

# **Bond Case Briefs**

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## **TAX - NEVADA**

### **Orbitz Worldwide, LLC v. Eighth Judicial District Court in and for County of Clark**

**Supreme Court of Nevada - September 28, 2023 - P.3d - 2023 WL 6350110 - 139 Nev. Adv. Op. 40**

Relators commenced private action on behalf of the state against online travel companies, asserting causes of action under the Nevada False Claims Act (NFCA), alleging that companies knowingly avoided obligations to pay transient-lodging taxes mandated by county and state law.

Following commencement of county's NFCA lawsuit against same companies, the companies moved for summary judgment in relators' suit on grounds of the government-action bar, triggered by county's NFCA case. The District Court denied the motion and then later denied companies' motion for reconsideration of that decision. Companies filed petition for writ of mandamus.

The Supreme Court held that:

- As a matter of first impression, government-action bar in NFCA contained no sequencing requirement, and so, when applicable, statute requires dismissal of a private NFCA action even if civil action on behalf of state or political subdivision was filed after the private action;
- As a matter of first impression, when a civil action under NFCA has been brought by or on behalf of a state governmental entity, the government-action bar presents no bar to a separate action on behalf of a different governmental authority, even if the two suits involve same allegations or transactions;
- Government-action bar did not require dismissal of relators' private action against online travel companies; and  
Failure to apply government-action bar did not interfere with Attorney General's control over private NFCA suits.

Supreme Court's exercise of discretion to entertain petition for writ of mandamus filed by online travel companies challenging district court's denial of its motion for summary judgment in relators' qui tam Nevada False Claims Act (NFCA) suit alleging that companies knowingly avoided paying transient-lodging taxes was warranted, where petition raised purely legal questions of first impression regarding effect of NFCA's government-action bar when a government entity files suit after the private qui tam action and the two suits involve two distinct governmental entities, the issues were of statewide importance, and moreover, the interpretation of the government-action bar at early stages of litigation furthered judicial economy.

Government-action bar in the Nevada False Claims Act (NFCA), stating that an NFCA action may not be maintained by a private plaintiff if the action is based upon allegations or transactions that are the subject of civil action or proceeding to which state or political subdivision is already a party, contains no sequencing requirement, and thus, when applicable, the statute requires dismissal of private qui tam NFCA action brought on behalf of the state even if civil action brought by state or political subdivision was filed after the private action.

When a civil action under the Nevada False Claims Act (NFCA) has been brought by or on behalf of a state governmental entity, the government-action bar presents no bar to a separate private action on behalf of a different governmental entity, even if the two suits involve same allegations or transactions.

Government-action bar in the Nevada False Claims Act (NFCA) did not require dismissal of relators' private action against online travel companies asserting that companies knowingly avoided obligations to pay transient-lodging taxes mandated by county code and state law by engaging in scheme to collect tax based on higher, retail room rate, but remitting tax based on lower, discounted room rate negotiated with hotels, even though county later filed own NFCA against same companies based on same allegations or transactions, where relators sought recovery of portion of transient-lodging tax to which the state, not county authorities, was entitled, and thus brought case only on their and that of the state, and state was not party to action brought by county.

Failure to apply government-action bar under the Nevada False Claims Act (NFCA) when private qui tam action was brought on behalf of the state against online travel companies for alleged scheme to avoid remitting full amount owed for transient-lodging taxes and county filed subsequent civil action on its own account against same companies did not interfere with Attorney General's control over private NFCA suits, as the Attorney General still had the right to intervene and use other procedural mechanisms to exercise a certain amount of control.