

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN MARCUS, an individual,
Appellant,

vs.

FULL COLOR GAMES, INC., A
NEVADA CORPORATION,
Respondent.

Case No. 79512

Electronically Filed
Mar 24 2020 12:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from a decision in favor of Respondent
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-759862-B

**APPELLANT'S RESPONSE TO HUTCHISON & STEFFEN, PLLC'S MOTION TO
WITHDRAW AS COUNSEL AND FOR EXTENSION OF TIME FOR RESPONDENT TO
LOCATE NEW COUNSEL**

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
Email: jag@mglaw.com
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
Email: djb@mgalaw.com
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: (702) 629-7900
Facsimile: (702) 629-7925
Attorneys for Appellant Brian Marcus

Appellant Brian Marcus (“Mr. Marcus”) by and through his attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby files this response to Hutchison & Steffen, PLLC’s motion to withdraw as counsel for Respondent and for extension of time for Respondent to locate new counsel.

LEGAL ARGUMENT

Mr. Marcus understands and acknowledges that in the underlying action, Hutchison & Steffen, PLLC (“H&S”) has been disqualified from continuing to represent Full Color Games, Inc., the respondent in this appeal. However, the order memorializing that decision was filed on February 18, 2020, as shown in Ex. A of the motion.

This means that Respondent waited for approximately an entire month before filing its motion on March 17, 2020 (two days before Respondent’s Answering Brief was due) seeking an additional 90 days to allow Respondent to obtain new counsel. No logical explanation was provided in the motion for the unreasonable delay in seeking an extension of time from this Court. In fact, the “explanation” in the motion only raises further questions, as it appears that David Mahon, the sole director of FCGI “has been out of the country in India or on business since the Court issued a decision disqualifying FCGI.” Thus, FCGI has known from the time the order was issued that it would be difficult obtaining new counsel.

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Mr. Mahon claims he has not had the time to find new counsel because he has “significant business interests ... that cannot be left unattended.” However, a busy workload is not a valid excuse for not meeting court-imposed deadlines. Mr. Mahon, not Mr. Marcus, initiated this lawsuit, and Mr. Mahon cannot ignore court-imposed deadlines simply because he believes his time is better spent elsewhere.

Further, while Mr. Marcus understands that Mr. Mahon may not be able to safely leave India until April 2020, FCGI’s ability to retain new counsel is in no way contingent upon Mr. Mahon’s physical presence in the United States. New counsel can easily be retained through more modern means, especially in these times where most firms have adapted to technology-based communications and many are limiting non-essential in-person consultations altogether. There are simply no grounds for Respondent to operate under the legally unsupported assumption that Mr. Mahon physically needs to be in the United States to retain new counsel for FCGI.

Through its motion, Respondent is requesting 90 days to retain new counsel, and presumably an additional 90 days to file the Answering Brief. To be clear, Respondent has already had over 30 days to retain new counsel. If the Court is inclined to grant an extension to Respondent, Mr. Marcus respectfully requests an extension of no longer than 60 days. As this Court is aware, Nevada’s anti-SLAPP statutes aim to protect First Amendment rights by providing defendants with a procedural mechanism to dismiss “meritless lawsuit[s] that a party initiates

primarily to chill a defendant’s exercise of his or her First Amendment free speech rights” before incurring the costs of litigation. *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013). *See also, Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59, 453 P.3d 1220, 1228 (2019) (“[T]he anti-SLAPP statute fits a specific purpose—to bar frivolous litigation designed to thwart free speech at the courthouse doors.”). The anti-SLAPP statutes aim for swift dismissal of frivolous litigation, and Respondent’s untimely and unreasonable request for an additional 90 days (on top of the 30 days it has already had) to retain new counsel and submit an Answering Brief only serves to counteract that goal.

CONCLUSION

For the foregoing reasons, this Court should not grant Respondent an additional 90 days to retain new counsel and file an Answering Brief. Mr. Marcus is requesting that any extension last no longer than 60 days.

DATED this 24th day of March 2020.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

JOSEPH A. GUTIERREZ, ESQ. NV Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

(702) 629-7900

Attorneys for Appellant Brian Marcus

CERTIFICATE OF SERVICE

I certify that on the 24th day of March 2020, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANT’S RESPONSE TO HUTCHISON & STEFFEN, PLLC’S MOTION TO WITHDRAW AS COUNSEL AND FOR EXTENSION OF TIME FOR RESPONDENT TO LOCATE NEW COUNSEL** shall be made in accordance with the Master Service List as follows:

Mark A. Hutchison
Todd W. Prall
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89200
Attorneys for Respondent Full Color Games, Inc.

DATED this 24th day of March 2020.

/s/ Brandon Lopipero

An Employee of MAIER GUTIERREZ &
ASSOCIATES