

CASE NO. 86462

IN THE SUPREME COURT OF NEVADA

ROWEN SEIBEL, MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; CRAIG GREEN; R SQUARED GLOBAL SOLUTIONS, LLC, Derivatively on Behalf of DNT ACQUISITION, LLC; and GR BURGR, LLC,

Appellants,

vs.

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION,

Respondents.

District Court Case No. A-17-760537-B

APPENDIX OF EXHIBITS TO APPELLANT'S OPENING BRIEF

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Elizabeth A. Brown
Clerk of Supreme Court

JOHN R. BAILEY
NEVADA BAR NO. 0137
DENNIS L. KENNEDY
NEVADA BAR NO. 1462
JOSHUA P. GILMORE
NEVADA BAR NO. 11576
PAUL C. WILLIAMS
NEVADA BAR NO. 12524

BAILEY ❖ KENNEDY

8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
TELEPHONE: (702) 562-8820
FACSIMILE: (702) 562-8821
JBAILEY@BAILEYKENNEDY.COM
DKENNEDY@BAILEYKENNEDY.COM
JGILMORE@BAILEYKENNEDY.COM
PWILLIAMS@BAILEYKENNEDY.COM

Attorneys for Appellants

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Notice of Entry of Order Granting Motion to Redact Caesars' Opposition to the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery on Order Shortening Time; and Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green and Seal Exhibits 3-6, 8-11, 13, 14, and 16 Thereto, filed February 3, 2021	13	82	AA02612- AA02625
Notice of Entry of Order Granting Motion to Redact Caesars' Opposition to the Development Parties' Motion For Leave to File A Supplement to their Oppositions to Motions for Summary Judgment on Order Shortening Time, filed July 26, 2022	38	147	AA08072- AA08083
Notice of Entry of Order Granting Motion to Redact Caesars' Reply to Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay and Seal Exhibit 115 Thereto, filed June 2, 2022	34	132	AA07101- AA07112

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Notice of Entry of Order Granting Motion to Redact Caesars' Reply in Support of (1) Counter-Motion for Summary Judgment Against Craig Green; and (2) Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV – VIII of the First Amended Complaint) and Seal Exhibits 39-43 and 45-47 Thereeto; and to Redact Reply in Support of PHWLTV, LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 thereto, filed March 17, 2023	42	167	AA09054-AA09065
Notice of Entry of Order Granting Motion to Redact Caesars' Response to Objections to Evidence Offered in Support of Motions for Summary Judgment, filed July 26, 2022	38	145	AA08051-AA08062
Notice of Entry of Order Granting Motion to Redact Opposition to Craig Green's Motion for Summary Judgment; Countermotion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV – VIII of the First Amended Complaint) and Seal Exhibits 2-3, 15-18, 21, 23-28, 31 and 33 in Appendix Thereeto, filed March 17, 2023	42	166	AA09042-AA09053

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Notice of Entry of Order Granting Motion to Redact Replies in Support of Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 82, 84-87, 90, 82, 99-100, and 109-112 to the Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed January 4, 2022	33	121	AA06980- AA06992
Notice of Entry of Order Granting Motion to Seal Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint, filed April 13, 2020	5	57	AA01156- AA01162
Notice of Entry of Order Granting Proposed Plaintiff in Intervention The Original Homestead Restaurant, Inc. d/b/a The Old Homestead Steakhouse's Motion to Intervene, filed October 23, 2018	2	27	AA00383- AA00388
Notice of Entry of Order Granting the Development Parties' Motion for Leave to File a Supplement to Their Opposition to Motions for Summary Judgment, filed December 27, 2021	33	118	AA06945- AA06956
Notice of Entry of Order Granting the Development Parties' Motion to Redact Their Oppositions to the Counter-Motion and Cross-Motion for Summary Judgment and to Seal All or Portions of Exhibits A-2, A-3, B, D-F, and I-N to the Appendix of Exhibits Supporting the Oppositions, filed October 27, 2022	41	162	AA08869- AA08878

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Notice of Entry of Stipulated Confidentiality Agreement and Protective Order, filed March 12, 2019	2	33	AA00445- AA00469
Notice of Entry of Stipulation and Order for a Limited Extension of the Dispositive Motion Deadline, filed February 18, 2021	13	88	AA02687- AA02700
Notice of Entry of Stipulation and Order of Dismissal of J. Jeffrey Frederick With Prejudice, filed August 28, 2019	2	37	AA00483- AA00487
Notice of Entry of Stipulation and Order of Dismissal With Prejudice, filed June 3, 2022	34	136	AA07165- AA07173
Notice of Entry of Stipulation and Order to Consolidate Case No. A-17-760537-B with and into Case No. A-17-751759-B, filed February 13, 2018	1	17	AA00218- AA00224
Notice of Entry of Stipulation and Proposed Order to Extend Discovery Deadlines (Ninth Request), filed October 19, 2020	7	70	AA01494- AA01523
Notice of Order Granting Caesars' Motion for Leave to File First Amended Complaint, filed March 11, 2020	5	52	AA01093- AA01100
Objections to Evidence Offered by Caesars in Support of its Motions for Summary Judgment, filed March 30, 2021	20	98	AA04118- AA04125

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
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Objections to Exhibits Offered in Support of Craig Green’s Motion for Summary Judgment, filed July 14, 2022	37	142	AA08034-AA08037
Objections to Exhibits Offered in Support of Craig Green’s Opposition to Caesars’ Counter-Motion for Summary Judgment and Rowen Seibel and the Development Entities’ Opposition to Caesars’ Cross-Motion for Summary Judgment, filed October 12, 2022	39	157	AA08432-AA08435
Objections to Exhibits Offered in Support of Plaintiffs’ Omnibus Supplement to Their Oppositions to Motions For Summary Judgment, filed January 13, 2022	33	123	AA07003-AA07006
Objections to Exhibits Offered in Support of the Seibel Parties’ Oppositions to Caesars’ Motions for Summary Judgment, filed November 30, 2021	32	114	AA06801-AA06808
Omnibus Order Granting the Development Entities, Rowen Seibel, and Craig Green’s Motions to Seal and Redact, filed May 26, 2021	31	109	AA06426-AA06437

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Omnibus Order Granting the Development Parties' Motions to Seal and Redact, filed February 8, 2022	33	126	AA07030- AA07038
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Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed July 14, 2022 – FILED UNDER SEAL	35	139	AA07450- AA07475
Opposition to Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed on October 14, 2019	3	39	AA00605- AA00704
Order (i) Denying the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRC 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery on Order Shortening Time; and (ii) Granting Caesars' Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green, filed on February 4, 2021	13	85	AA02657- AA02664
Order Denying Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed on November 25, 2019	4	43	AA00759- AA00762

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Order Granting Caesars' Motion for Leave to File First Amended Complaint, filed March 10, 2020	5	51	AA01088- AA01092
Order Granting Craig Green's Motion to Seal Exhibits 1-6 and 9-11 to His Motion for Summary Judgment, filed August 15, 2022	38	148	AA08084- AA08090
Order Granting Motion to Redact Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 1-36, 38, 40-42, 45-46, 48, 50, 66-67, 73, and 76-80 to the Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment, filed January 28, 2022	33	124	AA07007- AA07016
Order Granting Motion to Redact Caesars' Opposition to the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCF 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery on Order Shortening Time; and Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green and Seal Exhibits 3-6, 8-11, 13, 14, and 16 Thereto, filed February 2, 2021	13	81	AA02601- AA02611
Order Granting Motion to Redact Caesars' Opposition to the Development Parties' Motion For Leave to File A Supplement to their Oppositions to Motions for Summary Judgment on Order Shortening Time, filed July 26, 2022	38	146	AA08063- AA08071

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Order Granting Motion to Redact Caesars' Reply in Support of (1) Counter-Motion for Summary Judgment Against Craig Green; and (2) Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV – VIII of the First Amended Complaint) and Seal Exhibits 39-43 and 45-47 Thereto; and to Redact Reply in Support of PHWLTV, LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 thereto, filed March 16, 2023	42	165	AA09033- AA09041
Order Granting Motion to Redact Caesars' Reply to Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay and Seal Exhibit 115 Thereto, filed May 31, 2022	34	131	AA07092- AA07100
Order Granting Motion to Redact Caesars' Response to Objections to Evidence Offered in Support of Motions for Summary Judgment, filed July 26, 2022	38	144	AA08042- AA08050
Order Granting Motion to Redact Opposition to Craig Green's Motion for Summary Judgment; Countermotion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV – VIII of the First Amended Complaint) and Seal Exhibits 2-3, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto, filed March 16, 2023	42	164	AA09024- AA09032

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Order Granting Motion to Redact Replies in Support of Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 82, 84-87, 90, 82, 99-100, and 109-112 to the Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed January 3, 2022	33	120	AA06970- AA06979
Order Granting Motion to Seal Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint, filed April 13, 2020	5	56	AA01152- AA01155
Order Granting Proposed Plaintiff in Intervention The Original Homestead Restaurant, Inc. d/b/a The Old Homestead Steakhouse's Motion to Intervene, filed October 23, 2018	2	26	AA00381- AA00382
Order Granting the Development Parties' Motion for Leave to File a Supplement to Their Opposition to Motions for Summary Judgment, filed December 27, 2021	33	117	AA06936- AA06944
Order Granting the Development Parties' Motion to Redact Their Oppositions to the Counter-Motion and Cross-Motion for Summary Judgment and to Seal All or Portions of Exhibits A-2, A-3, B, D-F, and I-N to the Appendix of Exhibits Supporting the Oppositions, filed October 26, 2022	41	161	AA08862- AA08868
Plaintiff's Reply to Defendant PHWLTV, LLC's Counterclaims, filed August 25, 2017	1	9	AA00168- AA00173

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Reply in Support of (1) Counter-Motion for Summary Judgment Against Craig Green and (2) Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed October 12, 2022 – FILED UNDER SEAL	39	158	AA08436-AA08452
Reply in Support of Craig Green’s Motion for Summary Judgment, filed October 12, 2022	39	155	AA08411-AA08422
Reply in Support of Motion to Amend LLTQ/FERG Defendants’ Answer, Affirmative Defenses and Counterclaims, filed on October 17, 2019	3	41	AA00711-AA00726
Reply to DNT Acquisition, LLC’s Counterclaims, filed July 25, 2018	2	23	AA00339-AA00350
Reply to LLTQ/FERG Defendants’ Counterclaims, filed July 25, 2018	2	24	AA00351-AA00374
Reporter’s Transcript, taken December 14, 2020	13	80	AA02498-AA02600
Reporter’s Transcript, taken December 6, 2021	33	116	AA06820-AA06935
Reporter’s Transcript, taken February 12, 2020	5	50	AA01060-AA01087
Reporter’s Transcript, taken May 20, 2020	6	60	AA01170-AA01224
Reporter’s Transcript, taken November 22, 2022	42	163	AA08879-AA09023

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Reporter's Transcript, taken November 6, 2019	4	42	AA00727- AA00758
Reporter's Transcript, taken September 23, 2020	7	67	AA01389- AA01462
Request for Judicial Notice of Exhibit 30 in Appendix of Exhibits in Support of Caesars' Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed July 14, 2022	37	143	AA08038- AA08041
Request for Judicial Notice of Exhibits 39, 59, and 62 in Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment, filed February 25, 2021	20	96	AA04076- AA04079
Response to Objections to Evidence Offered by Caesars in Support of its Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VII of the First Amended Complaint), filed August 31, 2022	38	152	AA08146- AA08150

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Response to Objections to Evidence Offered by Caesars in Support of Its Opposition to Craig Green’s Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed October 12, 2022	39	156	AA08423-AA08431
Rowen Seibel and the Development Entities’ Opposition to Caesars’ Cross-Motion for Summary Judgment, filed August 31, 2022 – FILED UNDER SEAL	38	151	AA08123-AA08145
Stipulated Confidentiality Agreement and Protective Order, filed March 12, 2019	2	32	AA00423-AA00444
Stipulation and Order for a Limited Extension of the Dispositive Motion Deadline, filed February 17, 2021	13	87	AA02676-AA02686
Stipulation and Order of Dismissal of J. Jeffrey Frederick With Prejudice, filed August 28, 2019	2	36	AA00481-AA00482
Stipulation and Order of Dismissal With Prejudice, filed June 2, 2022	34	133	AA07113-AA07118
Stipulation and Order to Consolidate Case No. A-17-760537-B with and into Case No. A-17-751759-B, filed February 9, 2018	1	16	AA00214-AA00217
Stipulation and Proposed Order to Extend Discovery Deadlines (Ninth Request), filed October 15, 2020	7	69	AA01467-AA01493

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Substitution of Attorneys for GR Burger, LLC, filed March 17, 2021	20	97	AA04080- AA04417
The Development Entities and Rowen Seibel's Opposition to Caesars' Motion for Summary Judgment No. 1, filed March 30, 2021 – FILED UNDER SEAL	20	99	AA04126- AA04175
The Development Entities, Rowen Seibel, and Craig Green's Answer to Caesars' First Amended Complaint and Counterclaims, filed June 19, 2020	6	62	AA01231- AA01281
The Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery on Order Shortening Time, filed November 20, 2020 – FILED UNDER SEAL	7	71	AA01524- AA01591
The Development Entities, Rowen Seibel, and Craig Green's: (1) Reply in Support of Motion For Leave/ To Compel; (2) Opposition to Caesars' Countermotion for Protective Order; and (3) Opposition to Motion to Compel Deposition of Craig Green, filed December 7, 2020	12	78	AA02460- AA02469
The Development Entities' Opposition to Caesars' Motion to Strike Counterclaims, and/or in the Alternative, Motion to Dismiss, filed August 3, 2020	6	65	AA01316- AA01373

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
The Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay, filed December 30, 2021	33	119	AA06957- AA06969
Verified Complaint and Demand for Jury Trial, filed February 28, 2017	1	1	AA00001- AA00036

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 27th day of September, 2023, service of the foregoing was made by mandatory electronic service through the Nevada Supreme Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES J. PISANELLI	Email: JJP@pisanellibice.com
DEBRA L. SPINELLI	DLS@pisanellibice.com
M. MAGALI MERCERA	MMM@pisanellibice.com
PISANELLI BICE PLLC	<i>Attorneys for Respondents, Desert Palace, Inc.;</i>
400 South 7 th Street, Suite	<i>Paris Las Vegas Operating Company, LLC;</i>
300	<i>PHWLV, LLC; and Boardwalk Regency</i>
Las Vegas, NV 89101	<i>Corporation</i>

/s/ Susan Russo

Employee of BAILEY ❖ KENNEDY

TAB 42

1 CASE NO. A-17-751759-B

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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ROWEN SEIBEL,

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Plaintiff,

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vs.

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PHWLV LLC,

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Defendant.

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REPORTER'S TRANSCRIPT

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OF

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HEARING

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

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DATED WEDNESDAY, NOVEMBER 6, 2019

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

25

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

AA00727

1 APPEARANCES:

2 FOR GORDON RAMSEY:

3

CORIX GROUP OF COMPANIES

4

BY: ALLEN WILT, ESQ.

5

1005 TERMINAL WAY

6

SUITE 294

7

RENO, NV 89502

8

(775) 300-1628

9

AWILT@ALLEN.WILT@CORIX.COM

10

11

12

13

FOR PHWLV LLC:

14

15

PISANELLI BICE PLLC

16

BY: MARIA MAGALI MERCERA, ESQ.

17

400 SOUTH SEVENTH STREET

18

SUITE 300

19

LAS VEGAS, NV 89101

20

(702) 214-2100

21

(702) 214-2101 Fax

22

JJP@PISANELLIBICE.COM

23

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

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AA00728

1 APPEARANCES CONTINUED:

2

FOR THE DEFENDANTS:

3

FOR LLTQ ENTERPRISES; LLTQ ENTERPRISES 16, LLC; FERG,

4

16 LLC:

5

SCAROLA ZUBATOV SCHAFFZIN PLLC

6

BY: DANIEL J. BROOKS, ESQ.

7

1700 BROADWAY

8

41ST FLOOR

9

NEW YORK, NY 10019

10

(212) 757-0007

11

9212) 757-0469 Fax

12

DBROOKS@SZSLAW.COM

13

14

AND

15

RICE REUTHER SULLIVAN & CARROLL, LLP

16

BY: ANTHONY DIRAIMONDO, ESQ.

17

3800 HOWARD HUGHES PARKWAY

18

SUITE 1200

19

LAS VEGAS, NV 89169

20

(702) 732-9099

21

(702) Fax

22

ADIRAIMONDO@RRSC-LAW.COM

23

24

25

* * * * *

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

AA00729

1 LAS VEGAS, NEVADA; WEDNESDAY, NOVEMBER 6, 2019

2 10:50 A.M.

3 P R O C E E D I N G S

4 * * * * *

09:47:44

5
6 THE COURT: Next up, page 8. Rowen Seibel
7 versus PHWLV LLC.

8 And what we're going to do, we're going to
9 take -- how long do you think this will take?

10:50:51

10 MS. MERCERA: I don't think it will take --

11 MR. BROOKS: This motion?

12 THE COURT: Yes.

10:51:00

13 MR. BROOKS: This is a Daniel J. Brooks with
14 Scarola Zubatov Schaffzin for the movants. I've been
15 admitted pro hac. I would think probably ten minutes.

16 Maybe less.

17 THE COURT: Can you promise me ten minutes?

18 MS. MERCERA: From my argument --

10:51:15

19 MR. BROOKS: My argument will be less than
20 ten.

21 MS. MERCERA: My argument will be less than
22 ten minutes.

10:51:22

23 THE COURT: All right. And let's go ahead and
24 place our appearances for the record. Did we place our
25 appearances on the record?

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

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AA00730

10:51:25 1 MR. BROOKS: I think I just did. Yes. Daniel
2 J. Brooks Scarola Zubatov Schaffzin. Admitted pro hac
3 for the movants, LLTQ and FERG.

4 THE COURT: And can you say it one more time
10:51:39 5 sir, slowly?

6 MR. BROOKS: Sure. The name of the firm?

7 THE COURT: Your name too for the court
8 reporter.

9 MR. BROOKS: Okay. All right. Daniel J.
10:51:50 10 Brooks. And the name of the firm is Scarola,
11 S-C-A-R-O-L-A; Zubatov, Z-U-B-A-T-O-V, Schaffzin
12 S-C-H-A-F-F-Z-I-N. We are -- represent the plaintiff
13 in the first captioned action. And this, we're
14 representing the movants on this motion. And the
10:52:12 15 movants are LLTQ and FERG, F-E-R-G.

16 THE COURT: You got that?

17 THE COURT REPORTER: Yes. Thank you.

18 And I forgot to ask. Do you guys want this
19 reported?

10:52:21 20 MS. MERCERA: Yes, please.

21 THE COURT: And everyone placed their
22 appearances on the record in open court.

23 MR. DIRAIMONDO: Your Honor, Anthony
24 DiRaimondo co-counsel for Mr. Brooks representing the
10:52:34 25 same parties.

10:52:35 1 MS. MERCERA: Good morning, your Honor.
2 Magali Mercera on behalf of PHWLTV, Paris Las Vegas
3 Operating Company, Boardwalk Regency Corporation, and
4 Desert Palace Inc., and Caesars parties.

10:52:47 5 MR. WILT: Good morning, your Honor. Allen
6 Wilt for Gordon Ramsey.

7 THE COURT: All right. Once again, good
8 morning. And it's my understanding we have a motion to
9 amend defendant's answer, affirmative defenses, and
10 counterclaims; is that correct?

11 MR. BROOKS: Yes, your Honor. Really we're
12 just trying to -- we're just trying to get permission
13 to amend the LLTQ counterclaim. We're not asking to
14 change anything in the answer or the affirmative
15 defenses.

16 THE COURT: You can go ahead, sir.

17 MR. BROOKS: Okay. Thank you, your Honor.
18 Thank you for allowing me to participate over the
19 phone.

10:53:28 20 As you're aware these actions involve a number
21 of restaurants that were opened in various properties
22 belonging to Caesars Palace by Mr. Seibel through a
23 number of different entities. There's one entity for
24 each restaurant.

10:53:46 25 So in this case LLTQ entered into an agreement

10:53:53 1 with Caesars in 2012 to open a Gordon Ramsey pub, GR
2 Pub. The counterclaim as it exists -- and this motion
3 really seeks only to make explicit what's already, I
4 think, apparent in the existing counterclaim.

10:54:10 5 But the basis of the counterclaim of the
6 existing one and what we want to add by way of
7 amendment is paragraph 13.22 of the LLTQ agreement with
8 Caesars, which you can find on page 21 of Exhibit 1 to
9 the motion. Exhibit 1 to the motion is simply the
10 existing counterclaim.

10:54:34 11 But this provision which survives termination
12 of the agreements requires Caesars if it wishes to open
13 another restaurant similar to the Gordon Ramsey Pub to
14 do so with LLTQ or an affiliate on the same terms of
10:54:56 15 this agreement.

16 It also says that if Caesars wants to open a
17 steak restaurant similar to the one that TPOV had
18 opened in the Paris Hotel, it also needs to include
19 LLTQ or an affiliate. Now let me just backup because
10:55:14 20 this becomes relevant later. But TPOV opened a Gordon
21 Ramsey steak restaurant in the Paris Hotel prior to the
22 LLTQ agreement.

23 That agreement does not have a provision
24 similar to 13.22. So 13.22 not only deems as
10:55:35 25 restricted restaurant ventures, which require the

10:55:38 1 participation of LLTQ or an affiliate, not just pubs
2 similar to the Gordon Ramsey Pub but also steak
3 restaurants similar to the one that TPOV opened in the
4 Paris Hotel here in Las Vegas.

10:55:52 5 Now, the TPOV restaurant in the Paris Hotel is
6 part of a separate lawsuit, a related federal lawsuit
7 in federal court. And that becomes significant later
8 in this -- in this discussion.

9 The original counterclaim says that Caesars
10:56:17 10 opened restricted restaurant ventures without LLTQ's
11 participation. One is a fish and chips restaurant.
12 And then if you look at on page 26 of the original
13 counterclaim, beginning on page 26 paragraph 66 through
14 7 -- 69 -- 70, rather, refer to a GR. And GR stands
10:56:39 15 for Gordon Ramsey, GR Steak Baltimore steakhouse. And
16 it says that was improperly opened without LLTQ's
17 participation.

18 Now, the focus of this motion is to add
19 specific allegations about a GR Steak Atlantic City
10:56:56 20 restaurant.

21 But if you look at paragraph 71 of the
22 original counterclaim it says, "Upon information and
23 belief Ramsey intends to open additional restaurants in
24 the United States. And one or more such restaurant
10:57:10 25 ventures is, A, between Ramsey and Caesars or one of

10:57:14 1 its facilities, and, B, qualifies as a restricted
2 restaurant venture."

3 And then on page 30, of the original -- the
4 existing counterclaim, in the prayer for relief damages
10:57:29 5 are specifically sought for the operation by Caesars or
6 its affiliates of any and all restricted restaurant
7 ventures since they came out the bankrupt. There is a
8 typo there. It says restricted Ramsey ventures, but it
9 means restricted restaurant ventures. It has all
10:57:50 10 initial caps.

11 Caesars understood very well that what I just
12 read you would evince an intent on the part of LLTQ to
13 recover damages for any restricted restaurant venture
14 that was opened. Not just for the one, the steak, fish
10:58:09 15 and chips, or the GR Steak Baltimore.

16 And how do we know that Caesars understood
17 this? Well, if you look at our reply, your Honor,
18 Exhibit 5 to our reply, first of all, an acknowledgment
19 by counsel for Caesars that even though the
10:58:34 20 counterclaim does not specifically mention GR Steak
21 Atlantic City, the initial disclosures filed by those
22 parties did.

23 And if you look at the email, it's dated
24 April 30, 2019. Counsel for Caesars acknowledged that
10:58:56 25 that the initial disclosures did mention a request for

10:59:01 1 damages specific to the GR Steak Atlantic City even
2 though the counterclaim doesn't specifically mention
3 GR Steak Atlantic City.

4 And then also interestingly is Exhibit 6 to
10:59:17 5 our reply. So you'll recall I mentioned that TPOV had
6 brought a federal action in Las Vegas with respect to
7 the GR Steak Las Vegas, the one that's in the Paris
8 Hotel.

9 And in that case TPOV sought production of
10:59:39 10 financial records, profit and loss statements for
11 GR Steak Baltimore and also for GR Steak Atlantic City.
12 And in Exhibit 6 to our reply, you will see counsel for
13 Caesars saying that they were not going to -- by the
14 way, this happened back on a January 18th; although,
11:00:00 15 Exhibit 6 memorializing that is dated later in
16 February.

17 But there was a meet and confer on January 18,
18 and an email. And that significantly predates the
19 deadline for filing amendments to pleadings in this
11:00:18 20 case.

21 Now this relates to the federal case, though.
22 And so Caesars is saying that because TPOV in the
23 federal action had not asserted any claims related to
24 future restaurants, Paris, which is the defendant in
11:00:34 25 that the case, was not going to produce any financial

11:00:38 1 documents for the Atlantic City -- the steak restaurant
2 in Atlantic City or Baltimore. And then this is what
3 is significant. They then say, Additionally the
4 LLTQ/FERG defendants, the movants in this case, have
11:00:56 5 asserted claims related to future restaurants in the
6 action pending before the Nevada state court. That's
7 this case. And has conceded plaintiffs/LLTQ cannot
8 obtain nor do you intend to seek duplicate recovery in
9 both actions.

11:01:13 10 In other words Caesars or one of its
11 affiliates Paris is refusing to turn over profit and
12 loss statements for GR Steak Baltimore and GR Steak
13 Atlantic City because those claims are the subject of
14 this action, and, therefore, presumably those documents
11:01:32 15 would be produced in this action. And any recovery
16 with respect to those restaurants would occur in this
17 action not in the federal action.

18 Then we've attached email correspondence
19 showing numerous meet and confers through February,
11:01:50 20 March, and April to the end of April 2019, this year.

21 And if you were to look at Exhibit H to the
22 reply as late as April 29 Caesars was still acting as
23 if they might produce those records for GR Steak AC
24 even though the counterclaim does not explicitly ask
11:02:13 25 for those records. And they -- you'll see in Exhibit A

11:02:17 1 counsel for Caesars asks for "clarification" of exactly
2 what financial records LLTQ would want. There was an
3 exchange of correspondence.

4 And then I think on that date, April 29,
11:02:31 5 Caesars finally said we're not going to give you those
6 reports because you don't have a claim. We'll give you
7 the records for AC Steak Baltimore because, as
8 explicitly mentioned in the counterclaim, but we won't
9 give them to you for GR Steak AC because that is not
11:02:49 10 explicitly mentioned in the counterclaim.

11 At that point and shortly thereafter in early
12 May, predecessor counsel to these parties moved to --
13 for leave to withdraw, which is granted after some
14 passage of time. And my firm did not start
11:03:07 15 representing these parties until early June of 2019.

16 We kind of are like jumping into the spin
17 cycle of a very fast moving washing machine, your
18 Honor. And there have been discovery disputes. There
19 have been motion practice in both cases. There have
11:03:25 20 been depositions. There have been production of tens
21 of thousands of documents. Bates stamping them.
22 It's -- it's -- we've been very busy. But we've -- and
23 we're playing catch up.

24 But we did ask -- and this is in Exhibit 2 to
11:03:42 25 the motion. We did ask for financial records for all

11:03:50 1 of these restaurants. This is on page 5 of Exhibit 2
2 to the motion. My partner asked for financials for
3 eight different restaurants.

4 And then we're -- he was told, as Caesars has
11:04:09 5 said previously with predecessor counsel, that they
6 wouldn't give us records for GR Steak AC because it's
7 not mentioned explicitly in the counterclaim. However,
8 if we wanted to give them a proposed amendment to the
9 counterclaim, they would review it. We did. They
11:04:27 10 reviewed it. And if you look at Exhibit 2, on page 1,
11 after reviewing it on September 13th, we were told the
12 following: They wouldn't give us the records for
13 GR Steak Atlantic City. And this is the entire
14 explanation: "We reviewed your proposed amendment to
11:04:50 15 the counterclaim and cannot stipulate to the
16 amendment."

17 So we then made this motion, your Honor. And
18 if you look at Exhibit 3, it's red lined. And I
19 apologize. I'm not sure the red came out because when
11:05:04 20 I downloaded the document from the website, I don't see
21 anything in red. I don't know if your copy has the
22 red. But even if it doesn't, it's pretty self evident
23 what it is. We're changing -- it's almost nothing.
24 It's on pages 28 and 29 of the proposed new
11:05:24 25 counterclaim. And there's a red lined version, it's

11:05:27 1 Exhibit 3, and the clean version is Exhibit 4 to our
2 motion.

3 It only adds six paragraphs on pages 28 and
4 29. Paragraph 73 to 78. And those pertain to the fact
11:05:41 5 that Caesars affiliate has opened a steak restaurant
6 similar to the one, the TPOV one here, in Atlantic City
7 and hasn't allowed LLTQ or any of its affiliates to
8 participate.

9 And that's what those six paragraphs say. And
11:06:00 10 then paragraph 86 has been changed. I hope it's a
11 little bit more artfully pleaded than it's -- the
12 original paragraph, which just said that there haven't
13 been payments. It now says there must be payments for
14 these other restricted restaurant ventures including
11:06:23 15 the one in Atlantic City, the GR Steak Atlantic City.

16 And it also says to make more explicit which
17 what I believe is implied, at least implied in the
18 original one, that if you go and open any others in the
19 future, and there have been in the press that they
11:06:40 20 might be opening one in Kansas City, I believe, that
21 you'll also be liable if you don't include us and don't
22 pay us our share of the profits.

23 So those are the facts. We've -- there's
24 no -- there's no prejudice here to Caesars. They've
11:06:59 25 been on notice for a very long time that LLTQ, or one

11:07:06 1 of its affiliates, would try to hold it liable for not
2 including it in all restricted restaurant ventures and
3 not paying their share of the profits. They've known
4 that.

11:07:18 5 They even use that as a reason in the federal
6 action, if you look at Exhibit 6, to refuse to turn
7 over financial records about a steak restaurant in
8 Baltimore and the one in Atlantic City. They said
9 you're going to get that in the state case. You have
11:07:37 10 claims for that in the state case.

11 They've known that all along. There's no
12 prejudice they've been on notice. And the important
13 other issue is what effect would this have on case
14 management in this case? And the answer is none.

11:07:53 15 They finally have turned over some of the P&Ls
16 for the other seven restaurants; although, not
17 completely.

18 Hopefully they will or else there will be, you
19 know, get more motion practice. So they would just
11:08:07 20 have to answer seven new paragraphs which I'm sure
21 would take less than an hour. Quite a bit less than an
22 hour. And turn over P&Ls for GR Steak Atlantic City as
23 they've done -- as they're done reluctantly and slowly
24 for the others.

11:08:23 25 So and the reason is we want to turn them over

11:08:25 1 to our expert witness so he can try to calculate the
2 damages. That's due in February of next year. All the
3 discovery has been pushed back. Depositions have been
4 happening all the time. We've been trying to work very
11:08:41 5 diligently in moving this case forward.

6 Allowing this technical minor amendment of a
7 counterclaim when -- as I've said before, and I don't
8 want to beat a dead horse, arguably this claim is
9 already part of the existing claim. But I think for
11:08:59 10 the sake of clarity so everyone knows what the case is
11 about and what documents have to be produced, it would
12 be preferable if the Court would see fit to grant this
13 motion and allow us -- we'll serve it immediately. Let
14 them answer. And we can move forward.

11:09:15 15 It will not impede what's going on in this
16 case one iota. And that constitutes good cause under
17 Rule 16(b). The fact that they're on notice, the
18 completely lack of prejudice, and the lack of any
19 impact on case management.

11:09:29 20 And we -- we cited a Ninth Circuit case. I've
21 noticed that in this state, because your Rules of
22 Federal -- Civil Procedure track the federal ones,
23 often the courts in this state will cite Ninth Circuit
24 cases. And we've cited one. It's on page 5 of the
11:09:51 25 reply. It's in the original one. It's C.R. ex rel

11:09:54 1 Farnan vs Capistrano School District. It's a Ninth
2 Circuit court case in 2011?

3 THE COURT: Can you say that again? Say that
4 again because I have --

11:10:03 5 MR. BROOKS: I'm sorry.

6 THE COURT: What you just -- you cited a Ninth
7 Circuit federal case on page 5 --

8 MR. BROOKS: Yeah.

9 THE COURT: -- of your reply. Something like
11:10:09 10 that.

11 MR. BROOKS: Yeah. Okay. And the name of the
12 case is C.F. ex rel Farnan, F-A-R-N-A-N, versus
13 Capistrano Unified School District. 654 F3d 975, 1984
14 to 85, Ninth Circuit, 2011. Which says that good cause
11:10:39 15 is shown where there's no case management issues and
16 where the opposing party was on notice.

17 We cited that same case in our original
18 motion, your Honor.

19 I just want to have one last thing to say. As
11:10:52 20 I've been on the call listening to the other cases
21 before us, I could hear everything you're saying, your
22 Honor, but I've been having trouble hearing what some
23 of the counsel are saying. I'm not sure what the
24 reason is. So I would request that whoever is opposing
11:11:07 25 this motion speak loudly as possible so I can hear.

11:11:12 1 THE COURT: I understand, sir.
2 I mean, ultimately, and I understand your
3 discussion. It appears to me that the opposing party's
4 taking the position that Nutton, N-U-T-T-O-N, vs.
11:11:22 5 Sunset Station Inc. controls this matter.

6 And it's a recent Nevada Supreme Court matter
7 that places a burden on the moving party to establish
8 good cause when a motion to amend is filed pursuant to
9 Rule 15 to amend a pleading. And Nutton has a specific
11:11:45 10 standard that appears slightly different from the Ninth
11 Circuit case. What do I do with that?

12 MR. BROOKS: Well, your Honor, we cited that
13 case too in our original motion. I think what that
14 case says is you have to -- when the --

11:11:58 15 THE COURT: Because it's your -- it's your
16 burden.

17 (Multiple speaker cross-talk)

18 THE COURT: It's your burden. Right.

19 MR. BROOKS: It's our burden to show why
11:12:07 20 there's been delay and whether that delay has
21 prejudiced -- is likely to prejudice anyone or
22 impede --

23 THE COURT: Or whether there's --

24 MR. BROOKS: -- the effective administration
11:12:15 25 of this case.

11:12:15 1 THE COURT: Whether there's good cause for
2 delay because it's my understanding it's six months;
3 right?

4 MR. BROOKS: Well --

11:12:21 5 MS. MERCERA: It's a little more --

6 MR. BROOKS: It is.

7 MS. MERCERA: A little more than that.

8 MR. BROOKS: It is longer than that. But what
9 I was trying to say is I think counsel, predecessor
11:12:29 10 counsel may well have been lead to believe when they
11 were arguing, it's the same counsel in the federal
12 case, and they were told by Caesars, Well, you'll get
13 the documents in the state case because you have
14 asserted these claims in the state case.

11:12:44 15 That was right before the deadline expired for
16 amending pleadings. And we've consensually extended
17 every other deadline for everything else in this case:
18 Expert disclosure, depositions, document production.
19 You know, and there was a change of counsel in there.
11:13:07 20 And there were discussions where it seemed as though
21 Caesars would produce the documents. They'd want to
22 know which ones.

23 So, you know, I think -- I think the case you
24 referred to says you have to blend the liberal amended
11:13:26 25 policy under Rule 50 with the good cause standard under

11:13:32 1 Rule 16 when a deadline has been missed. But that
2 doesn't mean -- it's in your discretion, your Honor.
3 This --

4 THE COURT: Well, see, here's the thing. And
11:13:40 5 I think this is important to point out. I'm given
6 discretion, but all the discretion I'm given is
7 tempered depending on the facts and the rule --

8 MR. BROOKS: Yes.

9 THE COURT: -- that's applicable.

11:13:52 10 MR. BROOKS: I agree.

11 THE COURT: So I can't do whatever I want to
12 do. It's my understanding -- I haven't read Nutton in
13 a while, but Nutton recognizes the tension between
14 Rule 15C and Rule 16. And they say --

11:14:05 15 MR. BROOKS: Right.

16 THE COURT: -- yes, normally when motions to
17 amend should be freely granted. However, when there's
18 a scheduling order issued by the trial court has run,
19 then the standard is, no, not Rule 15, but you'll
11:14:19 20 follow Rule 16. And as a trial judge, I have to make a
21 determination as to whether there's good cause as
22 articulated in Nutton as the basis for any decision I
23 make.

24 And it really comes down to that. Because I
11:14:33 25 would love to do whatever I want to do, but I can't.

11:14:36 1 Right?

2 And so unless I can articulate on the record
3 good cause, I have to deny the motion. It's really
4 that simple.

11:14:46 5 MR. BROOKS: Well, I think there -- I think
6 you can articulate that here. I think there is good
7 cause because they've known about this since -- since
8 the -- since February. They took advantage of it.
9 Declined to produce documents in the federal case.

11:15:02 10 There is no prejudice. They have been on notice. And
11 this isn't going to affect one iota the progress of
12 this case.

13 And let me just read something from -- from
14 that case. Because I think -- well, this is another
11:15:29 15 case. But oh, yeah, it's Nutton. Yeah. So on page 5.
16 I'm sorry.

17 On page 5 of our original motion we cited the
18 Nutton case. And then we quoted -- quoted from the
19 Nutton case which says. Disregarding the scheduling
11:15:47 20 order should not be permitted where it, quote:

21 "Would undermined the Court's ability to
22 control its docket, disrupt the agreed-upon
23 course of the litigation and reward the
24 indolent and the cavalier."

11:16:00 25 And that's Nutton quoting Johnson vs. Mammoth

11:16:03 1 Recreations. It's another Ninth Circuit case. So as I
2 said, the Supreme Court -- well, it's actually the
3 Court of Appeals, the Nutton case, I believe, deciding
4 a Ninth Circuit case.

11:16:14 5 But here if you look at the language they
6 quoted from the Ninth Circuit granting this motion,
7 your Honor, will not undermine your ability to control
8 your docket. It will not disrupt the agreed-upon
9 course of the litigation. And it will not reward the
11:16:30 10 indolent and the cavalier.

11 I mean, we are rowing upstream here. We've
12 come into this. This is an enormously complex case.
13 We've been juggling all kinds of -- all kinds of issues
14 since the minute we got in here. We've been -- I don't
11:16:45 15 know how many times my partner has been out to
16 Las Vegas to argue motions, to take depositions. I've
17 been out there twice, and I'm going back next week.

18 It's hard to even fit in this motion practice
19 amid all of that. And as I said, I'm just repeating
11:17:01 20 myself, but I'm quoting from what Nutton says, quoting
21 the Ninth Circuit. I don't think those problems -- and
22 I understand those problems are present here.

23 So you've got Nutton. And I could be wrong.
24 I don't think it is the Nevada Supreme Court. It says
11:17:23 25 Court of Appeals.

11:17:23 1 THE COURT: No. It's the Court of Appeals.
2 That's fine.

3 MR. BROOKS: Okay. All right. But anyway
4 it's citing a Ninth Circuit case. It's warning about
11:17:31 5 certain kinds of things that could happen. Which I
6 agree with. They make sense. They're not going to
7 happen here. Nothing is going to happen here if you
8 allow this. They'll have to do it -- they've got the
9 answer on their -- you know, in the word document.

11:17:45 10 They'll just add. They'll deny the other six
11 paragraphs or admit them. And we'll move on.

12 It's not going to disrupt anything. We didn't
13 do it on purpose. There has been a change of counsel.
14 Original counsel, you know, they make another point
11:18:02 15 that this restaurant in Atlantic City had opened before
16 the original counterclaim was filed. And that's true.
17 It opened in late May 2018. And the original
18 counterclaim was filed on July 6, 2018.

19 And, obviously, prior counsel didn't -- even
11:18:19 20 though the restaurant had opened in Atlantic City, they
21 didn't know about it. If they had known about it,
22 obviously they would have alleged it as they did with
23 the Baltimore restaurant.

24 This is -- I think it is completely
11:18:33 25 discretionary, but I don't think elevating form over

11:18:37 1 substance and punishing unnecessarily somebody who is
2 not causing any prejudice to opposing party or to the
3 Court's ability to control its docket, I think, well,
4 it's within your discretion. We agree about that, your
11:18:50 5 Honor.

6 I think you have ample reasons to allow this
7 modest technical amendment. And don't forget. I mean,
8 this already may be included in the original
9 counterclaim. It talks about getting -- requesting
11:19:02 10 damages for all future restricted restaurant ventures,
11 and it alleges that on information and belief Caesars
12 intends to open more, which is what happened.

13 THE COURT: Thank you, sir.

14 Ma'am.

11:19:19 15 MS. MERCERA: Thank you, your Honor.

16 MR. BROOKS: Thank you.

17 MS. MERCERA: Your Honor, this motion really
18 is about the Seibel parties not believing that the
19 rules apply to them. That's true of their theory of
11:19:33 20 the case where they maintain that a convicted felon had
21 no duty to disclose not only his action but his
22 ultimate conviction to Caesars, a gaming licensee. And
23 it's also true now, your Honor, when they seek to
24 disregard the scheduling order that was entered in this
11:19:48 25 case.

11:19:49 1 This litigation was started over two years
2 ago. As counsel just conceded the counterclaim in this
3 case was filed over a year ago including after the
4 restaurant they seek to add now was already open.

11:20:01 5 And we have conducted extensive discovery over
6 a dozen depositions at this point with numerous more to
7 go. We have extended other deadlines in this case,
8 your Honor. But at no point have the Seibel parties
9 sought to extend the deadline to amend the pleadings.

11:20:19 10 Even when they try to shift that burden to us to say
11 that it was on us to determine that they were seeking
12 this discovery related to this case, that actually
13 contradicts their argument. Because if they knew back
14 in March that we were objecting to producing documents
11:20:37 15 related to the Atlantic City restaurant, they could
16 have still amended their counterclaim at that point.

17 Their reference to the communications in the
18 federal action saying that we concede that they're
19 seeking information about future restaurants actually
11:20:51 20 relates to paragraph 81 of their counterclaim, your
21 Honor. And there they specifically list which
22 restaurants they're seeking recovery for. Gordon
23 Ramsey Pub, Fish and Chips, and GR Steak Baltimore,
24 which are some of the documents that they were seeking.

11:21:09 25 At no point did they allege in their

11:21:11 1 counterclaim or in their pleading that they were
2 seeking information related to the Gordon Ramsey
3 Atlantic City restaurant.

4 Your Honor, I think what's interesting to note
11:21:19 5 too is that we have heard no explanation other than a
6 brief sentence just today as to why they never included
7 this restaurant in their future pleadings.

8 And I think it's important to note that they
9 even said that there will be future restaurants, and
11:21:33 10 they mentioned Kansas City. And the problem with that,
11 your Honor, is that at some point discovery has to cut
12 off.

13 We need to know what we're going to trial on,
14 what discovery needs to be completed so that the
11:21:45 15 parties can hire their experts and move forward to get
16 this case to trial next year which would have been
17 three years from the filing date.

18 And, your Honor, we are aware and we recognize
19 that there are certain situations where discovery
11:21:58 20 reveals additional facts that may require an amendment
21 to the pleading or even, as the rules explicitly allow,
22 the parties can even amend their pleadings at trial.

23 But, your Honor, the facts here are that --

24 THE COURT: Well, that's only -- you can only
11:22:12 25 do that if it's based upon consent.

11:22:15 1 MS. MERCERA: Correct, your Honor.

2 THE COURT: Under the rule. And that's often
3 overlooked. But that's clearly in the rule.

4 MS. MERCERA: Correct, your Honor. This is
11:22:20 5 not one of those situations because the counterclaim is
6 filed after much delay from the Seibel parties in July
7 of 2018 for a restaurant that was opened in May.

8 There is no explanation why they didn't add it
9 to the July counterclaim. Why didn't they move to
11:22:34 10 amend in August, September, October, November,

11 December, February even since new counsel came in, your
12 Honor, in June. They knew that we were objecting about
13 discovery related to a restaurant that wasn't included
14 in their pleadings and they didn't seek to amend.

11:22:50 15 So the fact that there has been undue delay I
16 think falls clearly within the case law in Nevada as
17 one of the reasons that this Court can deny an
18 amendment when it is sought so far after the deadline
19 to amend the pleadings has expired, your Honor.

11:23:06 20 So unless this Court has any questions for me,
21 I will leave it submitted on the pleadings.

22 THE COURT: For the record that deadline again
23 was?

24 MS. MERCERA: Deadline -- I'm sorry, what?

11:23:16 25 THE COURT: The deadline as far as the

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

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11:23:18 1 motions -- the amendment of the pleadings.

2 MS. MERCERA: It was February 4, 2019, I
3 believe, your Honor. Yes, February 4, 2019.

4 THE COURT: Thank you, ma'am.

11:23:33 5 MS. MERCERA: Thank you, your Honor.

6 MR. BROOKS: Your Honor, may I be heard on one
7 point that counsel made?

8 THE COURT: Yes.

9 MR. BROOKS: So she said that -- I'm
11:23:53 10 specifically referring to Exhibit 6 to our reply.

11 She's saying that the -- when they said they wouldn't
12 produce financial records pertaining to certain
13 restaurants because those restaurants -- those future
14 restaurants were subject -- were the subject of this
11:24:18 15 action, but not the federal action.

16 She said that didn't include GR Steak -- GR
17 Steak Atlantic City. That's not true. If you look at
18 the Exhibit 6. It's a February 15, 2019, email from
19 counsel who just spoke to you. And it says -- I'll
11:24:40 20 read it into the record:

21 "Additionally the LLTQ/FERG defendants have
22 asserted claims related to future restaurants
23 in the action pending before the Nevada state
24 court" -- this case -- "and as conceded

11:24:56 25 plaintiff/LLTQ cannot obtain nor do you intend

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

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11:25:01 1 to seek duplicative recovery of both actions."

2 I read that to you before. But then the next
3 sentence is the important sentence here.

4 "Accordingly, we do not believe that TPOV
11:25:11 5 16" -- that's the federal plaintiff -- "is
6 entitled to discovery related to the two
7 restaurants in Baltimore and Atlantic City. If
8 you believe an additional meet and confer is
9 necessary please let us know."

11:25:24 10 Again, I think, there is good cause on this
11 record to allow this very modest technical amendment.

12 THE COURT: Here's my last question before I
13 make a determination. Was there a specific discovery
14 request as it relates to written discovery requesting
11:25:47 15 the identification of all restaurants that, past and
16 current, that would meet the guidelines of the
17 contracts in place in this case?

18 MR. BROOKS: A request by us?

19 THE COURT: Yes.

11:26:04 20 MR. BROOKS: I'm not sure. I know there was a
21 request for financial information about this particular
22 restaurant.

23 THE COURT: Because the reason why I am asking
24 this, I'm asking this because it appears to me this
11:26:17 25 could have been solved as a result of a simple

11:26:22 1 interrogatory requesting the identity of any and all
2 restaurants that potentially would come under the
3 contractual agreements entered into between the
4 parties; right?

11:26:31 5 And if for whatever reason the plaintiffs
6 failed to properly identify the restaurant pursuant to
7 that discovery request, it could be said that, you
8 know, Judge, that is good cause. They were supposed to
9 disclose this. They have a duty and responsibility to
11:26:46 10 seasonably supplement their discovery. Consequently,
11 if that didn't occur, Judge, it's on them; not on us.
12 That would be good cause, your Honor.

13 MR. BROOKS: Your Honor.

14 THE COURT: I think --

11:26:58 15 MR. BROOKS: I'm not --

16 THE COURT: Go ahead.

17 MR. BROOKS: I'm sorry. I'm not aware of such
18 an interrogatory. I mean, I just don't know one way or
19 the other.

11:27:09 20 THE COURT: Okay. Anything else? Is that it?

21 MR. BROOKS: Not from me.

22 THE COURT: This is what I'm going to do. And
23 it's based upon the current facts of this case. We had
24 the discovery cutoff -- I'm sorry, a motion to amend
11:27:28 25 deadline of February 4, 2019. And that's, what, ten

11:27:33 1 months ago, give or take. That's a fairly significant
2 time period.

3 And just as important too, it seems to me that
4 under the current posture of the case during the open
11:27:50 5 discovery time period there could have been either
6 interrogatories or requests for production of documents
7 regarding additional restaurants that come under the
8 purview and umbrella of this contractual agreement
9 between the parties. That wasn't done. And I don't
11:28:05 10 know why it wasn't, but it wasn't.

11 And if that wouldn't have been properly
12 responded to, there would be clearly good cause here.
13 And so under the facts and based upon the delay, I
14 can't say there is currently.

11:28:18 15 So regarding the motion to amend, I'm going to
16 deny that.

17 Can you prepare an order, ma'am?

18 MS. MERCERA: We will. And we'll run it by
19 opposing counsel, your Honor.

11:28:27 20 THE COURT: Yeah.

21 Everyone enjoy your day.

22

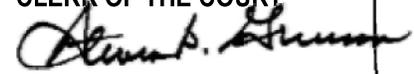
23 (Proceedings were concluded.)

24

25

* * * * *

TAB 43



1 James J. Pisanelli, Esq., Bar No. 4027
jpp@pisanellibice.com
2 Debra L. Spinelli, Esq., Bar No. 9695
dls@pisanellibice.com
3 M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
4 Brittnie T. Watkins, Esq., Bar No. 13612
BTW@pisanellibice.com
5 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
6 Las Vegas, Nevada 89101
Telephone: 702.214.2100
7 Facsimile: 702.214.2101

8 Jeffrey J. Zeiger, P.C., Esq. (admitted *pro hac vice*)
William E. Arnault, IV, Esq. (admitted *pro hac vice*)
9 KIRKLAND & ELLIS LLP
300 North LaSalle
10 Chicago, IL 60654
Telephone: 312.862.2000

11 *Attorneys for Desert Palace, Inc.;*
12 *Paris Las Vegas Operating Company, LLC;*
13 *PHWLTV, LLC; and Boardwalk Regency*
Corporation d/b/a Caesars Atlantic City

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
17 in Interest GR BURGR LLC, a Delaware
limited liability company,

18 Plaintiff,

19 v.

20 PHWLTV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
21 DOES I through X; ROE CORPORATIONS I
through X,

22 Defendants,

23 and

24 GR BURGR LLC, a Delaware limited liability
company,

25 Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**ORDER DENYING MOTION TO AMEND
LLTQ/FERG DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

Date of Hearing: November 6, 2019

Time of Hearing: 9:00 a.m.

27 AND ALL RELATED MATTERS

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 Defendants LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"),
2 FERG LLC ("FERG"), and FERG 16, LLC ("FERG 16") (collectively "LLTQ/FERG
3 Defendants") Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses, and
4 Counterclaims (the "Motion to Amend") came before the Court for hearing on November 6, 2019,
5 at 9:00 a.m. M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared on
6 behalf of PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
7 Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
8 Atlantic City ("CAC") and collectively with Caesars Palace, Paris, and Planet Hollywood,
9 "Caesars"). Anthony DiRaimondo, Esq. of the law firm RICE REUTHER SULIVAN & CARROLLC,
10 LLP appeared on behalf of the LLTQ/FERG Defendants. Daniel Brooks, Esq., of SCAROLA
11 ZUBATOV SCHAFFZIN PLLC, appeared telephonically on behalf of the LLTQ/FERG Defendants.
12 Allen Wilt, Esq., of the law firm FENNEMORE CRAIG, appeared on behalf of Gordon Ramsay.

13 The Court having considered the Motion to Amend and the opposition thereto, as well as
14 argument of counsel presented at the hearing, and good cause appearing therefor,

15 THE COURT FINDS THAT, under Nevada law, "[t]he court should freely give leave [to
16 amend] when justice so requires." NRCPC 15(a)(2). However, "[t]his does not . . . mean that a
17 trial judge may not, in a proper case, deny a motion to amend. If that were the intent, leave of
18 court would not be required." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000)
19 (quoting *Stephens v. So. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)).

20 THE COURT FURTHER FINDS THAT, "[w]here a scheduling order has been entered,
21 the lenient standard under Rule 15(a), which provides leave to amend 'shall be freely given,' must
22 be balanced against the requirement under Rule 16(b) that the Court's scheduling order 'shall not
23 be modified except upon a showing of good cause.'" *Nutton v. Sunset Station, Inc.*, 131 Nev. 279,
24 285, 357 P.3d 966, 971 (Nev. App. 2015) (quoting *Grochowski v. Phoenix Constr.*, 318 F.3d 80,
25 86 (2d Cir.2003)). "Disregard of the [scheduling] order would undermine the court's ability to
26 control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the
27 cavalier." *Id.* at 285-86, 357 P.3d at 971 (quoting *Johnson v. Mammoth Recreations, Inc.*, 975
28 F.2d 604, 610 (9th Cir.1992)).

1 THE COURT FURTHER FINDS THAT, the deadline to amend pleadings in this action
2 was February 4, 2019. Accordingly, the LLTQ/FERG Defendants had to demonstrate that good
3 cause exists to allow the amendment of their counterclaim after the deadline had expired.

4 THE COURT FURTHER FINDS THAT, the LLTQ/FERG Defendants have not met that
5 burden and have not demonstrated that good cause exists to permit amendment of their
6 counterclaim. The LLTQ/FERG Defendants were aware of the facts they sought to include in
7 their amended counterclaim before the deadline to amend expired and they delayed seeking leave
8 to amend their counterclaim.

9 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to
10 Amend is DENIED IN ITS ENTIRETY.

11 IT IS SO ORDERED.

12 DATED this 22nd day of November 2019.

13 
14 THE HONORABLE TIMOTHY C. WILLIAMS
EIGHTH JUDICIAL DISTRICT COURT

15 Respectfully submitted by:
16 DATED November 21, 2019

17 PISANELLI BICE PLLC
18 By: 
19 James J. Pisanelli, Esq., Bar No. 4027
20 Debra L. Spinelli, Esq., Bar No. 9695
21 M. Magali Mercera, Esq., Bar No. 11742
22 Brittanie T. Watkins, Esq., Bar No. 13612
23 400 South 7th Street, Suite 300
24 Las Vegas, NV 89101

25 and
26 Jeffrey J. Zeiger, P.C., Esq.
27 (admitted *pro hac vice*)
28 William E. Arnault, IV, Esq.
(admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
*Attorneys for Plaintiffs Desert Palace, Inc.; Paris Las Vegas Operating
Company, LLC; PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

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Approved as to form and content by:

DATED November 21, 2019

FENNEMORE CRAIG, P.C.

By: /s/ Allen Wilt
Allen Wilt, Esq. (SBN 4798)
John Tennert, Esq. (SBN 11728)
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

Approved as to form and content by:

DATED November 21, 2019

RICE REUTHER SULIVAN & CARROLLC, LLP

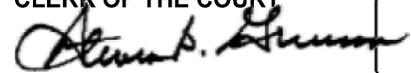
By: /s/ David A. Carroll
David A. Carroll, Esq.
Anthony J. DiRaimondo, Esq.
Robert E. Opdyke, Esq.
3800 Howard Hughes Pkwy., Suite 1200
Las Vegas, NV 89169

and

Steven C. Bennett, Esq.
Daniel J. Brooks, Esq.
SCAROLA ZUBATOV SCHAFFZIN PLLC 1700
Broadway, 41st Floor
New York, NY 10019

*Attorneys for Plaintiff Rowen
Seibel/Defendants Rowen Seibel; LLTQ
Enterprises, LLC; LLTQ Enterprises 16, LLC;
FERG, LLC; FERG 16, LLC; MOTI Partners,
LLC; MOTI Partners 16, LLC; TPOV
Enterprises, LLC; and TPOV Enterprises 16,
LLC*

TAB 44



1 James J. Pisanelli, Esq., Bar No. 4027
jjp@pisanellibice.com
2 Debra L. Spinelli, Esq., Bar No. 9695
dls@pisanellibice.com
3 M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
4 Brittnie T. Watkins, Esq., Bar No. 13612
BTW@pisanellibice.com
5 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
6 Las Vegas, Nevada 89101
Telephone: 702.214.2100
7 Facsimile: 702.214.2101

8 Jeffrey J. Zeiger, P.C., Esq. (admitted *pro hac vice*)
JZeiger@kirkland.com
9 William E. Arnault, IV, Esq. (admitted *pro hac vice*)
WArnault@kirkland.com
10 KIRKLAND & ELLIS LLP
300 North LaSalle
11 Chicago, Illinois 60654
Telephone: 312.862.2000

12 *Attorneys for Desert Palace, Inc.;*
13 *Paris Las Vegas Operating Company, LLC;*
14 *PHWLV, LLC; and Boardwalk Regency*
Corporation d/b/a Caesars Atlantic City

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
18 in Interest GR BURGR LLC, a Delaware
limited liability company,

19 Plaintiff,

20 v.

21 PHWLV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
22 DOES I through X; ROE CORPORATIONS I
through X,

23 Defendants,

24 and

25 GR BURGR LLC, a Delaware limited liability
company,

26 Nominal Plaintiff.

27

28 AND ALL RELATED MATTERS

Case No.: A-17-751759

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER
DENYING MOTION TO AMEND
LLTQ/FERG DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 PLEASE TAKE NOTICE that an Order Denying Motion to Amend LLTQ/FERG
2 Defendants' Answer, Affirmative Defenses and Counterclaims was entered in the above-
3 captioned matter on November 25, 2019, a true and correct copy of which is attached hereto.

4 DATED this 25th day of November 2019.

5 PISANELLI BICE PLLC
6 By: 

7 James J. Pisanelli, Esq., #4027
8 Debra L. Spinelli, Esq., #9695
9 M. Magali Mercera, Esq., #11742
10 Brittnie T. Watkins, Esq., #13612
11 400 South 7th Street, Suite 300
12 Las Vegas, Nevada 89101

13 Jeffrey J. Zeiger, P.C., Esq.
14 (admitted *pro hac vice*)
15 William E. Arnault, IV, Esq.
16 (admitted *pro hac vice*)
17 KIRKLAND & ELLIS LLP
18 300 North LaSalle
19 Chicago, Illinois 60654

20 *Attorneys for Desert Palace, Inc.;*
21 *Paris Las Vegas Operating Company, LLC;*
22 *PHWLV, LLC; and Boardwalk Regency*
23 *Corporation d/b/a Caesars Atlantic City*

24
25
26
27
28

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 25th day of November 2019, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER DENYING MOTION TO AMEND LLTQ/FERG DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS** to the following:

David A. Carroll, Esq.
Anthony J. DiRaimondo, Esq.
Robert E. Opdyke, Esq.
RICE REUTHER SULLIVAN & CARROLL, LLP
3800 Howard Hughes Pkwy., Suite 1200
Las Vegas, NV 89169

Alan Lebensfeld, Esq.
Lawrence J. Sharon, Esq.
LEBENSFELD SHARON &
SCHWARTZ, P.C.
140 Broad Street
Red Bank, NJ 07701

Steven C. Bennett, Esq.
Daniel J. Brooks, Esq.
SCAROLA ZUBATOV SCHAFFZIN PLLC
1700 Broadway, 41st Floor
New York, NY 10019

Attorneys for DNT Acquisition LLC

*Attorneys for Rowen Seibel, DNT Acquisition LLC,
Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

*Attorneys for Plaintiff in Intervention
The Original Homestead Restaurant, Inc.*

Allen J. Wilt, Esq.
John D. Tennert, Esq.
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

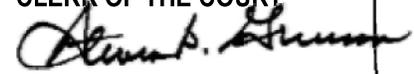
VIA U.S. MAIL (pleading only)
Kurt Heyman, Esq.
HEYMAN ENERIO GATTUSO &
HIRZEL LLP
300 Delaware Ave., Suite 200
Wilmington, DE 19801

Attorneys for Gordon Ramsay

Trustee for GR Burgr LLC



An employee of PISANELLI BICE PLLC



1 James J. Pisanelli, Esq., Bar No. 4027
jpp@pisanellibice.com
2 Debra L. Spinelli, Esq., Bar No. 9695
dls@pisanellibice.com
3 M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
4 Brittnie T. Watkins, Esq., Bar No. 13612
BTW@pisanellibice.com
5 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
6 Las Vegas, Nevada 89101
Telephone: 702.214.2100
7 Facsimile: 702.214.2101

8 Jeffrey J. Zeiger, P.C., Esq. (admitted *pro hac vice*)
William E. Arnault, IV, Esq. (admitted *pro hac vice*)
9 KIRKLAND & ELLIS LLP
300 North LaSalle
10 Chicago, IL 60654
Telephone: 312.862.2000

11 *Attorneys for Desert Palace, Inc.;*
12 *Paris Las Vegas Operating Company, LLC;*
13 *PHWLTV, LLC; and Boardwalk Regency*
Corporation d/b/a Caesars Atlantic City

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
17 in Interest GR BURGR LLC, a Delaware
limited liability company,

18 Plaintiff,

19 v.

20 PHWLTV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
21 DOES I through X; ROE CORPORATIONS I
through X,

22 Defendants,

23 and

24 GR BURGR LLC, a Delaware limited liability
company,

25 Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**ORDER DENYING MOTION TO AMEND
LLTQ/FERG DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

Date of Hearing: November 6, 2019

Time of Hearing: 9:00 a.m.

27 AND ALL RELATED MATTERS

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 Defendants LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"),
2 FERG LLC ("FERG"), and FERG 16, LLC ("FERG 16") (collectively "LLTQ/FERG
3 Defendants") Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses, and
4 Counterclaims (the "Motion to Amend") came before the Court for hearing on November 6, 2019,
5 at 9:00 a.m. M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared on
6 behalf of PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
7 Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
8 Atlantic City ("CAC") and collectively with Caesars Palace, Paris, and Planet Hollywood,
9 "Caesars"). Anthony DiRaimondo, Esq. of the law firm RICE REUTHER SULIVAN & CARROLLC,
10 LLP appeared on behalf of the LLTQ/FERG Defendants. Daniel Brooks, Esq., of SCAROLA
11 ZUBATOV SCHAFFZIN PLLC, appeared telephonically on behalf of the LLTQ/FERG Defendants.
12 Allen Wilt, Esq., of the law firm FENNEMORE CRAIG, appeared on behalf of Gordon Ramsay.

13 The Court having considered the Motion to Amend and the opposition thereto, as well as
14 argument of counsel presented at the hearing, and good cause appearing therefor,

15 THE COURT FINDS THAT, under Nevada law, "[t]he court should freely give leave [to
16 amend] when justice so requires." NRCPC 15(a)(2). However, "[t]his does not . . . mean that a
17 trial judge may not, in a proper case, deny a motion to amend. If that were the intent, leave of
18 court would not be required." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000)
19 (quoting *Stephens v. So. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)).

20 THE COURT FURTHER FINDS THAT, "[w]here a scheduling order has been entered,
21 the lenient standard under Rule 15(a), which provides leave to amend 'shall be freely given,' must
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24 285, 357 P.3d 966, 971 (Nev. App. 2015) (quoting *Grochowski v. Phoenix Constr.*, 318 F.3d 80,
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26 control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the
27 cavalier." *Id.* at 285-86, 357 P.3d at 971 (quoting *Johnson v. Mammoth Recreations, Inc.*, 975
28 F.2d 604, 610 (9th Cir.1992)).

1 THE COURT FURTHER FINDS THAT, the deadline to amend pleadings in this action
2 was February 4, 2019. Accordingly, the LLTQ/FERG Defendants had to demonstrate that good
3 cause exists to allow the amendment of their counterclaim after the deadline had expired.

4 THE COURT FURTHER FINDS THAT, the LLTQ/FERG Defendants have not met that
5 burden and have not demonstrated that good cause exists to permit amendment of their
6 counterclaim. The LLTQ/FERG Defendants were aware of the facts they sought to include in
7 their amended counterclaim before the deadline to amend expired and they delayed seeking leave
8 to amend their counterclaim.

9 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to
10 Amend is DENIED IN ITS ENTIRETY.

11 IT IS SO ORDERED.

12 DATED this 22nd day of November 2019.

13 
14 THE HONORABLE TIMOTHY C. WILLIAMS
EIGHTH JUDICIAL DISTRICT COURT
15 *CS*

15 Respectfully submitted by:

16 DATED November 21, 2019

17 PISANELLI BICE PLLC

18 By: 
19 James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
20 M. Magali Mercera, Esq., Bar No. 11742
Brittanie T. Watkins, Esq., Bar No. 13612
21 400 South 7th Street, Suite 300
Las Vegas, NV 89101

22 and

23 Jeffrey J. Zeiger, P.C., Esq.
24 (admitted *pro hac vice*)
William E. Arnault, IV, Esq.
25 (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
26 300 North LaSalle
Chicago, IL 60654

27 *Attorneys for Plaintiffs Desert Palace, Inc.; Paris Las Vegas Operating*
28 *Company, LLC; PHWLTV, LLC; and Boardwalk Regency*
Corporation d/b/a Caesars Atlantic City

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Approved as to form and content by:

DATED November 21, 2019

FENNEMORE CRAIG, P.C.

By: /s/ Allen Wilt
Allen Wilt, Esq. (SBN 4798)
John Tennert, Esq. (SBN 11728)
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

Approved as to form and content by:

DATED November 21, 2019

RICE REUTHER SULIVAN & CARROLLC, LLP

By: /s/ David A. Carroll
David A. Carroll, Esq.
Anthony J. DiRaimondo, Esq.
Robert E. Opdyke, Esq.
3800 Howard Hughes Pkwy., Suite 1200
Las Vegas, NV 89169

and

Steven C. Bennett, Esq.
Daniel J. Brooks, Esq.
SCAROLA ZUBATOV SCHAFFZIN PLLC 1700
Broadway, 41st Floor
New York, NY 10019

*Attorneys for Plaintiff Rowen
Seibel/Defendants Rowen Seibel; LLTQ
Enterprises, LLC; LLTQ Enterprises 16, LLC;
FERG, LLC; FERG 16, LLC; MOTI Partners,
LLC; MOTI Partners 16, LLC; TPOV
Enterprises, LLC; and TPOV Enterprises 16,
LLC*

TAB 45

**FILED UNDER
SEAL PURSUANT
TO PENDING
MOTION TO SEAL
FILED
CONCURRENTLY
HEREWITH**

TAB 46

**FILED UNDER
SEAL PURSUANT
TO PENDING
MOTION TO SEAL
FILED
CONCURRENTLY
HEREWITH**