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IN THE ARIZONA COURT OF APPEALS, DIVISION ONE

CASE NO. 1 CA-SA 09-0281

CV-10-0017-PR

ARTURO ROJAS CARDONA, JUAN JOSE ROJAS CARDONA, JUEGOS  
DE ENTRETENIMIENTO Y VIDEOS DE GUADALUPE, S. DE R. L. DE  
C.V., ENTRETENIMIENTO DE MEXICO, S.A. DE C.V., ATLANTICA DE  
INVERSIONES CORPORATIVAS, S.A. DE C.V., AND GUADALUPE  
RECREATION HOLDINGS, L.L.C.,

PHILIP G. URRY, CLERK  
BY \_\_\_\_\_

*Petitioners,*

v.

THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

*Respondent.*

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
HOLDINGS MEXICO, LLC, a Corporate Enterprise of the Lac Vieux Desert  
Band of Lake Superior Chippewa Indians, a federally recognized Indian  
Tribe; and LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS, a federally recognized Indian Tribe,

*Respondents-Real Parties in Interest.*

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On petition from decisions of the Arizona Superior Court, in and for the  
County of Maricopa; Case No. CV2008-090935

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**PETITION FOR REVIEW OF A SPECIAL ACTION DECISION  
OF THE COURT OF APPEALS**

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## **I. INTRODUCTION**

This Petition for Review is brought in accordance with Arizona Rules of Procedure for Special Actions, Rule 8 and Arizona Rules of Civil Appellate Procedure, Rule 23.

Petitioners Arturo Rojas Cardona, Juan Jose Rojas Cardona, Juegos de Entretenimiento y Videos de Guadalupe, S. de R.L. de C.V., Entretenimiento de Mexico, S.A. de C.V., Atlantica de Inversiones Corporativas, S.A. de C.V., Guadalupe Recreation Holdings, L.L.C. and their principal, bring this Petition for Review of the Special Action Decision of the Court of Appeals following that court's refusal to exercise its Special Action Jurisdiction to review the Superior Court's partial denial of Petitioners' Motions to Dismiss for Insufficiency of Service, Lack of Personal Jurisdiction, and Lack of Subject Matter Jurisdiction.

Petitioners, residents and citizens of Mexico, respectfully request that the Court accept review and Order the Court of Appeals to review the merits of the Special Action because the issues presented involve threshold questions of whether the Arizona courts have personal and subject matter jurisdiction over the Petitioners and the claims alleged.

Because it is well settled that an appeal is an inadequate remedy where either personal or subject matter is lacking, the Court of Appeals erred

in declining to review the merits of Petitioners' Special Action. Additionally, because the issues presented involve decisions by the Superior Court which: (1) directly contradict controlling Arizona precedent; (2) involve issues of first impression; and, (3) result in the extension of the Superior Court's jurisdictional powers at the expense of Due Process rights and U.S. Treaty obligations, the Court of Appeals should have accepted jurisdiction in order remedy the Superior Court's clear errors of law. ARPSA, Rule 3(b).

## **II. ISSUES DECIDED BY THE COURT OF APPEALS**

The Court of Appeals, without comment, declined to accept jurisdiction and review Petitioner's Petition for Special Action where the following issues were presented for *de novo* review:

1. Can service of process on a foreign national which did not comply with the Hague Convention on Service Abroad suffice under state law despite the holding in *Kadota v. Hosogai*, 125 Ariz. 131, 608 P.2d 68 (Ariz.App. 1980) that it cannot?

2. Can the Superior Court assert personal jurisdiction over a foreign national (who Plaintiffs concede had no contacts Arizona), solely on the basis that the foreign national was involved in negotiating a contract involving a Michigan company's investment in a Mexican business?

3. Does the Superior Court have subject matter jurisdiction over the underlying action where the Parties agreed to arbitrate all disputes in Mexico in contradiction to the U.N. Conf. on Int'l Comm. Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, T.I.A.S. No. 6997, 21 U.S.T. 2517, and United States Supreme Court precedent?

### III. STATEMENT OF MATERIAL FACTS

#### A. Overview of the Special Action

This case involves a business dispute between Petitioners and Plaintiffs/Respondents Real-Parties-in-Interest the Lac Vieux Desert Band of Lake Superior Chippewa Indians Holdings Mexico, LLC and the Lac Vieux Desert Band of Lake Superior Chippewa Indians (collectively the “Tribe”). Petitioners filed a Petition for Special Action in the Court of Appeals after the Superior Court partially denied Petitioners’ Motions to Dismiss for Insufficiency of Service, Lack of Personal Jurisdiction, and Lack of Subject Matter Jurisdiction. *See generally*, Appendix to the Petition for Special Action (“AP”), AP00369-70.

At oral argument before the Superior Court, Judge Joseph Kreamer repeatedly stated that it was “troubled” by the decisions he was reaching and wished that he had better guidance from the appellate courts because, he believed, the questions were “very close” and resulted in the expansion of state powers. AP00346 (19:7, 20:2), 348 (28:11-16, 29:21, 30:5), 353 (48:5-7); 354 (52:8), 356 (61:5), 347 (63-65), 358 (68:1), 365 (96:1, 97:16). Nevertheless, in an Order dated December 17, 2009, the Court of Appeals declined to exercise jurisdiction over the Special Action.

**B. Brief Description of the Dispute between the Parties-in-Interest.**

In or about May 2006, Petitioner Juegos de Entretenimiento y Videos de Guadalupe, S. de R.L. de C.V. ("Juegos") and Respondent Lac Vieux Desert Band of Lake Superior Chippewa Indians Holdings Mexico, LLC ("Tribal Holding Company") entered into an a partnership agreement involving a Mexican casino project located in Guadalupe, Mexico. Juegos was a joint venture partner in the casino project with co-Petitioner Entretenimiento de Mexico ("E-Mex"). The Tribal Holding Company bought a 26% interest in Juegos for \$6,500,000, and thereby an interest in E-Mex.

Juegos and the Tribal Holding Company's prepared a Master Term Sheet which set forth the principle terms of their agreement. The Master Term Sheet stated that they would finalize and sign a Partnership Purchase Agreement, Operational Agreement, and Joint Venture Agreement along with corresponding Security and a Depository Agreements. AP0051-52.

The Master Term Sheet stated that parties would submit all disputes arising from their relationship to binding and final arbitration in Mexico:

Any Dispute which the Parties cannot resolve through mediation within ten (10) days, unless otherwise mutually agreed, shall be submitted to final and binding arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"), by three (3) arbitrators appointed in accordance with the said rules, the arbitration places shall be Monterrey, Nuevo

Leon, Mexico. The prevailing Party in such arbitration shall be entitled to expenses including costs and reasonable attorneys' and other professional fees, incurred in connection with the arbitration (but excluding any costs and fees associated with prior negotiation or mediation). The decision of the arbitrator shall be final and non-appealable and may be enforced in any court of competent jurisdiction.

AP0052.

Thereafter, in August 2006, the Parties met in Mexico to hold their first partnership meeting and to work towards completing the Partnership Purchase, Operational, and Joint Venture Agreements, and the related subsidiary agreements. Although the Partnership, Operational, and Joint Venture Agreements were not completed (and never were), the Parties did finalize and sign the subsidiary Security, Depository, and Pledge Agreements securing the Tribal Holding Company's purchase of a 26% interest in Juegos and performance of the terms of the Master Term Sheet. AP0015-18 (¶¶ 50-61). The same day, the Parties also signed the Master Term Sheet, reaffirming the terms of that agreement. AP0015 (¶50). Because no further agreements were finalized, the Master Term Sheet remains the Parties' controlling master agreement.

Under the Master Term Sheet, the Parties had agreed that the Security and Depository Agreements would be interpreted under Arizona law—the jurisdiction where the Tribal Holding Company's attorneys were located.

AP0052. The Security Agreement stated the same and contained very limited waiver of jurisdiction clause:

(b) [The Tribal Holding Company] will be entitled to seek and may seek a deficiency judgment against Mexican Counterparts from and after the date Mexican Counterparts commits [*sic*] any act of fraud in connection with [the Tribe], but only upon final determination of such matter by a court of competent jurisdiction.

AP0060.<sup>1</sup> The Mexican Counterparts included the other Petitioners except for Juan Jose Rojas Cardona. AP0056.<sup>2</sup>

Thereafter, a dispute arose between Juegos and Tribal Holding Company concerning disbursements of a portion of the casino project's revenue to the Tribal Holding Company as required under the Master Term Sheet. Rather than seeking arbitration as required, the Tribal Holding Company sued Petitioners in Arizona Superior Court, and later added the Tribe itself as a party-plaintiff.<sup>3</sup> AP0001-04.

In the suit, the Tribe alleges breach of contract and various business tort and fraud theories against Petitioners related to Juegos' alleged non-

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<sup>1</sup> The Depository Agreement also contains a choice of law clause, but the Superior Court found that the clause was not a sufficient waiver of jurisdiction and, thus, is not discussed here. See AP 0359 (pp. 72-73).

<sup>2</sup> The Mexican Counterparts were defined by the Security Agreement to be Petitioners Juegos de Entretenimiento y Videos de Guadalupe, S. de R.L. de C.V., Entretenimiento de Mexico, S.A. de C.V., Atlantica de Inversiones Corporativas, S.A. de C.V., Guadalupe Recreation Holdings, L.L.C. and their principal Arturo Rojas Cardona. AP0056.

<sup>3</sup> The Tribe also named a number of Nevada entities owned by Petitioner Arturo Rojas Cardona as Defendants, but those entities were dismissed by the Superior Court and, thus, are not discussed here.

payment of revenues provided for under the Master Term Sheet. AP0037-46. Importantly here, none of the causes of action alleged seek relief under the Security Agreement. Additionally, the Tribe has not met the prerequisites under the Security Agreement for invoking Arizona jurisdiction (i.e., it has not obtained a judgment from a tribunal of competent jurisdiction that Mexican Counterparts committed fraud in connection with the Security Agreement). *See generally*, AP0037-46, AP360-62 (pp. 76-79, and 84-84). Nonetheless, the Tribe claims that Arizona courts have personal and subject matter over the Mexican Counterparts based on the Security Agreement's narrow waiver clause.

In addition to the Mexican Counterparts, the Tribe named Juan Jose Rojas Cardona as a Defendant. Because Mr. Rojas did not sign the master or subsidiary agreements, and is not a named beneficiary of them, the Tribe claims that Arizona courts have personal and subject matter jurisdiction over him based on the somewhat novel "transaction participant" theory. AP00277-82, and 291-94.

### **C. The Tribe's Attempt at Service of Process.**

After filing its Complaint, and subsequent Amended Complaints, the Tribe made one attempt to serve the Petitioners in Mexico by Federal Express. The packages were not delivered and the Tribe did not deny it

made no other attempt at service. AP0091, 144, and 155-59. The Tribe also sent via regular mail copies of the Summons and Amended Complaint to three former domestic addresses Arturo Rojas Cardona, or one of his companies, allegedly once used or resided at. *Id.* The Tribe received no confirmation of delivery and had no expectation that the process would be received. *Id.*

Months later, the Tribe filed an *Ex-Parte* Motion for Order Deeming Service Effected, or in the Alternative, Permitting Alternative Methods of Service of Summons and Complaint. AP0086-110. The Tribe, and the Superior Court granted, alternative service on the international Defendants as follows:

1. By certified mail to attorneys of record for the other Defendants in the case;
2. By Federal Express, return receipt, to the business address in Mexico the Parties met at on August 28, 2006;
3. On Arturo Rojas Cardona, by regular mail to the three alleged former U.S. addresses (which was deemed previously completed); and,
4. On Juan Jose Rojas Cardona, by emailing him at two email addresses he was alleged to have once used.

AP0137-41.

Thereafter, the Tribe sent a copy of the Summons and Amended Complaint to Mr. Davis and Mr. McCaskill, emailed copies to Juan Jose

Rojas Cardona at his alleged email addresses, and sent copies via Federal Express to the Mexican address. But, the Tribe's Federal Express packages were not delivered and it received no confirmation of delivery of the other documents except for those mailed to Defense counsel for the other Defendants. AP0169 (Ins. 23-24), 214-225; AP0197, 241-48.

**D. Petitioners' Motions to Dismiss.**

Thereafter, Petitioners made a limited appearance before the Superior Court and filed three Motions to Dismiss for Insufficiency of Service, Lack of Personal Jurisdiction, and Lack of Subject Matter Jurisdiction. AP0143-65; 256-67; and 296-303.

*1. Insufficiency of Process*

In the Superior Court, Petitioners argued that service of process was insufficient because it did not comply with Ariz.R.Civ.P., Rule 4.2(i)(1) and directly violated the Hague Convention on the Service Abroad, 20 U.S.T. 361, T.I.A.S. No. 6638. Additionally, Petitioners argued that none of the four means permitted were otherwise sufficient under Arizona law. The Superior Court recognized the inadequacy of the means requested, but ultimately found that four wrongs make a right:

I'm troubled by the cobbling together of methods that many times individually have been held not to be sufficient. I think in this case, due to the extenuating circumstances involved with these Defendants, that service has -- is sufficient under

these circumstances. It is a very close question, but I'm going to deny the motion.

AP0348 (28:11-16).

In their briefing to the Court of Appeals, Petitioners highlighted the fact that the Superior Court's decision was directly contrary to the controlling Arizona authority of *Kadota v. Hosogai*, 125 Ariz. 131, 608 P.2d 68 (Ariz.App. 1980) requiring service of process internationally to comply with the Hague Convention and, thus, Ariz.R.Civ.P., Rule 4.2(i)(1).

Petitioners also argued that that:

- Unconfirmed service by email—one of first impression in Arizona—was insufficient both under the Hague Convention and as a general matter;
- Service on the other Defendants' attorneys who had previously declared that they did not have authority to accept service on behalf of the Petitioners, was insufficient under Arizona law;<sup>4</sup> and,
- Service by mail without a confirmation of receipt was invalid both internationally and domestically under Arizona law.<sup>5</sup>

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<sup>4</sup> Citing *Kline v. Kline*, 212 P.3d 902, 908 (Ariz.App. 2009)(service on attorney not valid where the attorney is not authorized to accept service); *Rotary Club of Tucson v. Chaprales Ramos de Pena*, 160 Ariz. 362, 365, 773 P.2d. 467, 470 (Ariz.App. 1989)( the attorney must be “authorized, either expressly or impliedly, to receive service of process for his client, and if such agency is to be implied, it must be implied from all circumstances accompanying the attorney’s appointment which indicate the extent of authority the client intended to confer.”).

<sup>5</sup> Citing *Kadota*, *supra*, 125 Ariz. at 133; *Postal Instant Press, Inc. v. Corral Rests., Inc.*, *supra*, 186 Ariz. 535, 537, 925 P.2d 260, 262 (1996); *Tonner v. Paradise Valley Magistrate's Court*, 171 Ariz. 449, 451, 831 P.2d 448, 450 (Ariz.App. 1992).

## 2. Personal Jurisdiction over Juan Jose Rojas Cardona

In the Superior Court, Petitioners argued that because Juan Jose Rojas Cardona (1) had no contacts with the State of Arizona, (2) was not a party to the master or subsidiary agreements, and (3) was not a contemplated third-party beneficiary of those agreements, Arizona had no personal jurisdiction over him. AP00261-62, and 288-94. The Tribe did not dispute those facts, but rather argued that Arizona had personal jurisdiction simply because Mr. Rojas had been involved in the negotiations between the Tribal Holding Company and Juegos, and thus was a “transaction participant” subject to the Security Agreement’s narrow waiver of jurisdiction. AP00278-82.

Despite the fact neither Arizona nor any other jurisdiction had applied the “transaction participant” theory where the target was not a third-party beneficiary to the waiver clause, the Superior Court plowed new ground and concluded that Mr. Rojas had waived his Due Process rights by simply being involved in the negotiations on behalf of others. AP00357, 370.

## 3. Lack of Subject Matter Jurisdiction

Finally, with respect to subject matter jurisdiction, Petitioners argued to the Superior Court that the arbitration agreement in the Master Term Sheet was controlling and that the Tribe must arbitrate its dispute in Mexico as it had agreed. Petitioners focused on the fact that: (1) none of the

subsidiary agreements signed by the Parties specially abrogated the master arbitration clause; (2) the master arbitration clause was reaffirmed on the same day that the subsidiary agreements were signed; and (3) that the Tribe's claims did not fit the narrow exception waiving subject matter jurisdiction under the Security Agreement (that the Tribe be seeking a deficiency judgment and that a tribunal of competent jurisdiction had already found that the Mexican Counterparts had committed fraud in relation to the Security Agreement). AP00299-302, 327-30. Additionally, Petitioners argued that the U.N. Conf. on Int'l Comm. Arbitration Convention, T.I.A.S. No. 6997, 21 U.S.T. 2517, controlled, and under the precedent *Scherk v. Alberto-Culver, Co.*, 417 U.S. 506, 94 S.Ct. 2449 (1974), among others, dismissal was required. AP00300-01, 328-330.

In response, the Tribe argued, and the Superior Court agreed, that the Security Agreement's limited consent to jurisdiction clause extended beyond the written limitations and abrogated the master arbitration clause altogether—even for claims not arising under the Security Agreement. AP00365.

#### **IV. ARGUMENT FOR GRANTING PETITION**

The purpose of a Special Action is to provide a litigant an opportunity for interlocutory appellate review where there is no other equally plain,

speedy, or adequate remedy by appeal. ARPSA, Rule 1(a); *see also* *Magidow v. Coronado Cattle Co.*, 19 Ariz.App. 38, 41, 504 P.2d 961, 964 (1972); *Taylor v. Jarrett*, 191 Ariz. 550, 551-52, 959 P.2d 807, 808-09 (Ariz.App. 1998).

Proper service of process combined with personal and subject matter jurisdiction are prerequisites to a court's authority to hear a case. *See e.g.*, *Postal Instant Press, Inc. v. Corral Rests., Inc.*, 186 Ariz. 535, 538, 925 P.2d 260, 263 (1996); *State v. Western Union Fin. Servs., Inc.*, 219 Ariz. 337, 346, 199 P.3d 592, 601 (Ariz.App. 2008); *Washburn v. Pima County*, 206 Ariz. 571, 575, 81 P.3d 1030, 1034 (Ariz.App. 2003). Thus, Arizona courts have long held that special actions are proper where the court's jurisdiction over the petitioner is at question because an appeal is not an adequate remedy:

The general policy of our appellate courts is to decline jurisdiction when special action relief is sought from a denial of a motion to dismiss or a motion for summary judgment, because relief by appeal after judgment is usually an adequate remedy. *United States v. Superior Court*, 144 Ariz. 265, 269, 697 P.2d 658, 662 (1985); *see also* *Alhambra School Dist. v. Superior Court*, 165 Ariz. 38, 40 n. 3, 796 P.2d 470, 472 n. 3 (1990). However, special action jurisdiction is appropriate when the trial court's ruling cannot be justified under any rule of law, *King v. Superior Court*, 138 Ariz. 147, 149-50, 673 P.2d 787, 789-90 (1983), and when granting of special action relief will effectively terminate the litigation. *Lim v. Superior Court*, 126 Ariz. 481, 616 P.2d 941 (App.1980). Although any party who does not prevail on a motion to dismiss or for summary judgment may argue that special action relief would terminate the

litigation, we believe this argument is persuasive when the motion to dismiss is based on an absence of jurisdiction, as an appeal inadequately remedies a trial court's improperly requiring a defense in a matter where it has no jurisdiction.

*Polacke*, 170 Ariz. at 218-19 (exercising jurisdiction where the trial court was alleged to lack *in personam* or *quasi in rem* jurisdiction).

Our first determination must be whether a special action is appropriate to review the question of jurisdiction in this matter. We hold that it is, as in our opinion petitioners' ultimate right to appeal in this matter would not be an equally plain, speedy and adequate remedy as compared to a review at this stage by special action. *Johnson v. Superior Court of Maricopa County*, 14 Ariz.App. 329, 483 P.2d 561 (1971). If the trial court does not actually have jurisdiction, it would surely be unjust and unreasonable to put petitioners to the expense and delay of a full-fledged lawsuit before determining that question on appeal. We therefore accept jurisdiction in this matter.

*Magidow*, 19 Ariz.App. at 41(exercising jurisdiction where the trial court was alleged to lack jurisdiction and service of process was insufficient).

Here, Petitioners presented the Court of Appeals with three rulings challenging the jurisdictional reach of the Arizona courts over international litigants who had no contacts with Arizona. These rulings contradicted controlling precedent, offended international treaties (and the U.S. Constitution's Supremacy Clause), and created issues of first impression for the Court of Appeals. The Superior Court itself expressed serious reservations about its decisions, and lamented that the lack of appellate court guidance exacerbated the problem. Yet, despite the fact that the Superior

Court's decisions threaten to drag international citizens into the State of Arizona which in all likelihood has no personal or subject matter jurisdiction, the Court of Appeals declined to review the merits of the Special Action. The court erred in doing so.

The Court of Appeals must exercise its Special Action jurisdiction in cases where there is no adequate remedy and the issues presented go the threshold questions of whether the Superior Court has authority to hear the case and render a decision on the merits. Without the necessary jurisdiction, all further proceedings in the Superior Court will be simple a waste of the litigants and the trial court's time and limited financial resources. For Petitioners who must come to a foreign country, that price is even greater.

At a minimum, citizens of a foreign country such a Petitioners, with no other reasonable remedy available to it, must be allowed to have access to the appellate courts through the Special Action process to insure that its rights are not offended and that the Superior Court has the necessary jurisdiction over to proceed with the case. The Court of Appeals erred when it refused to consider the merits of whether the Superior Court has personal and subject matter jurisdiction.

## V. CONCLUSION

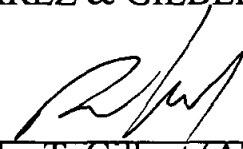
If the Court of Appeals' decision to not review the merits of this case is left to stand, the Superior Court will be allowed to trample the sovereignty of a foreign country and its citizens by exercising unparalleled expansion of jurisdictional power over litigants who: (1) have not been properly served; (2) have no contacts with this state; and, (3) have expressly contracted to resolve all of their disputes by international arbitration.

Petitioners, therefore, respectfully request that this Court find that the Court of Appeals erred and Order it to review the merits of the Special Action. Alternatively, Petitioners request that the Court undertake its own review this matter as the issues presented are of significant public importance, will undoubtedly occur over and over again in the future, and desperately need the guidance of this Court to provide clarity and certainty for all future parties, domestic and international.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of January, 2010.

ALVAREZ & GILBERT, PLLC

By

  
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Attorneys for Petitioners

## CERTIFICATE OF COMPLIANCE

Pursuant to Arizona Rules of Civil Appellate Procedure, Rule 23(c), the undersigned hereby certifies that the above Petition for Review of a Special Action Decision of the Court of Appeals is proportionately spaced, has a typeface of 14 points, and contains approximately 3,336 words.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of January, 2010.

ALVAREZ & GILBERT, PLLC

By



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*Pro Hac Vice* Attorneys for Petitioners

## DECLARATION OF SERVICE

I, RANDY A. MCCASKILL, declare as follows:

I am one of the attorneys representing Petitioners Arturo Rojas Cardona, Juan Jose Rojas Cardona, Juegos de Entretenimiento y Videos de Guadalupe, S. de R.L. de C.V., Entretenimiento de Mexico, S.A. de C.V., Atlantica de Inversiones Corporativas, S.A. de C.V., and Guadalupe Recreation Holdings, L.L.C., over the age of 18, and am competent to make this declaration.

In accordance with ARCAP Rules 6(c) and 23(c), I caused to be served the original and seven copies of the Petition for Review of a Special Action Decision of the Court of Appeals via hand-delivery to:

Office of the Clerk  
Arizona Court of Appeals, Division One  
1501 West Washington  
Phoenix, Arizona 85007

And, in accordance with ARCAP Rules 6(c) and 23(c), I caused to be served via U.S. Mail one copy of the Petition for Review of a Special Action Decision of the Court of Appeals on this day to:

Robert A. Rosette, Esq.  
Steve M. Bodmer, Esq.  
ROSETTE & ASSOCIATES, PC  
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Attorneys for Respondents/  
Real-Parties in Interest

The Honorable Joseph Kreamer  
Maricopa County Superior Court  
222 East Javelina Avenue  
Mesa, AZ 85210-6234

I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

DATED at Scottsdale, Arizona this 19th day of January, 2010.

  
\_\_\_\_\_  
Randy A. McCaskill, AZ Bar #024472

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

FILED DEC 17 2009

PHILIP G. URRY, CLERK  
BY 

ARTURO ROJAS CARDONA, JUAN JOSE ) Court of Appeals  
ROJAS CARDONA, JUEGOS DE ) Division One  
ENTRETENIMIENTO Y VIDEOS DE ) No. 1 CA-SA 09-0281  
GUADALUPE, S. DE R.L. DE C.V., )  
ENTRETENIMIENTO DE MEXICO, S.A. ) Maricopa County  
DE C.V., ATLANTICA DE ) Superior Court  
INVERSIONES CORPORATIVE AS, S.A. ) No. CV2008-090935  
DE C.V., AND GUADALUPE )  
RECREATION HOLDINGS, L.L.C., )

) DEPARTMENT B  
)  
Petitioners, )

v. ) O R D E R  
)

THE HONORABLE JOSEPH C. KREAMER, )  
Judge of the SUPERIOR COURT OF )  
THE STATE OF ARIZONA, in and for )  
the County of MARICOPA, )

) Respondent Judge, )  
)

LAC VIEUX DESERT BAND OF LAKE )  
SUPERIOR CHIPPEWA INDIANS )  
HOLDINGS MEXICO, LLC, a )  
Corporate Enterprise of the Lac )  
Vieux Desert Band of Lake )  
Superior Chippewa Indians, a )  
federally recognized Indian )  
Tribe; and LAC VIEUX DESERT BAND )  
OF LAKE SUPERIOR CHIPPEWA )  
INDIANS, a federally recognized )  
Indian Tribe, )

) Real Parties in Interest. )  
)

This special action came on regularly for conference  
this 16<sup>th</sup> day of December 2009, before Presiding Judge Patricia

K. Norris, and Judges Sheldon H. Weisberg and Margaret H. Downie, participating. The matter was taken under advisement. After consideration,

**IT IS ORDERED** that the Court of Appeals, in the exercise of its discretion, declines to accept jurisdiction in this special action.

DATED this 17th day of December, 2009.

A handwritten signature in black ink, appearing to read "Pat K Norris", written over a horizontal line.

PATRICIA K. NORRIS, Presiding Judge

Page 2

1 CA-SA 09-0281

Maricopa County Superior Court  
CV2008-090935

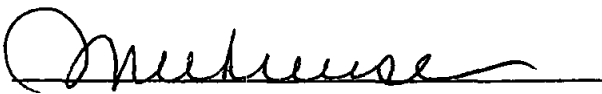
A true copy of the foregoing  
was mailed December 17, 2009 to:

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10 Attorneys for Defendants

11 **IN THE SUPERIOR COURT OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**  
13

14 LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS  
15 HOLDINGS MEXICO, LLC, *et al.*,

16 Plaintiffs,

17 vs.

18 ARTURO ROJAS CARDONA, *et al.*,

19 Defendants.  
20

Case No. CV2008-090935

**ORDER ON DEFENDANTS'  
MOTIONS TO DISMISS**

21 THIS MATTER having come before this Court on hearing on October 2, 2009 on  
22 Defendants' Motions to Dismiss for Insufficiency of Service, Lack of Personal  
23 Jurisdiction, and Lack of Subject Matter Jurisdiction and the Court having considered the  
24 pleadings on file herein, including:

- 25
- 26 1. Defendants' Rule 12(B)(5) Motion to Dismiss for Insufficiency of Service of  
27 Process;
  - 28 2. Defendants' Rule 12(B)(2) Motion to Dismiss for Lack of Personal Jurisdiction;

- 1 3. Defendants' Rule 12(B)(1) Motion to Dismiss for Lack of Subject Matter
- 2 Jurisdiction;
- 3 4. Plaintiffs' Response to Rule 12(B)(5) Motion to Dismiss for Insufficiency of
- 4 Service of Process;
- 5 5. Plaintiffs' Response to Rule 12(B)(2) Motion to Dismiss for Lack of Personal
- 6 Jurisdiction;
- 7 6. Plaintiffs' Response to Rule 12(B)(1) Motion to Dismiss for Lack of Subject
- 8 Matter Jurisdiction;
- 9 7. Defendants' Reply in Support of Rule 12(B)(5) Motion to Dismiss for
- 10 Insufficiency of Service of Process;
- 11 8. Defendants' Reply in Support of Rule 12(B)(2) Motion to Dismiss for Lack of
- 12 Personal Jurisdiction;
- 13 9. Defendants' Reply in Support of Rule 12(B)(1) Motion to Dismiss for Lack of
- 14 Subject Matter Jurisdiction;

15 NOW, THEREFORE, it is hereby ORDERED that for the reasons stated on the  
16 record:

17 Defendants' Rule 12(B)(5) Motion to Dismiss for Insufficiency of Service of  
18 Process is **DENIED**.

19 Defendants' Rule 12(B)(2) Motion to Dismiss for Lack of Personal Jurisdiction is  
20 **GRANTED IN PART** as to the corporate Defendants or who are non-signatories, but  
21 **DENIED** as to Juan Jose Rojas Cardona.

22 Defendants' Rule 12(B)(1) Motion to Dismiss for Lack of Subject Matter  
23 Jurisdiction is **DENIED**.

24 DATED this 22 day of December, 2009.

25  
26   
27 JUDGE JOHN R. DITSWORTH  
28 for JUDGE JOSEPH KREAMER

1  
2 Presented by:

3  
4 By /s/ Randy A. McCaskill  
5 ALVAREZ & GILBERT, PLLC  
6 John T. Gilbert (AZ Bar #004555)  
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15 Attorneys for Moving Defendants

16 LODGED by email this 22<sup>nd</sup> day  
17 of December, 2009 with:

18 The Honorable John Ditsworth  
19 Maricopa County Superior Court  
20 222 East Javelina Avenue, Suite 2C  
21 Mesa, AZ 85210-6234

22 COPIES of the foregoing emailed and  
23 mailed this 22<sup>nd</sup> day of December, 2009 to:

24 Robert A. Rosette, Esq.  
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28 And

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Attorneys for Plaintiff

By: /s/ Randy A. McCaskill

12/22/2009

Copy of signed Order  
FAXED TO:

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TO JUDGE JOHN DITSWORTH

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