

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT

----- X
MARSHALL INVESTMENTS CORPORATION, :
BRAIN F. LEONARD, as trustee for the estate of :
SRC Investment Corporation f/k/a Miller Schroeder :
Investments Corporation and THIRTY-ONE :
BANKING INSTITUTIONS :

Index No. 102512/08

Plaintiffs-Appellants

NOTICE OF ENTRY

-against-

HARRAH’S OPERATING COMPANY, INC., as :
successor to Ceaser’s Entertainment Inc. f/k/a Park :
Place Entertainment Corporation, CLIVE CUMMIS, :
IVAN KAUFMAN, and WALTER HORN :

Defendants-Respondents.

----- X
S I R S :

PLEASE TAKE NOTICE that attached is a true and correct copy of the decision and order in the above-captioned case that was entered in the Office of the Clerk of the Supreme Court of the State of New York, Appellate Division, First Department, on March 15, 2011.

Dated: New York, New York
March 16, 2011

Yours, etc.,

DECHERT LLP

By: 

Neil A. Steiner
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500
*Attorneys for Ivan Kaufman and
Walter Horn*

TO: Kirk O. Kolbo
Maslon Edelman Borman & Brand, LLP,
3300 Wells Fargo Center
Minneapolis, MN 55402

Jeffrey S. Boxer
Carter Ledyard & Milburn LLP
Two Wall Street, 13th Floor
New York, New York 10005

Thomas P. Puccio
LAW OFFICE OF THOMAS P. PUCCIO
230 Park Avenue
New York, New York 10169

Kevin Schlosser
Meyer, Suozzi, English & Klein, P.C.,
990 Stewart Avenue, Suite 300
Garden City, New York

Tom, J.P., Mazzarelli, Renwick, Freedman, Manzanet-Daniels, JJ.

4138 Marshall Investments Corporation, Index 102512/08
 et al.,
 Plaintiffs-Appellants,

-against-

 Harrah's Operating Company, Inc., etc., et al.,
 Defendants-Respondents.

Maslon Edelman Borman & Brand, LLP, Minneapolis, MN (Kirk O. Kolbo, of the Minnesota Bar, admitted pro hac vice, of counsel), for appellants.

Meyer, Suozzi, English & Klein, P.C., Garden City (Kevin Schlosser of counsel), for Harrah's Operating Company, Inc., respondent.

Dechert LLP, New York (Neil A. Steiner of counsel), for Ivan Kaufman and Walter Horn, respondents.

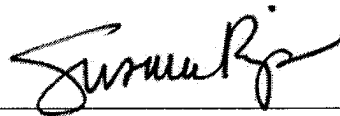
 Order, Supreme Court, New York County (Richard B. Lowe III, J.), entered August 3, 2009, which, inter alia, granted defendants' motion for summary judgment dismissing plaintiffs' first cause of action for tortious interference with contract, unanimously affirmed, with costs.

 The subject pledge agreement did not constitute a management contract which required the approval of the National Indian Gaming Commission (25 CFR 502.15; *cf. Machal, Inc. v Jena Band of Choctaw Indians*, 387 F Supp 2d 659, 666-667 [2005]). However, because it changes the Tribe's obligations, requiring them to make payments into escrow, and alters their liabilities, giving

the right to sue and a veto over certain modifications of a separate management agreement to plaintiffs, the pledge agreement is a modification or assignment of rights under the management agreement. As such, it is void because it was never approved by the commission (25 CFR 533.7). Since the underlying contract is void, plaintiffs cannot recover for tortious interference with that contract (see *Lama Holding Co. v Smith Barney*, 88 NY2d 413, 424 [1996]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 15, 2011

A handwritten signature in black ink, appearing to read "Susan R.", written over a horizontal line.

CLERK