

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE, DEPT. 11,

Respondents,

and

KAZUO OKADA, UNIVERSAL
ENTERTAINMENT CORP. AND
ARUZE USA, INC.,

Real Parties in Interest.

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Supreme Court No. 70452

Dist. Court Case No. A-12-656710-B

**ARUZE PARTIES' OPPOSITION
TO COUNTERMOTION TO
STRIKE PORTIONS OF VOLUME
2 OF APPENDIX TO REAL
PARTIES' ANSWER TO
PETITION FOR WRIT OF
PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

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Aruze USA, Inc.*

In its response to the Aruze Parties' (referred to by the Petitioner as the "Okada Parties") motion to strike, Wynn Resorts, Ltd. ("WRL") admits that footnote 8 in its reply brief falsely accuses the Aruze Parties of having "made up from whole cloth" the District Court's conclusion that many of the Freeh documents at issue in this writ petition contain "information [that] goes to the heart of the investigation which has been made publicly available by Wynn." WRL now says the District Court's rulings that it accused the Aruze Parties of fabricating were, in fact, the District Court's "very language" which was accurately cited by the Aruze Parties.

Notwithstanding this grudging admission, WRL, in a burst of irresponsible advocacy, asks this Court to disregard WRL's misconduct by permitting it to "amend" its false footnote 8 to suggest that the Aruze Parties are at fault for citing the District Court's rulings underpinning the "at issue waiver" at the heart of this writ proceeding and countermoves to strike the subject rulings because they are "improperly included in the Okada Parties' Appendix." The Aruze Parties ask this Court to disregard this inappropriate appellate chutzpah and deny WRL's countermotion, which is discussed next.

The District Court's conclusions, as quoted by the Aruze Parties, clearly support its ruling that there was an "at issue waiver" of privilege with respect to the

Freeh documents.¹ In its Response ("Resp.") to the Motion to Strike, WRL disingenuously argues that "the District Court did use those very words but not in the manner asserted by the [Aruze] Parties." Resp. at 1. This is irresponsible advocacy – the Aruze Parties' Answering brief presented the District Court's findings squarely within their context. There is absolutely no basis to strike from this appellate record the documents provided to the parties by the District Court that contain the "very words" relied on by the Aruze Parties to point out WRL's admitted false accusation in footnote 8.

WRL now claims that it was somehow improper for the Aruze Parties to rely on the District Court's documents. *See* Resp. at 2-3 (citing Vol. II App_0339 (excerpts of April 14, 2016 hearing transcript)). But an examination of the colloquy on which WRL relies clearly demonstrates that the District Court was not telling the parties they could never use the documents that are unquestionably part of the record of this case. This non-issue originated with WRL's counsel making the point that the writ petition would focus on the District Court's overall legal conclusions, not on document-by-document privilege determinations. *See* Vol. II App_0323 ("[W]e're going to take a writ on the standard and not on the actual

¹ At another point in the hearing that WRL cites, the District Court stated that "I made a determination that because of the use that was put to the [Freeh] report with the compliance committee, the board, and then the public disclosure of that report that there was a waiver of the ability to utilize the attorney-client privilege to protect it." *See* Vol. II App_0324.

documents, and all rights are reserved on the documents themselves"). The District Court agreed, and therefore instructed the Aruze Parties' counsel, when preparing the proposed order, not to attach the documents "because I made a determination on categories based on my review, rather than on a document-by-document ruling." *Id.* at App_0339.

In other words, the District Court did not want her order to imply that she had made independent legal rulings on each document because she had made her ruling based on "categories" of documents. The Aruze Parties respected that direction, and have not argued to this Court that the District Court made separate rulings on each of the more than 1,000 documents it reviewed to address the "at issue waiver" that agitates WRL and drives its current writ petition.² Indeed, the Aruze Parties have not made arguments about any of the individual documents at issue, because their contention is that there was an at issue waiver as to *all* of the evidence underlying the Freeh Report. The language from the District Court accurately conveys its finding that the Freeh documents, *en masse*, go "to the heart of the investigation." That is why the same phrase is repeated numerous times in the District Court's documents.

There is no basis to strike the District Court's documents under WRL's counter-motion because the documents are clearly part of the "trial court record"

² The Aruze Parties' Answering brief expressly noted, when citing these documents, that they were "Minute Order[s]." Aruze Br. at 11, 17.

under NRAP 10(a) that we are required to present to the Court in this writ proceeding. The Rule provides that "[t]he trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk." The District Court's documents clearly fall within this definition.

Further, the relief that WRL seeks is only available from the District Court, not this Court. *See* NRAP 10(c) ("If any difference arises about whether the trial court record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record conformed accordingly").

CONCLUSION

For the foregoing reasons, the Aruze Parties respectfully request that WRL's counter-motion to strike portions of the record be denied.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Morris Law Group, that in accordance therewith, I caused a copy of this **REAL PARTIES' OPPOSITION TO COUNTERMOTION TO STRIKE PORTIONS OF VOLUME 2 OF APPENDIX TO REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON October 11, 2016

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
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VIA ELECTRONIC AND U.S. MAIL ON October 10, 2016

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