

IN THE SUPREME COURT OF THE STATE OF NEVADA

L & I PROPERTIES, INC.; AND 4 EVER  
ACES, INC., D/B/A O'ACES BAR AND  
GRILL,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
KENNETH C. CORY, DISTRICT  
JUDGE,

Respondents,

and

DAN LAPORTE AND JAMES CAREY,  
Real Parties in Interest.

No. 42968

**FILED**

MAR 03 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order that denied petitioners' motion to dismiss. According to the underlying complaint filed by the real parties in interest, petitioners established a video poker promotion that involved payouts of up to \$10,000. The promotion was progressive in nature and based upon the number of royal flushes hit on video poker machines within a certain time period, with larger bonuses being paid as each successive royal flush was obtained. The real parties in interest's complaint alleged that they played the promotion as partners, pooled their investment, and "gambled hundreds of thousands of dollars in the promotion." They assert that they were successful in their endeavors, and had completed over half of the events needed to achieve the \$10,000 bonus. But before they could do so, petitioners' employees allegedly "trespassed them from the property" and

foreclosed them from participating further in the promotion. Therefore, the complaint alleged four causes of action based on breach of contract, fraud, conversion and conspiracy.

Petitioners did not file an answer, and instead moved to dismiss. Petitioners' main contention was that the Nevada Gaming Control Act, NRS Chapter 463, sets forth the general public policy regarding gaming and that NRS 463.0129(3) affirms the common law rule that a gaming establishment has the right to exclude any person from gaming activities or to eject any person from the establishment's premises for any reason.<sup>1</sup> The district court denied petitioners' motion to dismiss, and this writ petition followed.

This court may issue a writ of mandamus to compel the performance of an act, which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse of discretion.<sup>2</sup> A writ of mandamus is "a proper remedy to compel performance of a judicial act

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<sup>1</sup>NRS 483.0129(3) states:

This section does not:

- (a) Abrogate or abridge any common-law right of a gaming establishment to exclude any person from gaming activities or eject any person from the premises of the establishment for any reason[.]

<sup>2</sup>NRS 34.160; see also Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

when there is no plain, speedy, and adequate remedy at law.”<sup>3</sup> The issuance of a writ of mandamus is purely discretionary with this court.<sup>4</sup>

We have determined that we will generally decline to entertain writ petitions challenging orders denying motions to dismiss, unless: (1) no factual dispute exists and the district court is obligated to dismiss the action pursuant to clear authority under a statute or rule; or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.<sup>5</sup>

We previously directed petitioners to file a supplement as to whether: 1) the real parties in interest’s exclusive remedy lies with the Nevada Gaming Control Board (“NGCB”), and 2) this case presents solely legal issues. Having reviewed petitioners’ supplement and the real parties in interest’s answer, we conclude that the NGCB has exclusive jurisdiction in this matter, subject to judicial review after its final decision is rendered.

We have long held that under the common law, gaming debts are unenforceable in Nevada’s courts.<sup>6</sup> But NRS 463.361 creates a

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<sup>3</sup>Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (denying petition for writ of mandamus or prohibition); see NRS 34.160; NRS 34.170.

<sup>4</sup>Id.

<sup>5</sup>State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 238 (2002) (citing Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 269-70, 984 P.2d 756, 758 (1999) and Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997)).

<sup>6</sup>See State Gaming Control Bd. v. Breen, 99 Nev. 320, 323, 661 P.2d 1309, 1311 (1983).

statutory right to collect certain gaming debts, with disputes resolved by the NGCB or a hearing examiner. As we stated in Sengel v. IGT,<sup>7</sup> the NGCB has exclusive jurisdiction to resolve a disputed claim by a patron of a gambling licensee for a debt that is not evidenced by a credit instrument, and no other remedy exists to enforce such a gaming debt.

In Sports Form v. Leroy's Horse & Sports,<sup>8</sup> we held that there is no private right of action under NRS Chapter 463, reasoning:

The doctrine of primary jurisdiction requires that courts should sometimes refrain from exercising jurisdiction so that technical issues can first be determined by an administrative agency. Kapplemann v. Delta Air Lines, 539 F.2d 165, 168-169 (1st Cir. 1976). In Kapplemann, the court articulated two policies advanced by the traditional primary jurisdiction doctrine: "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration by a tribunal with specialized knowledge." Kapplemann, 539 F.2d at 169.

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<sup>7</sup>116 Nev. 565, 568-69, 2 P.3d 258, 260 (2000) (affirming a district court's order upholding board's determination that appellant did not win a valid progressive jackpot when a slot machine's internal malfunction caused three jackpot symbols to appear unevenly across the pay line); see also Harrah's Club v. State Gaming Control Bd., 104 Nev. 762, 766 P.2d 900 (1988) (determining that the district court had no jurisdiction over the board's investigations and only the board's final decision is subject to judicial review); Erickson v. Desert Palace, Inc., 942 F.2d 694 (9th Cir. 1990) (affirming district court's decision that Nevada statutes limit plaintiff's recovery of a gaming debt, for a slot machine jackpot, to the exclusive administrative proceeding followed by judicial review); Devon v. Unbelievable, Inc., 820 F. Supp. 528 (D. Nev. 1993) (holding that plaintiff seeking a slot machine jackpot was limited to pursuing relief in front of the NGCB, followed by judicial review).

<sup>8</sup>108 Nev. 37, 41, 823 P.2d 901, 903-04 (1992).

The continued growth and success of Nevada gaming is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively. This confidence and trust can only be maintained by strict and uniform regulation of all aspects of the gaming industry. See NRS 463.0129. Recognizing this, the legislature vested authority for enforcement of Chapter 463 in the Nevada Gaming Control Board and the Nevada Gaming Commission. Therefore, absent express language to the contrary, the legislative scheme of Chapter 463 precludes a private cause of action.

The real parties in interest concede that gaming debts not evidenced by a credit instrument are subject to the NGCB's exclusive jurisdiction, subject to judicial review, but assert that the video poker promotion was a contest and not a gaming debt, so that a civil action can be maintained to enforce it. We disagree. The real parties in interest's claims are entirely speculative and, further, are akin to collecting a gaming debt.

In Harrah's Club v. State, Gaming Comm'n,<sup>9</sup> this court considered a similar situation involving a casino's premium point disbursements. In addition to pecuniary winnings, premium points were issued to casino patrons winning certain slot machine jackpots or bingo games, and could be redeemed for either cash certificates or merchandise. Because the number of premium points awarded was based on a published payout schedule and was the result of actual wagering transactions in which both parties to the transaction had a chance of gain and took a risk of loss, this court determined that the premium points did not constitute a

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<sup>9</sup>99 Nev. 158, 659 P.2d 883 (1983).

promotional activity in which the patron had no stake at risk and for which the patron paid nothing.

As in Harrah's, the real parties in interest have allegedly “gambled hundreds of thousands of dollars” with the anticipation of gaining both their winnings and the offered bonuses. In order to earn those bonuses, the real parties in interest would have had to engage in wagering transactions in which both they and petitioners took a chance of gain and bore a risk of loss. The bonuses were to be paid only if the real parties in interest gambled and won royal flushes. Therefore, the real parties in interest were gambling and now seek to recover damages that are akin to gaming debts.

Additionally, the real parties in interest’s reliance on Las Vegas Hacienda v. Gibson,<sup>10</sup> is misplaced. That case involved a hole-in-one contest won by a golfer who paid fifty cents for the opportunity to win \$5,000 and is inapposite. Las Vegas Hacienda was decided in 1961, before NRS 463.361 was adopted in 1983, giving the NGCB exclusive authority to enforce gaming contracts. And, the golfer in that case did nothing more than pay an entrance fee and did not engage in any gaming activities in order to qualify for the prize money.<sup>11</sup>

The real parties in interest further argue that the NGCB has historically refused to accept jurisdiction over promotions. But assertions that the NGCB will not get involved are not a substitute for complying

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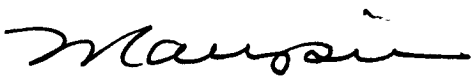
<sup>10</sup>77 Nev. 25, 359 P.2d 85 (1961).

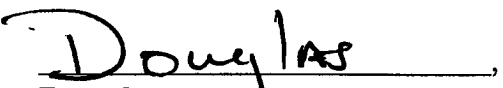
<sup>11</sup>Id.

with the correct administrative procedures as set forth in NRS Chapter 463.<sup>12</sup>

The real parties in interest's lawsuit, although it alleges breach of contract, fraud, conversion and conspiracy, seeks damages that are akin to gaming debts. Consequently, the real parties in interest are required to bring their claims before the NGCB and to seek judicial review if aggrieved by the NGCB's final decision. Accordingly, we direct the clerk of this court to issue a writ of mandamus directing the district court to dismiss the real parties in interest's complaint.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge  
Levine, Garfinkel & Katz  
Nersesian & Sankiewicz  
Clark County Clerk

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<sup>12</sup>Devon, 820 F. Supp. at 529.