

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU, LTD., a Macau corporation, DOES I-X; and ROE CORPORATIONS I-X,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE DAVID BARKER,
DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 69802
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A627691-B

**MOTION FOR LEAVE TO
FILE BRIEF OF AMICUS
CURIAE IN SUPPORT OF
PETITIONERS' PETITION**

DOMINICA C. ANDERSON (SBN 2988)
DANIEL B. HEIDTKE (SBN 12975)
DUANE MORRIS LLP
100 North City Parkway, Suite 1560
Las Vegas, NV 89106
Telephone: 702.868.2600

Attorneys for Movant/Proposed
Amicus Curiae
Patrick Dumont

HERSH KOZLOV (*Admitted Pro Hac Vice*)
PAUL P. JOSEPHSON (*Admitted Pro Hac Vice*)
DUANE MORRIS LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003
Telephone: 56.874.4325

Attorneys for Movant/Proposed
Amicus Curiae
Patrick Dumont

Pursuant to Nevada Rules of Appellate Procedure Rule 29, Movant/Proposed Amicus Curiae Mr. Patrick Dumont hereby requests leave to file his proposed Brief of Amicus Curiae, filed conditionally herewith and in support of Petitioners Las Vegas Sands Corp. (“LVSC”), Sands China, Ltd. (“Sands China”), Venetian Macau, Ltd. (“VML”), and Sheldon G. Adelson’s (collectively, “Petitioners”) Petition for Writ of Prohibition or Mandamus re Orders Denying Motion to Disqualify Judge Elizabeth Gonzalez Without a Hearing (hereinafter “Petition”).

The Nevada Rules of Appellate Procedure instruct this Court to apply such rules “liberally” in order to “secure the proper and efficient administration of the business and affairs of the court and to promote and facilitate the administration of justice by the court.” NRAP 1(c). This Court should heed such instruction. By accepting Mr. Dumont’s proposed Brief of Amicus Curiae, this Court will demonstrate it appreciates the issues of great import presented by Petitioners’ Petition affect more than just the Petitioners and Real Party of Interest; at issue in this case is the public’s confidence in the courts of the State of Nevada. *See, e.g., United States v. Balistrieri*, 779 F.2d 1191, 1204-05 (7th Cir. 1985) (“[I]f a judge proceeds in a case when there is (only) an appearance of impropriety in his doing so, *the injury is to the judicial system as a whole ...*”) (emphasis added).

I. STATEMENT OF INTEREST

Mr. Dumont was and is directly impacted by the issues presented in Petitioners’ Petition. Non- party, and Amicus Curiae here, Mr. Dumont, an executive of Petitioner LVSC, was deposed and during Mr. Dumont’s deposition, Jacobs’s counsel began to ask Mr. Dumont questions regarding

the media coverage of this case,¹ media received in the last months of 2015 and early 2016, years after the alleged wrongful termination at issue in the case. Mr. Dumont's counsel instructed Mr. Dumont to not answer the harassing questions advising the issue would be raised with the court.

At a previously-scheduled hearing on January 12, 2016, the District Court pressed the parties for an explanation about the instructions to not answer the questions Mr. Dumont's counsel believed were extremely irrelevant, and therefore, harassing. Before the District Court ruled on the instructions to not answer the questions, however, Mr. Dumont's counsel respectfully requested that the District Court forego ruling on the propriety of the instructions and transfer the issue.

At the January 12, 2016 hearing, the District Court denied the oral requests to transfer the issue and recuse from the matter brought by Mr.

¹ As explained in Petitioner's Petition, between the date upon which Mr. Dumont's deposition notice was e-served and the date of the January 12, 2016 hearing, the District Court had elected to participate in the intense press coverage. (*See*, Petition, at 1 ("Late last year the intense press coverage of this breach of contract case took a sharp and unexpectedly improper turn: Judge Elizabeth Gonzalez elected to participate in the coverage"), and 4 – 6 (detailing the District Court's decision to contribute to a *Time* Magazine story and a *Las Vegas Review-Journal* article).) Because the District Court had elected to participate in the intense press coverage of the case, Mr. Dumont's counsel submitted that a reasonable person could harbor doubts about the District Court's ability to remain impartial (or appear impartial) when deciding the propriety of instructions to not answer questions that were blocking answers to the same intense press coverage. On this basis, and among others bases discussed in the Petition, Petitioners eventually filed a Motion to Disqualify pursuant to NRS 1.235 and the Nevada Code of Judicial Conduct. (*See*, Petition, at 1.)

Dumont and LVSC, respectively. The District Court then struck the instructions to not answer delivered the previous day, and ordered Mr. Dumont back to his deposition under threat that any improper instructions to not answer could result in revocation of Mr. Dumot's counsel ability to appear *pro hac vice*.

After the January 12, 2016 hearing, the Law Clerk for the District Court e-mailed to the parties an email to Discovery Commissioner Bulla outlining the District Court's "instructions" to adhere to the following procedure:

This morning after meeting with counsel and dealing with an improper instruction not to answer by out of state counsel, I referred issues related to questions during the deposition on the narrow subject of:

Dumont's communication with third parties (including the media) about the litigation.

If they can't get a hold of you [Discovery Commissioner Bulla] or disagree with you, Judge Togliatti has agreed to be back up.

I will continue to deal with issues on all other areas including Dumont's communication with third parties (including the media) about Jacobs and other witnesses including DOJ and SEC).

(Amicus Appendix ("AA") AA-0224)² (hereinafter "January 12 Procedure"). However, by striking the instructions to not answer delivered

² Amicus Curiae, Patrick Dumont, submits a limited appendix for ease of reference only. The Amicus Appendix does not seek to introduce any new

the previous afternoon on January 11, 2016, the District Court did not follow the January 12 Procedure.

On January 13, 2016, Mr. Dumont, through his counsel, filed a motion seeking to have the District Court transfer the issue of the propriety of the instructions to not answer. Mr. Dumont filed such motion despite being ordered back to his deposition because of the important issues presented by the circumstances of this case and the strong probability that Mr. Dumont – or other nonparties – could be compelled to provide additional testimony about media contacts and coverage, about which the District Court has a personal interest and should not be ruling upon.

Ultimately, the Court denied Mr. Dumont’s Motion to Transfer the Issue, holding the January 12, 2016 Procedure it set up (but failed to follow) is “a fair procedure and protects everyone’s interest given the concerns that have previously been expressed.” (AA-0435.)

Mr. Dumont was directly involved in the motion practice below that is the subject of Petitioners’ Petition. Mr. Dumont seeks to participate as an amicus curiae because of this as well as a strong interest in protecting the public’s confidence in the judiciary. As a nonparty that was compelled to

information not already in the record. Instead, the Amicus Appendix is presented to provide this Court with easier access to the factual circumstances discussed herein. Petitioners’ Appendix spans twelve volumes, and without access to the entire twelve volumes at this time, Amicus Curiae Mr. Dumont would not be able to provide accurate pin cites to the factual circumstances discussed herein if solely relying on the Petitioners’ Index to Appendix. Therefore, Amicus Curiae Mr. Dumont submits his Appendix herewith to reduce or limit – as opposed to increase – any additional burden imposed on this Court as a result of the filing of this Brief of Amicus Curiae.

appear for his deposition, presented with questions that his counsel believed were irrelevant and harassing, Mr. Dumont should have been afforded a forum in which to litigate the propriety of such questions that was free of even the appearance of partiality. Mr. Dumont seeks this Court's permission to further present the issues Mr. Dumont was directly confronted with in the underlying case.

II. REASONS WHY AN AMICUS BRIEF IS DESIRABLE

Petitioners' Petition, generally, and the proposed Brief of Amicus Curiae, specifically, present issues not solely concerning the parties to the underlying case. By accepting the proposed Brief of Amicus Curiae, this Court will afford itself a full record upon which to consider the issues of great import addressed in the Petition. While the Court will have all of the transcripts, factual bases and legal argument concerning the interests of the *parties* in this case, *non-party* Mr. Dumont respectfully requests this Court consider his interests in the outcome of this important matter.

In this case, it is important that the Court accept Mr. Dumont's proposed Brief of Amicus Curiae, which discusses in detail the conduct of the District Court as it relates specifically to non-party Mr. Dumont. This Court has the opportunity, by accepting the proposed Brief of Amicus Curiae, to emphasize this Court's focus on protecting the public's perception of the judiciary in the State of Nevada, in the context of the judiciary's interaction with parties and *non-parties*, alike. As other courts have discussed, "nonparty witnesses are powerless to control the scope of litigation and discovery[,]" *United States v. Columbia Broad. Sys.*, 666 F.2d 364, 371 (9th Cir. 1982)), therefore, it is of great importance that this Court demonstrate its willingness to consider issues presented by non-party Mr.

Dumont in the proposed Brief of Amicus Curiae, filed concurrently and conditionally herewith in support of Petitioners' Petition.

Although Mr. Dumont's requested relief in the underlying action was more narrow than the request that the District Court fully recuse or be disqualified from the underlying action as discussed in Petitioners' Petition, the perspective of a non-party in this matter will provide this Court with the full circumstances upon which to consider the Petition and any Answer by Jacobs. Accordingly, acceptance of Mr. Dumont's proposed Brief of Amicus Curiae will greatly benefit this Court in further understanding the various competing interests present.

III. CONCLUSION

For the reasons set forth above, Movant/Proposed Amicus Curiae Patrick Dumont requests that this Court grant leave to file the proposed Brief of Amicus Curiae and accept the Brief of Amicus Curiae, filed conditionally and concurrently herewith.

DATED: February 29, 2016 DUANE MORRIS LLP

By: /s/ *Dominica C. Anderson*
Dominica C. Anderson (SBN 2988)
Daniel B. Heidtke (SBN 12975)

Attorneys for Movant/Proposed
Amicus Curiae
Patrick Dumont

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of DUANE MORRIS LLP; that, in accordance therewith, I caused a copy of the **MOTION TO FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE** to be hand delivered, in a sealed envelope, on the date and to the addressees shown below:

Judge David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
Respondent

James J. Pisanelli
Todd L. Bice
Debra Spinelli
PISANELLI BICE PLLC
400 South 7th Street
Las Vegas, NV 89101
**Attorneys for Steven C. Jacobs,
Real Party in Interest**

And by email transmission to the following addressees:

Steve Morris
Rosa Solis-Rainey
Ryan M. Lower
MORRIS LAW GROUP
300 South Fourth Street, Suite 900
Las Vegas, NV 89101
**Attorneys for Sheldon G. Adelson
Petitioner**

J. Stephen Peek
Robert J. Cassity
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Fl.
Las Vegas, NV 89134
**Attorneys for Las Vegas Sands
Corp. and Sands China, Ltd.
Petitioners**

Randall Jones
Mark M. Jones
KEMP, JONES & COULTHARD,
LLC
3800 Howard Hughes Pkwy, 17th Fl.
Las Vegas, NV 89169
**Attorneys for Sands China, Ltd.
Petitioner**

DATED February 29, 2016

/s/ Jana Dailey
Jana Dailey