

COURT OF APPEALS OF THE STATE OF NEVADA

Ya-Ling Hung and Wei-Hsiang Hung, each individually, as surviving heirs, and as co-administrators of the Estate of Tung-Tsung Hung and Pi-Ling Lee Hung v. Genting Berhad; Genting U.S. Interactive Gaming, Inc.; Genting Nevada Interactive Gaming, LLC; and Resorts World Las Vegas LLC

Ya-Ling Hung and Wei-Hsiang Hung v. Genting Berhad, 2022 NV 50 (Nev. Ct. App. 2022) · No. 83197-COA · Decided June 30, 2022

SUMMARY

The Nevada Court of Appeals affirmed dismissal of the Hungs’ amended wrongful-death and negligence complaint arising from a casino fire in Manila. The court held that the appellants waived challenges to alternative grounds for dismissal by failing to raise them in their opening brief, and it upheld denial of leave to amend because the proposed amendment would have been futile.

CASE DETAILS

COURT	Court of Appeals of the State of Nevada
WRITING FOR THE COURT	Tao, J.; Gibbons, C.J.; Bulla, J.
JURISDICTION	Nevada
DECIDED	June 30, 2022
DOCKET	83197-COA
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order dismissing an amended complaint in a tort action and denying the appellants' motion for leave to file a second amended complaint.
STANDARD OF REVIEW	The denial of leave to amend is reviewed for abuse of discretion. The appellate court applied waiver principles to unchallenged alternative grounds supporting dismissal.
PRECEDENTIAL VALUE	Published Nevada Court of Appeals opinion; precedential value is not otherwise specified in the source text.
PARTIES	Ya-Ling Hung, Wei-Hsiang Hung v. Genting Berhad, Genting U.S. Interactive Gaming, Inc., Genting Nevada Interactive Gaming, LLC,

TOPICS

appellate procedure waiver motions to dismiss motion to amend corporate veil piercing

PRACTICE AREAS

appellate procedure civil procedure torts corporate law

QUESTIONS PRESENTED

1. Whether an appellant waives challenges to alternative grounds supporting a district court's ruling by failing to challenge each ground in the opening brief.
2. Whether the district court abused its discretion by denying leave to file a second amended complaint when the proposed amendment did not cure the pleading deficiencies and would have been futile.

HOLDINGS

1. When a district court provides independent alternative grounds supporting its ultimate ruling, an appellant must properly challenge each ground in the opening brief; failure to do so generally waives the unchallenged grounds and warrants affirmance on those grounds.
2. The dismissal of the amended complaint was properly affirmed because the appellants failed to challenge the independent grounds based on NRCP 12(b)(5), NRCP 12(b)(6), and forum non conveniens.
3. The district court did not abuse its discretion in denying the motion for leave to amend because the proposed second amended complaint would have been futile.

KEY QUOTATIONS

“when a district court provides alternative bases to support its ultimate ruling, and an appellant fails to challenge the validity of each alternative basis on appeal, this court will generally deem that failure a waiver of each such challenge and thus affirm the district court’s judgment.”

“when a district court provides independent alternative grounds to support its ultimate ruling on an issue, an appellant must properly challenge all those independent alternative grounds. Otherwise, affirmance is warranted on the unchallenged grounds.”

FACTUAL BACKGROUND

In 2017, an armed assailant entered Resorts World Manila and set furniture on fire, causing patrons to flee. Tung-Tsung Hung and Pi-Ling Lee Hung hid in a hotel-room closet, became trapped, and died from smoke inhalation. Their children, Ya-Ling Hung and Wei-Hsiang Hung, sued entities associated with the Genting and Resorts World businesses for wrongful death and negligence, asserting among other things that Resorts World Manila and Resorts World Las Vegas were effectively the same entity.

PROCEDURAL HISTORY

The appellants filed wrongful-death and negligence claims in Nevada arising from deaths at Resorts World Manila. The district court dismissed the amended complaint on alternative grounds under NRCP 12(b)(2), NRCP 12(b)(5), NRCP 12(b)(6), and forum non conveniens, and denied the motion to amend. On appeal, the appellants challenged the personal-jurisdiction ruling and the denial of leave to amend, but did not challenge every independent ground supporting dismissal in their opening brief.

DISPOSITION

affirmed

CASES CITED

- Old Aztec Mine, Inc. v. Court of Appeals of Nevada, 97 Nev. 49, 623 P.2d 981 (1981)
- Kahn v. Morse & Mowbray, 121 Nev. 464, 117 P.3d 227 (2005)
- State v. Willis, 358 P.3d 107 (Kan. Ct. App. 2015)
- Hillis v. Heineman, 626 F.3d 1014 (9th Cir. 2010)
- Utah ex rel. Division of Forestry, Fire & State Lands v. United States, 528 F.3d 712 (10th Cir. 2008)
- Kellis v. Estate of Schnatz, 983 So. 2d 408 (Ala. Civ. App. 2007)
- Navajo Nation v. MacDonald, 885 P.2d 1104 (Ariz. Ct. App. 1994)
- Foxley v. Foxley, 939 P.2d 455 (Colo. App. 1996)
- AED, Inc. v. KDC Investments, LLC, 307 P.3d 176 (Idaho 2013)
- Salt Lake County v. Butler, Crockett & Walsh Development Corp., 297 P.3d 38 (Utah Ct. App. 2013)
- Sapuppo v. Allstate Floridian Insurance Co., 739 F.3d 678 (11th Cir. 2014)
- Khoury v. Seastrand, 132 Nev. 520, 377 P.3d 81 (2016)
- Francis v. Wynn Las Vegas, LLC, 127 Nev. 657, 262 P.3d 705 (2011)
- Powell v. Liberty Mutual Fire Insurance Co., 127 Nev. 156, 252 P.3d 668 (2011)
- Bongiovi v. Sullivan, 122 Nev. 556, 138 P.3d 433 (2006)
- Johnson v. Commonwealth, 609 S.E.2d 58 (Va. Ct. App. 2005)
- Senjab v. Alhulaibi, 137 Nev., Adv. Op. 64, 497 P.3d 618 (2021)
- Carducci v. Regan, 714 F.2d 171 (D.C. Cir. 1983)
- Provincial Government of Marinduque v. Placer Dome, Inc., 131 Nev. 296, 350 P.3d 392 (2015)
- Sanchez v. Wal-Mart Stores, Inc., 125 Nev. 818, 221 P.3d 1276 (2009)
- Olsen Family Trust v. Eighth Judicial District Court, 110 Nev. 548, 874 P.2d 778 (1994)
- Allum v. Valley Bank of Nevada, 109 Nev. 280, 849 P.2d 297 (1993)
- Connell v. Carl's Air Conditioning, 97 Nev. 436, 634 P.2d 673 (1981)
- Lorenz v. Beltio, Ltd., 114 Nev. 795, 963 P.2d 488 (1998)

