IN THE SUPREME COURT OF NEVADA

MCGUIRE HOLDINGS LTD., Appellant, v. BETFRED INTERNATIONAL HOLDINGS, LTD., Respondent.	Supreme Court No. 83638 District Court Case No. A827937

APPEAL

Appeal From the Judgment Entered by the Eighth Judicial District Court
The Honorable Nancy Allf, District Judge
District Court Case No. A-21-827937-B

APPELLANT'S REPLY BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record for the Appellant/Plaintiff, McGuire Holdings, Ltd., a limited company ("McGuire"), certifies that this Disclosure Statement contains the names of the persons and entities that need to be disclosed pursuant to the requirements of NRAP 26.1(a). These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

The Plaintiff, McGuire, is a Bahamas limited company duly organized under the laws of Bahamas with a principal place of business in Florida. Plaintiff does not have a parent corporation and there is not a publicly held company that owns ten percent (10%) or more of its stock.

The Plaintiff was represented in the proceedings below and in this appeal by Ariel E. Stern, Esq., of the law firm of Akerman, LLP and Damien H. Prosser, Esq., of the law firm of Morgan & Morgan, P.A.

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I. LEGAL ARGUMENT

A. The District Court Erroneously Resolved a Factual Dispute in Betfred's Favor When it Concluded that the Parties Understood the Agreement was Terminated.

"[W]hen factual disputes arise in a proceeding that challenges personal jurisdiction, those disputes must be resolved in favor of the plaintiff." *Levinson v. Second Jud. Dist. Ct. of State In & For Washoe Cty.*, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987); *see also Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 91, 440 P.3d 645, 649 (2019) ("The court may consider evidence presented through affidavits and must accept properly supported proffers as true and resolve factual disputes in the plaintiff's favor."). The district court in its rush to judgment erroneously resolved a factual dispute in Betfred's favor when it concluded that both parties understood that the Agreement was terminated because Hutchinson sent an email to Betfred stating "[Betfred Int'l] will be a success in USA [I] know, I'm just gutted I will not be along to see it." 1 App. 184. Betfred, in its response, treats this email as if it existed in a vacuum. It does not.

McGuire presented ample evidence to demonstrate that it was not operating under the assumption that the Agreement was terminated. Hutchinson's email, when examined in context, shows that McGuire understood that Betfred was halting its pursuit to become the sportsbook operator for the Mohegan Tribe. 1

App. 74. McGuire knew that if Betfred changed its mind and decided to resume its pursuit of that opportunity, Betfred was obligated under the Agreement to use McGuire's services. 1 App. 74.

Specifically, McGuire knew that the Agreement contained a binding exclusivity clause that prohibited Betfred from using any other third-party consultant other than McGuire to obtain the Mohegan Sportsbook Services. 1 App. 74. If McGuire had "understood" that the Agreement was not in full force and effect, it would not have been shocked when it learned that Betfred "made a deliberate decision" to obtain a third-party consultant other than McGuire—thereby breaching the Agreement—to obtain the Mohegan Sportsbook Services. 1 App. 38, 74–75, 137–38. In sum, Hutchinson's email—contrary to Betfred's inference and the district court's subsequent adoption—demonstrates that McGuire understood not that the Agreement was terminated but that Betfred was halting its pursuit of the Mohegan Sportsbook Services *until further notice.*

B. The District Court Erroneously Adjudicated this Case on the Merits When it Dismissed this Case with Prejudice.

The law is clear—a dismissal for lack of personal jurisdiction does not operate as adjudication on the merits, so it must be without prejudice. *See* Nev. R.

Civ. P. 41(b)[1]. Betfred has disingenuously staked its argument on this issue on an irrelevant case, *145 East Harmon II Trust v. Residences at MGM Grand*, 136 Nev. 115, 460 P.3d 455 (2020). But Betfred is right about one thing—context matters. This Court's consideration of the *Harmon* case should start and stop with the fact that it concerned a *voluntary* dismissal. *See 145 E. Harmon II Tr.*, 460 P.3d at 459. Here, it is incontrovertible that the dismissal at issue was *involuntary*. McGuire did not choose to dismiss this case. The parties, unlike in *Harmon*, did not stipulate to a dismissal. *See 145 E. Harmon II Tr.*, 460 P.3d at 457.

Rather, the district court involuntarily dismissed this case for lack of personal jurisdiction *with prejudice* in clear violation of the law. 1 App. 185–86. Therefore, this Court should remand this matter to the district court with instructions to strike the "with prejudice" language from its dismissal order if this Court decides not to reverse the district court's lack of personal jurisdiction ruling.

II. CONCLUSION

For the reasons stated in McGuire's opening brief and this reply, the District Court's Order of Dismissal should be vacated in its entirety, with a remand to the district court requiring Betfred to proceed with answering McGuire's First

[1] Betfred incorrectly relies on NRCP 41(e), which is immaterial to this case because it governs dismissals for want of prosecution. Here, the district court dismissed McGuire's case for lack of personal jurisdiction—not want of prosecution. The focus, therefore, must remain on NRCP 41(b), which explains the effect of an involuntary dismissal for lack of jurisdiction.

Amended Complaint and completing the litigation that has been filed in Nevada. In the alternative, this Court should remand this matter to the district court with instructions to strike the "with prejudice" language from its dismissal order.

DATED this 1st day of June, 2022.

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CERTIFICATION OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in proportionally space typeface using Microsoft Word 2010 with 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, as a typeface of 14 points or more and contains 743 words.

3. I also hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose.

4. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

5. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 1st day of June 2022.

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CERTIFICATE OF SERVICE

I certify that I electronically filed on 1st day of June 2022 the foregoing **APPELLANT'S REPLY BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen
An employee of AKERMAN LLP