

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**TUNICA WEB ADVERTISING, INC. and
CHERRY L. GRAZIOSI**

PLAINTIFFS

VS.

CIVIL ACTION NO.:2:03CV234-P-D

TUNICA COUNTY TOURISM COMMISSION., et al.

DEFENDANTS

**HOLLYWOOD CASINO'S RENEWED
MOTION FOR SUMMARY JUDGMENT**

COMES NOW HWCC-Tunica, Inc. (d/b/a "Hollywood Casino Tunica," hereinafter HOLLYWOOD CASINO), one of the Casino Defendants,¹ and submits this its Supplemental Memorandum Brief in support of the instant Renewed Motion for Summary Judgment pursuant to Rule 56, Federal Rules of Civil Procedure. Defendant HOLLYWOOD CASINO is entitled to judgment as a matter of law on Plaintiffs' federal and state antitrust claims, as well as their common law tort claim for intentional interference with business relations, for the reasons set forth in the MEMORANDUM BRIEF OF CASINO DEFENDANTS, and adopts and incorporates said BRIEF by reference. As an additional and independent ground for dismissal of Plaintiffs' federal and state antitrust claims against Defendant HOLLYWOOD CASINO, this Defendant states that those claims fail as a matter of law as to this Defendant, there is no genuine issue of material fact, and this Defendant is entitled to judgment as a matter of law with respect to said federal antitrust claims.

¹The Casino Defendants are Barden Mississippi Gaming, LLC (d/b/a "Fitzgerald's Casino and Hotel"), BL Development Corp. (d/b/a "Grand Casino Tunica"), Robinson Property Group, Ltd. Partnership (d/b/a "Horseshoe Casino & Hotel"), Tunica Partners II L.P. (d/b/a "Harrah's Tunica Mardi Gras Casino"), Bally's Olympia Limited Partnership (d/b/a "Bally's Saloon & Gambling Hall"), Boyd Tunica, Inc. (d/b/a "Sam's Town Hotel & Gambling Hall"), and Sheraton Tunica Corporation (d/b/a "Sheraton Casino & Hotel"). A separate Memorandum Brief is being submitted by HWCC-Tunica, Inc. (d/b/a "Hollywood Casino Tunica") based upon facts that specifically apply to it with respect to its argument in support of the instant motion.

I. PREMISE

HOLLYWOOD CASINO adopts and affirms the separate motions for summary judgment by the respective Defendants and incorporates the same herein by reference. HOLLYWOOD CASINO is subject to judgment as a matter of law because the Plaintiff has no admissible proof of an antitrust conspiracy sufficient to raise a genuine issue of disputed material fact.

The basis of Graziosi's conspiracy allegations rests on e-mails and communications with Clyde Callicott. While Callicott was an employee for four casinos over the course of the time the allegations arose, including Gold Strike Casino, Grand Casino Tunica, Sheraton Casino and Bally's Casino, this employment does not give rise to an agency relationship with HOLLYWOOD CASINO, and therefore is inadmissible hearsay.

Additionally, it is undisputed that John Osborne, the Vice-President and General Manager of HOLLYWOOD CASINO, was not present at the May 30, 2001, meeting where the alleged agreement took place, nor did he send a replacement or representative of HOLLYWOOD CASINO. All subsequent solicitation was given fair attention.

II. SUPPORTING DOCUMENTS

HOLLYWOOD CASINO adopts and incorporates herein by reference the pleadings, depositions and exhibits on file in the record hereof. Specifically, Defendant HOLLYWOOD CASINO relies on the following attached exhibits:

- (A) John Osborne Deposition, Exhibit "A";
- (B) Cherry Graziosi Deposition and Relevant Exhibits, Exhibit "B";
- (C) Clyde Callicott Deposition and Relevant Exhibits, Exhibit "C";
- (D) Rudi Schiffer Deposition, Exhibit "D";

- (E) Dominic Mezzetta Deposition, Exhibit "E";
- (F) Karen Sock Deposition, Exhibit "F";
- (G) Memorandum Opinion; Docket Entry 389; Exhibit "G";
- (H) Fifth Circuit Court of Appeals Opinion; Docket Entry 409, Exhibit "H."

III. SUPPORTING AUTHORITIES

HOLLYWOOD CASINO has caused to be filed herewith a separate Memorandum of Authorities and an itemization of material facts as required by local rules.

IV. REQUESTED RELIEF

Plaintiffs' burden as to Defendant HOLLYWOOD CASINO is to establish that antitrust injury was caused by the conduct of Defendant HOLLYWOOD CASINO. Plaintiffs can carry this burden only if they produce admissible, competent evidence that Defendant HOLLYWOOD CASINO actually participated in an alleged conspiracy to violate the antitrust laws, and that such conduct brought about an injury to competition within the relevant market. Given that burden and the undisputed material facts set forth above, it is clear that Callicott's statements cannot be admitted under either the rule 801(d)(2)(D) or 801(d)(2)(E) exceptions to the hearsay rule. (1) Graziosi cannot establish that the declarant Callicott and the casinos were coconspirators; (2) Callicott ceased being an agent of the casinos when he and Graziosi became partners; and (3) none of Calicott's e-mail statements were made in order to further a conspiracy while he was an employee of any casino.

Based on the standard set forth in the Memorandum of Authorities, all e-mail communication between Callicott and Graziosi fails to fall within either the Rule 801(d)(2)(D) or Rule 801(d)(2)(E) exceptions and as such should not be considered by the court when making a summary judgment determination.

Additionally, the plaintiff's conspiracy claims against HOLLYWOOD CASINO are without merit, as plaintiff is unable to prove any involvement by defendant HOLLYWOOD CASINO. The undisputed fact that Mr. Osborne was not present at the May 30, 2001 meeting should establish a lack of participation in the alleged conspiracy on the part of HOLLYWOOD CASINO that should result in its dismissal from this case.

WHEREFORE, PREMISES CONSIDERED, HOLLYWOOD CASINO renews its motion for summary judgment and prays for judgement as a matter of law based upon the absence of a genuine issue of disputed material fact as to the existence of an antitrust conspiracy.

RESPECTFULLY SUBMITTED this the 25th day of October, 2007.

HOLLYWOOD CASINO

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CERTIFICATE OF SERVICE

I, Benjamin E. Griffith, an attorney for Defendant Hollywood Casino, do hereby certify that I have this day caused a true and correct copy of the foregoing ***Renewed Motion for Summary Judgment*** to be delivered by the United States District Court ECF System to:

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DATED this 25th day of October, 2007.

/s/ Benjamin E. Griffith

Benjamin E. Griffith