

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Virginia Van Dusen, et al. v. Swift Transportation Co., Inc., et al.

THE HONORABLE JOHN W. SEDWICK

2:10-cv-00899 JWS

PROCEEDINGS:

ORDER FROM CHAMBERS

October 27, 2010

At docket 226, plaintiffs request the court to reconsider its order at docket 223 granting defendants' motion to compel arbitration. "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Plaintiffs argue that the court erred in concluding that the issue of whether the Contractor Agreement and Lease created an employer-employee relationship was subject to arbitration. Plaintiffs do not cite any controlling authority in support of their position that the court must decide whether an employment contract exists. Arbitration is a matter of contract. The FAA thus "requires courts to enforce them according to their terms." *Rent-A-Center, West, Inc. v. Jackson*, 130 S.Ct. 2772, 1776 (2010). Under the terms of the arbitration agreement at issue in this action, the parties agreed to arbitrate "any disputes arising out of or relating to the relationship created by the [Contractor Agreement.]" Thus, the gateway issue of whether an employer-employee relationship existed between the parties is subject to arbitration. Because plaintiffs failed to demonstrate that the court committed clear error, plaintiffs' motion for reconsideration at docket 226 is **DENIED**.

In the alternative, pursuant to 28 U.S.C. § 1292(b), plaintiffs request the court to certify for immediate appeal "the question of who decides the applicability of the FAA § 1 exemption where ... that question raises disputed fact issues going to the merits of the claims." **IT IS FURTHER ORDERED**: Defendants are directed to file a response to plaintiffs' request made pursuant to § 1292(b) on or before **November 12, 2010**. No reply may be filed unless requested by the court.
