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Slade v. Caesars Entm't Corp, 132 Nev. Adv. Op. 36 (May 12, 2016)

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GAMING LAW: EXCLUSION FROM PUBLIC ACCESS

Summary:

The Court generally upheld the common-law principles, referenced in NRS 463.0129(3)(a), permitting gaming establishments to exclude any persons from their premises for any reason, unless for discriminatory or otherwise unlawful purposes. Thus the district court properly dismissed the complaint.

Background:

Upon receiving an eviction letter from Caesars Entertainment Corporation (“Caesars”) that would prevent him from accessing all Caesar owned/operated/managed property, Dr. Joel Slade (“Slade”) entered a complaint alleging a breach of the duty of public access and seeking declaratory and injunctive relief. Slade alleged such eviction required cause, per NRS 463.0129(1)(e).

In response, Caesars filed a NRCP 12(b)(5) motion to dismiss, arguing it had the right to exclude Slade pursuant to NRS 463.0129(3)(a) and the common law. The district court granted Caesars’ motion to dismiss and Slade appealed.

Although the Court has previously addressed the constitutional right to access to a casino, right to access under a common-law principle is an issue of first impression in Nevada.

Discussion:

Construction of NRS 463.0129:

First, reconciling the parties’ two competing views of NRS 463.0129 required the court to interpret the meaning of the statutory subsections. The plain language of NRS 463.0129(1)(3) assures the general public access to a gaming premise, except as provided by the Legislature; however, the Legislature qualified that access in NRS 463.0129(3)(a) by recognizing a common-law right of gaming establishments to eject any person from the premises.

Second, interpreting the meaning of the statutory subsections required the court to define the scope of the gaming establishment’s ejection right under common law. The Court found there is overwhelming authority recognizing the common-law right of a private owner of a public amusement to exclude *any person for any reason from the premises.*² This Court declined to follow a narrower interpretation of the common-law right because it is at odds with the plain language of NRS 463.0129(3)(a).

Thus, casino establishments are to be open to the general public but have the common-law right to exclude any individual from the premises. However, the scope of this exclusion is limited by NRS 651.070, prohibiting limits on the equal enjoyment of goods, services, facilities,

¹ By: Katherine Maher

² See, e.g., *Brooks v. Chicago Downs Ass’n, Inc.*, 791 F.2d 512, 513, 516 (7th Cir. 1986); *Ziskis v. Kowalski*, 726 F.Supp. 902, 908 (D. Conn. 1989); *Donovan v. Grand Victoria Casino & Resort, L.P.*, 934 N.E.2d 1111, 1112, 1115-16 (Ind. 2010).

privileges, advantages and accommodations of any place of accommodation³ for reasons of discrimination, segregation or other unlawful purpose.

Dr. Slade failed to demonstrate his exclusion was for an unlawful reason:

As Slade did not litigate at district court nor argue on appeal that he was excluded from Caesar's properties for an unlawful reason, the claim was properly dismissed.

Inkeeper common law is not implicated here:

The Court rejected the argument that gaming establishments, when acting as innkeepers, have a common-law duty to allow access to any patron seeking lodging if there is not cause to exclude. As the statutory definition for gaming establishment includes "premises wherein...any gaming is done,"⁴ the Court did not believe the Legislature intended gaming establishments be subject to varying common-law duties when acting in non-gaming capacity. Such legislative intent is supported by the omission of any innkeeper common-law rule from NRS 463.0129(3), which instead states the common-law right to exclude is not abridged. Additionally, the original intentions of the innkeeper common-law rule do not apply in this particular case.

Conclusion

Pursuant to NRS 463.0129, gaming establishments generally have the right to exclude any person from their premises; however, the reason for the exclusion must be neither discriminatory nor unlawful. Because Slade failed to plead or demonstrate unlawful exclusion, the district court did not err in granting Caesar's motion to dismiss pursuant to 12(b)(5).

³ In a footnote, the Court concluded casinos were "place[s] of public accommodation".

⁴ NRS 463.0148; NRS 463.0153; see also Premises, BLACK'S LAW DICTIONARY (10th ed. 2014).