

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES TAYLOR; NEVADA GAMING)
 CONTROL BOARD; AND AMERICAN)
 GAMING ASSOCIATION,)
)
 Appellants/Cross-Respondents,)
)
 vs.)
)
 DR. NICHOLAS G. COLON,)
)
 Respondent/Cross-Appellant.)
 _____)

Supreme Court No. 78517
 District Court Case No. 2019-00000
 Electronically Filed
 Apr 26 2019 04:06 p.m.
 Elizabeth A. Brown
 Clerk of Supreme Court
DOCKET STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal. A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions. This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department:

County: Clark Judge Linda Bell for the calendar of Judge David Jones

District Ct. Case No. A-18-782057-C

2. Attorney filing this docketing statement:

Attorney: Robert A. Nersesian Telephone: (702) 385-5454

Firm: Nersesian & Sankiewicz

Address: 528 South Eighth Street
Las Vegas, Nevada 89101

Client(s): Dr. Nicholas G. Colon

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing cross-respondents(s):

Attorney: Theresa M. Haar, Senior Deputy Attorney General; Edward L.

Magaw, Deputy Attorney General Telephone: (702) 486-3792

Firm: Office of the Nevada Attorney General

Address: 555 E. Washington Avenue, Suite 3900, Las Vegas, Nevada 89101

Client(s): James Taylor and Nevada Gaming Control Board

Attorney: Jeff Silvestri, Esq. and Jeff Sifers, Esq. Telephone: (702) 873-4100

Firm: McDonald Carano LLP

Address: 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102

Client(s): American Gaming Association

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): Denial of Defendants anti-slapp motion |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Defamation claim against Defendants.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether Nevada's anti-slapp statutes, NRS 41.635 *et seq*, violate Nev. Const. Art. 1, § 3

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision

☐ A ballot question

If so, explain: The constitutionality of NRS 41.635 *et seq*, in light of Nev. Const.

Art. 1, § 3 is an issue of first impression. The scope of a constitutional right is always an issue of public policy by definition.

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

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Presumptively retained pursuant to NRAP 17(a)(11)..

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: Feb. 25, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served: Feb. 26, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

Note: Notice of cross-appeal was timely filed per NRAP 4(a)(2) with NRAP 26

18. If the time for filing the notice of appeal was tolled by a post-judgment motion(NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed April 1, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Plaintiff: April 15, 2019

Defendants Taylor and NGCB:

Defendants AGA: April 5, 2019

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(2)

SUBSTANTIVE APPEALABILITY

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

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

X Other (specify) NRS 41.670(4) and NRAP 4(a)(2)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 41.670(4) delineates that a denial of a special motion to dismiss a special motion to dismiss under the anti-slap statutes is immediately appealable. NRAP 4(a)(2) grants fourteen days (here extended because the fourteenth day fell on a weekend) in which to file an appeal from the time another party “files a notice of appeal” in which to file a notice of appeal.

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

(a) Parties:

Plaintiff/Respondent/Cross-Appellant: Dr. Nicholas G. Colon

Defendants/Appellants/Cross-Respondents: James Taylor; Nevada Gaming Control Board; and American Gaming Association

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

Appellee is evaluating a motion to dismiss the appeal of the Defendants as untimely. This should not affect the appeal of the Appellee as the Appellee’s Notice of Appeal was filed within the prescribed time following the Appellee being served with a filed “notice of appeal.”

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.

Nicholas Colon: Defamation

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

☒ No

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

(a) Specify the claims remaining pending below:

Defamation

(b) Specify the parties remaining below:

All parties

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

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)):

Order appealable under NRS 41.670(4).

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

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims
- and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

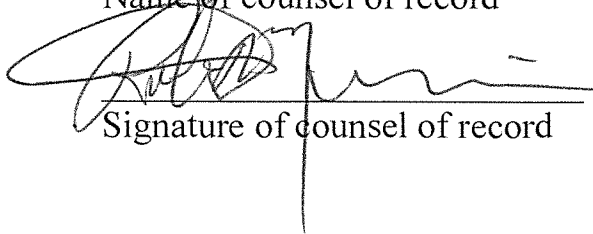
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nicholas G. Colon
Name of cross-appellant

April 26, 2019
Date

Clark County, Nevada
State and county where signed

Robert A. Nersesian
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 26th day of April, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By electronic service in accordance with the Court's Master Service List as follows:

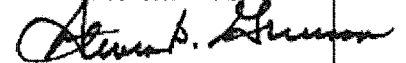
Theresa M. Haar (Bar No. 12158)
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Attorneys for American Gaming
Association

☒ By depositing the same into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

Stephen E. Haberfeld
8224 Blackburn Ave #100
Los Angeles, CA 90048
Settlement Judge


An employee of Nersesian & Sankiewicz



1 **ACOM**
Robert A. Nersesian
2 Nevada Bar No. 2762
Thea Marie Sankiewicz
3 Nevada Bar No. 2788
4 **NERSESIAN & SANKIEWICZ**
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5 Las Vegas, Nevada 89101
Telephone: 702-385-5454
6 Facsimile: 702-385-7667
7 *Attorneys for Plaintiff*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 DR. NICHOLAS G. COLON,)
11)
12 PLAINTIFF,)
13) Case No. Case No. A-18-782057-C
14 vs.) Dept. No. XXIX
15)
16 JAMES TAYLOR, STATE OF NEVADA, *ex*)
17 *rel* NEVADA GAMING CONTROL BOARD,)
18 AMERICAN GAMING ASSOCIATION, AND)
19 DOES I-XX)
20)
21 DEFENDANTS.)
22)

23 **AMENDED COMPLAINT FOR DEFAMATION AND JURY DEMAND**

24 **JURISDICTIONAL AND COMMON ALLEGATIONS**

- 25 1. Plaintiff, Dr. Nicholas Colon, is a gaming author, consultant, and executive addressing
26 and operating in the gaming industry.
27
28 2. On Monday, October 2, 2017, a presentation was made by James Taylor ("Taylor") at
the Sands Expo as part of the Global Gaming Expo, a/k/a G2E ("Expo") held at the
Sands Convention Center in Las Vegas.
3. The title of the presentation by Taylor was *Scams, Cheats and Black Lists: Current
Fraud and Casino Crimes*, and it was convened at 10:00 a.m.

- 1 4. Taylor was employed by the Nevada Gaming Control Board ("Board") at the time of the
2 presentation, and was acting both individually and within the aegis and scope of his
3 employment at the time of the presentation.
- 4
- 5 5. The event was hosted and put on by the American Gaming Association ("AGA"), which
6 association played a material part in seeking speakers, choosing subjects, and otherwise
7 acting as a publisher of the information conveyed at the Expo.
- 8
- 9 6. The AGA charged attendees for the Expo, and otherwise owned the event.
- 10
- 11 7. During the presentation by Taylor, a Power Point with embedded video was shown
12 presenting an alleged exemplar of casino fraud and crime.
- 13
- 14 8. Plaintiff was a subject of that Power Point video, and the point of the Power Point video
15 was to demonstrate cheating and criminal activities caught on video by, or otherwise
16 occurring at, casinos.
- 17
- 18 9. Taylor identified Plaintiff as a cheater and a criminal during the presentation, the
19 accusation being premised on the Plaintiff's possession and use of a device commonly
20 referred to as a crowd counter, tally counter, or clicker ("counter").
- 21
- 22 10. Plaintiff is not a cheater, is not a criminal, and did not use the counter in gambling.
- 23
- 24 11. Doe defendants are such other persons involved in preparing the presentation of
25 defendant, Taylor, persons having reviewed and approved the presentation of defendant,
26 Taylor, and persons feeding or providing the false information adopted and presented by
27 Defendant, Taylor.
- 28 12. The concept of the cheating allegation is that Plaintiff was in possession of, and using,
an illegal device while being filmed at a casino, which video was provided to the Board

1 and on information and belief, was provided to Taylor by the Board for purposes of the
2 presentation.

3
4 13. Plaintiff's reason for having the counter, as demonstrable from past presentations by
5 Plaintiff in the media, is that Plaintiff publishes articles using counts of people
6 frequenting various casinos as part of data of interest to gamblers and others operating in
7 the industry, and he would use the device to tally customers active at given times at
8 given casinos.

9
10 14. The counter is a ubiquitous tool used for many purposes, and is even found on the tables
11 of many table games available at a casino for use by a dealer or by pit personnel.
12 Nonetheless, one of the purposes for which it is not subject to use is to cheat at gambling
13 while playing blackjack at a casino.

14
15 15. Plaintiff was accused of using the crowd counter as a device to enhance his gaming in
16 violation of cheating statutes, in particular NRS 465.075.

17
18 16. As was evident from the events and the facts, and necessarily evident to the Board and
19 to Taylor, the alleged use of the crowd counter was not practicable as a device to
20 enhance card counting or otherwise increase odds at blackjack, and was, therefore, not a
21 device in Plaintiff's possession in violation of the law.

22
23 17. Moreover, considering Taylor's position (Deputy Chief) with the Enforcement Division
24 of the Nevada Gaming Control Board, and his position as a purported expert in cheating
25 at casinos, upon review of the video Taylor necessarily knew, positively, that Plaintiff
26 was not using the counter in violation of any criminal statute, knew that the Plaintiff was
27 not using the device to count cards or gain an advantage at gambling, and knew that his
28 presentation labeling Plaintiff as a criminal and cheater was false.

- 1 18. Taylor knew the facts stated in the preceding paragraph at the time of his publication of
2 Plaintiff as a criminal.
- 3 19. On information and belief, prior to the presentation, others at the Nevada Gaming
4 Control Board had assisted Taylor in the presentation, and at various levels, reviewed,
5 ratified, and approved of Taylor's labeling of the Plaintiff as a criminal. Such persons
6 ratifying, approving, and reviewing Taylor's presentation also recognized that it was
7 false at the time of the ratification, approval, and review.
- 8 20. The publication of the Plaintiff as a criminal and a cheater to persons within the gaming
9 industry, including Plaintiff's clientele, was defamation *per se*.
- 10 21. Plaintiff's reputation within the industry is part of his stock in trade, and Taylor and the
11 Board recognized that the publication of Plaintiff as a criminal and a cheater would
12 negatively impact Plaintiff's valued reputation.
- 13 22. Plaintiff was included in this video as a defrauder/criminal in Taylor's presentation.
- 14 23. Plaintiff is not, and never has been, a cheater, scammer, defrauder, or criminal in the
15 gaming context or any other context.
- 16 24. As a result of the foregoing, the defendants are each publishers or vicariously liable for
17 the publication of the false ascription of criminality to Plaintiff by Taylor.
- 18 25. The use of video of Dr. Colon with the associated ascription of bad acts constitutes
19 defamation *per se*.
- 20 26. Through the aforesaid defamation to persons within the very trade and business of the
21 Plaintiff, the defamation of the Plaintiff was particularly damaging and malicious.
- 22 27. The defamation of the Plaintiff was undertaken with fraud, oppression, and malice.
- 23
24
25
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27
28

1 28. Through the express words and power-point used at the Expo, it was communicated to
2 all present that the plaintiff was odious person such that the Plaintiff had committed
3 criminal actions

4 29. As a result of the defamation the plaintiff have suffered damages as follows:

- 5 a. Lost business opportunities;
- 6 b. Loss of reputation;
- 7 c. Humiliation;
- 8 d. Emotional distress;
- 9 e. Outrage;
- 10 f. Mortification;
- 11 g. Ostracism in his profession and business;
- 12 h. Punitive damages; and
- 13 i. Such other injuries as the jury finds relevant.

14 all comprising compensable injury to the Plaintiff in an amount in excess of \$15,000.00.

15 **AD DAMNUM**

16 WHEREFORE plaintiff requests that this court enter judgment in the amount
17 determined by the trier of fact in actual damages in excess of \$15,000.00, award determined
18 punitive damages in an amount in excess of \$15,000.00 and together therewith an award of the
19 attorney's fees, costs of suit, interest and such further relief as the court determines
20
21
22

23 ///

24 ///

25 ///

26 ///

27 ///

1 appropriate.

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 **JURY DEMAND**

16 Plaintiff herewith demands trial by jury of all issues so triable in the within case.

17 Dated this 26th day of February, 2019.

18 **NERSESIAN & SANKIEWICZ**

19 /s/ Robert A. Nersesian
20 Robert A. Nersesian
21 Nev. Bar No. 2762
22 Thea M. Sankiewicz
23 Nev. Bar No. 2788
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Attorneys for Plaintiff

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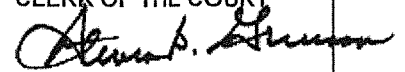
CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), the above referenced **AMENDED COMPLAINT FOR DEFAMATION AND JURY DEMAND** was served via e-service through the Eighth Judicial District Court e-filing system, and that the date and time of the electronic service is in place of the date and place of deposit in the mail and by depositing the same into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

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

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Attorneys for American Gaming Association

/s/ Rachel Stein
An employee of Nersesian & Sankiewicz



1 **NOED**

2 Robert A. Nersesian

3 Nevada Bar No. 2762

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

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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

RECEIVED
FEB 26 2019
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
24 audience is not a matter of public interest;
- 25 (3) there should be some degree of closeness between the challenged statements and
26 the asserted public interest—the assertion of a broad and amorphous public interest
27 is not sufficient;
- 28 (4) the focus of the speaker's conduct should be the public interest rather than a
mere effort to gather ammunition for another round of private controversy; and
- (5) a person cannot turn otherwise private information into a matter of public
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).

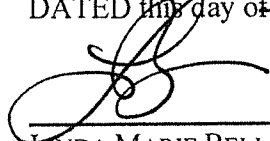
5 Nevada looks to California case law when considering its Anti-SLAPP statute. See John v.
6 Douglas Cty. Sch. Dist., 125 Nev. 746, 756 (2009); S.B. 444, 2015 Leg. Sess., 78th Sess. (Nev.
7 2015) at §12.5(2). California considered the constitutionality of Anti-SLAPP statutes in Briggs. V.
8 Eden Council 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.

1 **III. Conclusion**

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

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

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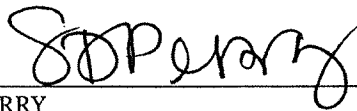
11 LINDA MARIE BELL
12 DISTRICT COURT JUDGE
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LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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
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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 Date: 01/ /2019
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII