STATE OF IDAHO)
County of KOOTENAI)ss
FILED 5/19/2020
AT 5:30 O'clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

BRETT E. TERRELL and JENNY H. TERRELL, husband and wife,,

Plaintiffs,

vs.

PARADIS DE GOLF HOLDING, LLC., an Idaho limited liability corporation; and DOES 1-99,

Defendants.

Case No. CV28-20-1182

MEMORANDUM DECISION AND ORDER COMPELLING ARBITRATION

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 11, 2020, Plaintiff's Brett Terrell and Jenny Terrell (the Terrells), filed a Complaint and Demand for Jury Trial against Paradis De Golf Holding, LLC. (Paradis) and Does 1-99, regarding a dispute over a recreational easement granted in an Easement Agreement (attached to Def's. Mem. of Authorities in Supp. of Def's. Mot. to Compel Arbitration). The Terrells' Complaint alleges causes of action for Declaratory Judgement, Breach of Contract, Quiet Title, and Conversion. Compl. 4-7.

Paradis filed a Notice of Appearance and Jury Demand on March 4, 2020. On April 4, 2020, Paradis filed Defendant's Demand for Arbitration. On April 22, 2020, Paradis filed Defendant's Motion to Compel Arbitration, Defendant's Memorandum of Authorities in Support of Defendant's Motion to Compel Arbitration, and a Declaration of Michael L. Wolfe. The Terrells filed an Objection to Motion to Compel Arbitration on May 12, 2020, an Affidavit of Tom Yeiser, an Affidavit of Steven Sycle, and an Affidavit

of Arthur B. Macomber on May 13, 2020. On May 15, 2020, Paradis filed Reply of Paradis De Golf Holding, LLC to Plaintiffs' Objection to Motion to Compel Arbitration. Oral argument on Paradis' Motion to Compel was held on May 19, 2020.

II. STANDARD OF REVIEW

The standard of review for a motion to compel arbitration has recently been delineated by the Idaho Supreme Court:

> "When ruling on a motion to compel arbitration, the district court applies the same standard as if ruling on a motion for summary judgment." *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010). As a result, "[a]rbitrability is a question of law to be decided by the court." *Id.* at 315, 246 P.3d at 968 (quoting *Mason v. State Farm Mut. Auto. Ins. Co.*, 145 Idaho 197, 200, 177 P.3d 944, 947 (2007)). This Court "exercise[s] free review over questions of arbitrability and may draw [its] own conclusions from the evidence presented." *Id.* "Whether the district court had subject matter jurisdiction is a question of law over which this Court exercises free review." *H.F.L.P., LLC v. City of Twin Falls*, 157 Idaho 672, 678, 339 P.3d 557, 563 (2014).
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> "Trial courts have broad discretion over the admission of evidence at trial, including . . . determining whether or not to grant a motion to compel." *Kirk v. Ford Motor Co.*, 141 Idaho 697, 700, 116 P.3d 27, 30 (2005). "Such decisions will only be reversed when there has been a clear abuse of discretion." *Id.* at 701, 116 P.3d at 31. When this Court reviews whether a trial court has abused its discretion, the four-part inquiry is "[w]hether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).
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> "The scope of review for awards made pursuant to the [FAA] . . . parallels the review of arbitrations governed by Idaho's Uniform Arbitration Act[.]" *Barbee v. WMA Sec., Inc.*, 143 Idaho 391, 396 n.4, 146 P.3d 657, 662 n.4 (2006); see also *Hecla Min. Co. v. Bunker Hill Co.*, 101 Idaho 557, 561 n.3, 617 P.2d 861, 865 n.3 (1980) ("We note that our view of the proper scope of judicial review of commercial arbitrator's awards does not vary significantly depending upon which act applies."). "When reviewing a district court's decision to vacate or modify an award of an arbitration panel this Court employs virtually the same standard of review as that of the district court when ruling on the petition." *Moore v. Omnicare*, Inc., 141 Idaho 809, 814, 118 P.3d 141, 146 (2005). "Judicial review of arbitrators' decisions is 'limited to an examination of the award to discern if any of the grounds for relief stated in the [FAA] exist.'" *Barbee*, 143

> Idaho at 396, 146 P.3d at 662 (quoting *Bingham Cnty. Comm'n v. Interstate Elec. Co.*, 105 Idaho 36, 42, 665 P.2d 1046, 1052 (1983)). Pursuant to the FAA, when a party moves to confirm an arbitration award, a "court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." 9 U.S.C. § 9. This includes, among other things, "when arbitrators exceeded their powers . . . ." 9 U.S.C. § 10(a)(4).

T3 Enterprises, Inc. v. Safeguard Bus. Sys., Inc., 164 Idaho 738, 744–45, 435 P.3d 518, 524–25 (2019).

III. ANALYSIS

A. The Terrells are in privity.

Paradis argues that:

> Plaintiffs have filed this civil action contending their disputes with Paradis arise from the Easement ... Because plaintiffs allege they have a right to relief from Paradis because of that Easement, it necessarily follows that plaintiffs are making claims which are within the scope of the Easement. Accordingly, plaintiffs are obliged by the Easement to arbitrate their claims against Paradis.

Def's. Mem. of Authorities in Supp. of Def's. Mot. to Compel Arbitration 4.

The Terrells preface their argument by stating that "being three or four parties away in privity through several deeds, neither plaintiffs nor defendants in this case can be said to have chosen the language found in the Recreational Easement." Pls.' Obj. to Mot. to Compel Arbitration 3. (citing Recreational Easement. Comp., Ex. B (Chain of deeds) (Feb. 11, 2020)). Therefore, "[t]he attenuated privity between the parties and the fact that no parties to this case chose the language in the Recreational Easement should, in addition to other reasons in this brief, cause this Court to be skeptical of holding these parties to its language regarding remedies, especially given the present claims." *Id.* at 3-4. The Terrells never explicitly argue that they are not bound in privity with the Recreational Easement Agreement (Easement Agreement). This Court finds that the Terrells are in fact in privity through their predecessors.

The Terrells next make four principal arguments as to why the Motion to Compel Arbitration should be denied by this Court: (1) The Clause is patently ambiguous, and should be read in favor of the non-movant party, (2) The Clause is latently ambiguous and should be read in favor of the non-moving party, (3) Paradis waived its right to arbitrate, and (4) Changes in Idaho code are favorable to the Terrells' arguments. Pls.' Obj. to Mot. to Compel Arbitration 3-12.

B. There is no ambiguity.

The Arbitration Clause in the Easement Agreement States: "this agreement shall be subject to binding Arbitration under the Idaho Uniform Arbitration Act or as the parties shall further agree." Defs'. Mem. of Authorities (Recreational Easement 2). Idaho Code § 7-901 states:

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act does not apply to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

Idaho Code § 7-902(a) states:

> On application of a party showing an agreement described in section 7-901, Idaho Code, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

Idaho Code § 7-902(a) states:

> Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

The Idaho Supreme Court has set forth presumptions in favor of arbitration:

> This Court has recognized a strong public policy which favors arbitration. *See, e.g., Bingham County Comm'n v. Interstate Elec. Co.*, 105 Idaho 36, 40, 665 P.2d 1046, 1050 (1983). Agreements to arbitrate are encouraged and given explicit recognition as effective means to resolve disputed issues. *Loomis, Inc. v. Cudahy,* 104 Idaho 106, 108, 656 P.2d 1359, 1361 (1983). Doubts are to be resolved in favor of arbitration. *See, Int'l Ass'n of Firefighters, Local No. 672 v. City of Boise,* 136 Idaho 162, 168, 30 P.3d 940, 946 (2001). A court reviewing an arbitration clause will order arbitration unless "it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Id.* (quoting *AT & T Tech., Inc. v. Communications Workers of America,* 475 U.S. 643, 650, 106 S.Ct. 1415, 1419, 89 L.Ed.2d 648, 656 (1986)).

Mason v. State Farm Mut. Auto. Ins. Co., 145 Idaho 197, 201, 177 P.3d 944, 948 (2007). When determining whether a motion to compel arbitration should be granted, the Idaho Supreme Court in *Mason* held:

> [t]he Court must limit its inquiry to whether there is an agreement to arbitrate. *Loomis, Inc.*, 104 Idaho at 109, 656 P.2d at 1362. Where parties have entered into an agreement calling for arbitration as a means of settling a dispute, the court's scope of review is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the parties' contract. *Int'l Ass'n of Firefighters,* 136 Idaho at 167, 30 P.3d at 945. Whether an arbitration clause in a contract requires arbitration of a particular dispute or claim depends upon its terms. *Lovey,* 139 Idaho at 46, 72 P.3d at 886. *See also EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289, 122 S.Ct. 754, 762, 151 L.Ed.2d 755, 766 (2002) (absent some ambiguity in the agreement, it is the language of the contract that defines the scope of disputes subject to arbitration); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57, 115 S.Ct. 1212, 1216, 131 L.Ed.2d 76, 84 (1995) ("[T]he FAA's proarbitration policy does not operate without regard to the wishes of the contracting parties."). The presumption in favor of arbitration does not displace the parties' intent. *See Oil, Chemical & Atomic Workers Int'l Union v. EG & G Idaho, Inc.*, 115 Idaho 671, 674, 769 P.2d 548, 551 (1989) (citing *First Nat'l Maint. Corp. v. NLRB,* 452 U.S. 666, 101 S.Ct. 2573, 69 L.Ed.2d 318 (1981)). Accordingly, the first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate that dispute. *See Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 626, 105 S.Ct. 3346, 3353, 87 L.Ed.2d 444, 454 (1985).

Id.

When interpreting an arbitration clause, "states apply general state law principles of contract interpretation to resolve the issue whether the parties entered into a valid and enforceable written agreement to arbitrate, and to determine the scope of the arbitration provision." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S.Ct. 1920, 1924, 131 L.Ed.2d 985, 994 (1995). *Mason v. State Farm Mut. Auto. Ins. Co.*, 145 Idaho 197, 200, 177 P.3d 944, 947 (2007) (Footnote 1) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S.Ct. 1920, 1924, 131 L.Ed.2d 985, 994 (1995).

The Terrells have accurately cited the Supreme Courts' delineation of contract interpretation:

> The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was formed. *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004) (internal citation omitted). In determining the intent of the parties, the contract is to be Viewed as a Whole. *Daugharly v. Post Falls Highway Dist,* 134 Idaho 731, 735, 9 P.3d 534, 538 (2000).
>
> > [T]his Court begins with the document's language. In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument. Interpreting an unambiguous contract and determining whether there has been a violation of that contract is an issue of law subject to free review. A contract term is ambiguous when there are two different reasonable interpretations or the language is nonsensical. Whether a contract is ambiguous is a question of law, but interpreting an ambiguous term is an issue of fact.
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> *Phillips v. Gomez*, 162 Idaho 803, 807, 405 P.3d 588, 592 (2017); quoting *Potlatch Educ. Ass 'n v. Potlatch Sch. Dist.* No. 285, 148 Idaho 630, 633, 226 P.3d 1277, 1280 (2010).
>
> There are two types of ambiguity, patent and latent. *Knipe Land Co. v. Robertson*, 151 Idaho 449, 455, 259 P.3d 595, 601 (2011). A patent ambiguity is an ambiguity clear from the face of the instrument in question. *Id.* On the other hand, '[a] latent ambiguity exists where an instrument is clear on its face, but loses that clarity When applied to the facts as they exist.' *Id.* If the Court finds an ambiguity, the interpretation of the contract term is a question for the fact-finder. *Id.* If the Court finds

> no ambiguity, 'the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument.' Potlatch, 148 Idaho at 633, 226 P.3d at 1280; quoting *C & G, Inc. v. Rule*, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001). Interpreting an unambiguous contract and determining whether there has been a violation of that contract is an issue of law. *Id.* (internal citation omitted).

Thurston Enterprises, Inc. v. Safeguard business Systems, Inc., 164 Idaho 709, 717-18, 435 P.3d 489, 497-98 (2019); Pls.' Obj. to Mot. to Compel Arbitration 4-5.

1. There is no patent ambiguity.

This Court finds that the arbitration clause in the Easement Agreement contains no patent ambiguity because the plain language of the Arbitration Clause clearly subjects matters arising out of the Easement Agreement to binding arbitration.

The Terrells argue that:

> Patent ambiguity exists, because the clause states the agreement will be **"subject to"** binding arbitration. Rec. Easement, p. 2. It does not state that **all claims and disputes** will be settled by arbitration. The plain language means that if the parties decide to arbitrate for a remedy, then the agreement will be subject to that remedy. But notice the end of the clause states, ". . . or as the parties shall further agree." The parties here have not agreed to arbitration, and it appears by its plain language that Whether to arbitrate or not is negotiable. This makes sense, especially with the attenuated privity of contract where no party to this case signed the agreement. As to these parties, the agreement is on its face an adhesion agreement.

Pls'. Obj. to Mot. to Compel Arbitration 5. (bold in original).

Paradis Argues:

> The language of the Easement stating that the agreement is subject to binding arbitration necessarily refers to disputes or controversies. There would be nothing to arbitrate in the absence of a dispute or controversy; parties do not arbitrate issues about which they agree. Thus, plaintiffs' argument renders the existing language nonsensical. Plaintiffs also suggest that because the document states that the arbitration proceeds "under the Idaho Uniform Arbitration Act or as the parties shall further agree," the document is ambiguous. Plaintiffs interpret the italicized language as requiring the parties to mutually agree to arbitrate. Once again, plaintiffs are attempting to rewrite the language rather than interpreting it. The italicized language indicates that the Idaho Uniform Act applies to the arbitration, but the parties can agree to other rules or

> procedures if they wish. In the absence of an agreement otherwise, the Uniform Act applies. The italicized language does not purport to require the parties' mutual consent
> before arbitrating.

Reply of Paradis to Pls'. Mot. to Compel Arbitration 2-3.

This Court finds that the plain language of the phrase, "[t]his agreement shall be subject to binding arbitration under the Idaho Uniform Arbitration Act" means exactly what it says it means. Any additional language is not required for the phrase to encompass the whole of the agreement. Questions as to the scope of the Arbitration Clause as it applies to the specific facts of this case will be discussed below under our discussion regarding latent ambiguity.

This Court similarly finds no ambiguity in the final section of the clause that reads "or as the parties shall further agree." The plain meaning of this phrase in the context of Arbitration Clause can only have one meaning, and that is the parties can supersede the requirement of binding arbitration if agreed upon by both parties. It would be non-sensical for an Arbitration Clause that requires binding arbitration to allow destruction of the Arbitration Clause by unilateral decision. If this were true, then there would be no point in having the Arbitration Clause in the contract at all. For these reasons, this Court finds that the Arbitration Clause is patently unambiguous.

2. There is no latent ambiguity.

This court finds that the Arbitration Clause contains no latent ambiguity because the facts of the case in regards to the Terrells' causes of action fall within the scope of binding arbitration under the Arbitration Clause.

The Terrells argue that the Arbitration Clause contains latent ambiguity because:

> [E]ven if the instrument appears clear on its face, the facts as they exist today indicate the original parties would more than likely not have arbitrated the quiet title, declaratory judgment, and other issues pleaded in Terrell's complaint. Terrells do not dispute the easement itself. Terrells

> dispute the idea that Paradis de Golf has any right or power to destroy Terrell's dominant estate interest by carving up the servient estate into new subdivisions and selling off chunks of it to third parties. This is a quiet title action at its core, and given the number of parties involved should not result in an arbitrator making the decisions given by statute to this Court. Concurrently with this objection to the motion to compel arbitration, plaintiffs have motioned to amend this case to add eight (8) newly identified parties to it. *First Sec. Bank of Idaho, N.A. v. Hansen*, 107 Idaho 472, 690 P.2d 927 (1984) (Only one case in Idaho mentions "quiet title" and "arbitration" together.)
>
> ... Terrells simply do not think the arbitration clause applies, due to the complex facts in this case already, increasing complexity that will challenge the Court as the case moves forward, and because the original parties to the Recreational Easement never contemplated the issues arising in this case being resolved by arbitration.

Pls'. Obj. to Mot. to Compel Arbitration. 5-6.

To sum up the Terrells argument for denying the Motion to Compel due to latent ambiguities the Terrells state:

> [L]atent ambiguities in this fact pattern indicate a complexity of issues not contemplated by the original parties to the Recreational Easement. Also, there is a statutory construction issue as to whether a quiet title action and a declaratory judgment petition to a court can be resolved by an arbiter to finally resolve a case of this nature. Terrells do not think the original parties to the Recreational Easement created the clause at issue in contemplation of resolving the types of disputes involved in this case, and thus Terrells pray this Court denies the motion to compel arbitration.

Id. at 9.

Paradis argues that there is nothing in the Uniform Arbitration Act at I.C. §7-901 which puts quiet title actions outside the scope of Arbitration and the Terrells:

> misinterpret Idaho Code §6-415 and 416 to make their argument. These statutes and Idaho Code §6-414 require that the owner of real property must compensate an occupant who had color of title, but was not the owner of the real property, and who made improvements to the property. The owner is required to compensate the occupier for the occupier's improvements, and the value of the property and the value of the improvements must be calculated. Plaintiffs interpret this requirement to mean that the action must proceed in District Court, but the statutes merely require the trier of fact to make the specific calculations. Nothing in the statutes state that the required calculations are exclusively done by Court and not an arbitrator.

Reply of Paradis to Pls'. Mot. to Compel Arbitration 2-3. This Court agrees with Paradis' argument, and finds no latent ambiguity.

C. Paradis has not waived its right to arbitrate

The Terrells argue that:

> In this case, Paradis de Golf proceeded to subdivide and selloff large portions of the Recreational Easement area, without discussion or negotiation with Terrells or any of the other parties for whose property the easement is appurtenant. Waiver of an arbitration clause upon the filing of litigation, see *Hansen*, is similar to waiver of an arbitration clause by taking actions for which an arbitration clause was not designed. In this case, Terrells pray this Court deny defendant's motion to compel arbitration, by finding defendants waived that right.

Pls.' Obj. to Mot. to compel Arbitration 10 (citing *Borah v. McCandless*, 147 Idaho 73, 78, 205 P.3d 1209, 1214 (2009)). This case is differentiated from *Hansen*. In *Hansen* the Court found that "the motion to compel arbitration was untimely filed and that by submitting to the jurisdiction of the district court and proceeding with litigation in that court," the moving party "waived its right to compel arbitration." *Hansen v. State Farm Mut. Auto. Ins. Co.,* 112 Idaho 663, 670, 735 P.2d 974, 981 (1987). In this Case, Paradis' Motion to Compel Arbitration was timely filed, and, as detailed above, this Court has found that the causes of action in this case fall under the scope of the Arbitration Clause, an therefore, Paradis has not waived its rights to arbitrate.

D. Changes in the Idaho Code do not change *Mason*.

The Terrells argue that changes to Idaho Code § 29-110 made in 2012 necessitate that the "Defendant's citation to *Mason* is old case law that has been superseded by Idaho statutes[.]" Pls.' Obj. to Mot. to Compel Arbitration 11.

Paradis argues that "both *Mason* and *Wattenbarger* were cited with approval by the Idaho Supreme Court in *T3 Enterprises, Inc. v. Safeguard Business Systems, Inc.*,

164 Idaho 738, 745, 435 P.3d 518 [525] (2019) which plaintiffs cite in their Opposition on page 2 and which was decided seven years after the 2012 amendments." Reply of Paradis to Pls'. Mot.to Compel Arbitration 6. Furthermore, Paradis argues that:

> The Court in *T3 Enterprises* enforced an arbitration clause in the parties' contract, but held that a forum clause requiring the arbitration in Texas was unenforceable pursuant to I.C. §29-110 and its 2012 amendment. *Id.* at p. 750. Thus, contrary to plaintiffs' argument, *Wattenbarger* and *Mason* have not been overturned, and *T3 Enterprises* illustrates that I.C. §29-110 does not invalidate arbitration clauses. This is obvious from the text of Idaho Code §29-110(1), which states in pertinent part that "nothing in this section shall affect contract provisions relating to arbitration so long as the contract does not require arbitration be conducted outside the state of Idaho." *Id.*

Id. at 7.

This Court fails to see how the changes made in 2012 by the Idaho Legislature to I.C. § 29-110 in any way invalidate *Mason* as it applies to the facts of this case, and finds such argument made by the Terrells to be disingenuous.

E. All of Terrells' causes of action fall within the Arbitration Clause.

This Court finds that the Terrells' four causes of action all fall within the scope of the Arbitration Clause. This is related to the latent ambiguity issue above, but somewhat distinct. As referenced in more detail above, the Idaho Supreme Court has held that when determining whether a motion to compel arbitration should be granted, "the court's scope of review is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the parties' contract." *Int'l Ass'n of Firefighters,* 136 Idaho at 167, 30 P.3d at 945.

Terrells claim, "This is a quiet title action at its core, and given the number of parties involved should not result in an arbitrator making the decisions given by statute to this Court." Pls'. Obj. to Mot. to Compel Arbitration 5-6. Terrells further argue:

> A quiet title action involves the appurtenant rights attaching to Terrell's property in the Recreational Easement, and has nothing to do with the terms of the easement itself. There's a question as to whether a quiet title action involving an easement of this type with its number of parties could be resolved properly by an arbitrator if this arbitration clause is triggered.
>
> Idaho code section 6-414, states:
>
> Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in a proper action found not to be the owner, no execution shall issue to put the owner in possession of the same after the filing of an action as hereinafter provided, until the provisions of this act have been complied with; provided said occupant may elect, after filing of the action, to exercise his right to remove such improvements if it can be done without injury otherwise to such real estate.
>
> A quiet title action is a matter for District Court, not an arbitrator. See I.C. §§ 6-415; 6-416.

Id. at 6-7.

Paradis argues,

> Plaintiffs also argue that because they have styled their Complaint as a quiet title action it is outside the scope of the Uniform Arbitration Act at I.C. §7—901 et seq. However, there is no language in the Act which supports this contention, and plaintiffs misinterpret Idaho Code §6-415 and 416 to make their argument. These statutes and Idaho Code §6-414 require that the owner of real property must compensate an occupant who had color of title, but was not the owner of the real property, and who made improvements to the property. The owner is required to compensate the occupier for the occupier's improvements, and the value of the property and the value of the improvements must be calculated. Plaintiffs interpret this requirement to mean that the action must proceed in District Court, but the statutes merely require the trier of fact to make the specific calculations. Nothing in the statutes state that the required calculations are exclusively done by a Court and not an arbitrator.

Reply of Paradis De Golf Holding, LLC to Pls.' Obj. to Mot. to Compel Arbitration 4.

This Court finds not only the quiet title action is governed by the arbitration clause, but all causes of action alleged by Terrells are covered.

1. Declaratory Judgement

The Terrells' first cause of action is for a Declaratory Judgement and alleges

that:

> Paradis de Golf has, both through written and unwritten contract, their conduct, and written deed and other writings unlawfully conveyed to third parties the right to build on the easement area as described herein at Exhibit A for the purposes of subdivision and development which are destroying Terrells' dominant estate easement rights.

Compl. 5.

The facts alleged in the language of the Terrells' claim for Declaratory Judgement fall squarely within the scope of the Arbitration Clause. The Terrells' allege that Paradis' actions "are destroying Terrells' dominant estate easement rights." *Id.* The dominant estate easement rights in question exist under the Easement Agreement and the question of arbitration is governed by the Arbitration Clause to the Easement Agreement, which states that "[t]his agreement shall be subject to binding arbitration..." For these reasons no latent ambiguity exists regarding the cause of action for Declaratory Judgement. Terrells cite two statutes from the Declaratory Judgments Act (I.C. §10-1201 et seq.), I.C. §10-1211 (parties to a declaratory judgment action) and §10-1212 (declaratory judgment act is remedial and is to be liberally construed). Pls'. Obj. to Mot. to Compel Arbitration 7. There is absolutely nothing about those two sections which would mandate Courts to adjudicate declaratory judgment actions when there is an applicable binding arbitration clause. Arbitration clauses are to be liberally construed as well (see the analysis of *Mason* above) and nothing about that fact places it in conflict with I.C. §10-1211.

2. Breach of Contract

The Terrells' second cause of action is for Breach of Contract and alleges:

> Recently, the successor owner to Prairie Golf, LLC, Paradis de Golf, either alone or in concert with one or several of the unnamed DOES 1-99, has undertaken construction to obliterate the easement area and sell to third parties portions of that servient estate underlying that recreational easement, including the recent destruction of the driving range.

Id. at 6.

The facts alleged in the language of the Terrells' Breach of Contract Claim fall squarely within the scope of the arbitration agreement. The Terrells have alleged that Plaintiffs [CHECK] have "undertaken construction to obliterate the easement area and sell to third parties' portions of that servient estate underlying that recreational easement..." *Id.* The fact that this cause of action centers on the breach of the terms found in the Easement Agreement obviously denotes that it pertains to the Easement Agreement itself, and therefore it falls within the scope of the Arbitration Clause.

3. Quiet Title

The Terrells' third cause of action asks this Court to Quiet title and:

> Pursuant to Idaho code section 6-401, plaintiffs Terrell pray for this Court to quiet title in their appurtenant recreational easement, because plaintiffs have suffered a diminution of and damage to the scope and extent of their dominant estate title interest in the real property golf course that is appurtenant to Terrells' land.

Id. As mentioned above, the Terrells argue that "A quiet title action is a matter for District Court, not an arbitrator." Pls'. Obj. to Mot. to Compel Arbitration 7.

This Court finds that the plain language of Quiet title regarding the Easement Agreement falls within the scope of the Arbitration Agreement for the same reasons as stated above. Additionally, this Court finds that nothing in the Uniform Arbitration Act I.C. §7-901, nor Idaho Code §§6-415, 416 requires quiet title actions to be settled by arbitration.

4. Conversion

The fourth cause of action alleges that "Defendant Paradis de Golf has unlawfully taken and converted to its own use or sold to third parties Terrells' incorporeal chattel real without a right to do so." Compl. 7. "Plaintiffs Terrell have been

harmed by defendant's servient estate conversion in an amount over $10,000 to be determined at trial." *Id.*

This Court finds the plain language of the Complaint states the Terrells are suing for conversion of their easement. The easement was granted under the Easement Agreement which is governed by the Arbitration Clause. For these reasons the Cause of action for Conversion falls within the scope of the Arbitration Clause; it is that simple.

The Terrells also make a general argument that the number of parties, and the issue of damages, creates complexities, which "were not envisioned by the original parties to the Recreational Easement, and this Court should not send such decisions to arbitration." Pls'. Obj. to Mot. to Compel Arbitration 5-7. The Terrells cite Idaho Code §10-1211, and §10-1212. This Court above determined that Idaho Code §10-1211, and 10-1212, are not applicable to the Terrells' argument.

The Terrells also cite *Murphy v. Mid-West National Life Ins. Co. of Tenn.*, 139 Idaho 330, 331, 78 P.3d 766, 768 (Idaho 2003). Pls'. Obj. to Mot. to Compel Arbitration 6. The Idaho Supreme Court in *Murphy* found that the arbitration agreement was unenforceable because, "[e]ffectively the arbitration agreement in this case turns the purposes of arbitration upside down. It is an expensive alternative to litigation that precludes the Murphys from pursuing the claim." 139 Idaho at 331, 78 P.3d at 768. The Terrells offer no evidence that arbitration in the present case will be more expensive then litigation, other than their bald claims that the case is complex and "such complexities were not envisioned by the original parties..." Pls'. Obj. to Mot. to Compel Arbitration 7.

IV. CONCLUSION

As set forth above in *T3 Enterprises, Inc.*, citing *Lunneborg*, this Court (1) perceives the issue as one of discretion; (2) believes it has acted within the outer

boundaries of its discretion; (3) believes it has acted consistently with the legal standards applicable to the specific choices available to it; and (4) has reached its decision by the exercise of reason. For the reasons discussed above, Defendant Paradis' Motion to Compel Arbitration is granted. At oral argument, counsel for Terrells voiced no objection to the nominee for arbitration made by counsel for Paradis, attorney Michael Hague.

IT IS HEREBY ORDERED Defendant Paradis' Motion to Compel Arbitration is **GRANTED.**

IT IS FURTHER ORDERED that attorney Michael B. Hague is the arbitrator and that all further court proceedings in this case are STAYED pending completion of arbitration, save for the hearing on the Terrells' Motion to Amend Complaint to Add Newly Identified Parties, already scheduled to be held on May 27, 2020.

DATED this 19th day of May, 2020.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 20th day of May, 2020, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail, email or facsimile to each of the following:

Arthur Macomber, art@macomberlaw.com ✓	Attorney for Plaintiffs
Michael Wolfe, mlw@randalldanskin.com ✓	Attorney for Defendants
Michael B. Hague, mhague@haguelawoffices.com ✓	Arbitrator

By Jeanne Clausen, Deputy Clerk