

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL COSTELLO,  
Appellant,  
vs.  
MICHAEL HOHL MOTOR COMPANY,  
Respondent.

No. 48729

**FILED**

DEC 03 2007  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to dismiss a complaint.<sup>1</sup> First Judicial District Court, Carson City; Michael R. Griffin, Judge.

After reviewing the docketing statement and the documents submitted to this court pursuant to NRAP 3(e), this court determined that the district court may have erred as a matter of law in dismissing the complaint rather than staying the action until after arbitration.<sup>2</sup> We

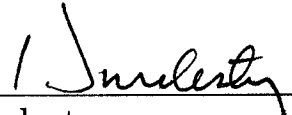
<sup>1</sup>The district court's order also granted a motion to compel arbitration. This court previously limited this appeal to the portion of the order that dismissed the complaint as an order granting a motion to compel arbitration is not appealable. See NRS 38.247 (listing orders related to arbitration that are appealable); Kindred v. Dist. Ct., 116 Nev. 405, 409, 996 P.2d 903, 906 (2000) (explaining that former version of NRS 38.247 did not list an order compelling arbitration as being subject to appeal and therefore such an order is not appealable); Clark County v. Empire Electric, Inc., 96 Nev. 18, 604 P.2d 352 (1980) (same).

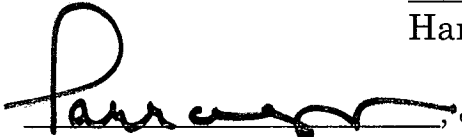
<sup>2</sup>See NRS 38.221(7) (providing that if the district court grants a motion to compel arbitration, it "shall stay any judicial proceeding that involves a claim subject to the arbitration"); Continental Insurance Co. v. Hull, 98 Nev. 542, 543-44, 654 P.2d 1024, 1025-26 (1982) (concluding that  
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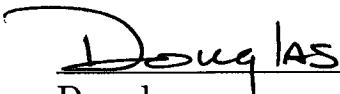
therefore directed respondent to show cause why this case should not be reversed and remanded to the district court.

In response to that order, respondent indicates that it “does not disagree with the Court’s analysis of the pertinent legal authority with respect to this issue” and therefore does not oppose a remand for further proceedings consistent with the Uniform Arbitration Act. Appellant has not filed a reply. Based on the response filed by respondent and our prior analysis, we conclude that the district court erred in dismissing the complaint rather than staying the proceedings as required by NRS 38.221(7).<sup>3</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

... continued

a former version of NRS 38.221 required the district court to stay a pending action when it determines that the action involves a claim that is subject to arbitration and that district court thus erred in granting a motion to dismiss the complaint rather than staying the action and compelling arbitration).

<sup>3</sup>See also Hull, 98 Nev. at 544, 654 P.2d at 1026 (concluding that district court erred by dismissing a complaint after granting a motion to compel arbitration rather than staying the action pending the arbitration proceedings and therefore remanding case “with instructions to proceed in accordance with the Uniform Arbitration Act”).

cc: First Judicial District Court Dept. 1, District Judge  
Carolyn Worrell, Settlement Judge  
Brian R. Morris  
Burton Bartlett & Glogovac  
Carson City Clerk