLC from re-forming after a period of dissolution or cancellation. Washington's newly-amended LLC statute provides for automatic retroactive reinstatement of voluntarily dissolved LLCs, however Otan does not qualify for automatic reinstatement. RCW 25.15.290. Lastly, even assuming that Otan is a legally distinct entity from the one that entered into Contract No. 2, the right to enforce an agreement may pass to a non-signatory for numerous reasons. Interasco expressly acknowledged this possibility in its contention to the ICC that the two individuals against whom it sought to invoke the ICC's jurisdiction had acted on behalf of Otan after its dissolution and were personally liable as a result of Otan's

dissolution. CP 136-38. Washington courts recognize the common law principle of “de facto corporations,” which can apply during post-dissolution circumstances and may result in individual liability on the part of the persons acting on the company’s behalf. *Equipto Division Aurora Equipment Co. v. Yarmouth*, 134 Wn.2d 356, 369-70, 950 P.2d 451 (1998). Whether viewed as a legal successor, an assignee, or a continuation of a cancelled LLC, Otan should not be prevented from enforcing the contract that Interasco admittedly signed and sought to enforce in arbitration.

D. Interasco Does Not Deny Entering Into Contract No. 2.

Interasco does not deny that it entered into Contract No. 2. The vast majority of “non-signatory” cases it cites involve challenges by a non-signatory to a signatory’s attempt to compel arbitration of a dispute based on a contract that the non-signatory denies signing. As the Second Circuit recently stated, “[I]t matters whether the party resisting arbitration is a signatory or not ...” *Merrill Lynch Inv. Managers v. Optibase, Ltd.*, 337 F.3d 125, 131-32 (2nd Cir. 2003). In many of such cases, there is a fundamental challenge to the creation of an enforceable contract by a non-party. On this basis, these cases are poor examples of instances where a signatory can avoid arbitration by seeking judicial intervention. *John Wiley & Sons v. Livingston*, 376 U.S. 543, 84 S.Ct. 909 (1964) is a prime example. Interasco claims that it stands for the proposition that the courts should decide issues of who can enforce an arbitration agreement against a

signatory, however *John Wiley* involved a “non-signatory,” a successor corporation, resisting the arbitration clause signed by the company that had merged into it. As seen in *John Wiley*, courts clearly are interested in ensuring that parties that have not agreed to arbitrate a dispute are not forced in to arbitration without a valid basis, and in such cases a threshold inquiry by the court is appropriate. But where it is clear that the party seeking to avoid arbitration is a signatory, the evidence of consent to arbitration is readily apparent and thus judicial intervention is not warranted. Furthermore, *John Wiley* concluded that the dispute was arbitrable, leaving for the arbitrator the task of deciding the case, and any procedural objections, on the merits, related to the effect of the merger. *Id.* at 551.

Similarly, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 115 S.Ct. 1920 (1995) involved a post-arbitration award challenge by two non-signatories, who claimed that they were not bound by the arbitration agreement at the center of the parties’ dispute. In response to the signatory’s argument that the non-signatories had waived the right to judicial review, the court determined that where a non-signatory challenges the arbitrator’s authority to arbitrate a particular dispute, that non-signatory may raise the question as an “arbitrability” question after the award is issued. *Kaplan*, 514 U.S. at 946. Unlike *Interasco*, that party’s challenge came after the arbitration concluded, not in the middle.

There is, as *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84, 123 S.Ct. 588 (2002) observed, a difference between “gateway”

disputes of arbitrability, where the existence of a valid agreement is in dispute and “procedural” disputes of arbitrability, which involve defenses that are generally intertwined with the merits. Those procedural defenses are, as Washington law confirms, not limited to “procedural” issues, but involve defenses on the merits that go to questions such as standing.

At the same time the Court has found the phrase “question of arbitrability” *not* applicable in other kinds of general circumstance where parties would likely expect that an arbitrator would decide the gateway matter. Thus ““procedural” questions which grow out of the dispute and bear on its final disposition” are presumptively *not* for the judge, but for an arbitrator, to decide.

Howsam, 537 U.S. at 84; *see also Yakima County Law Enforcement Officers Guild v. Yakima County*, 133 Wn.App. 281, 135 P.3d 558 (2006).

Substantive arbitrability disputes occur most frequently where a non-signatory resists arbitration and the court serves a “gateway” function. *Cf. Three Valleys Municipal Water District v. E.F. Hutton & Co.*, 925 F.2d 1136 (9th Cir. 1991) (holding that a party cannot be compelled to arbitrate under a contract that it denies entering into). Unlike those “gateway” cases, however, the trial court here ordered the parties to proceed with a short, but intense period of discovery, followed by summary judgment hearings and possibly a trial on the question of Otan’s standing. The relief granted goes well beyond court consideration of a “gateway” issue – it is in effect a mini-trial. From a procedural

standpoint, the “non-signatory” cases are not helpful or persuasive because the trial court here was not performing a mere “gateway” function.

AT&T Technologies v. Communications Workers of Am., 475 U.S. 643, 106 S.Ct. 1415 (1986) sets forth the correct legal standards, but it is factually distinguishable. It held that the subject matter of the parties’ dispute was expressly outside the parties’ agreement to arbitrate. *AT&T* was not decided on the basis that “no valid contract” existed between the parties. *Safety Equipment Corp. v. J.P. Maguire & Co.*, 391 F.2d 821, 828-29 (2nd Cir. 1968) likewise was resolved in favor of judicial determination of antitrust claims based upon the court’s conclusion that those particular substantive claims are not arbitrable. The issue of an assignee’s right to compel arbitration was a secondary consideration subsumed in the larger issue of the arbitrability of the antitrust claims.

Interasco denies being in a contractual relationship with the party on the other side of the contract, but it does not deny entering into the underlying contract. For this reason, the vast majority of the cases Interasco cites are inapposite.

Interasco’s only instance of a signatory successfully avoiding arbitration is *I.S. Joseph Co., Inc. v. Michigan Sugar Co.*, 803 F.2d 396 (8th Cir. 1986), but that decision is distinguishable in numerous ways. The most significant of the distinctions is the fact that, unlike Interasco, the party resisting arbitration in *Michigan Sugar Co.* had not commenced arbitration proceedings and had consistently resisted arbitrating all aspects of the parties’ dispute, including the purported assignment of the contract

at issue. In contrast, in its October 3, 2008 letter to the ICC, Interasco affirmatively argued in favor of the ICC's jurisdiction, even after making clear its understanding that Otan had experienced a gap in its corporate existence. CP 136-38. Not only did Interasco make those arguments with full knowledge of Otan's cancellation, it must also be noted that Interasco's claim that it commenced arbitration against Otan without knowing of its corporate status is at odds with its own pleadings, as is evidenced by its decision to commence arbitration against not only Otan, but also two individuals associated with Otan. CP 126. If Interasco had no knowledge of Otan's cancellation, it would not have had a reason to file against the two individuals.

The party resisting arbitration in *Michigan Sugar Co.* also alleged that the assignee was "stranger to the agreement and that it has no understanding with Josco about arbitration (or, for that matter, anything else)" and the agreement had no assignment provision. *Michigan Sugar Co.*, 802 F.2d at 399. The absence of an assignment provision required that the arbitrator look outside the contract to determine the assignment's validity. There is no such allegation here, and to the extent there is a potential assignment issue, the agreement has an assignment provision that would be subject the arbitrator's determination. CP 28.

Lastly, there is a major difference in the language of the agreement at issue—the parties' express delegation of the authority to decide arbitrability by the arbitration. The *Michigan Sugar Co.* court expressly recognized that

[i]t is conceivable that an arbitration agreement could be drafted so broadly as to give to the arbitrator in the first instance the power to determine arbitrability. Such a broad commitment to the discretion of the arbitrator would be highly unusual, and the party asserting it would be bound to prove clearly the intent of the parties to do so. Even in such a case, the court in determining that the parties intended to commit questions of arbitrability to the arbitrator, would in effect be making an initial finding that such a contract existed. In the present case there is no evidence of such intent.

Michigan Sugar Co., 803 F.2d 399 n1. Unlike the case in *Michigan Sugar Co.*, where there was no evidence of intent to delegate arbitrability issues to the arbitrator, Contract No. 2 contains clear evidence of such an intent. Thus, even if it is assumed that Interasco's procedural defense raises a question of substantive arbitrability, the parties' agreement relegates such questions to the arbitrator.

E. Otan and Interasco Agreed to Submit Arbitrability to the Arbitral Tribunal.

Even if Interasco is correct that its standing defense is an issue of arbitrability, the trial court erred because that is a question that the parties have agreed to submit to the arbitrator. Before discussing this issue on the merits, Otan denies that this is a newly raised argument. As discussed in Otan's Opposition to Interasco's Motion to Strike filed herewith, Otan raised the issue to the trial court, and in any event, if Interasco's characterization is accurate, then Otan's arguments relate to the jurisdiction of the court to determine arbitrability. Jurisdictional

arguments that may be raised at any time under RAP 2.5(a)(1).³ *See Anderson v. Farmers Ins. Co.*, 83 Wn.App. 725, 730-31, 923 P.2d 713 (1996) (considering question of arbitrator’s jurisdiction raised on appeal).

The parties disagree about whether the language the parties used in Contract No. 2 meets the legal standard. While a clear manifestation of intent is required to empower the arbitrator to determine arbitrability disputes, no case cited by Interasco holds that the parties have to expressly state “arbitrability” in their arbitration clause to demonstrate such intent. *See e.g., Tacoma Narrows Constructors v. Nippon Steel-Kawada Bridge, Inc.*, 138 Wn.App. 203, 156 P.3d 293 (2007) (a general “all disputes” provision does not rise to the level of a “clear and unmistakable delegation”). The language “no recourse to law courts” may not refer specifically to arbitrability disputes, but its clarity is indisputable. Unlike “all disputes” clauses that refer all issues generally, the “no recourse to law courts” language clearly indicates that the courts shall have no role in resolving any disputes that arise between the parties to Contract No. 2. This is clear and unmistakable evidence of the parties’ intention to submit arbitrability disputes to the arbitrator.

In addition, the parties expressly incorporated the ICC Rules of Arbitration in Contract No. 2. From the filing of its request for arbitration in August 2008 until the adverse decision was issued in May 2009,

³ RAP 2/5(a)(1) provides that “a party may raise for the first time” on review the “lack of trial court jurisdiction.”

Interasco demonstrated its intention to have all disputes, including arbitrability/standing disputes, resolved in the ICC forum under the ICC Rules of Arbitration.

Interasco's attempt to distinguish *Contec Corp. v. Remote Solution Co., Ltd.*, 398 F.3d 205 (2nd Cir. 2005) as not binding authority is unpersuasive. That fact that *Contec Corp.* applied AAA rules is of no significance, where both AAA rules and ICC rules clearly provide that the arbitrator is authorized to determine questions of arbitrability. *See accord, Apollo Computer, Inc. v. Berg*, 886 F.2d 469, 473 (1st Cir.1989) (applying arbitration rules of the International Chamber of Commerce, including language identical to Rule 6(2)). Furthermore, there is no ambiguity in Rule 6(2). That Rule provides:

If the Respondent does not file an Answer, as provided by Article 5, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the Court may decide, without prejudice to the admissibility or merits of the plea or pleas, that the arbitration shall proceed if it is prima facie satisfied that an arbitration agreement under the Rules may exist. ***In such a case, any decision as to the jurisdiction of the Arbitral Tribunal shall be taken by the Arbitral Tribunal itself.*** If the Court is not so satisfied, the parties shall be notified that the arbitration cannot proceed. In such a case, any party retains the right to ask any court having jurisdiction whether or not there is a binding arbitration agreement.

ICC Rules of Arbitration, Rule 6(2) (emphasis added). Interasco argues that it is not clear whether “in such a case” refers to when a party objects

to jurisdiction, when an arbitral tribunal finds a matter is not arbitrable, or both. In fact, the answer to Interasco's query is "none of the above." The logical reading of this Rule is that in any case where the Court decides it is prima facie satisfied that an arbitration agreement exists, the Arbitral Tribunal, which is the arbitrator hearing the merits of the case, as opposed to the Court administrators deciding procedural issues, shall decide the issue of jurisdiction. By reading the following sentence, "If the Court is not so satisfied, ..." the meaning of the emphasized portion becomes even more clear. The emphasized language shows what is to occur when there is a prima facie finding of arbitrability, and the subsequent sentence shows what is to occur when there is inadequate prima facie evidence of an arbitration agreement. If the ICC Court finds insufficient prima facie evidence, i.e. it serves in the "gateway" function described in *Howsam*, *supra* the ICC Court's decision on the lack of jurisdiction will halt the arbitral proceedings. But if the ICC Court finds adequate prima facie evidence of an arbitration agreement, the case passes to the Arbitral Tribunal, where the objecting party's jurisdictional issue can be raised again in conjunction with the case's merits.

Contec Corp. is good law. Interasco cites no authority to support its contention that it contradicts United States Supreme Court precedent and state law contract principles. The only authority that Interasco cites to refute *Contec* consists of three unpublished district court decisions from outside of Washington State. Interasco's citations do not conform to GR 14.1, which requires that a party citing to such unpublished authorities

filed and serve with its brief with a copy of the cited decisions. *See* GR 14.1. And even if considered, it is readily apparent that they represent the minority view, and therefore have no applicability to the interpretation of Contract No. 2.

III. CONCLUSION

The foregoing demonstrates that the trial court erred when it stayed the arbitration and entered an order for expedited discovery and summary judgment briefing. Otan's and Interasco's dispute belongs where it started, in the ICC International Court of Arbitration. Otan respectfully requests reversal of the trial court's order and dismissal of this action.

DATED this 20th day of October, 2009.

Respectfully submitted,

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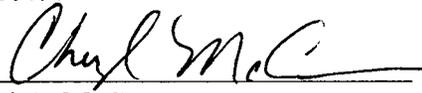
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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served a true and correct copy of **Otan Investments, LLC's Opening Brief** on counsel of record below:

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DATED this 20th day of October, 2009.



Cheryl A. McCrum