

In the Supreme Court of Nevada

ELAINE P. WYNN, an individual,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
of the State of Nevada, in and for the
County of Clark, and THE HONORABLE
ELIZABETH GONZALEZ, District Judge,
Respondent,

and

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

PETITIONER’S REPLY BRIEF ON MOTION TO STRIKE

Scandalous or irrelevant matters should be stricken from appellate briefs. NRAP 28(j). Wynn Resorts’ brief has both.

The Accusations are Scandalous

Accusing petitioner Elaine Wynn and her attorneys of unethical conduct is a “scandalous matter[.]” See NRAP 28(j). Wynn Resort’s represents that its allegations led “direct[ly]” to the order Ms. Wynn seeks to stay (Opp. 2:8–9), but in fact the district court has never substantiated those allegations.

The Accusation are Irrelevant

The scandalous assertions are also irrelevant to the NRAP 8(c) factors for issuing a stay. Wynn Resorts does not argue that the alleged misconduct fortifies the object of the petition so as to justify denying a stay. *Cf.* NRAP 8(c)(1). Similarly, Wynn Resorts does not claim that the alleged misconduct insulates Ms. Wynn from harm if the stay is denied or, conversely, compounds the harm a stay would cause Wynn Resorts to bear. *Cf.* NRAP 8(c)(2), (3). Wynn Resorts is likewise unable to link the alleged misconduct to whether Ms. Wynn will prevail on the merits. *Cf.* NRAP 8(c)(4).¹ Wynn Resorts' accusations have no effect on the argument against a stay.

Because the slurs against Ms. Wynn and her attorneys, even if true, would not justify denying a stay, they are not appropriate "factual

¹ The bulk of the opposition advances the unrelated legal argument that federal law does not protect the confidentiality of Ms. Wynn's whistleblower sources. (Opp. 2:19–3:11.) That argument is wrong. *See, e.g., Employees' Retirement Sys. v. Blanford*, 794 F.3d 297, 305 (2d Cir. 2015) (even a judicial complaint may keep sources confidential); 17 CFR § 240.21F-17. But this issue should be addressed in the petition, not in a motion for stay. All that is necessary to sustain a stay is a "substantial case on the merits when a serious legal question is involved." *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).

context” (Opp. 2:14–15). They should be stricken.²

Dated this 6th day of December, 2016.

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² Wynn Resorts does not oppose petitioner’s request to exceed the page limit.

CERTIFICATE OF SERVICE

I certify that on December 6, 2016, I submitted the foregoing “PETITIONER’S REPLY BRIEF ON MOTION TO STRIKE” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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