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IN THE SUPREME COURT OF THE STATE OF NEVADA

GOLDEN ROAD MOTOR INN, INC.,
A Nevada Corporation d/b/a
ATLANTIS CASINO RESORT SPA,

Appellant/Cross-Respondent,
vs.

SUMONA ISLAM, An Individual,

Respondent/Cross-Appellant,
and

MEI-GSR HOLDINGS LLC, A
Nevada Limited Liability Company
d/b/a GRAND SIERRA RESORT
which claims to be the successor in
interest to NAV-RENO-GS, LLC,

Case No.: 64349
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Clerk of Supreme Court

Respondent.
SUMONA ISLAM, An Individual,

Appellant,
vs.

GOLDEN ROAD MOTOR INN, INC.,
A Nevada Corporation d/b/a
ATLANTIS CASINO RESORT SPA,

Case No.: 64452

Respondent.
MEI-GSR HOLDINGS LLC, A
Nevada Limited Liability Company
d/b/a GRAND SIERRA RESORT,

Appellant/Cross-Respondent

Case No.: 65497

vs.

GOLDEN ROAD MOTOR INN, INC.,
A Nevada Corporation d/b/a
ATLANTIS CASINO RESORT SPA,

Respondent/Cross-Appellant.

District Court Case No.: CV12-01171
Honorable Patrick Flanagan, District Court Judge
GSR's Reply Brief on Cross-Appeal

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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.

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1 **ARGUMENT**

2 **I. AFTER FINDING THAT ATLANTIS HAD VIOLATED THE UTSA,**
3 **THE COURT SHOULD HAVE AWARDED GSR ITS REMAINING**
4 **REQUESTED ATTORNEY’S FEES UNDER THE UTSA**

5 After conducting a trial over 11 days, the court properly found, based upon
6 substantial evidence, that Appellant/Cross-Respondent, GOLDEN ROAD
7 MOTOR INN, INC., A Nevada Corporation d/b/a ATLANTIS CASINO
8 RESORT SPA (“Atlantis”), had acted in bad-faith against Respondent/Cross-
9 Appellant, MEI-GSR HOLDINGS, LLC, A Nevada Limited Liability Company
10 d/b/a GRAND SIERRA RESORT which claims to be the successor in interest to
11 NAV-RENO-GS, LLC (“GSR”), in violation of Nevada’s Uniform Trade Secret
12 Act (“UTSA”)(*NRS 600A.010, et seq.*). [7 App. 1592-98].

13 Pursuant to *NRS 600A.060* and the court’s findings, GSR should have
14 properly recovered any remaining outstanding reasonable attorney’s fees against
15 Atlantis pursuant to the UTSA. [7 App. 1597; 20 App. 4261-2].¹

16 **A. GSR’s Motion for Attorney’s Fees**

17 GSR timely and properly presented its post-trial motion for attorney’s fees
18 to the court, as provided by Nevada law, including the UTSA. [*See NRS*
19 *600A.060* (“ . . . the court may award reasonable attorney’s fees to the prevailing
20 party.”)(emphasis). [6 App. 1631-54; 10 App. 2147-71; 11 App. 2313-18].
21 “Procedurally, when parties seek attorney’s fees as a cost of litigation,
22 documentary evidence of fees is presented to the trial court, generally in a post-
23 trial motion.” *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev.
24 948, 956, 35 P.3d 964, 969 (2001)(*overruled on other grounds in Horgan v.*
25 *Felton*, 123 Nev. 577, 170 P.3d 982 (2007)).

26
27 ¹ A district court’s factual findings are given deference and will be upheld
28 if not clearly erroneous and if supported by substantial evidence. *International*
Fid. Ins. v. State of Nevada, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006).

1 GSR respectfully submits that Atlantis has misconstrued *Sandy Valley* as
2 requiring GSR to present evidence of its attorney's fees as an element of its
3 damages. GSR was a defendant in the lawsuit and the attorney's fees sought and
4 partially awarded to GSR by the court were pursuant to statute and/or rule, i.e.
5 *NRS 600A.060, NRCP 68 and NRS 17.115. [See Atlantis Combined*
6 *Answering/Reply Brief re: GSR, Page 24, fn. 81; see also 9 App. 1997-98, 2005].*
7 GSR properly sought recovery post-trial of its attorney's fees incurred in the
8 lawsuit.

9 Furthermore, in the Findings of Fact relating to Atlantis, the court stated,
10 "[t]hose fees [to Atlantis] will be awarded after appropriate affidavit of fees and
11 the memorandum of costs are timely submitted." [7 App. 1585-86](emphasis).
12 Like GSR, Atlantis also filed a motion for attorney's fees. [6 App. 1227-60,
13 1631-54; 9 App. 2017-2022; 10 App. 2147-71; 11 App. 2313-18].

14 **B. The Court's Findings Established GSR's Entitlement to**
15 **Attorney's Fees Under the UTSA**

16 Substantial evidence was presented at trial, upon which the court based its
17 factual findings and conclusions of law, that established that Atlantis' own
18 interpretation of what constituted a "trade secret" and its own conduct were
19 factual and legally incongruous with its allegations in the lawsuit against GSR in
20 relation to Respondent/Cross-Appellant, SUMONA ISLAM ("Sumona"). [7 App.
21 1592-98; Exhibit 75; (Ringkob) 12 App. 2477, 2538-39, 2591-93, 2600-2, 2607,
22 2610, 2614-17, 2644-46, Exhibits 19, 75 and 80; (Decarlo) 13 App. 2868, 2712-
23 13, 2893-94; (Hadley) 16 App. 3321-22; (Sumona) 3262-3; (Moreno) 17 App.
24 3486-87; (Robinson) 19 App. 4004-05]. Given Atlantis' own conduct and the
25 testimony of its managerial personnel, the court was well-grounded in its
26 determination that Atlantis had pursued its trade secret allegations against GSR
27 in bad-faith. [7 App. 1597].

28 \\\

1 Sumona never showed the spiral notebooks to GSR. Sumona was told by
2 GSR not to bring anything with her to GSR. Sumona told GSR that the
3 information she was utilizing was from her book of business and related to
4 players with whom she had a personal relationship. [7 App. 1596; 14 App. 2986,
5 2988; 15 App. 3116, 3221; 16 App. 3250-52, 3296, 3301, 3319, 3351, 3358-61;
6 17 App. 3548, 3556; 18 App. 3806-7; 20 App. 4148; 24 App. 5028-29].

7 The court properly found, in part, that:

8 The failure of Atlantis to produce any credible evidence
9 at trial that GSR misappropriated trade secrets
10 belonging to Atlantis constitutes bad faith that is shown
11 by the Plaintiff's knowledge of certain facts as set forth
12 in the findings of fact above; **the decision to move**
13 **forward against GSR and the extent of the litigation**
14 **against GSR despite a lack of direct evidence against**
15 **GSR.** This is a sufficient basis for an award of attorney
16 fees pursuant to NRS 600.060. [7 App. 1597; 1592-98;
17 20 App. 4261-2](emphasis).

18 The court also found the following:

19 17. Atlantis knew that among **the names it claimed were**
20 **misappropriated were names which were legally and properly**
21 **included in Ms. Islam's "book trade"** [sic] but despite this
22 knowledge brought and obtained an injunction preventing GSR from
23 marketing to these individuals from August 27, 2012 through the
24 trial of this matter in 2013. [7 App. 1595] (emphasis).

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1 21. **Atlantis presented no credible evidence that GSR**
2 **misappropriated any information constituting a trade secret and**
3 **in fact maintained the litigation and the injunction to include**
4 **names of persons which it knew and admitted at trial were**
5 **legally in Ms. Islam’s book of business and that she was entitled**
6 **to provide to GSR. [7 App. 1595](emphasis)**

7 22. Atlantis continued and maintained the litigation against GSR for
8 misappropriation of trade secrets even when it **knew that GSR was**
9 **acting in good faith** by relying on Ms. Islam’s assertions
10 concerning her “book of trade” and knew that the customer
11 information provided by Ms. Islam was limited to the customers’
12 name, address, telephone number and contact information. [7 App.
13 1595-96](emphasis).

14 26. **There is a lack of any evidence in the record that supports the**
15 **claim of Atlantis that GSR misappropriated Atlantis’ trade**
16 **secrets** and therefore, Atlantis has failed to meet its burden of proof.
17 [7 App. 1596](emphasis).

18 Atlantis’ own managerial personnel testified that a casino host (“host”)
19 could take their book of business with them, notwithstanding a contractual
20 agreement entered into between the host and Atlantis. [(Ringkob) 12 App. 2538-
21 39, 2591-93, 2600-2, 2607, 2614-17, 2644-46, Exhibits 19, 75 and 80; (Decarlo)
22 13 App. 2868, 2712-13]. Based upon all the evidence presented, the court
23 properly ruled that a host’s book of business included those players that the “host
24 had established a relationship” and that the information was not a trade secret. [7
25 App. 1582]. Evidence established that Atlantis itself has an established business
26 practice of acquiring information of the type it alleged in the lawsuit to be
27 “confidential” and “trade secret” from other casinos through Atlantis’ targeted
28 hiring of hosts from other casinos. [13 App. 2865, 2883, 2893-94].

1 In the court's Conclusions of Law, it stated:

- 2 **5. The failure of Atlantis to produce any credible evidence at trial**
3 **that GSR misappropriated trade secrets belonging to Atlantis**
4 **constitutes bad faith that is shown by the Plaintiff's knowledge**
5 **of certain facts as set forth in the findings of fact above, the**
6 **decision to move forward against GSR and the extent of the**
7 **litigation against GSR despite a lack of direct evidence against**
8 **GSR. This is a sufficient basis for an award of attorney fees**
9 **pursuant to NRS 600.060 [sic]. Defendants are not required to**
10 **prove a negative and under the objective specious standard a lack of**
11 **evidence in the record of misappropriation; in addition to the actions**
12 **as set forth above; is enough to show that the claim of**
13 **misappropriation was made in bad faith** (*Sasco v. Rosendin*
14 *Electric Inc.*, 143 Cal. Rptr. 3d 828, 207 Cal. App. 4th 837 (Ca
15 2012)) **and entitled GSR to Attorney's fees and costs in this**
16 **matter. [7 App. 1597](emphasis).**
- 17 **6. That Atlantis sought, obtained, and maintained a preliminary**
18 **injunction in this matter that included names which Atlantis**
19 **new were not trade secrets under NRS 600A.010 and continued**
20 **to maintain that injunction** even when it knew that those names
21 were part [sic] of Sumona Islam's personal book of trade **in order to**
22 **thwart competition for those players from GSR and said**
23 **conduct is evidence of bad faith entitling GSR to an award of**
24 **attorney's fees and costs. [7 App. 1597](emphasis).**
- 25 **7. That the claims against GSR are dismissed and judgment entered in**
26 **favor of the Defendant GSR and GSR is entitled to an award of costs**
27 **pursuant to NRS 18.110. [7 App. 1597].**

28 \\\

1 Prior to the lawsuit being filed and injunctive relief sought, GSR
2 responded to Atlantis' April 6, 2012 letter regarding Sumona. [1 App. 66-68; *see*
3 *also* Exhibit 5]. In the letter, GSR's counsel fully refuted Atlantis' allegations
4 relative to GSR (which the court later confirmed in its Findings of Fact: 7 App.
5 1595-97) and confirmed that GSR had not committed any violation of the UTSA,
6 i.e. "[e]ach of the persons that were contacted were either already in the GSR
7 database, or were part of Ms. Islam's personal book of business. In fact, a
8 number of the persons contacted have a relationship with Ms. Islam dating back
9 to her time with Harrah's." [1 App. 66].² GSR's counsel concluded by requesting
10 that Atlantis "immediately come forward with any information . . . that Ms. Islam
11 or GSR are in possession of proprietary information that is eligible to be
12 protected as a trade secret." [1 App. 68]. Instead of conducting any real
13 investigation into their allegations with regard to GSR, Atlantis chose to barrel
14 ahead with their lawsuit and injunction. The court properly found, given the lack
15 of any credible evidence establishing any misappropriation by GSR, that
16 Atlantis' conduct toward GSR amounted to a bad-faith violation of the UTSA. [7
17 App. 1595-97].

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25 ² The court properly found that the limitations imposed upon GSR's player
26 database prevented Sumona from entering any trade secret information. [7 App.
27 1593]. Both Atlantis and GSR personnel testified that they relied upon the
28 representations of the host with regard to which players were part of the host's
book of business. [12 App. 2591-93, 2611, 2613, 2615-17; 13 App. 2687, 2893-
94; 16 App. 3296, 3301, 3363-67.

1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of *NRAP* 32(a)(4), the typeface requirements of *NRAP* 32(a)(5) and
4 the type style requirements of *NRAP* 32(a)(6) because:

5 [x] This brief has been prepared in a proportionally spaced
6 typeface using Word Perfect - Version X4 in 14 Point Times
7 New Roman.

8 2. I further certify that this brief complies with the page or type-volume
9 limitations of *NRAP* 32(a)(7) because, excluding the parts of the brief exempted
10 by *NRAP* 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or
11 more and contains 1,919 words; and

12 3. Finally, I hereby certify that I have read this *Reply Brief on Cross-*
13 *Appeal* and to the best of my knowledge, information, and belief, it is not
14 frivolous or interposed for any improper purpose, such as to harass or to cause
15 unnecessary delay or needless increase in the cost of litigation. I further certify
16 that this *Reply Brief on Cross-Appeal* complies with all applicable *Nevada Rules*
17 *of Appellate Procedure*, including *NRAP* 28(e)(1), which requires every assertion
18 in the brief regarding matters in the record to be supported by a reference to the
19 page and volume number, if any, of the transcript or appendix where the matter
20 relied on is to be found.

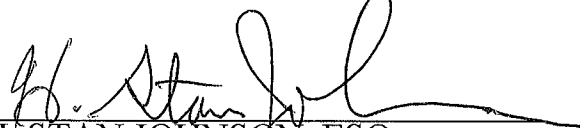
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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the *Nevada Rules of Appellate Procedure*.

DATED this 7th day of May 2015

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