

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA-25-0343

BLUEBIRD PROPERTY RENTALS, LLC and ALAINA GARCIA
Plaintiffs/Appellees

v.

WORLD BUSINESS LENDERS, LLC; WBL SPO I, LLC; and WBL SPO II,
LLC,
Defendants/Appellants

On Appeal from the Montana Eighteenth Judicial District Court,
in and for the County of Gallatin,
Cause No. DV-16-2023-201-DS
Hon. Andrew Breuner, Presiding

APPELLANTS' REPLY BRIEF

APPEARANCES:

Martin S. King
WORDEN THANE P.C.
321 W. Broadway St., Ste. 300
Missoula, MT 59802
(406) 721-3400
mking@wordenthane.com

*Attorneys for Defendants/Appellants
World Business Lenders, LLC; WBL
SPO I, LLC; and WBL SPO II, LLC*

Frederick R. Landers
Axilon Law
270 W. Kagey Blvd. Suite F
Bozeman, MT 59715
(406) 922-4777
rlanders@axilonlaw.com

*Attorneys for Plaintiffs/Appellees
Bluebird Property Rentals, LLC and
Alaina Garcia*

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SUMMARY

Bluebird and Garcia have not met their burden required under Federal and Montana law to prove that the arbitration provisions of the Loan Agreement are unenforceable. *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151 (9th Cir. 2013); *Sayler v. Yan Sun*, 2023 MT 175, 4 29, 413 Mont. 303, 536 P.3d 399.¹

Plaintiffs go to great lengths make the issue of arbitrability about the rate of interest and by presenting themselves, despite what they repeatedly represented in the business loan documents, as a single mother trying to pay her bills. This strategy apparently worked with the District Court who despite finding that “*While it may be true that a very careful reading of the Loan and Agreement and Guaranty makes clear what the borrower’s options are ...*”², then proceeded to

¹ In their brief Appellees misrepresent that WBL has conceded that Montana law applies as to validity and enforceability of the Loan Contracts. This is untrue. WBL’s motion states “for the purpose of this motion only”, that Montana law applies and did not and does not concede that Montana law is the correct choice of law. (Doc. 27.00, p. 6-7) It made the same reservation in its Opening Brief here.

² The District Court held specifically: “*While it may be true that a very careful reading of the Loan and Agreement and Guaranty makes clear what the borrower’s options are, the Court must assess the language with a high level of constitutionality and protection*” Opinion and Order, pp. 7.

find the arbitration language to be “intentionally misleading”³, even though Plaintiffs did not claim to be intentionally misled.

Obviously, the loan carried a high rate of interest. But Plaintiffs are not victims of a predatory lending scheme. Bluebird and Garcia sought out and initiated contact with WBL. They applied for a business loan, representing in their application, and in numerous signed loan documents, including the Loan Agreement which is called a “**Business Promissory Note and Security Agreement**” (Doc. 10.00, Ex. 1-8), that this was a business loan for

³ Opinion and Order pp. 7.

Bluebird, that the collateral was Bluebird property, and that the proceeds would be used for Bluebird's business only.^{4 5}

Before the loan closed, Bluebird and Garcia had two different conferences with WBL, one after receiving the loan documents, to discuss the terms of the loan and to address any questions they had about the loan documents or their terms.

They expressed none. (Doc. 16.00, ¶ 8)

Bluebird and Garcia were indeed required to hire an attorney of their choice to review the loan documents and provide an opinion letter that the loan and loan

⁴ At closing, among other documents, Garcia executed a "Business Loan Affidavit" (Doc. 10.00, Ex. 1-7) which provides:

In connection with the business loan to Borrower evidenced by the Business Promissory Note and Security Agreement of even date herewith (Loan Agreement) Borrower being first duly sworn on oath deposes and states:

That the proceeds of the Loan Agreement of FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00), being furnished to Borrower will be used for business purposes only, and not for personal, consumer, family or household purposes or to purchase personal, consumer, family or household goods.

Subscribed and sworn to by Borrower, under penalty of perjury, this day of , in the year . BORROWER: Bluebird Property Rentals, LLC

⁵ Garcia also claims the loan proceeds were deposited into "... my checking account...". (Doc. 10.00, ¶ 24) They were deposited into a business account in the name of Bluebird Property Rentals, LLC (using the Bluebird tax i.d.) as evidenced by another document signed by Garcia and Bluebird attesting that the loan proceeds would be used for "business purposes only". (Doc. 10.00, Ex. 1-5)

documents complied with Montana law. Bluebird and Garcia want to assign nefarious intent to this requirement, yet this is a standard practice in commercial loans, a fact acknowledged by Plaintiffs' counsel at oral argument. (Hearing Tr. p. 13-19).

In the context of Plaintiffs' sophistication, the issue isn't what the attorney did or didn't do, but that Bluebird and Garcia had access to an attorney, unlike in consumer loans, to clear up questions about the loan documents recognizing, especially in a commercial context, that the language of the Agreement means something. Montana Federal District Judge Lovell made this point in *Elk MT Motor Sports Inc. v. Arctic Cat Sales Inc.*, No. CV 13-7-H-CCLD, 2013 U.S. Dist. LEXIS 142070, 2013 WL 5492960 (D. Mont. Oct. 2013), when he ordered arbitration of a dealership agreement over the dealer's claim that its representative did not read or understand the arbitration language and didn't bother to hire an attorney.

Bluebird and Garcia offer as a justification for not reading or understanding the arbitration provisions of the Loan Documents "as amounting to fine print" and offering that they "skimmed" the documents. Garcia claims she didn't recall seeing or reading the provision entitled **ARBITRATION** in the Guaranty or the extensive arbitration language in the Loan Agreement and claims she didn't know anything

about arbitration until this lawsuit. (Garcia Dec. Doc. 10.00, ¶ 20) Conveniently, she also claims she did not see the choice of Nevada law despite being stated in numerous documents and being explained in upper case print in both the Loan Agreement and Guaranty. (Doc. 10.00, ¶ 21; Guaranty (Doc. 10.00, Ex. 1-21).

Borrowers who obtain business loans based on their misrepresentations and then sign but fail to read the operative language of the loan documents, should not later be allowed to claim they were misled when the lender enforces the loan documents that they didn't bother to read. *See e.g.* Mont. Code Ann. § 1-3-208 (A person may not take advantage of the person's own wrong"). Each party to a contract in Montana "[has] a duty to understand the terms of the agreement." *Gliko v. Permann*, 2006 MT 30, ¶ 35, 331 Mont. 112, 130 P.3d 155, 163.

Regarding Plaintiffs claims of a "Rent a Bank" scheme, it is non-sensical. The interest charged under the Loan Contracts is legal under the stated choice of Nevada and Federal law. Garcia acknowledges the loan was made by AXOS Bank, a federally regulated lender, which Garcia acknowledges she saw on the loan documents, including the application, as did her counsel who directed her opinion to AXOS. The Loan Agreement explains in bold print that the loan is a "business loan", explains in detail and in bold print the amount of interest charged, and warns, again in bold print, that it is a high interest loan. (Doc. 10.00: Ex. 1-2)

Plaintiffs also do not dispute that the loan documents that they signed as part of their application included their explicit acknowledgment that the loan may be assigned to a third party. (Doc. 10.00, Ex. 1-32, Ex. 1-40) Buying and selling loans and contracting for loan servicing are common practices in the United States financial system. Federal and Montana statutes recognize that loans made by lenders exempt from usury may be assigned to non-regulated lenders, with the loans retaining their exemption status. 12 U.S.C. § 85; 85 Fed. Rule 33530; *Rent-Rite SuperKegs W. Ltd. v. World Bus. Lenders, LLC*, 623 B.R. 335 (D. Colo. 2020)⁶; M.C.A. §31-1-107(2).

Bluebird and Garcia make unsupported allegations that the language of the Loan Contracts was drafted with the intent to hide the amount of interest charged or insulate WBL from liability. There is no evidence to support his allegation. First, these are AXOS documents. Regardless, not a single fact was misrepresented, and Plaintiffs don't describe any.

⁶ In the *Rent-Rite Superkegs* case, which is cited by Plaintiffs, the Bankruptcy Court and District Court held that under federal law loans made by lenders that are exempt from usury when made remain exempt after assignment to a non-protected lender. The case was then remanded to the Bankruptcy Court and later dismissed.

Ultimately, the District Court's finding that the arbitration language in the Loan Agreement is unenforceable because Bluebird and Garcia were intentionally misled, is error. A fact acknowledged by Plaintiffs.

Similarly, the District Court's finding that "*it may be true that a very careful reading of the Loan and Agreement and Guaranty makes clear what the borrower's options are*", but then holding they are unenforceable because they are not in conspicuous type, highlighted, prominent or initialed, is at odds with the Federal Arbitration Act. (FAA)

As to their claim of ambiguity, the Plaintiffs rely on a single word in the Guaranty only, to argue that the extensive arbitration language in both the Loan Agreement and Guaranty Agreement is ambiguous and without effect and that as a result, Plaintiffs did not knowingly waive their right to litigate their claims under the Loan Agreement in Court. The District Court did not find the arbitration language itself to be ambiguous, nor is it, since when reading the entirety of the Loan Contracts (which Plaintiffs acknowledge they did not do), there is only one reasonable interpretation, i.e. that all parties have waived their right to a jury trial and that the case shall be tried to the court unless any party requests arbitration. Moreover, the Plaintiffs claim that arbitration language is ambiguous is not based on their reading or understanding of the arbitration language, which they have no

recall of doing or having, but rather, their reading of the language of the Guaranty *without reading or understanding* the arbitration language.

Finally, under the FAA and Montana law, the arbitration language is to be interpreted in favor of arbitrability including directing arbitration of the Plaintiffs' claims under the Loan Agreement, which does not contain the disputed language of the Guaranty.

As to unconscionability, the Court did not find the arbitration language to be unconscionable. Nor is it. The arbitration provisions do not unreasonably favor the Defendants nor are they unduly oppressive, or oppressive at all, to Plaintiffs.

LAW

The Ninth Circuit recently explained in *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 483 (9th Cir. 2023) the state of the law under Federal Arbitration Act in interpreting arbitration provisions in contracts:

The United States Supreme Court's cases "place it beyond dispute that the FAA was designed to promote arbitration." ... The (Supreme) Court has "repeatedly described the Act as 'embod[y]ing [a] national policy favoring arbitration,' and 'a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary.'" (citations omitted). In enacting the FAA, Congress intended to combat the longstanding "hostility towards arbitration" that "had manifested itself in a great variety of devices and formulas declaring arbitration against public policy." We have gone further, stating that "the FAA's purpose is to give preference (instead of mere equality) to arbitration provisions." (Emphasis ours) Citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S. Ct. 1740, 179 L.ed.2d. 742 (2011); and *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1160 (9th Cir. 2013).

The Supreme Court has counseled that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration . . . "Thus, as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." *Mitsubishi Motors Corp. v. Soler Chrysler Plymouth*, 473 U.S. 614, 626, 105 S.Ct. 346, 87 L.Ed.2d 444 (1985), quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983).

Because the FAA favors arbitration, the burden here is on the Plaintiff to prove that the arbitration provisions are unenforceable. *Green Tree Fin. Corp.- Ala. v. Randolph*, 531 U.S. 79, 91, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000); *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1157 (9th Cir. 2013) ("[T]hose parties challenging the enforceability of an arbitration agreement bear the burden of proving that the provision is unenforceable.")

Montana law also holds that the party asserting unconscionability has the burden to prove it. M.C.A. §§ 26-1-401, 402 and 28-2-805; *Sayler v. Yan Sun*, 2023 MT 175, ¶ 29, 413 Mont. 303, 536 P.3d 399.

ARGUMENT

1. There is No Dispute That the Arbitration Provisions Encompass Plaintiffs' Claims.

Bluebird and Garcia admit that if the arbitration provisions of the Loan Agreement are enforceable, that their claims as alleged in their Complaint are properly adjudicated in arbitration.

2. The District Court Erred in Finding that the Arbitration Language was Misleading and that Plaintiffs Were Misled.

The District Court denied WBL's motion to compel arbitration, concluding that the arbitration language was intentionally misleading. Bluebird and Garcia acknowledge that they are not claiming that they were intentionally misled. (Appellee Brief, pp. 20, footnote 14) Clearly, the District Court erred.

Bluebird and Gracia do allege that they were misled because in reading the language of the Guaranty they thought that although they were waiving their right to jury trial, they could still have a trial before the Court. Again, they were not misled because of ambiguity in the arbitration language or because they were confused about arbitration, or even because the language in the Guaranty as compared to the arbitration language, was ambiguous. In essence, their claim is that the language is misleading because while they read the language in the

Guaranty, they failed to read or understand the arbitration language and thus were surprised to learn that their claims were even subject to arbitration.

One who executes a written contract is presumed to know the contents of the contract and to assent to those specified terms in the absence of fraud, misrepresentation, or other wrongful act by the other contracting party. Absent incapacity to contract, ignorance of the contents of a clear unambiguous written contract is not grounds for relief from liability. *Lenz v. FSC Secs. Corp.*, 2018 MT 67, 391 Mont. 84, 414 P.3d 1262.

Plaintiffs should not be heard to claim they were misled when, in a commercial loan to their limited liability company, they were represented by counsel, had the opportunity before closing to review the loan documents and to have them reviewed by counsel, and yet did not read the operative provisions, did not discuss them with counsel and did not discuss them with the Lender despite having several opportunities to do so. Plaintiffs were not misled because of the language of the Loan Contracts. Plaintiffs were misled because Plaintiffs chose not to take the time to read or understand the arbitration provisions of the Loan Contracts but remember a single word of the Guaranty. Plaintiffs' intentional ignorance of the terms of the Loan Contracts is not a basis to find they were misled or to render the arbitration provisions unenforceable. *Lenz*, ¶ 22.

3. The District Court’s Refusal to Enforce Arbitration Because the Contract Failed to Include Highlighting, Prominent Language, and/or Initials is Contrary to the Federal Arbitration Act and Error.

In its Opinion and Order the District Court found that “*While it may be true that a very careful reading of the Loan and Agreement and Guaranty makes clear what the borrower’s options are ...*” it then went on to find that the arbitration provisions are not enforceable because “*it does not prominently call attention to a party’s option to compel arbitration*” (Order, p. 6); “*... is neither titled nor set up for initials or signature ...*”(Order, p. 6); and *The positioning and selective highlighting of language in the Loan Agreement and Guaranty are susceptible to the reasonable view that they are intentionally misleading.* (Order, p. 7).

By requiring highlighting, initials and other prominent type in order for the arbitration provisions of the Loan Contracts to be enforceable in what it found to be an otherwise “clear” contract if carefully read, the District Court’s Order violates Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, by placing arbitration provisions on a suspect status and a different footing as other contracts. *Doctor’s Associates v Casarotto*, 517 U.S. 681, 687, 116 S. Ct. 1652, 134 L.Ed.2d. 902. No Montana law requires special explanation or initialing of arbitration provisions in a contract between corporate entities. *Elk MT Motor Sports Inc. v. Arctic Cat Sales Inc.*, No. CV 13-7-H-CCLD, 2013 U.S. Dist. LEXIS 142070,

2013 WL 5492960 (D. Mont. Oct. 2013). Bluebird and Garcia basically ignore this error in their brief.

4. The Loan Contracts are not Ambiguous.

The District Court did not find that the arbitration provisions in the Loan Contracts are ambiguous. Nor are they. When reading the arbitration language of the Loan Agreement, which the Plaintiffs are suing under, Plaintiffs acknowledge there is no ambiguity. Even when interpreting the Loan Agreement and Guaranty together in their entirety, there is only one reasonable interpretation: that all parties have waived their right to a jury trial and the case shall be tried to the court unless any party requests arbitration.

When interpreting a contract, a Court must endeavor to give effect to every part of the contract whenever reasonably practical. M.C.A. § 28-3-202. Plaintiff's claim is that even though they didn't read or understand the extensive arbitration provisions in either the Loan Agreement or Guaranty, that the entire arbitration language should be disregarded because of the single word "shall" in the Guaranty agreement that they conveniently did read, but which they are not suing under.

Plaintiffs argue, and the District Court held, that the Loan Agreements should be construed against WBL as drafter. These are AXOS documents not WBL documents. WBL is not the drafter. Regardless, under the FAA, in

interpreting whether to compel arbitration “questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration. . . .The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” (Emphasis ours) *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 626, 105 S. Ct. 3346, 87 L.Ed.2d 444 (1985) . When a contract contains an arbitration clause, there is a presumption of arbitrability. *Epic Sys. Corp., v. Lewis*, 584 U.S. 497, 138 S.Ct. 1612, 200 L.Ed.2d. 889 (2018).

The Montana Supreme Court has recognized that, “if an arbitration clause is ambiguous, giving rise to a presumption in favor of arbitration, then "arbitration of a grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute, and doubts are 'resolved in favor of coverage’”. *Anderson v. Deere Co.*, 2018 MT 257 ¶ 18, 393 Mont. 157, 429 P.3d 625; *Kalispell Educ. Assn. v. Bd. Of Trs.*, 2011 MT 154, ¶ 18, 361 Mont. 115, 255 P.3d 199.

5. Bluebird and Garcia Consented to Arbitration.

A party to a clear and unambiguous written contract "cannot avoid [its] legal

consequences... simply by later claiming that she did not understand" the legal consequences "of the plain language of the contract." *Lenz v. FSC Secs. Corp.*, 2018 MT 67, 391 Mont. 84, 414 P.3d 1262. Plaintiffs claim of an ambiguity, and therefore what they claim to be a lack of consent, is that what they did read in the Guaranty conflicts with what they didn't read or understand in the arbitration provisions. Plaintiffs should not be allowed to escape the consequences of a commercial contract that they did not bother to read or understand.

As expected, Bluebird and Garcia rely greatly on *Riehl v. Cambridge Court GF, LLC*, 2010 MT 28, 355 Mont. 161, 22 P.3d 581. This case is not even remotely like *Riehl*. *Riehl* involved an admission contract between a nursing home and an elderly resident's daughter. The daughter executed the subject contract without the assistance of an attorney.

Riehl died at the facility and her estate sued for negligence. On appeal, the Supreme Court denied arbitration finding that whether the parties agreed to arbitration was a question of fact and that since the daughter only thought that arbitration was "preferred" and not binding, and that she had no idea that she was waiving her right to jury, that there was no meeting of the minds.

Unlike *Riehl*, this is a commercial business loan in which Plaintiffs were represented by counsel. Here, the Plaintiffs' claim of an ambiguity is not based on

what Garcia read in the arbitration language, but a conflict in the language she did read and her ignorance about arbitration for failing to read the arbitration provisions. More significant is that this case, unlike *Riehl*, is governed by the FAA. Considering that Plaintiffs claims are under Loan Agreement only⁷, and the disputed language is in the Guaranty, and considering the broad presumption of arbitrability under the FAA, *Riehl* is not persuasive.

Plaintiffs also cite *Kelker v. Geneva-Roth Ventures, Inc.*, 2013 MT 62, 369 Mont. 254, 303 P.3d 777. In *Kelker*, the loan contract involved consumer loans made by an unlicensed consumer lender. The Defendant moved to compel arbitration which the Court denied finding the plaintiff was under economic distress and that the loan contracts were unconscionable under the since rejected “reasonable expectations” standard. *Kelker* is not persuasive in this case.

Plaintiffs should not be heard to claim that by not reading or understanding the arbitration provisions that they did not consent to arbitration.

6. The Arbitration Provisions are Not Unconscionable.

Bluebird and Garcia claim the arbitration provisions are unconscionable. The District Court did not find unconscionability.

In order to find a contract or contract term unconscionable, Montana utilizes

⁷ Garcia is not a party to the Loan Agreement.

a two-part test: 1. Whether the contract or provision is adhesive, and 2., if it either “unreasonably favors the stronger party or is unduly oppressive to the weaker party.” *Lenz*, ¶ 26.

Even if the Loan Contracts are considered adhesive, that does not make the arbitration provisions “unconscionable”. *Tedesco v. Home Sav. Bancorp, Inc.*, 2017 MT 304, ¶ 30, 389 Mont. 468, 407 P.3d 289. Indeed, virtually every commercial loan, especially of this size, is made under loan documents that are adhesive.⁸ To be unconscionable, the adhesive provision in question, in this case the arbitration provisions, must unreasonably favor the stronger party or be unduly oppressive to the weaker party. *Bucy v. Edward Jones & Co., L.P.*, 2019 MT 173, ¶ 38, 396 Mont. 408, 421, 445 P.3d 812, 821. Whether a contract of adhesion unreasonably favors the stronger party or is unduly oppressive party to a weaker party is a mixed question of law and fact under the totality of the circumstances. *Bucy*, ¶ 39.

Nowhere have Bluebird and Garcia met their burden to prove the second element of unconscionability, i.e. that the arbitration provisions unreasonably favor WBL or are unreasonably oppressive to Plaintiffs. In reality, the arbitration

⁸ Plaintiffs want to assign nefarious intent that these are adhesive loan documents. Plaintiffs did not want to pay their attorneys to *explain* the loan documents to them, much less to negotiate or write them.

provisions favor Bluebird and Garcia, a fact that they do not deny. That is where the inquiry ends.

Plaintiffs argue that the arbitration provisions favor WBL because it could have drafted a simpler arbitration provision and claiming that this language gives the lender, but not the borrower, a choice between arbitration or the courts. This makes no sense and is not supported by the language. All parties waived their right to a jury trial. All parties have the exact same right to request arbitration or not and each must go through the exact same simple process to do so. Plaintiffs have never explained how the arbitration provisions are unreasonably favorable to WBL or unduly oppressive to Plaintiffs. The arbitration provisions are even-handed, do not favor or disfavor either party (in fact favors the “weaker” party by paying some of their costs), and does not give a unilateral right to WBL that is denied to Bluebird or Garcia. *Elk Mt. Motor Sports, Inc. v. Arctic Cat Sales, Inc.*, U.S. Dist. LEXIS 142070, at *14 (D. Mont. Sep. 30, 2013), citing *Iwen v. U.S. West Direct*, 1999 MT 63, 293 Mont. 512, 977 P.2d 989.

Ignoring the language of the arbitration provisions, Plaintiffs want to try and twist the factors articulated in *Kortum-Managhan v. Herbergers NBGL*, 2009 MT 79, 349 Mont. 475, 204 P.3d 69 to claim unconscionability.

First, Plaintiffs claim arbitration was “foisted” on them. While the loan

documents are admittedly adhesive, as are virtually all loan documents for loans of this type, especially with national lenders like AXOS, they were not “foisted” on Plaintiffs. Plaintiffs sought out WBL not the other way around. Bluebird and Garcia, and their counsel had copies of the loan documents before closing and had several conversations with WBL prior to the loan closing about the documents and loan terms.

Plaintiffs claim there was a disparity in sophistication. This is simply not credible in connection with a commercial loan to a corporate borrower represented by legal counsel. Plaintiffs want to argue that even though Bluebird is a limited liability company that represented itself as a successful business, the Court should exercise “reverse piercing” and consider the sophistication of its members in determining unconscionability.⁹ This is simply not the law, nor should it be.

In any case, Alaina Garcia is simply not an unsophisticated borrower. In fact, just the opposite. *USA v. Alaina Marie Garcia*, Cause No.: 2:24-cr-00025-DLC (D. Mont. 2024).

Regarding Plaintiffs’ claim to being “in financial distress”, wanting to expand a business as they represented to WBL, is not financial or economic”

⁹ Plaintiffs argue that limited liability companies should be treated as individuals because they can be formed with a single piece of paper. Corporations and limited partnerships can also be easily formed.

distress. *Hughes v. Pullman*, 2001 MT 216, § 23, 306 Mont. 420, 36 P.3d 339.

CONCLUSION

At the end of the day, Bluebird and Garcia take no responsibility for anything. They didn't carefully read or understand the loan documents. They didn't ask questions about the loan before closing. They didn't ask their attorney about the loan documents or the arbitration provisions. They executed numerous documents claiming this was a business loan and that the proceeds would be used for business purposes, only to now claim it is a consumer loan used to pay Garcia's personal bills and that the documents the Plaintiffs signed should be dismissed as "fine print".

Under the FAA and Montana law doubts are construed in favor of arbitration. Under the circumstances, that is what the Court is asked to do.

Respectfully, the Order of the District Court should be reversed, and this case should be remanded with instructions that it be stayed pending arbitration.

Dated this 3rd day of November 2025.

WORDEN THANE P.C.
Attorneys for Defendants/Appellants




Martin S. King

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is 4,879, not averaging more than 280 words per page, excluding the certificate of service and certificate of compliance.

Dated this 3rd day of November 2025.

WORDEN THANE P.C.
Attorneys for Defendants/Appellants



Martin S. King

CERTIFICATE OF SERVICE

I certify that on November 3, 2025, I served a copy of the preceding document by prepaid mail on the following:

Frederick P. Landers
Axilon Law
270 W. Kagy Blvd., Suite F
Bozeman, MT 59715
rlanders@axilonlaw.com
Attorneys for Appellees



CERTIFICATE OF SERVICE

I, Martin S. King, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 11-03-2025:

Frederick P. Landers (Attorney)
270 W. Kagy Blvd.
Suite F
Bozeman MT 59715
Representing: Bluebird Property Rentals, LLC, Alaina Garcia
Service Method: eService

Electronically signed by Christina DiMuro on behalf of Martin S. King
Dated: 11-03-2025