

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

Electronically Filed
Jun 27 2016 08:59 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

K-KEL, INC., d/b/a Spearmint
Rhino Gentlemen's Club;
OLYMPUS GARDEN, INC., d/b/a
Olympic Garden; SHAC, LLC,
d/b/a Sapphire; D. WESTWOOD,
INC., d/b/a Treasures; THE
POWER COMPANY, INC., dba
Crazy Horse Too Gentlemen's
Club,

Appellants,

vs.

NEVADA DEPARTMENT OF
TAXATION, and NEVADA TAX
COMMISSION,

Respondents

No.: 69886

**AMENDED DOCKETING
STATEMENT
CIVIL APPEALS**

1. Judicial District:	Eighth Judicial District
Department:	Clark County Dept. 30
Judge:	Hon. Jerry A. Wiese II
Dist. Ct. Case No.:	A-11-648894-J, consolidated A-14-697515-J

2. Attorney filing this docketing statement

WILLIAM H. BROWN (7623)
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Client: K-Kel, Inc.

This is a joint statement by multiple appellants. The names and addresses of other counsel, and the names of their clients are listed on an accompanying sheet with a certification that they concur in the filing of this statement.

3. Attorneys representing respondents

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Clients: Nevada Department of Taxation, Nevada Tax Commission

4. Nature of disposition below

Review of agency determination

5. Does this appeal raise issues concerning any of the following:

N/A

6. Pending and prior proceedings in this court.

Two prior cases are related to this appeal—*Deja Vu I*, and *Deja Vu II*:

Deja Vu I:

Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.
Clark County Dist. Court Case No.: A554970
Nevada Supreme Court Docket No.: 59752
Reported: 130 Nev. Adv. Op. 72, 334 P.3d 387 (2014) cert.
denied sub nom. SHAC, LLC v. Nevada Dep't of Taxation,
135 S. Ct. 1431, 191 L. Ed. 2d 367 (2015) (“*Deja Vu I*”)

Deja Vu II:

Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.
Clark County Dist. Court Case No.: A533273
Nevada Supreme Court Docket No.: 60037
Reported: 130 Nev. Adv. Op. 73, 334 P.3d 392 (2014) (“*Deja Vu II*”)

7. Pending and prior proceedings in other courts.

N/A

8. Nature of the action.

This matter began as a facial and as applied challenge to the constitutionality of Nevada’s Live Entertainment Tax (NRS Chapter 368A, the “LET”). Initially, the petitioners challenged the LET

administratively, a process that culminated with a final decision from the Nevada Tax Commission dated October 12, 2007 rejecting the challenge (the “NTC decision”).

Following the NTC decision, the petitioners sued (as plaintiffs) in *Déjà Vu Showgirls of Las Vegas LLC, et al. v. Nev. Dept. Tax, et al.* (A554970). That case was dismissed by the district court, which then ordered it to proceed as a petition for judicial review. Accordingly, the petitioners appealed the NTC decision via a petition for judicial review under NRS Chapter 233B.

On January 15, 2016, the district court entered its order denying judicial review of the NTC decision. The court found there was substantial evidence supporting Nevada Tax Commission’s decisions and they did not violate NRS 233B.135. Consequently, the district court affirmed the NTC decision, and denied the petitioner’s petition for judicial review. Petitioners timely appealed that order, and after this Court found the appeal premature, an amended order (the “amended order”).¹

9. Issues on appeal.

Broadly stated, this appeal presents one issue: whether, facially, or as applied, Nevada’s Live Entertainment Tax (NRS Chapter 368A (the “LET”)) is an unconstitutional tax on protected expression. Within that analysis, there is one sub-issue: whether appellants were improperly denied the right to conduct discovery, including specifically depositions, in the administrative review process.

¹ The order listed petitioners that should have been formally dismissed (D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores; DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà; and LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings) and it erroneously omitted a petitioner that it should have included (THE POWER COMPANY, INC., dba Crazy Horse Too Gentlemen’s Club). The amended order corrects these errors. But with respect to issues presented for review, the orders are the same.

10. Pending proceedings in this court raising the same or similar issues.

Appellants are not aware of any pending proceedings in this court raising the same or similar issues.

11. Constitutional issues.

In light of the constitutional issues raised, the appropriate state agencies are parties to this appeal.

12. Other issues.

N/A

13. Assignment to the Court of Appeals or retention in the Supreme Court.

This case is an appeal from a district court order reviewing an appeal from an administrative agency involving tax and thus, under NRAP 17(a)(9), retained by the Supreme Court. See NRAP 17(a)(9).

14. Trial

N/A

15. Judicial Disqualification.

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from.

June 23, 2016

- 17. Date written notice of entry of judgment or order was served.**

June 24, 2016

Service: via mail/electronic

- 18. Post-judgment motions (NRCp 50(b), or 52(b), or 59) tolling timing for filing notice of appeal**

N/A

- 19. Date notice of appeal was filed**

June 24, 2016

- 20. Specify statute or rule governing time limit for filing the notice of appeal.**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

- 21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from.**

NRS 233B.150

- 22. List all parties involved in the action or consolidated actions in the district court.**

(a) Parties:

Petitioners: K-KEL, INC., d/b/a Spearmint Rhino Gentlemen's Club, OLYMPUS GARDEN, INC., d/b/a Olympic Garden, SHAC, L.L.C. d/b/a Sapphire, D. WESTWOOD, INC., d/b/a Treasures, DEJA VU

SHOWGIRLS OF LAS VEGAS, LLC, d/b/a/ Déjà vu, and
LITTLE DARLINGS OF LAS VEGAS, LLC, d/b/a Little
Darlings

Respondents: NEVADA DEPARTMENT OF TAXATION,
and NEVADA TAX COMMISSION

(b) If all parties in the district court are not parties in this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

In the district court, the three of the original eight petitioners were formally dismissed via stipulation: D.I. FOOD & BEVERAGE OF LAS VEGAS, INC., dba Scores; DEJA VU SHOWGIRLS OF LAS VEGAS, LLC, dba Déjà; and LITTLE DARLINGS OF LAS VEGAS, LLC, dba Little Darlings. *See* amended order (filed June 23, 2016).

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Petitioners raised identical claims via a petition for judicial review of a decision by the Nevada Tax Commission ("NTC"). The district court disposed of these claims on January 15, 2016 in an order denying judicial review of the NTC decision.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes.

25. If you answered “No” to question 24, complete the following:

N/A

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

Exhibit 1: Petition for Judicial Review (filed 9-23-2011)

Exhibit 2: Notice of Entry of Amended Order Denying
Judicial Review of Administrative Decision (filed 6-
24-16); and Amended Order Denying Judicial
Review of Administrative Decision (filed 6-23-16)

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of appellant: K-Kel, Inc.

Name of counsel of record: William H. Brown (7623)

Signature of counsel of record: /s/ *William H. Brown*

Date: June 24, 2016

State and county where signed: Clark County, Nevada

CERTIFICATE OF SERVICE

I certify that on June 24, 2016, I served a copy of this completed **Amended Docketing Statement** to the parties below, upon all counsel of record by mailing by first class mail with sufficient postage fully prepaid, and by e-filing and e-serving via the Supreme Court of Nevada's e-filing and e-service system to the following address(es):

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An employee of LAMBROSE BROWN PLLC

CERTIFICATION OF CONCURRENCE

This is a joint statement by multiple appellants. By signing below, the below counsel on behalf of their respective clients hereby certify that they concur in the filing of this statement.

Dated: June 24, 2016

Dated: June 24, 2016

/s/ Bradley J. Shafer

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