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Apr 09 2019 11:35 a.m.
Elizabeth A. Brown
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Attorneys for Defendants
James Taylor and Nevada
Gaming Control Board

DISTRICT COURT
CLARK COUNTY, NEVADA

DR. NICHOLAS G. COLON

Plaintiff,

vs.

**JAMES TAYLOR, NEVADA GAMING
CONTROL BOARD, AMERICAN GAMING
ASSOCIATION, AND DOES I-XX,**

Defendant(s).

Case No. A-18-782057-C
Dept. No. XXIX

NOTICE OF APPEAL

Notice is hereby given that Defendants, James Taylor and Nevada Gaming Control Board, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, Theresa M. Haar, Senior Deputy Attorney General and Edward L. Magaw, Deputy Attorney General, hereby appeals to the Supreme Court of Nevada from the Decision and

...

...

...

1 Order entered in this action on the 26th day of February, 2019, a copy of which is attached
2 hereto as Ex. A.

3 DATED this 1st day of April, 2019.

4 AARON D. FORD
5 Attorney General

6 By: /s/ THERESA M. HAAR
7 Theresa M. Haar (Bar No. 12158)
8 Senior Deputy Attorney General
9 Edward L. Magaw (Bar No. 9111)
10 Deputy Attorney General
11 *Attorneys for Defendants*
12 *James Taylor and Nevada*
13 *Gaming Control Board*
14
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 1st day of April, 2019.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

Robert A. Nersesian
Thea Marie Sankiewicz
Nersesian & Sankiewicz
528 S. Eighth St.
Las Vegas, NV 89101
Attorneys for Plaintiff

/s/ TRACI PLOTNICK
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A



1 **NOED**

2 Robert A. Nersesian

3 Nevada Bar No. 2762

4 Thea Marie Sankiewicz

5 Nevada Bar No. 2788

6 **NERSESIAN & SANKIEWICZ**

7 528 South Eighth Street

8 Las Vegas, Nevada 89101

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12 *Attorneys for Plaintiff*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 DR. NICHOLAS G. COLON,

16 PLAINTIFF,

17 vs.

18 JAMES TAYLOR, NEVADA GAMING
19 CONTROL BOARD, AMERICAN GAMING
20 ASSOCIATION, AND DOES I-XX,

21 DEFENDANTS.

22 **NOTICE OF ENTRY OF DECISION AND ORDER**

23 PLEASE TAKE NOTICE that a Decision and Order from the Hearing on December 20,
24 2018, was entered in the above-entitled matter on the 26th day of February, 2019. A copy of

25 ///

26 ///

27 ///

28 ///

///

///

///

Nersesian & Sankiewicz

528 SOUTH EIGHTH STREET
LAS VEGAS NEVADA 89101

Case Number: A-18-782057-C

1 said Decision and Order is attached hereto.

2 Dated this 26th day of February, 2019.

3 **NERSESIAN & SANKIEWICZ**

4 /s/ Robert A. Nersesian

5 Robert A. Nersesian

6 Nev. Bar No. 2762

7 Thea M. Sankiewicz

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13 Email: vegaslegal@aol.com

14 *Attorneys for Plaintiff*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the 26th day of February, 2019, pursuant to NRCP 5(b) and
17 EDCR 8.05(f), the above referenced **NOTICE OF ENTRY OF DECISION AND ORDER**
18 was served via e-service through the Eighth Judicial District Court e-filing system, and that the
19 date and time of the electronic service is in place of the date and place of deposit in the mail and
20 by depositing the same into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as
21 follows:

22 Aaron D. Ford

23 Attorney General

24 Theresa M. Haar (Bar No. 12158)

25 Senior Deputy Attorney General

26 Edward L. Magaw (Bar No. 9111)

27 Deputy Attorney General

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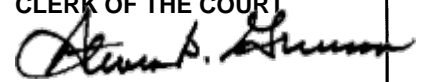
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*Attorneys for American Gaming
Association*

/s/ Rachel Stein

An employee of Nersesian & Sankiewicz



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 DR. NICHOLAS G. COLON,

6 Colon,

7 vs.

Case No. A-18-782057-C

8 JAMES TAYLOR, NEVADA GAMING CONTROL BOARD,
AMERICAN GAMING ASSOCIATION, AND DOES I-XX,

Dept. No. XXIX

9 Defendants.

10 DECISION AND ORDER

11 James Taylor, a Deputy Chief of the Enforcement Division of the Gaming Control Board,
12 gave a presentation on scams, cheating, and fraud in casinos. During this presentation, Mr. Taylor
13 presented a picture of Dr. Nicholas G. Colon under a section entitled "Use of a cheating device". Dr.
14 Colon brought a lawsuit against Mr. Taylor and the Gaming Control Board, alleging that they
15 defamed Dr. Colon by at least implying he was a cheater. Defendants James Taylor and Nevada
16 Gaming Control Board brought an Anti-SLAPP Motion to Dismiss Dr. Colon's Complaint. Plaintiff
17 Dr. Nicholas Colon opposed the Anti-SLAPP Motion to Dismiss. The parties made oral arguments
18 on December 20, 2018. I am denying the Anti-SLAPP Motion to Dismiss.

19 **I. Factual and Procedural Background**

20 On October 2, 2018, the Sands Convention Center held the Global Gaming Expo. At this
21 Expo, James Taylor, a Deputy Chief of the Enforcement Division of the Gaming Control Board,
22 gave a presentation on scams, cheating, and fraud in casinos. Mr. Taylor gave this presentation to
23 about 300 people. As part of that presentation, Mr. Taylor showed a short video that depicted a man
24 sitting at a blackjack table holding some sort of device in his hand. The video clip did not show the
25 face of the man, but focused on what the man was holding under the table. Though there is a dispute
26 as to what exactly Mr. Taylor said during the display of the video clip, it is undisputed that Mr.
27 Taylor stated that a cheating device was used in violation of the law. Dr. Colon, who is an author,
28 consultant, and executive addressing and operating in the gaming industry, claims that he was the

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DISTRICT JUDGE
DEPARTMENT VII
LINDA MARIE BELL
CLERK OF THE COURT

1 man in the video. This claim is not disputed. Dr. Colon further contends that the device in his hand
2 was not a cheating device, but was instead a crowd counter. Dr. Colon alleges that many in
3 attendance at Mr. Taylor's presentation recognized him as the man in the video. On the same day,
4 Dr. Colon filed a complaint claiming one count of defamation per se based on Mr. Taylor's
5 depiction of him as a cheater during the presentation.

6 On December 6, 2018, Mr. Taylor and the Gaming Control Board filed an Anti-SLAPP
7 Motion to Dismiss. Dr. Colon filed an Opposition to on December 17, 2018. Defendants filed a
8 Reply on December 19, 2018. Oral arguments on the motion were heard on December 20, 2018.

9 II. Discussion

10 An Anti-SLAPP Motion to Dismiss is governed by NRS 41.660, et seq. First, I must
11 "[d]etermine whether the moving party has established, by a preponderance of the evidence, that the
12 claim is based upon a good faith communication in furtherance of the right to petition or the right to
13 free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). Such
14 communications include "written or oral statements made in direct connection with an issue under
15 consideration by a legislative, executive, or judicial body, or any other official proceeding
16 authorized by law." NRS 41.637. Good faith communication is any "communication made in direct
17 connection with an issue of public interest in a place open to the public or in a public forum, which
18 is truthful or is made without knowledge of its falsehood." NRS 41.637(4).

19 Nevada adopted the California standard for what distinguishes a public interest from a
20 private one:

- 21 (1) "public interest" does not equate with mere curiosity;
- 22 (2) a matter of public interest should be something of concern to a substantial
23 number of people; a matter of concern to a speaker and a relatively small specific
audience is not a matter of public interest;
- 24 (3) there should be some degree of closeness between the challenged statements and
the asserted public interest—the assertion of a broad and amorphous public interest
is not sufficient;
- 25 (4) the focus of the speaker's conduct should be the public interest rather than a
26 mere effort to gather ammunition for another round of private controversy; and
- 27 (5) a person cannot turn otherwise private information into a matter of public
28 interest simply by communicating it to a large number of people.

1 Shapiro v. Welt 389 P.3d 262 268, 133 Nev. Adv. Op. 6 (2017) citing Piping Rock Partners, Inc. v.
2 David Lerner Assocs., Inc., 946 F. Supp.2d 957, 968 (N.D. Cal. 2013) aff'd 609 Fed.Appx. 497 (9th
3 Cir. 2015) citing Weinberg v. Feisel, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392-93 (2003).

4 The only alleged defamation in Dr. Colon's complaint was when Mr. Taylor, during his
5 presentation on cheating at the G2E expo, showed a video clip of Dr. Colon sitting at a blackjack
6 table holding some sort of device in his hand. Mr. Taylor then identified the device as the only
7 counting device that was recovered by the GCB so far that year.

8 **A. Mr. Taylor's presentation was a matter of public concern.**

9 Mr. Taylor's speech was a matter of public concern. Security and the laws surrounding
10 gaming are not a mere curiosity. Gaming is a central pillar of the Las Vegas economy. There are a
11 substantial number of people concerned about such matters, which is evident given the large number
12 of people that listened to Mr. Taylor's speech. There is no assertion of a broad and amorphous
13 public interest, as the use of cheating devices correlate exactly with gaming security. There is no
14 evidence that Mr. Taylor's speech was an effort to do anything other than act in the public interest.
15 Thus, Mr. Taylor's speech was a matter of public interest.

16 **B. Mr. Taylor's presentation was not a good faith communication.**

17 Although Mr. Taylor's speech is a matter of public concern, I cannot find that Mr. Taylor
18 made the communication in good faith by a preponderance of the evidence. Dr. Colon contends that
19 the device in his hand was a crowd counter, not a cheating device. This crowd counter cannot be
20 used to cheat at blackjack because it cannot subtract, only add. This contention is supported by the
21 affidavits of two gaming experts, Michael Aponte and Eliot Jacobson, as well as the affidavit of Dr.
22 Colon. Mr. Taylor and the Gaming Control Board do not dispute that the device in his hand was a
23 crowd counter, and could not be used to cheat at blackjack.

24 Mr. Taylor and the Gaming Control Board argue that Mr. Taylor did not specifically claim
25 that the crowd counter was a cheating device. Instead, Mr. Taylor simply identified the device as a
26 counting device and stated that it was the only counting device obtained that year. In context, this is
27 not a persuasive argument. Mr. Taylor also discussed Dr. Colon's arrest and discussed Dr. Colon
28 under the section entitled "Use of a cheating device." Mr. Taylor also cited NRS 465.075(1), which

1 makes it “unlawful to use or possess any computerized electronic or mechanical device . . . to obtain
2 an advantage at playing any game in a licensed gaming establishment.”

3 In order to find good faith communication, I have to find that the communication was
4 truthful or was made without knowledge of its falsehood. The communication that the crowd counter
5 was a cheating device was not truthful. There is no evidence that Mr. Taylor was without knowledge
6 of its falsehood, as Mr. Taylor does not make any such claims in his affidavit. Instead, the evidence
7 shows that Mr. Taylor most likely knew that the crowd counter could not be used as a cheating
8 device, as Dr. Colon provided two separate affidavits supporting this contention. Thus, I find by a
9 preponderance of the evidence that Mr. Taylor’s statements do not constitute a good faith
10 communication.

11 **C. Nevada’s Anti-SLAPP statute does not violate the right to a trial by jury.**

12 Colon also challenges the constitutionality of NRS 41.660, et seq. as it infringes on the right
13 to a trial by jury as stated in article 1, section 3 of the Nevada Constitution. Colon claims that the
14 statutory scheme calls for the Court to invade into the province of the jury by weighing the evidence
15 and adjudicating matters summarily.

16 Nevada’s current Anti-SLAPP statute was created by the legislature in an effort to protect the
17 exercise of another constitutional right: the First Amendment rights to free speech. S.B. 286, 2013
18 Leg. Sess., 77th Sess. (Nev. 2013). “Statutes are presumed to be valid [E]very reasonable
19 construction must be resorted to, in order to save a statute from unconstitutionality.” Shapiro v. Welt,
20 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017) (internal quotations omitted). In Shapiro, the
21 Nevada Supreme Court used its discretion to review the constitutionality of Nevada’s Anti-SLAPP
22 statute. Though it did not address specifically the right to a trial by jury, the court did find the statute
23 constitutional. While this does not foreclose the discussion at hand, it serves as a proper background
24 to my analysis.

25 Adjudicating matters summarily is not new to the judiciary in this or any jurisdiction.
26 Virtually every jurisdiction in this country, including the highest court, embraces motions for
27 summary judgment and motions to dismiss in their respective rules of civil procedure. These rules
28 have been held to be constitutional when pitted against the right to a trial by jury. See Fid. & Deposit

1 Co. of Maryland v. United States, 187 U.S. 315, 318, 23 S. Ct. 120, 120; see also United States v.
2 Carter, No. 3:15CV161, 2015 WL 9593652, at *7 (E.D. Va. Dec. 31, 2015), aff'd, 669 F. App'x 682
3 (4th Cir. 2016), and aff'd, 669 F. App'x 682 (4th Cir. 2016)(stating that a right to a trial by jury does
4 not exist until a plaintiff shows a genuine issue of material fact).

5 Nevada looks to California case law when considering its Anti-SLAPP statute. See John v.
6 Douglas Cty. Sch. Dist., 125 Nev. 746, 756 (2009); S.B. 444, 2015 Leg. Sess., 78th Sess. (Nev.
7 2015) at §12.5(2). California considered the constitutionality of Anti-SLAPP statutes in Briggs. V.
8 Eden Council for Hope & Opportunity. 19 Cal. 4th 1106 (1999). In Briggs, the California court
9 found that, because the statute only required a showing of minimal merit as to plaintiff's claims, the
10 statute did not violate the plaintiff's right to trial. Id.

11 Here, the Anti-SLAPP statute puts the initial burden on the defendant, not the plaintiff. The
12 defendant must show by a preponderance of the evidence that the claim is based upon good faith
13 communication. NRS 411.660(3)(a). After that, the plaintiff must show a minimal merit of their
14 claim, in this case that they have a probability of prevailing on the claim. NRS 411.660(3)(b). The
15 only time that the court considers the evidence and functions like a jury is the first prong of the Anti-
16 SLAPP statute, when it is considering the defendant's burden of proof. When the plaintiff has the
17 burden of proof, the plaintiff needs only a minimal merit as to their claim. As plaintiff needs only a
18 minimal merit, it functions as a special motion for summary judgment. Thus, plaintiff's right to a
19 trial is not impacted by the Anti-SLAPP statute.

III. Conclusion

Defendants have not shown by a preponderance of the evidence that Dr. Colon's claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Thus, I am denying Defendant's Anti-SLAPP Motion to Dismiss.

DATED ^{Feb} ~~this~~ day of ~~January~~ ²⁵, 2019.

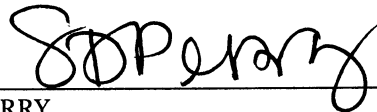


LINDA MARIE BELL
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
James Adams, Esq. Adams Law Group, Ltd. c/o James R. Adams, Esq. 5420 W. Sahara Ave. #202 Las Vegas, NV 89146	Counsel for Colon
Robert T. Robbins, Esq. 1995 Village Center Circle, Suite 190 Las Vegas, NV 89134	Counsel for Defendants



SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

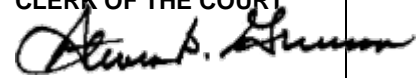
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A685807 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: 01/ /2019



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Edward L. Magaw (Bar No. 9111)
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Attorneys for Defendants
James Taylor and Nevada
Gaming Control Board

DISTRICT COURT
CLARK COUNTY, NEVADA

DR. NICHOLAS G. COLON

Plaintiff,

vs.

JAMES TAYLOR, NEVADA GAMING
CONTROL BOARD, AMERICAN GAMING
ASSOCIATION, AND DOES I-XX,

Defendant(s).

Case No. A-18-782057-C
Dept. No. XXIX

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Defendants, James Taylor and Nevada Gaming Control Board.

2. Identify the judge issuing the decision, judgment or order appealed from:

The Honorable Linda Marie Bell.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellants James Taylor and Nevada Gaming Control Board

Theresa M. Haar
Senior Deputy Attorney General
Edward L. Magaw
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101

1 4. Identify each respondent and the name and address of appellate counsel, if
2 known, for each respondent (if the name of a respondent's appellate counsel is unknown,
3 indicate as much and provide the name and address of that respondent's trial counsel):

4 Respondent Dr. Nicholas G. Colon

5 Robert A. Nersesian
6 Thea Marie Sankiewicz
7 Nersesian & Sankiewicz
8 528 S. Eighth St.
9 Las Vegas, Nevada 89101

10 5. Indicate whether any attorney identified above in response to question 3 or 4 is
11 not licensed to practice law in Nevada and, if so, whether the district court granted that
12 attorney permission to appear under SCR 42 (attach a copy of any district court order
13 granting such permission):

14 Not applicable.

15 6. Indicate whether appellant was represented by appointed or retained counsel in
16 the district court:

17 State Counsel, Office of the Attorney General

18 7. Indicate whether appellant is represented by appointed or retained counsel on
19 appeal:

20 State Counsel, Office of the Attorney General

21 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
22 the date of entry of the district court order granting such leave:

23 Not applicable.

24 9. Indicate the date the proceedings commenced in the district court (e.g., date
25 complaint, indictment, information, or petition was filed):

26 October 2, 2018

27 10. Provide a brief description of the nature of the action and result in the district
28 court, including the type of judgment or order being appealed and the relief granted by the
district court:

...

1 On October 2, 2018 Plaintiff filed a Complaint alleging a single cause of action of
2 defamation per se. On December 6, 2018, Defendants James Taylor and the Nevada
3 Gaming Control Board filed an Anti-SLAPP Special Motion to Dismiss pursuant to NRS
4 41.660. On February 26, 2019 the order was entered denying Defendants' Special Motion
5 to Dismiss. Defendants now appeal that denial of the Anti-SLAPP Special Motion to
6 Dismiss pursuant to NRS 41.670(4).

7 11. Indicate whether the case has previously been the subject of an appeal to or
8 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court
9 docket number of the prior proceeding:

10 Not applicable.

11 12. Indicate whether this appeal involves child custody or visitation:

12 Not applicable.

13 13. If this is a civil case, indicate whether this appeal involves the possibility of
14 settlement:

15 Not applicable.

16 DATED this 1st day of April, 2019.

17 AARON D. FORD
18 Attorney General

19 By: /s/ THERESA M. HAAR
20 Theresa M. Haar (Bar No. 12158)
21 Senior Deputy Attorney General
22 Edward L. Magaw (Bar No. 9111)
23 Deputy Attorney General
24 *Attorneys for Defendants*
25 *James Taylor and Nevada*
26 *Gaming Control Board*
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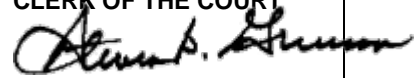
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I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

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Attorneys for Plaintiff

/s/ TRACI PLOTNICK
Traci Plotnick, an employee of the
Office of the Attorney General



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DISTRICT COURT

CLARK COUNTY, NEVADA

DR. NICHOLAS G. COLON

Plaintiff,

vs.

JAMES TAYLOR, NEVADA GAMING
CONTROL BOARD, AMERICAN GAMING
ASSOCIATION, AND DOES I-XX,

Defendant(s).

Case No. A-18-782057-C
Dept. No. XXIX

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: Melissa Murphy-Delgado, Court Recorder, Department 31:

On March 8, 2019, Appellants requested preparation of the transcript of proceedings
of the December 20, 2018 hearing, which is the subject of the appeal.

DATED this 1st day of April, 2019.

AARON D. FORD
Attorney General

By: /s/ THERESA M. HAAR

Theresa M. Haar (Bar No. 12158)
Senior Deputy Attorney General
Edward L. Magaw (Bar No. 9111)
Deputy Attorney General
Attorneys for Defendants
James Taylor and Nevada
Gaming Control Board

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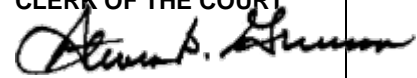
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Attorneys for Plaintiff

/s/ TRACI PLOTNICK
Traci Plotnick, an employee of the
Office of the Attorney General



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Gaming Control Board

DISTRICT COURT

CLARK COUNTY, NEVADA

DR. NICHOLAS G. COLON

Plaintiff,

vs.

JAMES TAYLOR, NEVADA GAMING
CONTROL BOARD, AMERICAN GAMING
ASSOCIATION, AND DOES I-XX,

Defendant(s).

Case No. A-18-782057-C
Dept. No. XXIX

AMENDED REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: Melissa Murphy-Delgado, Court Recorder, Department 29:

On March 8, 2019, Appellants requested preparation of the transcript of proceedings
of the December 20, 2018 hearing, which is the subject of the appeal.

DATED this 1st day of April, 2019.

AARON D. FORD
Attorney General

By: /s/ THERESA M. HAAR
Theresa M. Haar (Bar No. 12158)
Senior Deputy Attorney General
Edward L. Magaw (Bar No. 9111)
Deputy Attorney General
Attorneys for Defendants
James Taylor and Nevada
Gaming Control Board

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Las Vegas, NV 89101
Attorneys for Plaintiff

/s/ TRACI PLOTNICK
Traci Plotnick, an employee of the
Office of the Attorney General

CASE SUMMARY**CASE NO. A-18-782057-C**

Nicholas Colon, Plaintiff(s)
vs.
James Taylor, Defendant(s)

§
§
§
§
§

Location: **Department 29**
 Judicial Officer: **Jones, David M**
 Filed on: **10/02/2018**
 Case Number History:
 Cross-Reference Case Number: **A782057**

CASE INFORMATIONCase Type: **Intentional Misconduct**

Case
Status: **10/02/2018 Open**





DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-18-782057-C
Court	Department 29
Date Assigned	12/07/2018
Judicial Officer	Jones, David M

PARTY INFORMATION

Plaintiff	Colon, Nicholas G.	<i>Lead Attorneys</i> Nersesian, Robert A. <i>Retained</i> 7023855454(W)
Defendant	American Gaming Association	Silvestri, Jeffrey A. <i>Retained</i> 7028734100(W)
	Nevada Gaming Control Board	Haar, Theresa M. <i>Retained</i> 702-420-2001(W)
	Taylor, James	Haar, Theresa M. <i>Retained</i> 702-420-2001(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

10/02/2018	 Complaint With Jury Demand Filed By: Plaintiff Colon, Nicholas G. <i>Complaint for Defamation and Jury Demand</i>
10/02/2018	 Initial Appearance Fee Disclosure Filed By: Plaintiff Colon, Nicholas G. <i>Initial Appearance Fee Disclosure</i>
10/12/2018	 Summons Electronically Issued - Service Pending <i>Summons</i>
10/12/2018	 Summons Electronically Issued - Service Pending <i>Summons</i>

CASE SUMMARY

CASE NO. A-18-782057-C

10/12/2018	 Summons Electronically Issued - Service Pending <i>Summons</i>
10/31/2018	 Affidavit of Service <i>Affidavit of Service</i>
10/31/2018	 Affidavit of Service <i>Affidavit of Service</i>
10/31/2018	 Affidavit of Service <i>Affidavit of Service</i>
12/06/2018	 Motion to Dismiss Filed By: Defendant Taylor, James; Defendant Nevada Gaming Control Board <i>Defendant's Anti-SLAPP Special Motion to Dismiss</i>
12/07/2018	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
12/07/2018	 Certificate of Service Filed by: Defendant Taylor, James; Defendant Nevada Gaming Control Board <i>Certificate of Service</i>
12/14/2018	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
12/14/2018	 Joinder To Motion Filed By: Defendant American Gaming Association <i>American Gaming Association's Joinder to Defendants' Anti-Slapp Special Motion to Dismiss</i>
12/17/2018	 Opposition <i>Plaintiff's Opposition to Defendants' Special Motion to Dismiss</i>
12/17/2018	 Declaration <i>Declaration of Dr. Nicholas G. Colon</i>
12/17/2018	 Motion to Dismiss Filed By: Defendant American Gaming Association <i>American Gaming Association's Motion to Dismiss Complaint</i>
12/19/2018	 Reply Filed by: Defendant Taylor, James; Defendant Nevada Gaming Control Board <i>Defendants' Reply in Support of Their Anti-SLAPP Special Motion to Dismiss</i>
01/02/2019	 Supplemental Points and Authorities <i>Plaintiff's Supplemental Authorities in Support of Plaintiff's Opposition to Defendants' Special Motion to Dismiss</i>
01/04/2019	 Opposition <i>Opposition to Defendant American Gaming's Motion to Dismiss</i>
01/08/2019	 Response

CASE SUMMARY

CASE NO. A-18-782057-C

Filed by: Defendant Taylor, James; Defendant Nevada Gaming Control Board
Defendants' Response to Plaintiff's Supplemental Authorities

01/16/2019



Reply in Support

Filed By: Defendant American Gaming Association
Reply in Support of American Gaming Association's Motion to Dismiss Complaint

01/22/2019



Stipulation and Order

Filed by: Defendant American Gaming Association
Stipulation and Order to Continue Hearing on American Gaming Association's Motion to Dismiss Complaint

01/25/2019



Stipulation and Order

Filed by: Defendant American Gaming Association
Stipulation and Order to Continue Hearing on American Gaming Association's Motion to Dismiss Complaint

01/28/2019



Notice of Entry of Stipulation and Order

Filed By: Defendant American Gaming Association
Notice of Entry of Order to Continue Hearing on American Gaming Association's Motion to Dismiss Complaint

02/26/2019



Decision and Order

Decision and Order

02/26/2019



Notice of Entry of Decision and Order

Notice of Entry of Decision and Order

02/26/2019



Amended Complaint

Filed By: Plaintiff Colon, Nicholas G.
Amended Complaint for Defamation and Jury Demand

03/14/2019



Order

Order Denying the Motion of American Gaming Association to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted

03/14/2019



Notice of Entry of Order

Notice of Entry of Order

03/15/2019



Answer to Amended Complaint

Filed By: Defendant Taylor, James; Defendant Nevada Gaming Control Board
Defendants Taylor and Nevada Gaming Control Board's Answer to Plaintiff's Amended Complaint

03/19/2019



Answer to Amended Complaint

American Gaming Association's Answer to Amended Complaint for Defamation and Jury Demand

04/01/2019



Notice of Appeal

Filed By: Defendant Taylor, James; Defendant Nevada Gaming Control Board
Notice of Appeal

04/01/2019



Case Appeal Statement

Filed By: Defendant Taylor, James; Defendant Nevada Gaming Control Board

CASE SUMMARY**CASE NO. A-18-782057-C***Case Appeal Statement*

04/01/2019

**Request**

Filed by: Defendant Taylor, James; Defendant Nevada Gaming Control Board
Request for Transcript of Proceedings

04/01/2019

**Amended**

Filed By: Defendant Taylor, James; Defendant Nevada Gaming Control Board
Amended Request for Transcript of Proceedings

HEARINGS

12/07/2018

**Minute Order (11:00 AM) (Judicial Officer: Kishner, Joanna S.)**

Recused;

Journal Entry Details:

Although the Court would and could rule fairly and without bias, recusal is appropriate in the present case in accordance with Canon 2.11(A) of the Nevada Code of Judicial Conduct to avoid the appearance of impartiality since a member of the Court's family has been represented by one of the counsel listed in the pleadings, the Court, thus, recuses itself from the matter and asks that it be reassigned randomly in accordance with appropriate procedures.;

12/20/2018

Motion to Dismiss (9:00 AM) (Judicial Officer: Bell, Chief Judge)*Defendant's Anti-SLAPP Special Motion to Dismiss*

Denied;

12/20/2018

Joinder (9:00 AM) (Judicial Officer: Bell, Chief Judge)*American Gaming Association's Joinder to Defendants' Anti-Slapp Special Motion to Dismiss*

Denied;

12/20/2018

**All Pending Motions (9:00 AM) (Judicial Officer: Bell, Chief Judge)**

Matter Heard;

Journal Entry Details:

DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS AMERICAN GAMING ASSOCIATION'S JOINDER TO DEFENDANTS' ANTI-SLAPP SPECIAL MOTION TO DISMISS Mr. Nersesian advised there was a motion filed set to be heard on January 23, 2019 and he preferred these motions be heard together. Ms. Haar noted she preferred to proceed today. COURT ORDERED, matters TRAILED to allow the Court to review the motions. MATTER RECALLED: All parties present as before. Arguments by counsel regarding the merits of the motion. COURT ORDERED, motion UNDER ADVISEMENT. ;

02/13/2019

Motion to Dismiss (9:00 AM) (Judicial Officer: Jones, David M)*American Gaming Association's Motion to Dismiss Complaint*

Denied Without Prejudice;

Duplicate Entry

DATE**FINANCIAL INFORMATION****Defendant** American Gaming Association

Total Charges

223.00

Total Payments and Credits

446.00

Balance Due as of 4/3/2019**(223.00)****Defendant** Nevada Gaming Control Board

Total Charges

247.00

Total Payments and Credits

247.00

Balance Due as of 4/3/2019**0.00****Plaintiff** Colon, Nicholas G.

Total Charges

270.00

Total Payments and Credits

270.00

Balance Due as of 4/3/2019**0.00**

CASE SUMMARY

CASE NO. A-18-782057-C

DISTRICT COURT CIVIL COVER SHEET

A-18-782057-C

Department 31

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): DR. NICHOLAS G. COLON	Defendant(s) (name/address/phone): JAMES TAYLOR, NEVADA GAMING CONTROL BOARD AMERICAN GAMING ASSOCIATION, AND DOES I-XX
Attorney (name/address/phone): Robert A. Nersesian Nersesian & Sankiewicz 528 South Eighth Street, Las Vegas, Nevada 89101 702-385-5454	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input checked="" type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

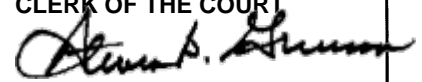
Business Court filings should be filed using the Business Court civil coversheet.

10/02/2018

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 DR. NICHOLAS G. COLON,

6 Colon,

7 vs.

Case No. A-18-782057-C

8 JAMES TAYLOR, NEVADA GAMING CONTROL BOARD,
AMERICAN GAMING ASSOCIATION, AND DOES I-XX,

Dept. No. XXIX

9 Defendants.

10 DECISION AND ORDER

11 James Taylor, a Deputy Chief of the Enforcement Division of the Gaming Control Board,
12 gave a presentation on scams, cheating, and fraud in casinos. During this presentation, Mr. Taylor
13 presented a picture of Dr. Nicholas G. Colon under a section entitled "Use of a cheating device". Dr.
14 Colon brought a lawsuit against Mr. Taylor and the Gaming Control Board, alleging that they
15 defamed Dr. Colon by at least implying he was a cheater. Defendants James Taylor and Nevada
16 Gaming Control Board brought an Anti-SLAPP Motion to Dismiss Dr. Colon's Complaint. Plaintiff
17 Dr. Nicholas Colon opposed the Anti-SLAPP Motion to Dismiss. The parties made oral arguments
18 on December 20, 2018. I am denying the Anti-SLAPP Motion to Dismiss.

19 **I. Factual and Procedural Background**

20 On October 2, 2018, the Sands Convention Center held the Global Gaming Expo. At this
21 Expo, James Taylor, a Deputy Chief of the Enforcement Division of the Gaming Control Board,
22 gave a presentation on scams, cheating, and fraud in casinos. Mr. Taylor gave this presentation to
23 about 300 people. As part of that presentation, Mr. Taylor showed a short video that depicted a man
24 sitting at a blackjack table holding some sort of device in his hand. The video clip did not show the
25 face of the man, but focused on what the man was holding under the table. Though there is a dispute
26 as to what exactly Mr. Taylor said during the display of the video clip, it is undisputed that Mr.
27 Taylor stated that a cheating device was used in violation of the law. Dr. Colon, who is an author,
28 consultant, and executive addressing and operating in the gaming industry, claims that he was the

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DISTRICT JUDGE
DEPARTMENT VII
LINDA MARIE BELL
CLERK OF THE COURT

1 man in the video. This claim is not disputed. Dr. Colon further contends that the device in his hand
2 was not a cheating device, but was instead a crowd counter. Dr. Colon alleges that many in
3 attendance at Mr. Taylor's presentation recognized him as the man in the video. On the same day,
4 Dr. Colon filed a complaint claiming one count of defamation per se based on Mr. Taylor's
5 depiction of him as a cheater during the presentation.

6 On December 6, 2018, Mr. Taylor and the Gaming Control Board filed an Anti-SLAPP
7 Motion to Dismiss. Dr. Colon filed an Opposition to on December 17, 2018. Defendants filed a
8 Reply on December 19, 2018. Oral arguments on the motion were heard on December 20, 2018.

9 **II. Discussion**

10 An Anti-SLAPP Motion to Dismiss is governed by NRS 41.660, et seq. First, I must
11 "[d]etermine whether the moving party has established, by a preponderance of the evidence, that the
12 claim is based upon a good faith communication in furtherance of the right to petition or the right to
13 free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). Such
14 communications include "written or oral statements made in direct connection with an issue under
15 consideration by a legislative, executive, or judicial body, or any other official proceeding
16 authorized by law." NRS 41.637. Good faith communication is any "communication made in direct
17 connection with an issue of public interest in a place open to the public or in a public forum, which
18 is truthful or is made without knowledge of its falsehood." NRS 41.637(4).

19 Nevada adopted the California standard for what distinguishes a public interest from a
20 private one:

- 21 (1) "public interest" does not equate with mere curiosity;
- 22 (2) a matter of public interest should be something of concern to a substantial
23 number of people; a matter of concern to a speaker and a relatively small specific
audience is not a matter of public interest;
- 24 (3) there should be some degree of closeness between the challenged statements and
the asserted public interest—the assertion of a broad and amorphous public interest
is not sufficient;
- 25 (4) the focus of the speaker's conduct should be the public interest rather than a
26 mere effort to gather ammunition for another round of private controversy; and
- 27 (5) a person cannot turn otherwise private information into a matter of public
28 interest simply by communicating it to a large number of people.

1 Shapiro v. Welt 389 P.3d 262 268, 133 Nev. Adv. Op. 6 (2017) citing Piping Rock Partners, Inc. v.
2 David Lerner Assocs., Inc., 946 F. Supp.2d 957, 968 (N.D. Cal. 2013) aff'd 609 Fed.Appx. 497 (9th
3 Cir. 2015) citing Weinberg v. Feisel, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392-93 (2003).

4 The only alleged defamation in Dr. Colon's complaint was when Mr. Taylor, during his
5 presentation on cheating at the G2E expo, showed a video clip of Dr. Colon sitting at a blackjack
6 table holding some sort of device in his hand. Mr. Taylor then identified the device as the only
7 counting device that was recovered by the GCB so far that year.

8 **A. Mr. Taylor's presentation was a matter of public concern.**

9 Mr. Taylor's speech was a matter of public concern. Security and the laws surrounding
10 gaming are not a mere curiosity. Gaming is a central pillar of the Las Vegas economy. There are a
11 substantial number of people concerned about such matters, which is evident given the large number
12 of people that listened to Mr. Taylor's speech. There is no assertion of a broad and amorphous
13 public interest, as the use of cheating devices correlate exactly with gaming security. There is no
14 evidence that Mr. Taylor's speech was an effort to do anything other than act in the public interest.
15 Thus, Mr. Taylor's speech was a matter of public interest.

16 **B. Mr. Taylor's presentation was not a good faith communication.**

17 Although Mr. Taylor's speech is a matter of public concern, I cannot find that Mr. Taylor
18 made the communication in good faith by a preponderance of the evidence. Dr. Colon contends that
19 the device in his hand was a crowd counter, not a cheating device. This crowd counter cannot be
20 used to cheat at blackjack because it cannot subtract, only add. This contention is supported by the
21 affidavits of two gaming experts, Michael Aponte and Eliot Jacobson, as well as the affidavit of Dr.
22 Colon. Mr. Taylor and the Gaming Control Board do not dispute that the device in his hand was a
23 crowd counter, and could not be used to cheat at blackjack.

24 Mr. Taylor and the Gaming Control Board argue that Mr. Taylor did not specifically claim
25 that the crowd counter was a cheating device. Instead, Mr. Taylor simply identified the device as a
26 counting device and stated that it was the only counting device obtained that year. In context, this is
27 not a persuasive argument. Mr. Taylor also discussed Dr. Colon's arrest and discussed Dr. Colon
28 under the section entitled "Use of a cheating device." Mr. Taylor also cited NRS 465.075(1), which

1 makes it “unlawful to use or possess any computerized electronic or mechanical device . . . to obtain
2 an advantage at playing any game in a licensed gaming establishment.”

3 In order to find good faith communication, I have to find that the communication was
4 truthful or was made without knowledge of its falsehood. The communication that the crowd counter
5 was a cheating device was not truthful. There is no evidence that Mr. Taylor was without knowledge
6 of its falsehood, as Mr. Taylor does not make any such claims in his affidavit. Instead, the evidence
7 shows that Mr. Taylor most likely knew that the crowd counter could not be used as a cheating
8 device, as Dr. Colon provided two separate affidavits supporting this contention. Thus, I find by a
9 preponderance of the evidence that Mr. Taylor’s statements do not constitute a good faith
10 communication.

11 **C. Nevada’s Anti-SLAPP statute does not violate the right to a trial by jury.**

12 Colon also challenges the constitutionality of NRS 41.660, et seq. as it infringes on the right
13 to a trial by jury as stated in article 1, section 3 of the Nevada Constitution. Colon claims that the
14 statutory scheme calls for the Court to invade into the province of the jury by weighing the evidence
15 and adjudicating matters summarily.

16 Nevada’s current Anti-SLAPP statute was created by the legislature in an effort to protect the
17 exercise of another constitutional right: the First Amendment rights to free speech. S.B. 286, 2013
18 Leg. Sess., 77th Sess. (Nev. 2013). “Statutes are presumed to be valid [E]very reasonable
19 construction must be resorted to, in order to save a statute from unconstitutionality.” Shapiro v. Welt,
20 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017) (internal quotations omitted). In Shapiro, the
21 Nevada Supreme Court used its discretion to review the constitutionality of Nevada’s Anti-SLAPP
22 statute. Though it did not address specifically the right to a trial by jury, the court did find the statute
23 constitutional. While this does not foreclose the discussion at hand, it serves as a proper background
24 to my analysis.

25 Adjudicating matters summarily is not new to the judiciary in this or any jurisdiction.
26 Virtually every jurisdiction in this country, including the highest court, embraces motions for
27 summary judgment and motions to dismiss in their respective rules of civil procedure. These rules
28 have been held to be constitutional when pitted against the right to a trial by jury. See Fid. & Deposit

1 Co. of Maryland v. United States, 187 U.S. 315, 318, 23 S. Ct. 120, 120; see also United States v.
2 Carter, No. 3:15CV161, 2015 WL 9593652, at *7 (E.D. Va. Dec. 31, 2015), aff'd, 669 F. App'x 682
3 (4th Cir. 2016), and aff'd, 669 F. App'x 682 (4th Cir. 2016)(stating that a right to a trial by jury does
4 not exist until a plaintiff shows a genuine issue of material fact).

5 Nevada looks to California case law when considering its Anti-SLAPP statute. See John v.
6 Douglas Cty. Sch. Dist., 125 Nev. 746, 756 (2009); S.B. 444, 2015 Leg. Sess., 78th Sess. (Nev.
7 2015) at §12.5(2). California considered the constitutionality of Anti-SLAPP statutes in Briggs. V.
8 Eden Council for Hope & Opportunity. 19 Cal. 4th 1106 (1999). In Briggs, the California court
9 found that, because the statute only required a showing of minimal merit as to plaintiff's claims, the
10 statute did not violate the plaintiff's right to trial. Id.

11 Here, the Anti-SLAPP statute puts the initial burden on the defendant, not the plaintiff. The
12 defendant must show by a preponderance of the evidence that the claim is based upon good faith
13 communication. NRS 411.660(3)(a). After that, the plaintiff must show a minimal merit of their
14 claim, in this case that they have a probability of prevailing on the claim. NRS 411.660(3)(b). The
15 only time that the court considers the evidence and functions like a jury is the first prong of the Anti-
16 SLAPP statute, when it is considering the defendant's burden of proof. When the plaintiff has the
17 burden of proof, the plaintiff needs only a minimal merit as to their claim. As plaintiff needs only a
18 minimal merit, it functions as a special motion for summary judgment. Thus, plaintiff's right to a
19 trial is not impacted by the Anti-SLAPP statute.

III. Conclusion

Defendants have not shown by a preponderance of the evidence that Dr. Colon's claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Thus, I am denying Defendant's Anti-SLAPP Motion to Dismiss.

DATED ^{Feb} ~~this~~ day of ~~January~~ ²⁵, 2019.



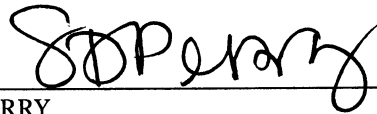
LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
James Adams, Esq. Adams Law Group, Ltd. c/o James R. Adams, Esq. 5420 W. Sahara Ave. #202 Las Vegas, NV 89146	Counsel for Colon
Robert T. Robbins, Esq. 1995 Village Center Circle, Suite 190 Las Vegas, NV 89134	Counsel for Defendants



SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A685807 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: 01/ /2019



1 **NOED**

2 Robert A. Nersesian

3 Nevada Bar No. 2762

4 Thea Marie Sankiewicz

5 Nevada Bar No. 2788

6 **NERSESIAN & SANKIEWICZ**

7 528 South Eighth Street

8 Las Vegas, Nevada 89101

9 Telephone: 702-385-5454

10 Facsimile: 702-385-7667

11 Email: vegaslegal@aol.com

12 *Attorneys for Plaintiff*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 DR. NICHOLAS G. COLON,

16 PLAINTIFF,

17 vs.

18 JAMES TAYLOR, NEVADA GAMING
19 CONTROL BOARD, AMERICAN GAMING
20 ASSOCIATION, AND DOES I-XX,

21 DEFENDANTS.

22 **NOTICE OF ENTRY OF DECISION AND ORDER**

23 PLEASE TAKE NOTICE that a Decision and Order from the Hearing on December 20,
24 2018, was entered in the above-entitled matter on the 26th day of February, 2019. A copy of

25 ///

26 ///

27 ///

28 ///

///

///

///

Nersesian & Sankiewicz

528 SOUTH EIGHTH STREET
LAS VEGAS NEVADA 89101

Case Number: A-18-782057-C

1 said Decision and Order is attached hereto.

2 Dated this 26th day of February, 2019.

3 **NERSESIAN & SANKIEWICZ**

4 /s/ Robert A. Nersesian

5 Robert A. Nersesian

6 Nev. Bar No. 2762

7 Thea M. Sankiewicz

8 Nev. Bar No. 2788

9 528 South Eighth Street

10 Las Vegas, Nevada 89101

11 Telephone: 702-385-5454

12 Facsimile: 702-385-7667

13 Email: vegaslegal@aol.com

14 *Attorneys for Plaintiff*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the 26th day of February, 2019, pursuant to NRCP 5(b) and
17 EDCR 8.05(f), the above referenced **NOTICE OF ENTRY OF DECISION AND ORDER**
18 was served via e-service through the Eighth Judicial District Court e-filing system, and that the
19 date and time of the electronic service is in place of the date and place of deposit in the mail and
20 by depositing the same into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as
21 follows:

22 Aaron D. Ford

23 Attorney General

24 Theresa M. Haar (Bar No. 12158)

25 Senior Deputy Attorney General

26 Edward L. Magaw (Bar No. 9111)

27 Deputy Attorney General

28 Office of the Attorney General

555 E. Washington Ave., Ste. 3900

Las Vegas, Nevada 89101

thaar@ag.nv.gov

emagaw@ag.nv.gov

*Attorneys for Defendants James Taylor
and Nevada Gaming Control Board*

Jeff Silvestri, Esq. (NSBN 5779)

Jason Sifers, Esq. (NSBN 14273)

McDONALD CARANO LLP

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

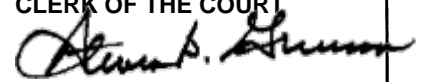
jsilvestri@mcdonaldcarano.com

jsifers@mcdonaldcarano.com

*Attorneys for American Gaming
Association*

/s/ Rachel Stein

An employee of Nersesian & Sankiewicz



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 DR. NICHOLAS G. COLON,

6 Colon,

7 vs.

Case No. A-18-782057-C

8 JAMES TAYLOR, NEVADA GAMING CONTROL BOARD,
AMERICAN GAMING ASSOCIATION, AND DOES I-XX,

Dept. No. XXIX

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16 Gaming Control Board brought an Anti-SLAPP Motion to Dismiss Dr. Colon's Complaint. Plaintiff
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20 On October 2, 2018, the Sands Convention Center held the Global Gaming Expo. At this
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11 "[d]etermine whether the moving party has established, by a preponderance of the evidence, that the
12 claim is based upon a good faith communication in furtherance of the right to petition or the right to
13 free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). Such
14 communications include "written or oral statements made in direct connection with an issue under
15 consideration by a legislative, executive, or judicial body, or any other official proceeding
16 authorized by law." NRS 41.637. Good faith communication is any "communication made in direct
17 connection with an issue of public interest in a place open to the public or in a public forum, which
18 is truthful or is made without knowledge of its falsehood." NRS 41.637(4).

19 Nevada adopted the California standard for what distinguishes a public interest from a
20 private one:

- 21 (1) "public interest" does not equate with mere curiosity;
- 22 (2) a matter of public interest should be something of concern to a substantial
23 number of people; a matter of concern to a speaker and a relatively small specific
audience is not a matter of public interest;
- 24 (3) there should be some degree of closeness between the challenged statements and
the asserted public interest—the assertion of a broad and amorphous public interest
is not sufficient;
- 25 (4) the focus of the speaker's conduct should be the public interest rather than a
26 mere effort to gather ammunition for another round of private controversy; and
27 (5) a person cannot turn otherwise private information into a matter of public
28 interest simply by communicating it to a large number of people.

1 Shapiro v. Welt 389 P.3d 262 268, 133 Nev. Adv. Op. 6 (2017) citing Piping Rock Partners, Inc. v.
2 David Lerner Assocs., Inc., 946 F. Supp.2d 957, 968 (N.D. Cal. 2013) aff'd 609 Fed.Appx. 497 (9th
3 Cir. 2015) citing Weinberg v. Feisel, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392-93 (2003).

4 The only alleged defamation in Dr. Colon's complaint was when Mr. Taylor, during his
5 presentation on cheating at the G2E expo, showed a video clip of Dr. Colon sitting at a blackjack
6 table holding some sort of device in his hand. Mr. Taylor then identified the device as the only
7 counting device that was recovered by the GCB so far that year.

8 **A. Mr. Taylor's presentation was a matter of public concern.**

9 Mr. Taylor's speech was a matter of public concern. Security and the laws surrounding
10 gaming are not a mere curiosity. Gaming is a central pillar of the Las Vegas economy. There are a
11 substantial number of people concerned about such matters, which is evident given the large number
12 of people that listened to Mr. Taylor's speech. There is no assertion of a broad and amorphous
13 public interest, as the use of cheating devices correlate exactly with gaming security. There is no
14 evidence that Mr. Taylor's speech was an effort to do anything other than act in the public interest.
15 Thus, Mr. Taylor's speech was a matter of public interest.

16 **B. Mr. Taylor's presentation was not a good faith communication.**

17 Although Mr. Taylor's speech is a matter of public concern, I cannot find that Mr. Taylor
18 made the communication in good faith by a preponderance of the evidence. Dr. Colon contends that
19 the device in his hand was a crowd counter, not a cheating device. This crowd counter cannot be
20 used to cheat at blackjack because it cannot subtract, only add. This contention is supported by the
21 affidavits of two gaming experts, Michael Aponte and Eliot Jacobson, as well as the affidavit of Dr.
22 Colon. Mr. Taylor and the Gaming Control Board do not dispute that the device in his hand was a
23 crowd counter, and could not be used to cheat at blackjack.

24 Mr. Taylor and the Gaming Control Board argue that Mr. Taylor did not specifically claim
25 that the crowd counter was a cheating device. Instead, Mr. Taylor simply identified the device as a
26 counting device and stated that it was the only counting device obtained that year. In context, this is
27 not a persuasive argument. Mr. Taylor also discussed Dr. Colon's arrest and discussed Dr. Colon
28 under the section entitled "Use of a cheating device." Mr. Taylor also cited NRS 465.075(1), which

1 makes it “unlawful to use or possess any computerized electronic or mechanical device . . . to obtain
2 an advantage at playing any game in a licensed gaming establishment.”

3 In order to find good faith communication, I have to find that the communication was
4 truthful or was made without knowledge of its falsehood. The communication that the crowd counter
5 was a cheating device was not truthful. There is no evidence that Mr. Taylor was without knowledge
6 of its falsehood, as Mr. Taylor does not make any such claims in his affidavit. Instead, the evidence
7 shows that Mr. Taylor most likely knew that the crowd counter could not be used as a cheating
8 device, as Dr. Colon provided two separate affidavits supporting this contention. Thus, I find by a
9 preponderance of the evidence that Mr. Taylor’s statements do not constitute a good faith
10 communication.

11 **C. Nevada’s Anti-SLAPP statute does not violate the right to a trial by jury.**

12 Colon also challenges the constitutionality of NRS 41.660, et seq. as it infringes on the right
13 to a trial by jury as stated in article 1, section 3 of the Nevada Constitution. Colon claims that the
14 statutory scheme calls for the Court to invade into the province of the jury by weighing the evidence
15 and adjudicating matters summarily.

16 Nevada’s current Anti-SLAPP statute was created by the legislature in an effort to protect the
17 exercise of another constitutional right: the First Amendment rights to free speech. S.B. 286, 2013
18 Leg. Sess., 77th Sess. (Nev. 2013). “Statutes are presumed to be valid [E]very reasonable
19 construction must be resorted to, in order to save a statute from unconstitutionality.” Shapiro v. Welt,
20 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017) (internal quotations omitted). In Shapiro, the
21 Nevada Supreme Court used its discretion to review the constitutionality of Nevada’s Anti-SLAPP
22 statute. Though it did not address specifically the right to a trial by jury, the court did find the statute
23 constitutional. While this does not foreclose the discussion at hand, it serves as a proper background
24 to my analysis.

25 Adjudicating matters summarily is not new to the judiciary in this or any jurisdiction.
26 Virtually every jurisdiction in this country, including the highest court, embraces motions for
27 summary judgment and motions to dismiss in their respective rules of civil procedure. These rules
28 have been held to be constitutional when pitted against the right to a trial by jury. See Fid. & Deposit

1 Co. of Maryland v. United States, 187 U.S. 315, 318, 23 S. Ct. 120, 120; see also United States v.
2 Carter, No. 3:15CV161, 2015 WL 9593652, at *7 (E.D. Va. Dec. 31, 2015), aff'd, 669 F. App'x 682
3 (4th Cir. 2016), and aff'd, 669 F. App'x 682 (4th Cir. 2016)(stating that a right to a trial by jury does
4 not exist until a plaintiff shows a genuine issue of material fact).

5 Nevada looks to California case law when considering its Anti-SLAPP statute. See John v.
6 Douglas Cty. Sch. Dist., 125 Nev. 746, 756 (2009); S.B. 444, 2015 Leg. Sess., 78th Sess. (Nev.
7 2015) at §12.5(2). California considered the constitutionality of Anti-SLAPP statutes in Briggs. V.
8 Eden Council for Hope & Opportunity. 19 Cal. 4th 1106 (1999). In Briggs, the California court
9 found that, because the statute only required a showing of minimal merit as to plaintiff's claims, the
10 statute did not violate the plaintiff's right to trial. Id.

11 Here, the Anti-SLAPP statute puts the initial burden on the defendant, not the plaintiff. The
12 defendant must show by a preponderance of the evidence that the claim is based upon good faith
13 communication. NRS 411.660(3)(a). After that, the plaintiff must show a minimal merit of their
14 claim, in this case that they have a probability of prevailing on the claim. NRS 411.660(3)(b). The
15 only time that the court considers the evidence and functions like a jury is the first prong of the Anti-
16 SLAPP statute, when it is considering the defendant's burden of proof. When the plaintiff has the
17 burden of proof, the plaintiff needs only a minimal merit as to their claim. As plaintiff needs only a
18 minimal merit, it functions as a special motion for summary judgment. Thus, plaintiff's right to a
19 trial is not impacted by the Anti-SLAPP statute.

III. Conclusion

Defendants have not shown by a preponderance of the evidence that Dr. Colon's claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Thus, I am denying Defendant's Anti-SLAPP Motion to Dismiss.

DATED ^{Feb} ~~this~~ day of ~~January~~ ²⁵, 2019.

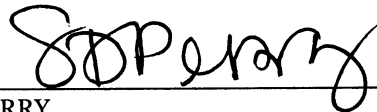


LINDA MARIE BELL
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
James Adams, Esq. Adams Law Group, Ltd. c/o James R. Adams, Esq. 5420 W. Sahara Ave. #202 Las Vegas, NV 89146	Counsel for Colon
Robert T. Robbins, Esq. 1995 Village Center Circle, Suite 190 Las Vegas, NV 89134	Counsel for Defendants



SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A685807 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: 01/ /2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

December 07, 2018

A-18-782057-C Nicholas Colon, Plaintiff(s)
vs.
James Taylor, Defendant(s)

December 07, 2018 11:00 AM Minute Order

HEARD BY: Kishner, Joanna S.

COURTROOM: Chambers

COURT CLERK: Tena Jolley

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Although the Court would and could rule fairly and without bias, recusal is appropriate in the present case in accordance with Canon 2.11(A) of the Nevada Code of Judicial Conduct to avoid the appearance of impartiality since a member of the Court's family has been represented by one of the counsel listed in the pleadings, the Court, thus, recuses itself from the matter and asks that it be reassigned randomly in accordance with appropriate procedures.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

December 20, 2018

A-18-782057-C Nicholas Colon, Plaintiff(s)
vs.
James Taylor, Defendant(s)

December 20, 2018 9:00 AM All Pending Motions

HEARD BY: Bell, Chief Judge **COURTROOM:** RJC Courtroom 15A

COURT CLERK:
Natalie Ortega

RECORDER: Melissa Murphy-Delgado

REPORTER:

PARTIES

PRESENT: Haar, Theresa M. Attorney
Nersesian, Robert A. Attorney
Silvestri, Jeffrey A. Attorney

JOURNAL ENTRIES

- DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS AMERICAN GAMING ASSOCIATION'S JOINDER TO DEFENDANTS' ANTI-SLAPP SPECIAL MOTION TO DISMISS

Mr. Nersesian advised there was a motion filed set to be heard on January 23, 2019 and he preferred these motions be heard together. Ms. Haar noted she preferred to proceed today. COURT ORDERED, matters TRAILED to allow the Court to review the motions.

MATTER RECALLED: All parties present as before. Arguments by counsel regarding the merits of the motion. COURT ORDERED, motion UNDER ADVISEMENT.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; REQUEST FOR TRANSCRIPT OF PROCEEDINGS; AMENDED REQUEST FOR TRANSCRIPT OF PROCEEDINGS; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES

DR. NICHOLAS G. COLON,

Plaintiff(s),

vs.

JAMES TAYLOR; STATE OF NEVADA ex rel
NEVADA GAMING CONTROL BOARD;
AMERICAN GAMING ASSOCIATION,

Defendant(s),

Case No: A-18-782057-C

Dept No: XXIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 3 day of April 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

April 3, 2019

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: DR. NICHOLAS G. COLON vs. JAMES TAYLOR; STATE OF NEVADA ex rel NEVADA
GAMING CONTROL BOARD; AMERICAN GAMING ASSOCIATION
D.C. CASE: A-18-782057-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed April 3, 2019. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

February 13, 2019

date

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk