

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE P. WYNN,

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,

WYNN RESORTS, LIMITED, a
Nevada Corporation,

Real Party in Interest.

Case No. 71432

Electronically Filed
Jul 07 2017 01:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**REAL PARTY IN INTEREST
WYNN RESORTS, LIMITED'S
RESPONSE TO PETITIONER
ELAINE P. WYNN'S MOTION
TO VOLUNTARILY VACATE
PARTIAL STAY OF
PROCEEDINGS**

I. INTRODUCTION

After stalling the district court proceedings for months based on the suggestion that she was a whistleblower who needed a stay of discovery to protect her from "retaliatory" inquiries into the caustic allegations she injected into the underlying litigation, Petitioner Elaine P. Wynn ("Ms. Wynn") now abruptly seeks to change course and unwind the discovery stay she obtained from this Court because it no longer serves her interests. The discovery stay no longer serves Ms. Wynn's interests because it threatens to (i) thwart her desire to conduct discovery into related subject matters in the district court proceedings, and (ii) result in the severance of her claims altogether from the main action below. Wynn Resorts, Limited ("Wynn Resorts" or the "Company") does not necessarily oppose lifting the stay imposed in connection with Ms. Wynn's pending writ petition. It respectfully submits, however, that this Court should not take any action on Ms. Wynn's request to lift the stay of proceedings until it has the benefit of the background that has caused Ms. Wynn to seek this latest form of relief.

1 In particular, Wynn Resorts submits that the discovery stay should not be lifted
2 until the Court resolves Ms. Wynn's corresponding request to voluntarily dismiss her
3 fully-briefed writ petition, which is set to be scheduled for oral argument. While
4 Wynn Resorts originally opposed the discovery stay sought and obtained by
5 Ms. Wynn, the reality is that – given Ms. Wynn's ever-changing positions before the
6 district court and her desire to keep all of her litigation options open – the discovery
7 stay is now necessary to protect Wynn Resorts from bogus allegations of retaliation
8 until all parties know the state of play relating to Ms. Wynn's writ petition and the
9 conditions upon which it may or may not be dismissed.

10 As just one example, Wynn Resorts does not know whether Ms. Wynn will
11 proceed with her professed intent to dismiss her pending writ petition if this Court
12 advises it will only grant the dismissal subject to the conditions that will be requested
13 by Wynn Resorts in its forthcoming opposition to be filed on July 10, 2017. The
14 requested conditions would prevent Ms. Wynn from later raising allegations of
15 retaliatory conduct in any form based on her purported status as a whistleblower.
16 Should Ms. Wynn's desire for an expedient lifting of the discovery stay be granted,
17 but she later refuses to consent to a dismissal of her writ petition based on the
18 conditions sought by Wynn Resorts, then the Company and the other parties adverse
19 to Ms. Wynn in the proceedings below risk continuing exposure to claims of
20 retaliation simply by engaging in the routine discovery tasks necessary to explore
21 Ms. Wynn's underlying claims.

22 To avoid putting any party in such a Catch-22 position, the Court should first
23 determine whether to grant Ms. Wynn's motion to voluntarily dismiss her writ
24 petition pursuant to NRAP 42 and, if so, based on what conditions. As part of that
25 determination, the Court can address the discovery stay so that all parties know the
26 ground rules going forward at the district court level.

II. FACTS

On October 6, 2016, in the face of an evidentiary hearing on sanctions related to her violations of the Protective Order with Respect to Confidentiality dated February 14, 2013 ("Protective Order") and an order from the district court compelling her to respond to deposition questions and written discovery concerning her misconduct, Ms. Wynn filed a writ petition claiming she was immune from discovery as a whistleblower under the Sarbanes-Oxley Act ("SOX") and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") (the "Writ Petition"). Ms. Wynn likewise obtained a stay of proceedings, which prohibited Wynn Resorts from conducting her deposition, seeking other forms of discovery, or proceeding with the evidentiary hearing on sanctions.¹

At the same time, Wynn Resorts was seeking injunctive relief and the disqualification of Ms. Wynn's counsel from the law firm Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") due to Ms. Wynn's theft, and her counsel's illicit use, of the Company's privileged and confidential information. The district court initially planned to conduct one consolidated evidentiary hearing on Wynn Resorts' motions for injunctive relief, disqualification and sanctions. Due to the stay imposed as a result of the Writ Petition, however, the district court was required to move forward with the evidentiary hearing on the issues of disqualification and injunctive relief only, and to forego the evidentiary hearing on sanctions related to Ms. Wynn's violation of the Protective Order. Suffice it to say, Ms. Wynn's Writ Petition multiplied the proceedings at the district court level and exponentially increased the time and resources expended by Wynn Resorts related to Ms. Wynn's misconduct.

¹ In addition, Ms. Wynn repeatedly threatened to file a federal lawsuit against Wynn Resorts based on the same facts and law as her writ petition, going so far as to provide the Company with a draft complaint.

1 Wynn Resorts' motion to disqualify Quinn Emanuel was rendered moot when
2 the law firm withdrew as counsel for Ms. Wynn on March 10, 2017, in the middle of
3 a multi-day evidentiary hearing on Wynn Resorts' motion for preliminary injunction
4 related to Ms. Wynn's theft and use of the Company's privileged and confidential
5 information. After three days of testimony by Ms. Wynn, she and her new counsel
6 stipulated to the entry of a permanent injunction on March 17, 2017. With these
7 discrete issues resolved but for an ongoing Special Master process described below,
8 *see infra* at note 3, the parties re-commenced fact discovery in preparation for a firm
9 trial date in April 2018.² Ms. Wynn, however, continued to prosecute the Writ
10 Petition, and the partial stay of proceedings imposed by this Court remained in place.

11 Once fact discovery resumed, Ms. Wynn (through new counsel) expanded her
12 claims through an amended pleading and sought to conduct aggressive discovery
13 against Wynn Resorts and Stephen A. Wynn ("Mr. Wynn") on those claims. At the
14 same time, however, when Aruze USA, Inc. and Universal Entertainment, Corp.
15 (collectively the "Okada Parties") sought written discovery from Ms. Wynn on the
16 very allegations for which she was seeking discovery from Mr. Wynn and
17 Wynn Resorts, Ms. Wynn balked – invoking the pending Writ Petition and
18 corresponding discovery stay as a basis to refuse to provide any substantive
19 responses. Perhaps unwittingly, Ms. Wynn and her new counsel failed to recognize
20 that her pursuit of discovery from Wynn Resorts and Mr. Wynn (collectively the
21 "Wynn Parties") on the very same subjects she was simultaneously refusing to
22 address on the basis of the Writ Proceeding and the discovery stay issued by this
23 Court resulted in "one-sided discovery" that violated fundamental principles of the
24 adversarial process.

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26
27
28 ² This case must go to trial in April 2018 to avoid running afoul of the five-year
rule under NRCP 41(e).

1 The Wynn Parties, therefore, jointly moved to stay discovery on Ms. Wynn's
2 claims until the resolution of the Writ Proceeding. The Wynn Parties also moved to
3 sever Ms. Wynn's claims from the claims between the Wynn Parties and the
4 Okada Parties as the temporary stay of discovery being sought on Ms. Wynn's claims
5 would likely continue beyond the cut-off for fact discovery in the underlying action,
6 which is scheduled to close on September 8, 2017.³ Because the Wynn Parties are
7 currently precluded from conducting any discovery on Ms. Wynn's claims, they also
8 moved to sever Ms. Wynn's claims under NRCP 20 and 21. Severance is required as
9 discovery is continuing on the claims related to the Okada Parties in anticipation of
10 the firm April 2018 trial date. The parties cannot, however, possibly be prepared to
11 conduct a trial on all parties' claims and defenses before the expiration of the five-year
12 rule given the present inability to conduct reciprocal discovery of Ms. Wynn.

13 The district court correctly recognized that Ms. Wynn's attempt to conduct
14 "one-sided discovery" against the Wynn Parties presents a "huge issue." (*See*
15 Exhibit "1," June 26, 2017 Hr'g Tr. at 18:25). The district court advised that it was
16 continuing the hearing on the Wynn Parties' Motion to Stay and Sever until
17 Ms. Wynn formally withdrew the Writ Petition and lifted the stay as her oral
18 representations that she intended to do so were insufficient. (*Id.* at 22:23-23:2).
19 Ms. Wynn thereafter sought Wynn Resorts' consent to the dismissal of her Writ
20 Petition, but refused to agree to the reasonable and necessary conditions requested by
21 the Company.⁴

22
23 ³ Ms. Wynn is also refusing to participate in document discovery due to a
24 Special Master process implemented by the district court to address her theft and use
25 of Wynn Resorts' privileged and confidential information. In short, Ms. Wynn claims
26 she has no access to the documents that allegedly support her claims and, therefore,
cannot respond to requests for production under NRCP 34. This fact alone warrants
a stay and severance of Ms. Wynn's claims regardless of whether the stay imposed as
a result of her Writ Petition is lifted.

27 ⁴ Specifically, Wynn Resorts requested that Ms. Wynn agree that she is not a
28 whistleblower and has no protections under SOX or Dodd-Frank, including that these
laws do not provide limits or exemptions to Ms. Wynn's obligation to comply with
her disclosure and discovery obligations. Wynn Resorts requested this condition so
that Ms. Wynn cannot dismiss the Writ Petition—which is fully briefed and awaiting

1 Simply put, Ms. Wynn wants to jettison the pending Writ Petition so that she
2 can proceed expeditiously with the discovery she desires to conduct in the district
3 court while retaining the option to resurrect the same baseless whistleblower
4 arguments against Wynn Resorts at a later date when it is again convenient for her to
5 do so. Because Ms. Wynn's position is the epitome of a litigant trying to have her
6 cake and eat it too, Wynn Resorts provided notice of its intention to oppose
7 Ms. Wynn's motion to voluntarily dismiss the Writ Petition and to request that this
8 Court impose conditions prohibiting Ms. Wynn from resuscitating her various
9 whistleblower and retaliation theories at some unknown time in the future.

10 The disposition of Ms. Wynn's contested Motion to Dismiss her Writ Petition
11 will, of course, take time. Each passing day increases the likelihood that the district
12 court will grant the Wynn Parties' motion to stay and sever. In hopes of escaping this
13 result, Ms. Wynn now seeks to vacate the stay of proceedings regardless of the
14 resolution of her Motion to Dismiss. But merely lifting the discovery stay will not
15 resolve the broader issues caused by Ms. Wynn's ever-shifting positions and
16 self-interested manipulation of the judicial process. Indeed, if Ms. Wynn succeeds
17 in vacating the discovery stay before the Court determines whether to dismiss the
18 Writ Petition and on what conditions, the Wynn Parties will be placed in the
19 untenable position of exposing themselves to additional claims of retaliation from
20 Ms. Wynn merely by proceeding with the necessary discovery on her claims.

21 **II. ARGUMENT**

22 Ms. Wynn argues that "the Court's stay of discovery no longer serves any
23 purpose" because she has moved to voluntarily dismiss her writ petition.⁵ (*See*

24 _____
25 oral argument – and subsequently re-assert the same arguments in another appeal or
26 a separate lawsuit against the Company. In addition, Wynn Resorts requested that
27 Ms. Wynn pay all reasonable costs related to this writ proceeding under NRAP 39.
28 Finally, Wynn Resorts requested Ms. Wynn's agreement that the dismissal of the Writ
Petition would be without prejudice to any claims or causes of action against Ms.
Wynn, including for attorney's fees and damages.

⁵ Ms. Wynn, of course, does not indicate whether she would still withdraw her
Writ Petition if the Court advises that it intends to impose the conditions that will be
sought by Wynn Resorts. If the Court does so, Ms. Wynn may very well choose to

1 Mot. at 3). At the same time, however, Ms. Wynn incongruously maintains that "the
2 legal issues in the petition still have substantial merit." (*Id.* at 3). She has also
3 referenced potential "federal or administrative claims against Wynn Resorts" (*see*
4 Petitioner's Reply to Wynn Resorts' 'Notice of Intent' at 2) (on file), and further
5 "raised the possibility of bringing a separate SEC action." (*See* Exhibit "2," Response
6 to Wynn Resorts' Status Report). Ms. Wynn, in other words, seeks to avoid this
7 Court's adjudication of her status as a whistleblower under SOX and Dodd-Frank
8 while expressly raising the specter of filing a federal lawsuit or administrative action
9 against Wynn Resorts based on these same meritless claims. The Court should not
10 allow Ms. Wynn to engage in such forum shopping.

11 While Ms. Wynn is urging the Court to lift the stay and permit discovery to go
12 forward in the underlying litigation, she conveniently ignores that the first item on
13 the agenda will be the resumption of her aborted deposition in connection with the
14 evidentiary hearing on sanctions related to her violation of the Protective Order.
15 (Ex. 1 at 14:19-21 ("Judge Gonzalez: Because I've got a Rule 37 hearing I've got to
16 do that relates to it, that's why. And I can't do that Rule 37 hearing because I've had
17 a stay in place for a year.")). That is the exact process that resulted in Ms. Wynn's
18 invocation of her purported whistleblower status and claim that she was the subject
19 of illegal retaliation under SOX and Dodd-Frank. (*See generally* Petition for Writ of
20 Prohibition or, in the Alternative, Mandamus) (on file).

21 Ms. Wynn's desire to abandon her whistleblower petition before this Court
22 while threatening to raise the same claims of retaliation at a later date in this or
23 another forum is manifestly unfair and entirely unworkable. If the Court lifts the stay
24 and discovery related to the evidentiary hearing on sanctions goes forward without
25 the benefit of a decision on the potential dismissal of the Writ Petition, Wynn Resorts
26 will be faced with the Hobson's choice of (i) vindicating its rights related to

27 _____
28 proceed with her Writ Petition. In that case, Ms. Wynn would in all likelihood seek
to reinstate the stay of proceedings that she is now moving to vacate.

Ms. Wynn's violations of the Protective Order while exposing itself to further claims of retaliation, or (ii) handcuffing its ability to address Ms. Wynn's sanctionable conduct in order to avoid additional claims of retaliation in this or another forum. To that end, Ms. Wynn's counsel has left no doubt that she intends to continue claiming whistleblower protection in the underlying case. During the June 26, 2017 hearing on the Wynn Parties' Motion to Stay and Sever, Ms. Wynn's counsel argued:

Obviously there can't be retaliation against Ms. Wynn for her assertion of a whistleblower privilege, but we're now going to fully participate in discovery.

(Ex. 1 at 12:5-8.)

In the end, Ms. Wynn's strategic maneuvering in this Court to avoid a stay and severance in the district court below greatly prejudices the Wynn Parties by exposing them to additional claims of retaliation at a later date based on nothing more than proceeding with court-ordered discovery. The only remedy for the impossible situation created by Ms. Wynn's shifting positions is the imposition of conditions on dismissal of the Writ Petition that preclude her from re-asserting that she is a whistleblower entitled to some form of protection from discovery. Accordingly, Ms. Wynn's contention that "the Court's stay of discovery no longer serves any purpose" is wrong. Until the Court resolves Ms. Wynn's Motion to Dismiss the Writ Petition, the stay of proceedings now protects Wynn Resorts from Ms. Wynn's opportunistic behavior and clear intention to re-raise the same meritless whistleblower claims in this Court, the district court, or some other forum at a later date.

III. CONCLUSION

Based on the foregoing, Wynn Resorts respectfully submits that any ruling on Ms. Wynn's Motion to Lift the Stay of Proceedings should only be made in

1 conjunction with the ultimate issue before the Court, to wit—whether Ms. Wynn's
2 Writ Petition will be dismissed pursuant to NRAP 42 and, if so, on what conditions.

3 DATED this 7th day of July, 2017.

4 PISANELLI BICE PLLC

5
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 7th day of July, 2017, I filed and served via the Court's eFlex electronic filing system and via United States mail, a true and correct copy of the above and foregoing **RESPONSE TO PETITIONER ELAINE P. WYNN'S MOTION TO VOLUNTARILY VACATE PARTIAL STAY OF PROCEEDINGS** properly addressed to the following:

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EXHIBIT 1

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-12-656710-B
	.	
vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	
Defendants	.	Transcript of
	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON ELAINE WYNN'S MOTION TO COMPEL
AND WYNN PARTIES' MOTION TO STAY DISCOVERY**

MONDAY, JUNE 26, 2017

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

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ROBERT J. CASSITY, ESQ.
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WILLIAM R. URGAS, ESQ.
MARK E. FERRARIO, ESQ.
DONALD JUDE CAMPBELL, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JUNE 26, 2017, 8:13 A.M.

2 (Court was called to order)

3 THE COURT: So I would like to start with the motion
4 to stay discovery and sever.

5 Thank you, Mr. Ferrario, for coming. We really
6 appreciate you being here.

7 MR. FERRARIO: I was out in the hallway waiting for
8 someone to unlock the door.

9 MR. PISANELLI: Why so defensive?

10 MR. FERRARIO: I find that to be informative.

11 (Pause in the proceedings)

12 THE COURT: All right.

13 MR. PISANELLI: Thanks, Your Honor.

14 So, Your Honor, the best I can describe our motion
15 is that it is a product of the law of unintended consequences.
16 We started this process with promises from the defendants,
17 both of them actually, sets of defendants that this discovery
18 process and the consolidation of all of these different issues
19 would promote efficiency. But what has resulted is a lopsided
20 and uneven playing field where one side gets to prosecute
21 their case, conduct discovery, and the other doesn't. And to
22 be clear, Your Honor, this is the result, this unfairness,
23 this lack of due process, as we've characterized it, is the
24 result of illicit conduct of the Quinn Emanuel firm in part
25 and Elaine Wynn in part. That's what has derailed this entire

1 process. It's not just a coincidence. And so we have that
2 situation described in the McCabe case that we cited to, that
3 we have a one-sided boxing match here where one side gets to
4 throw punches and the other side doesn't. And the court, of
5 course, characterized that as fundamentally unjust and
6 inefficient, and that's what we're asking you to remedy.

7 Now, the way we see it, Your Honor, there's two
8 choices, stay the entire thing, tolls the five year rule,
9 everything is satisfied, but I don't think anyone in this
10 room, Your Honor included, would be happy with that, or we go
11 back and revisit an idea that was brought to you a year or so
12 ago, and that is to take this litigation that at its heart is
13 about the rehearing of a divorce settlement and sever it out.
14 Stay the discovery and sever it out. And we think if we apply
15 really all standards for severance these circumstances call
16 for it and meet all those legal requirements.

17 So there's just a few facts that I think I want to
18 highlight here and I want to reiterate everything that's in
19 our briefs, but there are a few that are really important, the
20 first of which is that part of what has caused this problem is
21 Ms. Wynn's position that she's a whistleblower. Despite your
22 ruling on it, she exercised the right that she has to go to
23 the Supreme Court and request a stay and was successful. The
24 problem with what we're doing now --

25 THE COURT: That argument's currently being

1 scheduled; right?

2 MR. PISANELLI: For September at the earliest. We
3 don't even have a date yet, but we know that the July
4 opportunity didn't work because Ms. Wynn's counsel couldn't do
5 it that early.

6 THE COURT: Mr. Polsenberg was having a grandchild
7 is what the notice said.

8 MR. PISANELLI: I'm not saying it critically. I'm
9 not saying it was manipulative.

10 THE COURT: He submitted a notice to the Supreme
11 Court that he revealed a lot of personal information, and I
12 go, wow, would you really file that; but it was Dan, so --

13 MR. PISANELLI: It was. But the point is not why
14 it's in September but that it is in September at the earliest
15 after or right around the time that our discovery closes.

16 And the other thing that can't and shouldn't be lost
17 in this mix, very important fact about that stay, Your Honor,
18 is that what is also stayed beyond meaningful discovery of Ms.
19 Wynn is the sanctions hearing that we have for her violations
20 of your orders, in particular her open and continued
21 violations of the confidentiality stipulation and order. So
22 we know that a very important thing could happen from that
23 evidentiary hearing. And it's not that she might get
24 sanctioned financially. That by all measures would be
25 meaningless to her. It's not that she may be called upon to

1 reimburse us for our attorneys' fees. That, too, seems like
2 it would be meaningless, but that we will be asking for
3 evidentiary restrictions and sanctions from that hearing. And
4 that is most meaningful under these circumstances, and that
5 process, too, is stayed and will not occur in time for us to
6 have a resolution, a workable one, perhaps even with another
7 writ going up before discovery closes and the trial
8 approaches.

9 Now, the second important fact is that we have the
10 special master process. And the reason we have that, Your
11 Honor, is because Ms. Wynn commingled what she has
12 characterized as her documents with the documents she stole.
13 Now, that is taking a long time. We're having conversations
14 with Judge Wall about additional assistance, and any
15 suggestion to you that this is going to be wrapped up in a
16 couple of weeks is just misguided. It's not true. It's going
17 to take several months, and we won't even be finished, we
18 believe, with the special master process that Ms. Wynn has
19 insisted upon by the time discovery closes.

20 Ms. Wynn says in her opposition that it doesn't
21 matter, special process, because all we're doing is getting
22 our documents back and we know what she has and we have access
23 to that information. That's just simply not true. We know
24 that she described in her deposition documents that we don't
25 have. We also know from the deposition and the hearing before

1 you that they destroyed files. So there is a lot of discovery
2 that we are entitled to get from her, and she can't just fall
3 back, as so many parties do who don't want to participate in
4 discovery, and simply say, oh, you have it anyway, you don't
5 need to get my files, you have it anyway. That never works
6 with you. That never works with anyone. But that's the
7 excuse they used to overcome the problem with the special
8 master.

9 Finally, from a fact perspective, two months give or
10 take is what we have left for factual discovery here. And put
11 that -- now filter everything we know about this case through
12 that fact, two months left with all of these restrictions on
13 discovery, on meaningful depositions, her refusal to produce
14 documents until the special master process is finished and we
15 have two months left. Something has to give.

16 I'll reiterate. We're not asking you to stop this
17 entire train. I'm sure Mr. Peek would jump up and not be
18 happy with that. I don't think anybody would. But severing
19 out the rehearing of the divorce seems to be the perfect
20 approach.

21 Now, the only real thing we see by way of response
22 is Ms. Wynn saying, okay, okay, you got us, we won't assert
23 the whistleblower defense going forward, we've done it looking
24 backwards in the sanctions depositions, we've done it only a
25 week or so ago to the Okada depositions, but we won't assert

1 it here. And that handpicking selection of when they'll
2 assert it and when they won't is never allowed under the law.
3 That is the perfect sword and shield. And you'll note that
4 they didn't say, let's get to the sanctions hearing, let's
5 withdraw the writ at the Supreme Court. They just said, trust
6 us, Ms. Wynn will behave this time at her deposition and we'll
7 get through these next 60, 70 days of discovery and everyone
8 will have a fair opportunity. Well, respectfully, Ms. Wynn
9 lost the ability to ask us to trust her a long time ago. And
10 the law doesn't permit her to say when she will assert this if
11 it's a privilege or just some type of protection and when she
12 won't. The fact that it's in play, that we have been stalled
13 for a year is what matters. The promise that she'll behave
14 better doesn't get us anywhere.

15 So, Your Honor, I won't go through all the elements
16 of severance. I think you could just put one fact on the
17 table. You'll see the that standard for severance is met,
18 and that is the Okada litigation is about redemption. We
19 claim bad actions by Mr. Okada led to redemption. Ms. Wynn,
20 on the other hand, wants a new divorce settlement. These two
21 factual --

22 THE COURT: But she also -- she also contends that
23 the redemption has legal effects to her given her agreement.

24 MR. PISANELLI: That's true. And I agree with that.
25 But as you pointed out --

1 THE COURT: That's why I originally put the cases
2 together.

3 MR. PISANELLI: Right. That's what I meant by the
4 law of unintended consequences. But your point way back when
5 still holds true today, that Ms. Wynn's claim follows the
6 resolution of the Okada claim. So if we now take her out and
7 put her in a separate litigation, we can even move forward as
8 fast as they want, we surely will be in trial before that case
9 will have been resolved, and she'll know whether she has an
10 argument now that the third leg of the three-party agreement
11 has a legal effect on her rights in the shareholders
12 agreement. She has an argument anyway. Right now she says
13 what if, what if Okada's out. And so we don't need to put her
14 cart in front of the horse of this litigation. That is the
15 sum and substance of our position.

16 THE COURT: Thank you.

17 MR. PISANELLI: Thanks.

18 THE COURT: Mr. Ferrario, before you start I have a
19 question. And you may want to huddle with your team. I need
20 you as part of your argument to explain to me how the impact
21 of the historical assertion of protection due to alleged
22 whistleblower status affects the discovery that interrelates
23 with the Okada claims and defenses.

24 MR. FERRARIO: Say that again.

25 THE COURT: So the whistleblower isn't just about

1 your counterclaim.

2 MR. FERRARIO: Right.

3 THE COURT: The whistleblower is about Ms. Wynn's
4 conduct; right? That's how it's been alleged and asserted.

5 MR. FERRARIO: Uh-huh.

6 THE COURT: So does it affect the claims and
7 defenses of Mr. Peek's client?

8 MR. FERRARIO: Give us a second. We were just
9 talking about that. I think it's all moot, to be honest with
10 you.

11 THE COURT: Are you going to have Mr. Peek as part
12 of your team now?

13 MR. FERRARIO: No.

14 MR. PISANELLI: Now?

15 MR. FERRARIO: I can talk to Mr. Peek. He's got
16 historical --

17 THE COURT: He does have historical knowledge. He
18 has been in this case longer than you have.

19 MR. FERRARIO: He has.

20 MR. PEEK: I don't know if I'm invited or not, Your
21 Honor.

22 THE COURT: I don't think they were inviting you.

23 MR. PEEK: I didn't think so, either.

24 MR. FERRARIO: I'll invite him.

25 Come on, Steve.

1 THE COURT: But Ms. Cowden got invited.
2 MR. PEEK: I'm going to go.
3 MR. PISANELLI: Can we go?
4 THE COURT: I don't think you should.
5 MR. PEEK: Yeah. Please feel free, help us answer
6 the question.
7 THE COURT: That's going to be interesting.
8 (Pause in the proceedings)
9 THE COURT: Do you have an answer to my question?
10 MR. COLE: We do.
11 THE COURT: Would you like to tell me what the
12 answer is.
13 MR. COLE: Mr. Ferrario will.
14 MR. FERRARIO: Sure. I'm going to start by
15 referring to the Wynn parties' brief or what they were
16 supposedly seeking. If you look at page 7 of their brief,
17 they were complaining that Ms. Wynn refused to disclose the
18 who, what, when, where, and how of her knowledge regarding the
19 events about which she purportedly made inquiries and that led
20 to retaliation. We have made it clear that we will now in
21 deposition offer the who, what, when, where, and how. We will
22 do that in response to --
23 THE COURT: Are you going to tell the Supreme Court
24 you're withdrawing your writ, then, and so the stay can be
25 evaporated if you're changing your position?

1 MR. FERRARIO: Your Honor, I would have -- I can --
2 I think we are going to do that. The only reason I'm hedging
3 at all is that Mr. Polsenberg sometimes sees things in appeals
4 and writs that others of us here don't. But I believe that
5 the writ is now mooted by what we're doing. Obviously there
6 can't be retaliation against Ms. Wynn for her assertion of a
7 whistleblower privilege, but we're now going to fully
8 participate in discovery. That would be discovery from the
9 Aruze parties, that would be discovery from the Wynn parties.

10 THE COURT: So I need to know the answer to that
11 question.

12 MR. COLE: I would imagine today.

13 THE COURT: Because the stay is the issue. Well,
14 at least it's part of the issue.

15 MR. FERRARIO: Your Honor, we're willing to answer
16 questions, and we're saying that on the record, okay. If we
17 need to go back to the court and modify the stay, we will.
18 What we're telling this Court, what we're telling the Wynn
19 parties, what we're telling the Aruze parties is we're ready
20 to go, we're ready to answer these questions. And I don't
21 know how much clearer we could be. This is from our
22 perspective just another attempt by the Wynn parties to avoid
23 discovery on these issues that impact not only our case, but
24 impact the Aruze case. The cases are intertwined. There's no
25 doubt about that. You've already ruled on that in prior

1 motions. If you look at page 9 of our papers, we set out all
2 the reasons why. If you look at Aruze's papers they filed on
3 Friday, it sets out all the reasons why. It's all about a
4 pattern and practice of conduct at Wynn Resorts that overlays
5 our claim and overlays the Aruze claims. No question Mr. Peek
6 is going to engage in the exact same discovery of his claim
7 whether this case is consolidated -- they overlap all the way.
8 And you've already ruled on this twice. What I'm seeing here
9 is just a repeated attempt by the Wynn parties to take bites
10 at apples. I mean, you've already ruled against them on the
11 severance. They're back again with a novel approach. This
12 should have been raised on the motion to compel three weeks
13 ago.

14 THE COURT: Mr. Ferrario, it's -- the stay creates
15 additional impacts.

16 MR. FERRARIO: I understand, Your Honor.

17 THE COURT: The longer the Supreme Court has a stay
18 in place the more significant it is to my ability to try the
19 case.

20 MR. FERRARIO: I get that.

21 THE COURT: We all recognize that.

22 MR. FERRARIO: Uh-huh.

23 THE COURT: So if you're telling me you're going to
24 or at least you believe it is likely you're going to withdraw
25 your petition for writ in the Supreme Court on this issue and

1 that stay evaporates, then I have absolutely no reason to
2 grant this motion or even talk to anybody anymore.

3 MR. FERRARIO: I would agree with you.

4 THE COURT: When will you know the answer to that
5 question?

6 MR. FERRARIO: I don't think -- we will tell you
7 today. We will report back to the Court. We will report back
8 to the Wynn parties. The only reason we haven't is --

9 THE COURT: You've got to talk to Polsenberg. I
10 know.

11 MR. FERRARIO: I've got to talk to Polsenberg.
12 Everybody towards the end of last week got very, very busy.
13 So with that, Your Honor, again, I don't think, though, just
14 to address that point, if Ms. Wynn is willing to sit for
15 deposition and to answer the questions, the who, what, when,
16 where, how, which is what they want, how is there any
17 prejudice to them, how is this then one-sided discovery? It
18 simply isn't. So we're willing to do that.

19 THE COURT: Because I've got a Rule 37 hearing I've
20 got to do that relates to it, that's why. And I can't do that
21 Rule 37 hearing because I've had a stay in place for a year.

22 MR. FERRARIO: I understand.

23 THE COURT: And now you're telling me, oh, well,
24 it's a do over, Judge, we're not going to -- you know that
25 stay that's been there for a year, we've decided we really

1 don't want to pursue that anymore.

2 MR. FERRARIO: Well, we're not -- I wouldn't
3 characterize it a do over. And, you know, I wasn't here when
4 all that went down, as you know. But I was here at the end.
5 And now, you know, that's kind of funny, too. I listen to all
6 this talk about these sanctions and this process, and, quite
7 frankly, at the end of the day I think you're going to find
8 that it is truly much ado about nothing, it was another tactic
9 employed by Wynn Resorts to really stall the case. That's
10 really what's going on.

11 But that's neither here nor there. We'll be on the
12 phone with the special master this afternoon. We're going to
13 offer up the ability to hire a contract attorney to slog
14 through this. We're not having these lengthy hearings they
15 had before. Ms. Spinelli and I were on a phone call two weeks
16 ago. We resolved issues rapidly. This ain't rocket science.
17 They're going to get their documents back, we're going to get
18 our privileged stuff back, we're going to go through the
19 discovery process. It's actually rather simple, especially if
20 you sit down and just look at the directories and say,
21 children's, you know, photos, bar mitzvah pictures, Wynn
22 Resorts board packet, that's pretty simple, take that back.
23 You want your pictures? No. It's the simplest thing ever if
24 you could just get people to look at it being it's discovery
25 that's slowing the things down. But we'll get it on.

1 THE COURT: And how long since nobody's done that?

2 MR. FERRARIO: What?

3 THE COURT: It's been how long since nobody's done
4 that what would be very simple in most --

5 MR. FERRARIO: We're doing it. But, I mean, you
6 don't mean computers and stuff. There's a little learning
7 curve here for me, too, so -- but I think I'm up on it now.

8 But at the end of the day these cases belong
9 together, the discovery overlaps, and they should proceed
10 together. There's no basis for severance. And you know what,
11 they need to quit taking bites at this apple. They've made it
12 clear -- and I get it, I get they don't want to engage in
13 discovery on this. Despite all the bluster and all the
14 bravado, they don't want us to look at the conduct that's part
15 of the sixth amended cross-claim. That's pretty obvious.
16 Because if they really had confidence in their case, they
17 would welcome the opportunity to get through the discovery
18 process and then they'd bring dispositive motions. So their
19 actions undercut their bravado.

20 And then this whole -- this whole sanctions thing,
21 they went off after that hearing we had upstairs when Your
22 Honor expressed concern, I guess, or surprise about the Virtue
23 email, which will be addressed in the next motion, and the
24 parties got together and worked out a process that everybody
25 folded their tent, we said, you know, we may or may not see

1 you again down the road. They went out, you know what they
2 did to try to intimidate Ms. Wynn again? They went out and
3 filed another lawsuit in front of Judge Denton alleging --

4 THE COURT: He's a fine judge.

5 MR. FERRARIO: -- the exact same stuff. And all of
6 this -- you want to know all the horrendous conduct they talk
7 about Ms. Wynn, the horrendous -- let's cut through all this
8 nonsense, too. Let's put this all to rest, this horrendous
9 conduct of commingling, all this bad stuff. It was based on
10 her advice of counsel at the time, Munger Tolles. And I could
11 go through with you at the time this was done what the status
12 of privilege law was this in this department before the Sands
13 case was decided. And I can go through all that, which we
14 were prepared to do.

15 THE COURT: The Supreme Court said I was wrong.

16 MR. FERRARIO: You're right.

17 THE COURT: Okay.

18 MR. FERRARIO: But, you know, a lawyer looking at
19 your docket at that time might have said, hey, you know, I can
20 go get that document. But we were prepared with all that.
21 They didn't want to, because their charade evaporated when the
22 Virtue email thing blew up. So you know what we need to do?
23 We need to start talking about the merits of this case. And
24 the merits of this case are as framed in the sixth amended
25 cross-claim that Your Honor has already allowed to be here,

1 okay. They need to respond to that complaint, and then they
2 need to respond to the discovery that you ordered three weeks
3 ago. And they need to stop delaying these proceedings and
4 finding every excuse they can to avoid answering the call of
5 our allegations. That's what needs to happen. That's how
6 this case will move forward.

7 And furthermore, to the extent they want to depose
8 Ms. Wynn, what's it, like two months away now, guys, something
9 like that, two months from now they'll probably take her
10 deposition. You know what? They -- if they're thwarted in
11 answering the question because there's still some stray dog
12 document that's hanging around in Judge Wall's relativity
13 Website thing, you know what, they can have another crack at
14 her if they come back to court, or they talk to us and say,
15 hey, you know what, I didn't have a fair shot to ask her about
16 that. Because we're not afraid of discovery, and we're not
17 afraid of a full airing of all of the facts relating to these
18 issues. We welcome that. We're not trying to prejudice them
19 in any way.

20 And with that I'll answer any questions.

21 THE COURT: Anything else, Mr. Pisanelli?

22 MR. PISANELLI: Yes, Your Honor.

23 MR. PEEK: Well, I have something to say, because
24 this is still an unresolved issue.

25 THE COURT: It's a huge issue, Mr. Peek. Okay.

1 MR. PEEK: And I think Mr. Pisanelli would rather I
2 speak before he does.

3 MR. PISANELLI: That depends what you're going to
4 say.

5 THE COURT: He's not in your side.

6 MR. PEEK: I'm not supporting you.

7 THE COURT: Remember, he went in the room with them?
8 That means he's not on your side today.

9 MR. PEEK: I'm not.

10 MR. PISANELLI: He never comes in our meetings, Your
11 Honor.

12 MR. PEEK: I never get invited.

13 Your Honor, because the issue of whether or not the
14 writ is going to be withdrawn -- this is still an open issue,
15 because I understood what the Court's ruling would be, but I
16 -- because I don't know what that answer's going to be, I want
17 to at least make some points that concern at least the Aruze
18 parties.

19 We know that Ms. Wynn's claims and the Aruze
20 parties' claims have overlapping questions of law and
21 overlapping questions of fact starting with the shareholder
22 agreement. They also deals with questions of alleged lack of
23 independence, which we have alleged and which Ms. Wynn has
24 alleged. The control over the board is also something that
25 she has alleged and we have alleged. We both allege that

1 questioning Mr. Wynn's decisions will lead to punishment and
2 expulsion. That's a claim that we made, that's a claim that
3 Ms. Wynn made. We also claim, as well as does Ms. Wynn, that
4 Wynn Resorts inconsistently reports matters to gaming
5 authorities, that when it suits Mr. Wynn's interests he
6 reports them and when it doesn't then he uses pretextual
7 measures to implement and oust the parties, Ms. Wynn in one
8 case, and Okada in the other. All of these are set forth in
9 both our counterclaim, as well as in Ms. Wynn's sixth amended
10 cross-claim.

11 And what concerns me is that this is nothing more
12 than a transparent attempt on the part of Wynn Resorts to deny
13 the Aruze parties the discovery. Because we're going to be
14 asking all of those very same questions after independence,
15 about activities of Mr. Poster, about activities of Mr. Shore,
16 about activities of -- the alleged activities of Mr. Wynn.
17 We're going to be asking those very same questions, and they
18 don't want us to ask those questions.

19 So we're entitled to the discovery on those issues,
20 but they seek by this overbroad request for a stay of
21 discovery and severance to deny us the right to discovery.
22 Let's recognize this motion for what it really is. It's a
23 thinly veiled, transparent effort by Wynn Resorts and Steve
24 Wynn to deny the Aruze parties discovery into these
25 overlapping issues.

1 So no matter what happens, this should not -- should
2 not impair our ability to conduct discovery, Your Honor, on
3 those very same overlapping issues, so there should be no stay
4 of discovery on the part of the Aruze parties on these issues.

5 THE COURT: Thank you, Mr. Peek.

6 Mr. Pisanelli.

7 MR. PISANELLI: Yes, Your Honor. So both the Okada
8 parties and Ms. Wynn tell us that we're avoiding discovery.
9 Well, no one said anything about discovery. They get severed
10 into their own case. They can conduct the discovery as they
11 deem appropriate, and we can have those discussions there.
12 But we are not under the pressure of a closing discovery date
13 and approaching trial. That's the big difference here. So
14 when Ms. Wynn says that all she wants to do is participate in
15 discovery I ask, well, where have you been for the last year.
16 And now to say that the reason we want severance is because
17 we're avoiding discovery doesn't really make a lot of logical
18 sense, nor is it consistent with the history of this case.
19 They want discovery. We can do it here just like the Okada
20 parties have already done this discovery in this case.

21 Here's the most important point, Your Honor. Ms.
22 Wynn says that the cut-and-paste application of the
23 whistleblower issue, no harm, no foul, we derailed this case
24 for a year but now we want to change courses because we don't
25 like the consequences and so long as we now change courses

1 everything's fine. Well, it's not fine, Your Honor, because
2 we still have a few things, as I pointed out earlier. We have
3 lots of remnants of the whistleblower issues that are still
4 inside this case, including the inability to finish our
5 sanctions here. We also have Ms. Wynn refusing to produce
6 documents until she gets through the special master process.
7 So we won't be able to conduct a deposition of her without her
8 documents. And they say, oh, it's fine, go depose her without
9 our documents, if you find something later after discovery
10 closes when we're on the eve of trial you can figure that out
11 and come back to us then. In other words, her agenda of what
12 she wants to produce and not produce, what she wants to answer
13 and not answer should be the primary concern of this Court,
14 rather than the fairness of the parties that came here because
15 Mr. Okada in our view bribed government officials, which has
16 nothing to do with Ms. Wynn claiming that there's derivative
17 claims out there for corporate mismanagement that she has no
18 standing to prosecute. This is black-and-white issues that
19 have nothing to do with one another. The special master
20 process has bogged us down and will beyond discovery. The
21 writ has bogged us and will beyond discovery.

22 THE COURT: Thanks, Mr. Pisanelli.

23 I'm going to continue this to my chambers calendar
24 on Friday. I am ordering Elaine Wynn's counsel to provide a
25 status report and a copy of any submission to the Nevada

1 Supreme Court by close of business on Wednesday for me to
2 evaluate how that impacts this motion.

3 Both of you have used all your time. Do you want me
4 to just rule on the motion to compel?

5 So it's premature. While at the evidentiary hearing
6 I did mention that if you were going to use a document and
7 make claims related to that document for purposes of an
8 evidentiary hearing or trial, it would be inappropriate for
9 that document to be redacted. We're not there yet. So to the
10 extent that nobody's made a decision that they're going to use
11 what I'm calling the Virtue email at trial at this point, I'm
12 not going to order it unredacted. That may change in the
13 future.

14 MR. PEEK: The problem I have, obviously, is --

15 THE COURT: You don't get to argue. All the time's
16 gone. You all used it all up.

17 MR. PISANELLI: Thank you, Your Honor.

18 THE COURT: Goodbye. I said premature, which means
19 it's denied without prejudice. So as you get closer, you can
20 ask again. Have a nice day.

21 THE PROCEEDINGS CONCLUDED AT 8:43 A.M.

22 * * * * *

23

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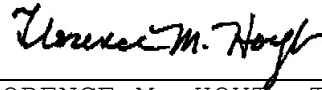
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

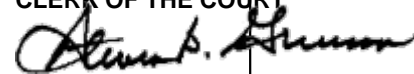


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EXHIBIT 2



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE
USA, Inc., a Nevada corporation,
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Defendants.

AND ALL RELATED CLAIMS

CASE NO. A-12-656710-B
Dept. No.: XI

**RESPONSE TO WYNN RESORTS'
STATUS REPORT**

Hearing Date: June 30, 2017
Hearing Time: In chambers.

1 Wynn Resorts' status report is revealing. While the severance motion was couched as a
2 complaint about purportedly not being able to proceed with discovery, Wynn Resorts' actions in
3 the Supreme Court to prevent timely dismissal of the writ, and its improper reargument of the
4 motion in its status report, shows that the true goal is to *delay* discovery by severance and a stay.
5 Wynn Resorts just can't take yes for an answer.

6 Wynn Resorts' status report is also out of line. They were not asked to provide supple-
7 mental briefing on their severance argument. And they certainly were not invited to disclose the
8 content of confidential settlement negotiations regarding the resolution of the writ petition. That
9 the status report misrepresents those conversations is even more galling.

10 The issue of dismissal is now before the Supreme Court. In light of Wynn Resorts' latest
11 actions, Ms. Wynn will be asking the Supreme Court to lift the stay, even if it does not immedi-
12 ately dismiss the petition.

13 ***1. The Status Report Inappropriately—and Inaccurately—Describes***
14 ***Settlement Discussions***

15 This Court should disregard Wynn Resorts' attempt to interject settlement discussions
16 into its argument for severance. The conditions Wynn Resorts conveyed to Ms. Wynn's counsel
17 for its stipulation to dismiss the petition, and Ms. Wynn's response to those conditions, are irrele-
18 vant to any question before this Court. *See* NRS 48.105.

19 But even if it were appropriate to consider those discussions, Wynn Resorts misrepresents
20 them. Wynn Resorts paints Ms. Wynn as unreasonable because allegedly she would not even
21 agree to "comply[] with her disclosure and discovery obligations in this case." (Status Report at
22 3:6.) That is quite different from the demand Wynn Resorts' counsel made yesterday. In addi-
23 tion to requiring Ms. Wynn to abandon her challenge to the orders underlying the writ petition,
24 Wynn Resorts said Ms. Wynn would have to promise *never* to claim whistleblower protection in
25 any forum under any circumstances. Ms. Wynn expressly raised the possibility of bringing a
26 separate SEC action, but Wynn Resorts was explicit that no, she could not protect herself from
27 future retaliation even then.
28

1 Wynn Resorts also omits the other conditions they imposed on dismissal: payment of all
2 Wynn Resorts' costs and a provision entitling Wynn Resorts to bring future claims for attorney's
3 fees and damages against Ms. Wynn. It was hard to figure out just what Wynn Resorts meant,
4 but it was clear that Wynn Resorts' reservation was extremely broad. Ms. Wynn's counsel could
5 not agree to such onerous and uncertain conditions for a stipulation, especially when in circum-
6 stances like this it is extremely likely the Supreme Court will grant her motion to dismiss without
7 Wynn Resorts' conditions.

8 **2. Ms. Wynn will Move to Vacate the Stay**

9
10 In light of Wynn Resorts' response to the motion to dismiss, Ms. Wynn will be asking the
11 Supreme Court to lift the stay on an expedited basis so that discovery can move forward, even if
12 the Court does not immediately dismiss the petition. Ms. Wynn was the sole beneficiary of the
13 stay: she requested it, Wynn Resorts opposed it, the Supreme Court granted it. Now Ms. Wynn is
14 prepared to abandon the stay. The request for full briefing seems to be just a delay tactic to avoid
15 the discovery Ms. Wynn seeks and, but for the stay order, this Court stands ready to give.

16 Dated this 29th day of June, 2017.

17 JOLLEY URGAL WOODBURY & LITTLE

18
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I hereby certify that I am an employee of Jolley Urga Woodbury & Little and that on June 29, 2017, I served a true and correct copy of the foregoing Response to Wynn Resorts' Status Report on the parties listed below by causing it to be transmitted by the Court's Odyssey e-service/e-filing system.

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