

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,

Respondents,

and

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Real Party in Interest.

Electronically Filed
Jun 30 2017 03:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A-12-656710-B

**MOTION TO VOLUNTARILY VACATE PARTIAL STAY OF PROCEEDINGS
WHILE THIS COURT CONSIDERS THE MOTION TO DISMISS
*(Expedited Resolution Requested)***

Real party in interest Wynn Resorts, Limited's "intent" to more fully brief issues could delay the adjudication of petitioner Elaine Wynn's motion simply to withdraw her petition for extraordinary relief. This could then prevent discovery on the merits from proceeding in the district court. To prevent that, petitioner moves this Court to vacate the partial stay of discovery while it considers any additional briefing

on the withdrawal of the writ petition.

1. *As the Petition is now Moot, there is No Reason for a Stay while the Court Considers the Motion to Withdraw*

Ms. Wynn had requested and received a partial stay of proceedings while her writ petition challenged the district court's orders requiring certain disclosures of information. Ms. Wynn now moves to withdraw her petition, effectively agreeing to provide the information at issue in those orders. By seeking full briefing on issues collateral to that simple motion to voluntarily dismiss, however, Wynn Resorts could forestall the objective of the withdrawal—the resumption of discovery in the district court.

Even if this Court does not summarily dismiss the petition as Ms. Wynn requested, it should at least vacate the stay *now*, allowing discovery to resume, without awaiting the full briefing on the motion to dismiss.

2. *The Stay No Longer Serves a Useful Purpose*

When a stay outlives the controversy it was meant to suspend, the stay should be vacated. *McClendon v. City of Albuquerque*, 100 F.3d 863, 868 n.1 (10th Cir. 1996) (vacating stay once appellate disposition

rendering the stay moot); *see also Zhang v. Eighth Judicial Dist. Court*, 120 Nev. 1037, 1043 n.1, 103 P.3d 20, 24 n.1 (2004), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

Here, this Court's stay of discovery no longer serves any purpose. As discussed, Ms. Wynn has effectively agreed to disclose what the stay allows her to withhold. There is nothing left for the stay to protect, and it should be vacated.

3. The NRAP 8 Analysis has Changed, No Longer Favoring a Stay

Even if Ms. Wynn's assent were not enough, the NRAP 8 factors show that a stay is no longer appropriate. Ms. Wynn has no desire to prosecute her petition further, and Wynn Resorts' opposition to withdrawal seems to be that the Court should enter some sort of ruling broader than the questions raised in the petition. In neither circumstance does vacating the stay defeat the object of the petition. *See* NRAP 8(c)(1). Vacating the stay would be harmless for the same reasons. *See* NRAP 8(c)(2), (3). And while the bare legal issues in the petition still have substantial merit, even if moot in the current application, the quality of the legal debate is not a reason to maintain the stay. *See*

NRAP 8(c)(4).

4. *The Stay for Ms. Wynn's Benefit Cannot be Used for Wynn Resorts to Cause Delay*

Wynn Resorts did not seek a stay of its own. It vigorously opposed the stay Ms. Wynn sought. Wynn Resorts now wants to avoid discovery of issues unrelated to the questions in Ms. Wynn's petition by opposing Ms. Wynn's motion to dismiss. But that is no reason to extend the stay that was solely for the purpose of protecting Ms. Wynn's privilege. That stay should be vacated now so discovery can proceed, without waiting for a final resolution of the motion to dismiss the writ petition.

5. *This Court should Expedite Consideration of this Stay Issue*

If this Court plans to devote any appreciable time considering the issues raised by Wynn Resorts as conditions to the withdrawal of the writ petition, it should at least vacate the stay of the district-court proceedings in an expedited manner. While this motion may not fall under the extreme conditions contemplated as an emergency under NRAP 27(e), it should still be handled in an expedited manner to allow the district-court matter to proceed. *See* NRAP 2.

CONCLUSION

This Court should vacate the stay of discovery.

Dated this 30th day of June, 2017.

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CERTIFICATE OF SERVICE

I certify that on June 30, 2017, I submitted the foregoing “Motion to Voluntarily Vacate Partial Stay of Proceedings while this Court Considers the Motion to Dismiss” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that a copy of this document will be served by mail, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Honorable Elizabeth Gonzalez
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/s/ Yolanda Griffin
An Employee of Lewis Roca Rothgerber Christie LLP