

2010 12 28 10 10 AM

IN THE SUPREME COURT FOR THE STATE OF OKLAHOMA

EDDIE LEE HOWARD AND )  
SHANE D. SCHNEIDER, )  
 )  
Plaintiffs/Appellants, )  
 )  
v. )  
 )  
NITRO-LIFT TECHNOLOGIES, LLC, )  
 )  
Defendant/Appellee. )

No. 109003

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
DEC 28 2010  
MICHAEL S. RICHIE  
CLERK

12-28-10  
[Handwritten initials and a filing stamp]

RESPONSE TO PETITION IN ERROR

Is appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

     YES                        X   NO

Attached as Exhibit "A" is the appellee's statement of the case in response to appellants' statement of the case in the petition in error.

In accelerated appeals from orders granting motion for summary judgment or motion to dismiss only appellee shall also file concurrently with response any supplement to record on accelerated appeal. See Rule 1.36.

DATE: December 28, 2010.

Verified by: 

Kelli M. Masters, OBA #18588  
FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS  
100 N. Broadway, Suite 1700,  
Oklahoma City, OK 73012  
Telephone: (405) 232-0621  
Facsimile: (405) 232-9659

-and-

J. Wallace Coppedge, II (OBA #11796)  
Coppedge & Rowe  
225 W. Main Street  
Tishomingo, OK 73460-1726  
Telephone: (580) 371-9561  
Facsimile: (580) 371-9869

**CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK**

I hereby certify that a true and correct copy of the Response to Petition in Error was mailed this 28<sup>th</sup> day of December, 2010, to

Micah Knight, Esq.  
P.O. Box 1576  
Durant, OK 74702

Attorney for Appellant

by depositing it in the U.S. Mails, postage prepaid.

I further certify that a copy of the Response to Petition in Error was filed in the Office of the Court Clerk of Johnston County on the 28<sup>th</sup> day of December, 2010.

  
Kelli M. Masters

## EXHIBIT A: RESPONSE TO APPELLANTS' STATEMENT OF THE CASE

The record in this case does not support the assertions made by Appellants in their Statement of the Case. Plaintiffs/Appellants Eddie Lee Howard and Shane D. Schneider (“Appellants”) seek declaratory judgment and injunctive relief on the grounds that their Confidentiality/Non-Compete Agreements with Appellee, including the arbitration provisions, are void and unenforceable.

Appellants began working for Defendant/Appellee Nitro-Lift during the summer of 2008. Contrary to their contentions about being manual laborers, both are thoroughly trained technicians. During their employment with Nitro-Lift, Appellants obtained a significant amount of confidential information and training concerning the implementation of specialized equipment and procedures that are proprietary to Nitro-Lift. As employees of Nitro-Lift, a Louisiana company, Appellants worked in Texas, Arkansas, and other states, spending approximately 20% of their time in Oklahoma. After almost two years, Howard and Schneider left Nitro-Lift to work for a competitor in Arkansas. They solicited or continue to solicit other employees and customers of Nitro-Lift in violation of the agreements they signed with Nitro-Lift. In July 2010, Nitro-Lift submitted a demand for arbitration through the American Arbitration Association as agreed to by the parties, and that arbitration has already progressed through several stages, including the selection of an arbitrator. Appellants then filed a declaratory judgment action in Johnston County.

The District Court found the arbitration clause in the agreements to be valid, and the non-competition, non-solicitation and confidentiality provisions to be reasonable. In its Order, the Court cited *Key Temporary Personnel v. Cox*, 1994 OK CIV APP 123, 884 P.2d 1213, and *Oklahoma Oncology v. US Oncology*, 2007 OK 12, 160 P.3d 936 in support of its determination as to the “gateway” question regarding the binding effect of the subject arbitration clause. This determination should be upheld, and Appellants Appeal should be denied in its entirety.