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## Summary of *Awada v. Shuffle Master, Inc.*, 123 Nev. Adv. Op. No. 57

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## CIVIL PROCEDURE – DISPOSAL OF CLAIMS

### Summary

Appeal of a district court judgment in a contract action and a post-judgment order denying a new trial.

### Disposition/Outcome

Affirmed in part, reversed in part, dismissed in part, and remanded for further proceedings. District courts have the discretion to bifurcate the legal and equitable claims of a single action, conduct a bench trial on the equitable claims, and, so long as it is done pursuant to Nevada law and the rules of civil procedure, district courts may subsequently use the findings of fact and conclusions of law from the bench trial to dispose of any remaining claims in the action.

### Factual and Procedural History

In November 1999, after receiving approval from the Nevada Gaming Control Board, Yehia Awada patented one of its card games titled 3 Way Action, for which he had previously registered the 3 Way Action trademark. After unsuccessfully marketing the game on his own, Awada entered into an agreement with Shuffle Master. Under the agreement, Awada became Shuffle Master's employee for six months and was responsible for promoting the game under Shuffle Master's direction. Awada "represented and warranted that he and GEI were the sole owners of [the game] . . . and all intellectual property related thereto free and clear of any claims. . . ."<sup>2</sup>

The agreement granted Shuffle Master "all of the rights including all intellectual property rights,"<sup>3</sup> the control and exclusive right to promote and test-market the game during the six month period, and the option to purchase an exclusive license for all rights to the game at a set price.

Prior to entering into this agreement, Awada had entered into an agreement with International Game Technology (hereinafter "IGT") granting them the right to use the name and trademark, 3 Way Action, for a video poker game. Thus, Shuffle Master was forced to enter into a separate agreement with IGT in order to use the 3 Way Action name for the table game. However, Shuffle Master was prevented from developing a video version of the game because this would infringe on IGT's trademark rights.

Shuffle Master did not exercise its option to purchase the exclusive license from Awada in the agreed time period, and, after failing to resolve their differences; Shuffle Master rescinded the agreement and ended its relationship with Awada.

In September 2002, Awada filed a complaint against Shuffle Master and its chief executive officer "alleging breach of contract, fraud, civil conspiracy, tortious interference with contractual relations/prospective economic advantage, breach of the implied covenant of good faith and fair dealing, conversion, and unjust enrichment."<sup>4</sup> In its answer, Shuffle Master

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<sup>1</sup> By Magali Calderon.

<sup>2</sup> *Awada v. Shuffle Master, Inc.*, 123 Nev. Adv. Op. No. 57, p. 4 (Dec. 27, 2007).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at p. 5.

asserted various affirmative defenses and counterclaims, and sought rescission of the agreement based on fraudulent inducement and failure to perform.

Although the district court denied Shuffle Master's initial motion for summary judgment, it subsequently bifurcated Shuffle Master's rescission request from the other claims and conducted a bench trial on this counterclaim alone. After reviewing the evidence and testimony, the district court ruled in favor of Shuffle Master and rescinded the agreement. The district court then attempted to settle the remaining claims and requested that the parties submit "letter briefs" addressing the impact of the findings and conclusions on the remaining claims.

During a status check, the district court told the parties that the findings and conclusions from the bench trial disposed of the remaining claims. Thereafter, the court entered an order dismissing Awada's remaining claims with prejudice. The district court subsequently denied Awada's motion to amend its findings and conclusions and its motion for a new trial.

In the present action, Awada appeals the rescission order, the dismissal of his claims, and the denial of his motion for a new trial. Awada argues that the district court violated his right to a jury trial when it bifurcated the claims, conducted a bench trial on only one claim, and used the findings and conclusions to dispose of the remaining claims.

## **Discussion**

### **Awada's Request for A Jury Trial**

A district court has the discretion to separate "any claim, cross-claim, counterclaim, or third-party claim" and conduct a separate trial as long as it "always preserv[es] inviolate the [constitutional] right of trial by jury."<sup>5</sup> Because the right to a jury trial does not extend to equitable matters,<sup>6</sup> the Court had to determine whether this right was preserved when a court, after first considering the equitable claims, uses its conclusions of those claims to dispose of a case's legal issues before proceeding to a jury trial.

The court reviewed the constitutional issue of the right to a jury trial *de novo*.<sup>7</sup> The Nevada Constitution provides that "[t]he right of trial by Jury shall be secured to all and remain inviolate forever."<sup>8</sup> The Nevada jury trial right is defined by English common law because the phrasing indicates the framer's intent regarding the right as they understood it at the time of the adoption of the Nevada Constitution, in 1864.<sup>9</sup> In order to examine the jury trial right in light of the English common law at the time in this country, the court examined the existent law of 1864, in California. In California, courts had the discretion to resolve equitable issues in a case before addressing the legal issues.<sup>10</sup> Furthermore, one case recognized that resolving the equitable issues "[would] obviate the necessity of a trial of the legal issues."<sup>11</sup> Additionally, the court

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<sup>5</sup> NEV. R. CIV. P. 42(b).

<sup>6</sup> *See, e.g.*, *Harmon v. Tanner Motor Tours, Ltd.*, 79 Nev. 4, 20, 377 P.2d 622, 630 (1963) (concluding that where the complaint solely sought equitable relief, there is no right to a jury trial); *Musgrave v. Casey*, 68 Nev. 471, 474, 235 P.2d 729, 731 (1951) ("It is elemental that in a suit in equity the judgment or decree must be based upon findings of the court rather than a jury verdict . . .").

<sup>7</sup> *See Callie v. Bowling*, 123 Nev. \_\_\_, \_\_\_, 160 P.3d 878, 879 (2007).

<sup>8</sup> NEV. CONST. art. 1, § 3.

<sup>9</sup> *See Aftercare of Clark County v. Justice Ct. of Las Vegas*, 120 Nev. 1, 6, 82 P.3d 931, 933 (2004); *Cheung v. Eighth Judicial Dist.Ct.*, 121 Nev. 867, 870, 124 P.3d 550, 553 (2005).

<sup>10</sup> *See Lestrade v. Barth*, 19 Cal. 660, 671 (1862) (recognizing that a court may first resolve the equitable issues raised in an action and that the court's determination of those issues may dictate the necessity of "proceeding with the action at law").

<sup>11</sup> *See Swasey v. Adair*, 88 Cal. 179, 180, 25 P. 1119, 1119 (1891) (recognizing that "the proper rule of procedure for the court is to" resolve equitable claims before addressing any legal claims, and providing that "[i]t may happen

surveyed the law in existence, in 1864, in Iowa, Wisconsin, and Ohio, which recognized that the inviolate jury right did not prevent a court from addressing a case's equitable claims first,<sup>12</sup> even if their resolution disposed of the case at law.<sup>13</sup>

This sampling of cases illustrated that, as understood in 1864, the jury trial right did not prevent a court from addressing a case's equitable issues before presenting the legal issues to a jury, if necessary. Thus, the Nevada Supreme Court concluded that "Nevada's jury trial right . . . does not require the district court always . . . proceed first with any legal issues."<sup>14</sup> As such, in this case, the district court did not abuse its discretion when it bifurcated the claims, conducted a bench trial on the rescission issue alone, and then disposed of Awada's contract-based claims based on the findings of fact and conclusions of law from the bench trial.<sup>15</sup>

### Rescission

A contract may be rescinded based on fraud in the inducement.<sup>16</sup> Fraud in the inducement must be proven by, among other things, showing that a party made a false representation that was material to the transaction.<sup>17</sup> The district court found that Awada misrepresented his ownership interests based on:

1. [T]he agreement, wherein Awada represented that he and GEI were the sole owners of the game;
2. [A] copy of Awada's agreement with IGT, wherein he granted to IGT his rights to the name 3 Way Action before executing the agreement with Shuffle Master;
3. [T]estimonial evidence supporting Shuffle Master's claim; and
4. [E]vidence that after entering into the agreement, Shuffle Master had to negotiate a separate agreement with IGT in order to use the name 3 Way Action.

*Awada*, 123 Nev. Adv. Op. No. 57, p. 14. The Supreme Court concluded that this was adequate evidence to support the district court's finding of fraud in the inducement and, as such, the district court acted within its discretion when it rescinded the contract.<sup>18</sup>

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in many cases that the result of the trial of the equitable [claims] will obviate the necessity of a trial of the legal issues").

<sup>12</sup> See IOWA CONST. art. 1, § 9; OHIO CONST. art. 1, § 5; WIS. CONST. art. 1, § 5.

<sup>13</sup> At the time in Iowa, the appropriate practice was to address the equitable issues if they were raised by the defendant and to dispose of the case at law if those issues were resolved in the defendant's favor. See *Van Orman v. Spafford, Clarke & Co.*, 16 Iowa 186, 190 (1864). In Wisconsin, the Supreme Court recognized that the "correct practice" was to address the equitable issues first and afterwards the legal. See *Harrison v. Juneau Bank*, 17 Wis. 340, 351 (1863). See also *Sheeful v. Murty*, 30 Ohio St. 50 (1876).

<sup>14</sup> *Awada*, 123 Nev. Adv. Op. No. 57, p. 11-12.

<sup>15</sup> The court, however, noted that the district court could have either "commenced a bifurcated trial on the Awada's remaining claims or required Shuffle Master to refile its motion for summary judgment to comply with NRCP 56." *Id.* at p. 12 n.26. This error, however, was harmless as to the contract-based claims. *Id.* The court further noted that once a claim is allowed to be added, a district court could only dispose of it "in accordance with the Rules of Civil Procedure and the dictates of due process." See *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 83-84, 847 P.2d at 735 (quoting *U.S. Dev. Corp. v. Peoples Federal Sav. & Loan*, 873 F.2d 731, 736 (4th Cir. 1989)).

<sup>16</sup> *Havas v. Alger*, 85 Nev. 627, 631, 461 P.2d 857, 859 (1969).

<sup>17</sup> *J.A. Jones Construction Co. v. Lehrer McGovern Bovis*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004); *Pac. Maxon, Inc. v. Wilson*, 96 Nev. 867, 871, 619 P.2d 816, 818 (1980).

<sup>18</sup> The district court rescinded the contract based on fraud in the inducement and failure to perform. *Awada*, 123 Nev. Adv. Op. No. 57, p. 14. However, the Nevada Supreme Court did not address Awada's purported failure to

### Contract-Based Claims

Awada argued the district erred when it dismissed his contract claims. However, the basis for the contract-based claims was eliminated when the district court rescinded the contract because “where there has been a valid rescission of the contract, there is no longer any contract to enforce and, therefore, no longer a cause of action for breach.”<sup>19</sup> Therefore, because the Supreme Court concluded that the district court properly rescinded the contract, it also concluded that the district court properly disposed of the contract-based claims after it rescinded the agreement.

### Awada’s Remaining Claims

The Court concluded that the district improperly disposed of Awada’s remaining claims against Shuffle Master and Yoseloff because these claims did not rely on the existence of a valid contract. As such, these claims were not automatically eliminated when the contract was rescinded. Thus, the Court concluded the district court erred when it dismissed these claims “without giving Awada notice and an opportunity to be heard as required under NRCP 56.”<sup>20</sup>

### Conclusion

The Nevada Supreme Court concluded that district courts have the discretion to bifurcate the equitable and legal issues of an action, conduct a bench trial on the equitable issues, and dispose of any remaining issues, “so long as disposal of the issues is available under Nevada law.”<sup>21</sup> Thus, the district court acted within its discretion when it bifurcated the claims in this case.

As such, the Court affirmed the district court’s rescission of the agreement because there was substantial evidence supporting the district court’s findings. Furthermore, the district court did not err when it disposed of Awada’s contract-based claims against Shuffle Master. However, the Court reversed the district court’s judgment as to Awada’s remaining claims against Shuffle Master and Yoseloff because the district court disposed of these “without conducting the second portion of the bifurcated trial or adhering to the procedural requirements of NRCP 56.”<sup>22</sup> Therefore, the case was remanded for further proceedings.

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perform because there was substantial evidence which supported the rescission of the contract based on fraud in the inducement. *Id.*

<sup>19</sup> Great American Ins. Co. v. General Builders, Inc., 113 Nev. 346, 354 n.6, 934 P.2d 257, 262 n.6 (1997) (implying that the rule would apply to claims for both breach of contract and breach of the covenant of good faith and fair dealing); *See also* Pac. Ins. Co. v. Kent, 120 F. Supp. 2d 1205, 1214 (C.D. Cal. 2000) (“Where an insurer prevails on its rescission claim, any breach of contract and bad faith counterclaims brought by the insured are necessarily precluded.”).

<sup>20</sup> *Awada*, 123 Nev. Adv. Op. No. 57, p. 16.

<sup>21</sup> *Id.* at p. 16.

<sup>22</sup> *Id.* at p. 17.