

IN THE SUPREME COURT OF THE STATE OF NEVADA

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YA-LING HUNG and WEI-HSIANG HUNG, )  
each individually, as surviving heirs, and Co- )  
Administrators of the Estate of Tung-Tsung )  
Hung and Pi-Ling Lee Hung, Descendants, )

Appellants, )

vs. )

GENTING BERHAD; GENTING U.S. )  
INTERACTIVE GAMING, INC.; GENTING )  
NEVADA INTERACTIVE GAMING, LLC; )  
RESORTS WORLD LAS VEGAS LLC, )

Respondents. )

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**APPEAL**

From the Eighth Judicial District Court,  
The Honorable Nancy L. Allf, District Judge  
District Court Case No. A-19-795338-C

**APPELLANTS' OPENING BRIEF**

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## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellants YA-LING HUNG and WEI-HSIANG HUNG, as individuals, are the surviving heirs and Co-Administrators of the Estate of Tung-Tsung Hung and Pi-Ling Lee Hung, Descendants. Appellants are individuals, therefore there are no parent corporations or publicly-held companies that own 10% or more of the party's stock.

Appellants are represented by Kevin R. Hansen and Amanda A. Harmon of Law Offices of Kevin R. Hansen.

DATED this 23<sup>rd</sup> day of November, 2021.

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## **JURISDICTIONAL STATEMENT**

This is an appeal from an Order dated June 30, 2021 granting Defendants Resorts World Las Vegas, LLC, Genting Berhad, Genting U.S. Gaming, Inc. and Genting Nevada Interactive Gaming LLC’s Motion to Dismiss and Denying Plaintiffs Ya-Ling Hung and Wei-Hsiang Hung’s Countermotion to Amend the Complaint (“Order”). Appendix (“App”) 393-410). Notice of Entry of the Order was filed on June 30, 2021 (App 411-431). The Order Granting Defendants’ Motion to Dismiss and Denying Plaintiffs’ Countermotion to Amend the Complaint constituted a final judgment as to all parties below and was therefore applicable under NRAP 3A(b)(1). Appellants timely filed a Notice of Appeal on July 6, 2021 (App 432-434).

## **ROUTING STATEMENT**

The instant matter should presumptively be retained by the Nevada Supreme Court because this appeal raises as a principal issue a question of first impression involving clarity of the common law and statutory interpretation. NRAP 17(a)(11). Specifically, at issue is an important question of how a Plaintiff properly obtains jurisdiction over a non-resident defendant under *Trump v. District Court*, 109 Nev. 687 (1993). This matter raises a question of statewide public importance concerning jurisdiction and forum. NRAP 17(a)(12).

## **STATEMENT OF ISSUES FOR REVIEW**

1. Whether the District Court erred in granting Defendants' Motion to Dismiss by failing to assert personal jurisdiction against GENTING BERHAD, GENTING U.S. INTERACTIVE GAMING, INC., and GENTING NEVADA INTERACTIVE GAMING, LLC ("Genting Respondents") and failing to recognize a cognizable claim asserted against Resorts World Las Vegas.

2. Whether the District Court erred in denying Plaintiffs' Countermotion to Amend the Complaint.

## **STATEMENT OF THE CASE**

This is an action for wrongful death, negligence, and intentional infliction of emotional distress against the Respondents. Appellants are the surviving heirs and Co-Administrators of the Estate of their parents, Mr. Tung-Tsung Hung and Mrs. Pi-Ling Lee Hung who died in a fire at the Resorts World Hotel and Casino in Manila, Philippines in June 2017.

Appellants filed their Amended Complaint on May 30, 2019. Respondents filed their Motion to Dismiss on February 5, 2021, claiming that the District Court lacked personal jurisdiction over the Genting Respondents, that Appellants failed to plead facts to support a cognizable claim against Resorts World Las Vegas, and that the First Amended Complaint failed to join a necessary and indispensable party. Appellants filed their Opposition to the Motion to Dismiss on May 14, 2021.

The District Court granted the Motion to Dismiss, ruling that it lacked personal jurisdiction as to the Genting Respondents and that Appellants could not state a prima facie claim for relief against Resorts World Las Vegas. The District Court alternatively found that an indispensable party (Resorts World Manila) was not served with process and that dismissal was proper under the doctrine of Forum Non Conveniens. The Order Granting the Motion to Dismiss and Denying Appellants' Countermotion to Amend the Complaint

was entered on June 30, 2021. App 393, 411. This is the Order from which the Appellants appeal.

### **FACTUAL BACKGROUND**

1. On June 2, 2017 at 12:11 a.m., Jessie Javier Carlos (“Carlos”) entered the Resorts World Manila casino (“the Casino”) armed with an assault rifle and wearing a mask and an ammunition vest. App 094; Amended Complaint ¶ 23.

2. A detailed chronology of the events can be found at App 197-199. These events are hereinafter referred to as “the Incident.” Amended Complaint ¶ 24.

3. During the Incident, 37 people (not including Carlos) lost their lives, including the Hungs. App 094; Amended Complaint ¶ 25.

4. Due to certain suspected ‘cover-ups,’ families, including the Hungs, have been unable to obtain more information about the Incident and the circumstances leading to the Hungs’ deaths. App 094; Amended Complaint ¶ 26.

5. As a direct and proximate result of the actions of Respondents, and each of them, The Casino reached some confidential settlement agreements with other families whose members died in the Incident, as a result of Respondents’ wrongdoing. No settlement has been reached with the

Appellants who seek full compensation for the Casino's highly egregious conduct. App 094; Amended Complaint ¶ 27.

#### THE HUNGS

6. The Hungs were Taiwanese nationals and among the 37 killed during the Incident. App 095; Amended Complaint ¶ 28.

7. The Hungs were married and had two children: Appellant Wei-Hsiang and Appellant Ya-Ling. At the time of their deaths, the Hungs had four grandchildren. App 095; Amended Complaint ¶ 29.

8. At the time of the Incident, the Hungs were staying at the Casino as VVIPs (very very important persons). They were in the Casino's VVIP room at the time of the Incident. App 095; Amended Complaint ¶ 30.

9. During the Incident, Respondents' employees led the Hungs, and others, into a pantry in the VIP room, to hide from the fire. App 095; Amended Complaint ¶ 31.

10. After the Incident, the Hungs were found in the VIP pantry room, where they had died from smoke inhalation. App 095; Amended Complaint ¶ 32.

11. A detailed report of the misconduct of the Respondents has been prepared and can be found at App 200-272.

12. Respondents have publicly admitted "lapses" in their security,

allowing the attacks to take place, resulting in Mr. and Mrs. Hungs' tragic and untimely deaths. App 092; Amended Complaint ¶ 4.

13. After the incident in question the Respondents engaged in fraudulent conduct to cover up their negligence and prevent Appellants from recovering for their injuries, thus causing additional injury to the Appellants. App 094, 099; Amended Complaint ¶ 26, 36.

### **PROCEDURAL HISTORY**

1. On May 23, 2019, Plaintiffs filed their Complaint. App 001-090.
2. On May 30, 2019, Plaintiffs filed their Amended Complaint. App 091-102.
3. On July 3, 2019, Plaintiffs filed their Proofs of Service on Genting Nevada Gaming, Genting U.S. Gaming, and Resorts World Las Vegas. App 103-109.
4. On February 4, 2020, the District Court Granted and subsequently Entered an Order to Extend the Time to Effectuate Service. App 110-113.
5. On May 28, 2020, the District Court Granted and Entered an Order to Extend the Time to Effectuate Service. App 114-117.
6. On August 6, 2020, the District Court Granted and subsequently entered an Order Granting Plaintiff's Counsel's Motion to Withdraw as

Counsel of Record. App 118-123.

7. On September 1, 2020, a Notice of Appearance was filed on behalf of Plaintiffs. App 124-125.

8. On February 5, 2021, Defendants filed their Motion to Dismiss with Exhibits A-C. App 126-167.

9. On March 3, 2021, Defendants filed a Notice of Non-Opposition to their Motion to Dismiss. App 168-170.

10. On May 4, 2021, a Substitution of Attorney was filed on behalf of Plaintiffs. App 171-174.

11. On May 5, 2021, A Stipulation and Order to Continue the Hearing on Defendants Motion to Withdraw was filed and entered. App 175-185.

12. On May 14, 2021, Plaintiffs filed their Opposition to the Motion to Dismiss and Countermotion to Amend the Complaint with Exhibits 1-11. App 186-367.

13. On June 3, 2021, Defendants filed their Reply in Support of Motion to Dismiss and Opposition to Countermotion to Amend the Complaint. App 368-381.

14. On June 10, 2021, oral arguments relating to the Motion to Dismiss and Countermotion to Amend Complaint were heard. See Recorder's

Transcript of the Proceeding at App 382-392.

15. On June 30, 2021, the District Court entered the Order Granting the Motion to Dismiss and Denying the Countermotion to Amend the Complaint. App 393-410.

16. On June 30, 2021, the Notice of Entry of Order Granting the Defendants' Motion to Dismiss and Denying Plaintiffs' Countermotion to Amend the Complaint was filed. App 411-431.

17. On July 6, 2021, Plaintiffs filed their Notice of Appeal. App 432-434.

18. On July 6, 2021, Plaintiffs filed their Case Appeal Statement. App 435-438.

### **SUMMARY OF THE ARGUMENTS**

Respondents have subjected themselves to the general jurisdiction of the State of Nevada by purchasing property in 2013, developing that property over the past eight years and obtaining gaming licenses in the State of Nevada. Once general jurisdiction over the Respondent is established, Nevada is the proper forum to adjudicate Appellant's claims as Respondents have, through corruption and fraud, attempted to prevent Appellants from bringing their claims elsewhere. Appellants agreed to the dismissal of certain defendants not directly in the chain of tortious conduct as currently established. Appellants

request this Court reverse the District Court’s Order Dismissing Appellants’ claims and denying Appellants the opportunity to Amend the Complaint.

## ARGUMENT

i. Minimum Contacts and Jurisdiction

a. Legal Standard

“To obtain jurisdiction over a non-resident defendant, a plaintiff must show that: (1) the requirements of the state’s long-arm statute have been satisfied, and (2) due process is not offended by the exercise of jurisdiction. See *Trump v. District Court*, 109 Nev. 687, 698 (1993); see also *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945); see also *Casentini v. Ninth Judicial Dist. Court*, 110 Nev. 721, 726 (1994).

A court of the state of Nevada may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the Constitution of the United States. See Nev. Rev. Stat. §14.065. “Nevada’s long-arm statute, NRS 14.065, reaches the limits of due process set by the United States Constitution.” See *Baker v. Dist. Ct.*, 116 Nev. 527, 531 (2000). The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires a nonresident defendant to have “minimum contacts” with the forum state sufficient to ensure that exercising personal jurisdiction over him would not offend “traditional notions of fair play and substantial justice.” *Id.* at 531-532.

Due process requirements are satisfied if the nonresident defendant's contacts are sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction, and it is reasonable to subject the nonresident defendants to suit in the forum state. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40 (2014) (citing *Arbella*, 122 Nev. at 512, 516; *Daimler AG v. Bauman*, 134 S.Ct. 746, 762 (2014)).

Courts may exercise general or "all purpose" personal jurisdiction over a defendant "to hear any and all claims against it" when the defendant's affiliations with the forum state "are so constant and pervasive as to render it essentially at home in the forum State." *Bauman* at 751.

General jurisdiction exists over a defendant who has "substantial" or "continuous and systematic" contacts with the forum state such that the assertion of personal jurisdiction over him is constitutionally fair even where the claims are unrelated to those contacts. See *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1171 (9<sup>th</sup> Cir. 2006) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984)). In a controversy unrelated to a defendant's contacts with the forum, a court may exercise general jurisdiction where "continuous corporate operations within a state [are] thought so substantial and of such a nature as to justify suit against

[the defendant] on causes of action arising from dealings entirely distinct from those activities.” *Id.* at 1169.

b. Argument

The Eighth Judicial District Court, Clark County, Nevada has jurisdiction to hear this case. The following is some of the information Appellants are currently aware of, and it is expected that after Appellants conduct discovery, these allegations will be bolstered and enhanced.

Respondents are engaged in substantial business within this District. In 2013 the Respondents, under the direct control of Lim purchased property in Clark County, Nevada for the purposes of developing a gaming property in Clark County, Nevada.

Since 2013 the Defendant Lim, by and through the entity Respondents have pursued the development and opening of a gaming property in Clark County, Nevada and have thereby subjected themselves to the jurisdiction of the Courts of Nevada and specifically in Clark County. See Clark County Real Property Records, App 273-282.

Kok Thay Lim is the primary owner of the Genting Group entities. Lim exercises ownership and control over all other Respondents in this matter and personally directs and controls the actions of the other Respondents in the actions set forth herein. See Respondent Flow Chart, App 334.

Upon information and belief, during the time frame of the incident referred to herein Lim traveled multiple times to Manila to supervise and control the actions of the other Respondents both before the incident and after the incident for the specific purpose of covering up the wrongdoing of the Respondents and to prevent the Appellants from recovering herein. See Corporate Profile and Information, App 283-296.

Lim, as a gaming licensee in the State of Nevada is subject to the Courts and jurisdiction of the State of Nevada and specifically Clark County. See GCB Disposition, App 302-333.

The State of Nevada has a significant and substantial interest in protecting the residents of the State of Nevada and those who travel to the State of Nevada for gaming purposes to adjudicate the conduct of its licensees, no matter where in the world that conduct takes place. See article on how Steve Wynn has been investigated in other gaming jurisdictions for this conduct in this jurisdiction, App 335-340.

By becoming a gaming licensee in the State of Nevada, Lim has consented to the jurisdiction of the State of Nevada over his conduct and the conduct of the entities over whom he exercises domination and control.

The actions of Lim and the other Respondents in attempting to cover up the conduct of the Respondents in the incident in question has left the

Appellants unable to pursue their claims in the courts of the Philippines leaving the Courts of the State of Nevada as the only available venue for this action. See Sanchez Report, App 200-272. See also the report on Philippines corruption, App 341-344.

The Genting Group entities own the Resorts World brand, including Resorts World Las Vegas and Resorts World Manila.

Resorts World Las Vegas and Resorts World Manila are therefore, for all intents and purposes, one and the same, owned by the Genting entities. See Respondent Flow Chart, App 334.

Genting Berhad, and Resorts World Las Vegas LLC are each corporations doing business in Nevada and registered with the Nevada Secretary of State.

In addition, Resorts World Manila is partnered with, and uses the brands of Hilton, Sheraton and Marriott, all based and headquartered in the United States and doing business in Clark County, Nevada.

Discovery will therefore show, including by piercing the corporate veil, the alter ego nature of Respondents' corporate structure and that jurisdiction is appropriate in the Eighth Judicial District Court, Clark County, Nevada, especially given the lack of another appropriate forum to provide justice to Appellants.

Therefore, the Eighth Judicial District Court, Clark County, Nevada has personal jurisdiction over both Appellants and Respondents and subject matter jurisdiction pursuant to Article 6, Section 6 of the Nevada Constitution and NRS 4.370.

ii. Appellant's Countermotion to Amend the Complaint

a. Legal Standard for the Amendment of Pleadings

Nevada Rule of Civil Procedure 15 governs matters concerning the amendment of pleadings. Pursuant to NRCP 15(a)(2), a party may amend a pleading by way of leave of court or upon the consent of the adversarial party. *See* NRCP 15(a)(2). For more than forty (40) years, courts in Nevada have held that leave to amend a pleading should be freely given in circumstances where “justice so requires.” *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138, 139 (1973). Courts have long held that leave to amend a prior pleading should only be denied in limited circumstances in which there is a showing of “dilatatory motive, undue prejudice or futility of amendment.” *Id.*

The Nevada Supreme Court has held that NRCP 15(a) contemplates the liberal amendment of pleadings, which in colloquial terms means that most motions for leave to amend prior pleading should be granted unless a strong reason exists not to do so, such as prejudice to the opponent or lack of good faith by the moving party. *Stephens*, 89 Nev. at 105, 507 P. 2d at 139. The

liberality reflected in NRCP 15(a) recognizes that discovery is a fluid process through which unexpected and newly found evidence is uncovered with regularity (particularly when evidence is solely in the possession of one party when the case is initiated) and that parties should have some ability to tailor their pleadings based upon information that a party discovers after an initial pleading is filed.

b. Filing of Amended Complaint

In this matter the Respondents have raised issues of jurisdiction, forum and appropriateness of claims. The Second Amended Complaint provides additional clarification and attachments which demonstrate the appropriateness of the courts of the State of Nevada to determine the issues related to this matter. See proposed Second Amended Complaint, App 352-367. Exhibits to the Second Amended Complaint are not attached as they would be duplicative to the exhibits to this brief. The Second Amended Complaint also narrows down the proposed parties and dismisses certain parties who, at this time, are not known to be directly involved.

c. Dismissal Without Prejudice of Certain Defendants

NRCP 41(a)(1)(A) allows the Appellant in an action to dismiss certain defendants before those defendants have filed an Answer or a Motion for Summary Judgment. As neither have been filed for any party in this case, the

Appellants in this matter will dismiss the following parties without prejudice subject to refiling should the evidence show a connection between those defendants and the incident in question. Genting U.S. Interactive Gaming Inc., Genting Nevada Interactive Gaming LLC, Genting Intellectual Property Pte Ltd, Resorts World Inc Pte Ltd.

### **CONCLUSION**

For the reasons set forth above, Appellants respectfully request this Court reverse the District Court's Order Dismissing Appellants' claims and denying Appellants the opportunity to Amend the Complaint as Appellants are able to establish jurisdiction in the Eighth Judicial District Court, Clark County, Nevada.

DATED this 23<sup>rd</sup> day of November, 2021.

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## CERTIFICATE OF COMPLIANCE

1. I 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 a proportionally spaced typeface using Microsoft Word 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 proportionately spaced, has a typeface of 14 points or more and contains 2811 words. Counsel has relied upon the word count application of the word processing program in this regard.
3. Finally, I 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. 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. 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 23<sup>rd</sup> day of November, 2021.

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the LAW OFFICES OF KEVIN R. HANSEN and that on the 23<sup>rd</sup> day of November, 2021, I caused a true and correct copy of the foregoing document to be served on all parties VIA ELECTRONIC SERVICE through the Nevada Supreme Court's efile e-file and serve system, addressed as follows:

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