

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISRAEL BAIGUEN, an individual,
Appellant,

v.

HARRAH'S LAS VEGAS, LLC, a Nevada Domestic Limited-Liability Company, dba HARRAH'S CASINO HOTEL, LAS VEGAS; HARRAH'S LAS VEGAS INC. dba HARRAH'S CASINO HOTEL, LAS VEGAS; CAESARS ENTERTAINMENT CORPORATION, a Nevada Foreign Corporation, dba HARRAH'S CASINO HOTEL, LAS VEGAS; DOES I through X, inclusive; and, and ROE CORPORATIONS I through X, inclusive,
Respondents.

Electronically Filed
Apr 07 2017 04:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 70204

Appeal from Clark County District Court

Case No. A-14-708544 -C

MOTION TO STRIKE PETITION FOR REVIEW

Appellant Israel Baiguen, pursuant to NRAP 27, hereby moves the Nevada Supreme Court to strike the Petition for Review filed by Respondent Harrah's Las Vegas, LLC on March 16, 2017.

This case was submitted to the Court of Appeals pursuant to NRAP 17(b)(2). In the Routing Statement of his Opening Brief Appellant stated that "[w]hereas this

appeal is taken from a District Court Order Granting Summary Judgment, this matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)". [Opening Brief, page 1.] In the Answering Statement within its Responding Brief, Harrah's stated "Respondents agree with the Routing Statement contained in the Opening Brief." [Answering Brief, page 1.]

The matter was fully briefed by both parties and submitted to the Court of Appeals. On February 28, 2017 the Court of Appeals issued its Order reversing and remanding the matter. [Order of Reversal and Remand, page 5.] That order reversed the District Court's granting of summary judgment in favor of Harrah's.

Now, only after suffering an adverse result from the Court of Appeals, Harrah's belatedly claims that this case "is 'one of first impression of general statewide significance' or 'statewide public importance'" and should therefore be decided by the Supreme Court and not the Court of Appeals. [Petition for Review, page 2]. Harrah's agreement at the briefing stage that the case should be routed to the Court of Appeals should now operate to waive the newly stated belief that this case "is 'one of first impression of general statewide significance' or 'statewide public importance'".

If granted, the extraordinary relief being requested by Harrah's would negate the intended benefits to litigants and the Nevada judicial system by the creation of the Court of Appeals. At this point, the appeal SHOULD be finally resolved and

the matter remanded for further proceedings in the district court. However, if the court entertains Harrah's petition for review - which really amounts to a second bite at the appellate apple - the authority and efficacy of the Court of Appeals will be thoroughly undermined.

NRAP 17 clearly delineates the categories of cases which should be routed to each respective court. All of the information needed for Harrah's to make a determination regarding which court should hear this case was available before the briefs were written. Nevertheless, Harrah's agreed that the issues in this case could and should be resolved by the Court of Appeals.

Harrah's concurrent complaint that "the Court of Appeals decision conflicts with prior holdings that worker's compensation applies when, as here, there is a nexus between workplace conditions and an injury" is without merit. First, a review of the table of authorities in Harrah's Answering Brief reveals that the case cited in support of the Petition for Review, *Rio Suite Hotel & Casino v. Gorsky*, was NOT cited in the Answering Brief. Now, Harrah's seeks to impermissibly rely upon authority which Harrah's 1) never raised at the district court level; and 2) did not include in its Responding Brief.

Despite the Court of Appeals' well-reasoned analysis of the issue of whether Appellant's injuries arose from his employment, and its subsequent determination that they did not, Harrah's simply declares that "they did." PFR page 5. One

party's disagreement with the decision (which of course is the result in every case) does not equate to a "conflict with prior holdings". Indeed, nowhere in the Petition for Review does Harrah's either 1) identify exactly which prior cases are inapposite to the Court of Appeal's order; or 2) explain how the order in this case does violence to any prior holdings by Nevada courts. Instead, Harrah's cites to an extra-jurisdictional Arizona case, *Dugan v. American Express*, which has been the authority relied upon primarily by Harrah's throughout this litigation. Even then, Harrah's merely re-argues the points already considered and eschewed by the Court of Appeals.

CONCLUSION

Based upon the legal authority and reasons set forth above and the pleadings and papers on file herein, Appellant Israel Baiguen moves this Honorable Court to strike Respondent's Petition for Review.

Dated this 7th day of April, 2017.

Law Offices of Steven M. Burris, LLC

By: /s/ Jeffrey L. Galliher

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Steven M. Burris LLC and that on the 7th day of April, 2017, pursuant to N.E.F.C.R 8, I electronically filed and served a true and correct copy of the above and foregoing MOTION TO STRIKE PETITION FOR REVIEW as follows:

by the Court's CM/ECF system which will send notification to the following; and

by US mail at Las Vegas, Nevada, postage prepaid thereon, addressed to the following:

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/s/ Kristina Marzec
An Employee of the law offices of Steven
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