



Slade v. Caesars

Entertainment Corp., LLC

By Maren Parry

Hypothetical¹: *You are the leading attorney in your field of practice. Your brilliant mind and legal acumen have prompted the organizers of The Best Legal Conference Ever to invite you to be the keynote speaker at its event in a few months. The conference will take place at the Convention Heaven Resort and Casino in one of its vast conference spaces. (You make a mental note to wear comfortable shoes that day because this conference space is over a mile from the casino valet). It's perfect; not only do you need the very specific and timely CLE credit on ethics and substance abuse in order to keep your bar license active for another year, you have been to this conference in prior years and know that it is teeming with potential clients. You accept the invitation and immediately prepare a remarkable presentation, PowerPoint slides, and handouts—well in advance.*

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A month or so before the conference, you open your newspaper over breakfast to discover that the international gaming conglomerate, Casinos ‘n More, has been approved to acquire the Convention Heaven property. The deal is scheduled to close a week before the conference. You finish the article and leave for work, but on the way to your office you realize why the article stood out. Remember that thing that happened that one time at that one property when you went with your friends on a weekend getaway? You were technically “kicked out” and told to never, ever, ever, come back? Isn’t that particular property also owned by Casinos ‘n More? You dig out the letter that came in the mail from Casinos ‘n More after that visit (yes, you’re the organized person you’ve always wanted to be in this hypothetical), and confirm that you were formally evicted from the property. The letter goes on to say that you are also banned permanently from ever setting foot on any Casinos ‘n More-owned property.



Here's the question—Can Casinos 'n More really stop you from going to the conference and exclude you from a part of the resort that far from any actual gaming activities?

The Nevada Supreme Court's May 12, 2016, decision in *Slade v. Caesars Entertainment* suggests that the answer to this question is "Yes." For reasons not disclosed in the decision, Dr. Joel Slade was evicted from Harrah's Tunica Hotel and Casino in Tunica, Mississippi. In 2011, Slade received a letter notifying him that he had been officially evicted from the Tunica property, and that the eviction would be enforced at all properties owned, operated, or managed by the casino's parent company, Caesars Entertainment Corporation. Slade wanted to attend a medical conference that was scheduled at Paris Las Vegas Hotel and Casino (a Caesars property), but after contacting Caesars' corporate headquarters, he was informed that the eviction would be enforced, and he would not be granted access.

Not satisfied with that answer, Slade retained counsel and filed a complaint for declaratory and injunctive relief, alleging a breach of the duty of public access. He alleged that under common law and NRS 463.0129(1)(e), Caesars could not exclude him without cause. He further argued that Caesars owed him a duty of reasonable access to the property as either an innkeeper or as a purveyor of a public amusement. Caesars responded with a successful motion to dismiss for failure to state a claim, arguing that NRS 463.0129(3)(a) and common law provided Caesars with the right to exclude any person from gaming activities or eject anyone from its establishment. The trial court granted Caesars' motion and Slade elected to appeal. The matter was an issue of first impression for the Nevada Supreme Court.



After weighing decisions from other jurisdictions with respect to common-law rights of access in the context of gaming, the Court's four-to-three decision concluded that although casino establishments are to be open to the general public, they retain the common-law right to exclude any individual from their premises. The Court followed with a caveat that this common-law right is not without limitation. Gaming establishments are not granted the

unlimited right to exclude for any reason, as those rights may be abridged by statute. Cited as an example is NRS 651.070 giving all persons the right to full and equal enjoyment of "the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, without discrimination or segregation on the ground of race, color, religion, national origin, disability, sexual orientation, sex, gender identity or expression." The Court concluded that if the reason for exclusion is not discriminatory or otherwise unlawful, Caesars had the right to exclude Dr. Slade.

The record below and the briefing to the Nevada Supreme Court did not address the reason for Slade's original eviction from the Tunica property, but his subsequent exclusion from all other Caesars properties was based on that action. Even without these facts, the majority determined that Slade had failed to demonstrate that his exclusion was for an unlawful reason, and it proceeded to uphold the lower court's dismissal.

Before concluding its majority opinion, the Court addressed Slade's argument that gaming establishments, when acting as "innkeepers," have a heightened common-law duty to provide access to lodging. The majority emphasized that NRS 463.0129(3)(a) references the right to exclude from the "premises," and that it would lead to inconsistent application of the law should the district courts be expected to parse out which duties apply to the different areas of the property depending on the physical configuration of a particular hotel-casino, and the reason that the patron is seeking to visit. Therefore, the majority opted for a broad right allowing casino establishments to exclude evicted individuals from the entire premises.

Two dissenting opinions disagreed with the majority, each in favor of allowing Slade to proceed through discovery to further develop the facts related to the reason for his eviction. One dissent argued that the heightened common-law innkeeper rule did apply in the case, with the second objecting to any interpretation of the law ultimately allowing a gaming establishment to unlawfully discriminate because it chooses not to give a reason for excluding a patron.

So, based on the Slade case, you use your brilliant legal mind and conclude that if Slade did not get to attend his medical convention, you probably need to hurry and find a way to earn CLE credits at a property not owned by Casinos 'n More.

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¹ See *Casino Gaming in New Jersey*, State of New Jersey Casino Control Commission, at <http://www.nj.gov/casinos/home/gamingnj/index.html>