

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL CHOY,
Appellant,
vs.
AMERISTAR CASINOS, INC., A
NEVADA CORPORATION,
Respondent.

No. 56281

FILED

JUN 28 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
DEPUTY CLERK

Petition for en banc reconsideration of panel opinion affirming district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Petition for en banc reconsideration denied.

Nersesian & Sankiewicz and Robert A. Nersesian and Thea Marie Sankiewicz, Las Vegas,
for Appellant.

Pisanelli Bice, PLLC, and Todd L. Bice and Jarrod L. Rickard, Las Vegas,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, DOUGLAS, J.:

Appellant Paul Choy filed a complaint in district court alleging various tort claims against respondent Ameristar Casinos, Inc., arising out of Choy's alleged detention by security guards at the Ameristar Casino Hotel Kansas City in Missouri. After Ameristar Casinos, Inc., filed a motion for summary judgment, Choy filed an opposition that included a paragraph arguing that under NRCP 56(f) the summary judgment motion

should be continued to allow for discovery. The district court denied Choy's request to continue the motion to allow for discovery and granted summary judgment.

On appeal, Choy argued that the district court erred in denying his request under NRCP 56(f) and granting summary judgment. This court issued an opinion affirming the district court's order granting summary judgment and denying Choy's NRCP 56(f) request, holding that Choy failed to substantially comply with NRCP 56(f)'s requirement that the party opposing a motion for summary judgment and seeking a denial or continuance of the motion in order to conduct further discovery must provide an affidavit giving the reasons why the party cannot present "facts essential to justify the party's opposition." Choy v. Ameristar Casinos, 127 Nev. ___, ___, 265 P.3d 698, 700 (2011). Choy thereafter filed a timely petition for rehearing, which was denied. Choy then filed this timely petition for en banc reconsideration.

En banc reconsideration is appropriate when needed to preserve precedential uniformity or the matter presents issues involving substantial precedential, constitutional, or public policy value. NRAP 40A(a). Choy contends this court's precedent did not require parties to comply with NRCP 56(f)'s affidavit requirement, citing to Halimi v. Blacketor, 105 Nev. 105, 106, 770 P.2d 531, 531 (1989), in support of his argument. To the extent that Halimi is inconsistent with the text of NRCP 56(f) and this court's holding in Choy, that parties must substantially comply with NRCP 56(f)'s affidavit requirement, we disapprove of the holding in Halimi.

Choy has failed to demonstrate that en banc reconsideration is warranted in this appeal, and the petition is therefore denied.¹

Douglas, J.
Douglas

We concur:

Cherry, C.J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

¹The remaining arguments made by Choy in his petition also fail to demonstrate that en banc reconsideration is warranted.