

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioners,

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,  
DEPT. XI,

Respondent,

and

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

Real Parties in Interest.

Case No.

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Clerk of Supreme Court

**APPENDIX TO PETITION FOR  
WRIT OF PROHIBITION OR  
ALTERNATIVELY MANDAMUS**

**VOLUME II OF II**

DATED this 7th day of August, 2017.

PISANELLI BICE PLLC

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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 August, 2017, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS VOLUME I OF II** properly addressed to the following:

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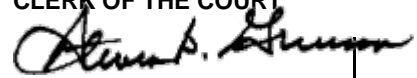
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**SERVED VIA HAND-DELIERY**

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Eighth Judicial District court, Dept. XI  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

*Respondent*

/s/ Kimberly Peets  
An employee of PISANELLI BICE PLLC



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

. . . . .

CASE NO. A-656710

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS**

MONDAY, JUNE 5, 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.

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J. COLBY WILLIAMS, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JUNE 5, 2017, 8:12 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. So let's start with the  
4 motion to quash related to 30(b)(6) depo, if that's okay, or  
5 limit the 30(b)(6) depo.

6 MR. PISANELLI: Your Honor, before we get started,  
7 could you let us know how the time will be allocated? We've  
8 talked about this before, whether there's two sides, three  
9 sides, or four sides. We have motions here solely between Mr.  
10 Wynn and Ms. Wynn, we have motions that involve the company,  
11 et cetera. I want to make sure --

12 THE COURT: The motion to compel, you guys are going  
13 to split it up and hopefully not go over 7 minutes for the  
14 whole side on either side. If we could do this motion related  
15 to the 30(b)(6), though, I think that one has a little more  
16 discussion we need to have.

17 MR. PISANELLI: Okay. So, Your Honor, we're here  
18 again trying to bring discovery back to a reasonable place in  
19 light of what the dispute is really about. We feel the  
20 shadows of Quinn Emanuel still lingering in this case with  
21 this old motion that comes from a 30(b)(6) notice that they  
22 originally propounded. It appears that Ms. Wynn is not  
23 changing her course, she's merely passing the baton from one  
24 group of lawyers who had a strategy that she set to another  
25 group of lawyers. And, as we have stated to you in the past,



1 we're going to continue to fight at every step with this  
2 tactic of hers, and we'll bring to Your Honor -- whether it's  
3 redundant or not, we'll bring to Your Honor every time we  
4 think that she and her lawyers are overstepping the bounds.  
5 And that's what this motion is.

6 THE COURT: That's going to be painful if you do it.

7 MR. PISANELLI: I understand. But the point is we  
8 have a 30(b)(6) notice here that is designed, I would say, to  
9 do one of two things, either to continue to promote an abusive  
10 tactic or to promote derivative claims as we've set forth in  
11 this motion and the others. And let me just touch upon that  
12 last one, because our position on why these claims are  
13 irrelevant I think has been fully briefed. But if look at the  
14 nature of the topics that we're talking about here, they all  
15 come from her reminding us at every step that she's a major  
16 shareholder of this firm, of this company, and that she has  
17 the right to challenge what has happened in the case. And  
18 that very well may be right if she was bringing derivative  
19 claims and if she could come before you to prove that she was  
20 fit to be a class representative. None of that has happened,  
21 none of that will happen, because she's not fit and because  
22 she doesn't want derivative claims; she wants at the end of  
23 the day to get out of her divorce agreement with really just  
24 two major issues, is the agreement enforceable and, if it is,  
25 has it been breached. None of these things about Rolex

1 watches, about Ferraris, about settlement of other lawsuits  
2 have anything to do with her shareholders agreement, have  
3 anything to do with whether it was breached or not. And so  
4 they necessarily have put themselves on a path where they  
5 can't complete this deposition certainly in the 7 hours we've  
6 agreed to double it. They, of course, said that's not good  
7 enough because of all these collateral issues. And we've come  
8 to Your Honor to ask that -- to get them back on track, pull  
9 them off of that limb they're on, get them right back in the  
10 center where the issues lie, and let's focus on the real  
11 issues in this case. That's the sum and substance. I can go  
12 through every one of the 16 notices we're challenging, but  
13 that's the basis for all of them, whether it be Kim Sinatra's  
14 thought process and what she was doing as the lawyer for the  
15 company or these collateral issues having to do with people  
16 who aren't even parties to this lawsuit and whether their  
17 actions were advisable or not 10 years ago, 15 years ago,  
18 5 years ago, long before any of these disputes ever arose.

19           So we're asking you as we have before for a  
20 protective order to give her fair discovery, but discovery  
21 that only touches upon what matters in this case.

22           THE COURT: Okay. Thank you.

23           Mr. Ferrario, why on earth do you need to know about  
24 Rolex watches and Ferrari automobiles?

25           MR. FERRARIO: As we've pled in our complaint, which

1 is fifth amended --

2 THE COURT: Aren't you on the sixth?

3 MR. FERRARIO: We're on the sixth, but the fifth  
4 they tried to dismiss all these allegations and unsuccessfully  
5 so. These claims have now been allowed. You allowed the  
6 sixth amended complaint. It goes to -- and, Judge, I find it  
7 a little bit disingenuous for Mr. Pisanelli to stand up here  
8 and say that these are outside the scope of what we pled.  
9 They know what our claims -- if you look at their pleading,  
10 they characterize our claim accurately. These actions were  
11 retaliatory. I mean, actions against Ms. Wynn were  
12 retaliatory because she was inquiring into these very matters.  
13 And we're entitled to that discovery. And they haven't cited  
14 a case, a rule, nothing that supports the position they've  
15 taken on -- in opposition to our motion to compel or the  
16 positions they're taking to thwart the 30(b)(6) discovery.

17 And I don't know what else there is to say. This  
18 has been briefed. I read this probably four times over the  
19 weekend, and you know for me that's a lot. I'm trying to  
20 figure out what in the heck are they arguing. And we've  
21 already survived the motion to dismiss, we've survived a  
22 motion to strike on these things, we've filed a new  
23 counterclaim. They've tried to stop that. Your Honor didn't  
24 grant them that relief. We're here now, we're entitled to go  
25 into these matters. This is part and parcel of our claim.

1 They characterize it accurately. They say we have wild  
2 conspiracy theories. You know what, that's what discovery's  
3 for. Let's see if they're wild. Let's get at the proof. You  
4 know what, they might be right, they might be wild when we get  
5 through it. But one thing they're not entitled to do, they're  
6 not entitled to prevent us from doing the discovery that the  
7 rules provide that we can do. I understand they don't want us  
8 to get into this. And this is really the tension here. And I  
9 would submit that Mr. Pisanelli's opening comments really are  
10 at the heart of what's going on on the other side. They're  
11 going to come here, they're going to fight, they're going to  
12 do this, it's going to be redundant, and you said it's going  
13 to be painful. You're right, it is going to be painful.  
14 Because the one thing they don't want to do is get at the  
15 facts underlying our cross-claim. And we know why. Because  
16 they know that when we get there that these actions against  
17 Ms. Wynn were retaliatory, that our claims will be supported.  
18 And they know they can't justify what happened at the Wynn  
19 during this period of time. And I would disagree with him  
20 that this started with Quinn Emanuel. No. This started when  
21 the people at the Wynn, Mr. Wynn, Ms. Sinatra, and others  
22 decided they were going to target Ms. Wynn because she was  
23 speaking out about inappropriate conduct occurring at the  
24 Wynn. That's when this started. And they're not entitled to  
25 thwart our efforts to get at this discovery. So they've cited

1 no case that supports this, they can't come to Court and  
2 recast our claims as they want them to be. We've cited all  
3 the law that supports this. We're entitled to this discovery,  
4 we're entitled to do it fully and completely, that's why we'll  
5 need three days. They're not entitled to make blanket  
6 objections saying we can't even talk to Ms. Sinatra because  
7 she's company counsel when, what was it, two weeks ago Mr.  
8 Pisanelli stood up here in an argument against Mr. Peek and  
9 said, you know what, I can't distinguish between what she's  
10 doing as a corporate secretary and what she's doing as a GC.  
11 If you can't do that, then I don't know how you can assert an  
12 attorney-client privilege.

13           So I could go through all of the frivolous reasons  
14 behind their motion for protective order, but I think Your  
15 Honor's read this. I've been in front of you enough to know  
16 you have a pretty good idea what you're going to do, so I'll  
17 answer any questions you may have.

18           THE COURT: No, I don't have any more questions.  
19           Mr. Pisanelli, any more time you want to use on  
20 this?

21           MR. PISANELLI: Just to correct Mr. Ferrario, Your  
22 Honor. He has not -- his client has not survived the motion  
23 to dismiss. It actually lost the motion to dismiss.

24           THE COURT: They've survived motions to dismiss on  
25 certain claims.

1 MR. PISANELLI: No, not against us, Your Honor. She  
2 has against Mr. Wynn. But the company and Ms. Sinatra were  
3 dismissed from her frivolous claims. They filed a sixth  
4 amended complaint, which you gave them leave to file, and a  
5 motion to dismiss is pending. So he has survived nothing in  
6 that regard.

7 And the final point I'll make is the only --

8 THE COURT: They claim they filed it Friday  
9 afternoon. I haven't seen it, but it's mentioned in their  
10 opposition.

11 MR. FERRARIO: Oh. Okay.

12 MR. PISANELLI: So the only thing he tells you, Your  
13 Honor, with these facially irrelevant topics is that's  
14 retaliation, but ignores the fact that if he's going to  
15 distance himself from the fact that these are truly derivative  
16 and say, oh, no, they're retaliation, her retaliation claim  
17 doesn't require any proof of whether someone had a Rolex watch  
18 on when they got in a Ferrari to go drive down to see Mr. Wynn  
19 and help settle a lawsuit. None of that matters.

20 What matters, if they're really going to try and  
21 prove it, is to prove she was retaliated against, not prove  
22 the underlying frivolous allegations. We know what this is  
23 about. It's about abuse, it's always been about abuse, and  
24 it's still about abuse.

25 THE COURT: Okay. The motion for protective order

1 is granted in part. With respect to the topics of who bought  
2 a Rolex watch in the stores at the Wynn and who traded in a  
3 Ferrari or bought a Ferrari dealership at the Wynn, those it  
4 is granted.

5 As to all other issues it's denied. The deposition  
6 will be limited to two days of seven hours each.

7 Can I go to the motion to compel now. Not the Ernst  
8 & Young one, but the other one.

9 MR. FERRARIO: Sure. I think in light of what you  
10 just said I pretty much know where this one's going.

11 THE COURT: It's amazing how that works, huh?

12 MR. FERRARIO: Okay. Well, then I'm going to shut  
13 up and sit down.

14 THE COURT: Thank you.

15 Mr. Campbell.

16 MR. CAMPBELL: Your Honor, can I have just a moment?  
17 I want to grab the easel.

18 THE COURT: Absolutely.

19 MR. CAMPBELL: Your Honor, this is Garrett Logan.  
20 Mr. Logan is one of summer law clerks.

21 THE COURT: Nice to meet you Mr. Logan. Good luck  
22 with the boards. Those used to be called crutches when I was  
23 in practice.

24 MR. FERRARIO: Your Honor, while we're doing that I  
25 want to introduce Scott Stein from Sidley.

1 THE COURT: Hi.

2 MR. FERRARIO: He'll be working with us on this

3 case.

4 MR. STEIN: Good morning, Your Honor.

5 MR. FERRARIO: And he's been pro hac-ed in.

6 THE COURT: Mr. Campbell, you and Mr. Peek are the

7 only ones who use foam boards anymore.

8 MR. CAMPBELL: Well, Your Honor, tried and true.

9 THE COURT: I know.

10 MR. CAMPBELL: I'm an old dog.

11 THE COURT: I don't know if I could get past them if

12 I was in practice anymore, so --

13 MR. CAMPBELL: Your Honor, I'm not sure how much

14 time I have, but I'll try to get through this quickly.

15 THE COURT: Seven minutes or less is what I gave

16 your team on this motion.

17 MR. CAMPBELL: All right. Your Honor, we're going

18 to rely upon our briefs with respect to the failure of

19 opposing counsel to abide by 2.34. I know he may be new to

20 the case and is from another jurisdiction, but that does not

21 alleviate him from complying with the rule. And that is

22 particularly somewhat offensive in our regard with respect to

23 some of the things he said about Mr. Williams, who I take

24 personal umbrage at. Irrespective of that, I'm going to get

25 into the meat of it.



1           Your Honor, there's a lot that I can say with  
2 respect to what they're trying to do here, but I'd like to  
3 just focus, Your Honor, just on their causes of action, if we  
4 could. So essentially they have several causes of action that  
5 sound in what is essentially a breach of contract suit. They  
6 basically claim, number one, you know, is there an issue with  
7 respect to the viability of the contract itself, the  
8 shareholders agreement, and, number two, was it breached. A  
9 breach of contract does not require or entail any sort of  
10 exploration into whether or not there has been a bad motive.  
11 Motive is completely irrelevant in a breach of contract claim  
12 to the same effect as their fiduciary duty claim. A fiduciary  
13 duty claim does not involve proving or even going into the  
14 motive of the fiduciary. Many fiduciary duties are pure of  
15 heart --

16           THE COURT: It's not required, but it's frequently  
17 part of it.

18           MR. CAMPBELL: It's not required at all, Your Honor.  
19 It's required at all.

20           THE COURT: I understand, Mr. Campbell.

21           MR. CAMPBELL: So what they have tried to do is  
22 they've tried to shoehorn all of this into a notion that  
23 there's a retaliation charge here at play. Judge, do you see  
24 a cause of action for retaliation anywhere in these pleadings?  
25 No. So what they've tried to do is come in and shoehorn this

1 into, well, it's all part and parcel of this claim that we  
2 have, Your Honor, with respect to the implied covenant of good  
3 faith and fair dealing. And that's absolutely nonsense.

4 But let's give it to them, Your Honor. Let's give  
5 it to them that they have this retaliation claim. What  
6 required in a retaliation claim? Here it is, Your Honor.  
7 We've cited this in our brief, okay. It's the Weingand case.  
8 "In determining whether plaintiff can establish a claim for  
9 retaliation or wrongful termination --" she's saying that she  
10 didn't get put on the board -- "the courts apply a formula set  
11 for the McDonnell Douglas Corporation versus Green," the  
12 famous United States Supreme Court case. "But in order to  
13 establish a prima facie case supporting a retaliation claim a  
14 plaintiff must show, one, that he engaged in protected  
15 activity; two, the employer subjected him to an adverse  
16 employment action; and, three, a causal link between the  
17 protected activity and the employer's action." But that's it.  
18 It doesn't require any motive, anything more than that to be  
19 proved.

20 Now, the State of Nevada has dealt with that precise  
21 issue. Justice Shearing, writing for the majority in a case  
22 that has been cited time and time again in not only this  
23 jurisdiction but in other jurisdictions, stated as follows.  
24 "The relevant inquiry is not whether any particular law or  
25 regulation has been violated, but instead whether some

1 important public policy interest embodying the law has been  
2 furthered by the whistleblowing activity." And she declares  
3 herself to be a whistleblower. "Instructions Number 25 and  
4 Number 26 were given in error insofar as they require proof  
5 that the defendants actually participated in illegal conduct.  
6 Allen is required to show only that he reasonably suspected in  
7 good faith that Valley participated in illegal conduct, not  
8 that they actually did or that he sought proof of that."

9           If you take those two, Your Honor, cases, this is  
10 what your pattern jury instruction would look like in this  
11 case. The jury instruction would read as follows. "Here the  
12 plaintiff claims she was wrongfully terminated when the  
13 defendant retaliated against her after she complained of  
14 potentially unlawful employment practices. In order to  
15 establish a retaliation claim a plaintiff must show, one, that  
16 she engaged in a protected activity; two, the defendant  
17 subjected her to an adverse employment action; and, three, a  
18 causal link between the protected activity and the defendant's  
19 action. In this regard the relevant inquiry is not whether  
20 any particular law or regulation was violated, but instead  
21 whether some important public policy interest embodied in the  
22 law has been furthered by the whistleblowing activity. Thus,  
23 the plaintiff is not required to prove that the defendant  
24 actually participated in illegal conduct. Rather, she was  
25 required to show only that she reasonably suspected in good

1 faith that the defendant participated in the conduct." No  
2 actual proof of any wrongdoing of any kind, of any sort is  
3 required at all. Therefore, you don't even get into that  
4 evidence. Otherwise what you have --

5           You can take it down.

6           Otherwise what you have is you have protracted  
7 discovery on completely satellite issues. You have many  
8 trials, you have motion practice that goes on endlessly over  
9 and over and over again, Your Honor. What this really is is  
10 not seeking to buttress any cause of action, but rather just  
11 infuse and inject more waste, more refuse into this entire  
12 case and pollute it further with these side issues that have  
13 nothing to do with any of this.

14           And, Your Honor, I remind the Court you've got three  
15 months to go in discovery in this. There is no way that this  
16 is going to ever get done in any three months when we're  
17 dealing with all of these tangential satellite issues that  
18 have no place in this case. And moreover, Your Honor, you'll  
19 never get through a trial when you're dealing with all of  
20 these issues that have nothing to do with the case and issues  
21 as to whether or not something happened or did not happen.  
22 The only question is this. The question is did she make a  
23 claim and was she retaliated because she made a claim, not the  
24 substance or the particulars of that claim.

25           THE COURT: Thank you.

1           Mr. Ferrario, anything --

2           Mr. Bice, did you want to add something?

3           MR. BICE: Two points, Your Honor.

4           THE COURT: Because I think all your team's time got  
5 used up, but you can have two minutes or less.

6           MR. BICE: Your Honor, two points. One, I need to  
7 emphasize to the Court these are derivative issues. And being  
8 derivative issues is a significant fact for the company. Ms.  
9 Wynn was rejected by the shareholders to serve as a  
10 representative, and she could never satisfy the requirements  
11 of Rule 23 to be a derivative plaintiff, because she doesn't  
12 have the company's best interests at heart, she has her  
13 personal interests at heart.

14           The reason that the law -- the difference between  
15 derivative and direct claims is significant, Your Honor, is  
16 because the company gets to decide whether or not it has been  
17 agreed and whether or not it wants to pursue the matter. Ms.  
18 Wynn can't simply come into court and end-run that and say,  
19 well, I'm a direct plaintiff but now I want to be doing  
20 discovery on what amounts to derivative claims, number one.

21           Number two, Your Honor, there seems to be lost on  
22 Ms. Wynn is that she has a stay at the Supreme Court because  
23 this Court has already rejected her whistleblower status.  
24 This Court has already ruled she is not a whistleblower. She  
25 does not get to hide behind the federal statutes for the

1 protection of whistleblowers. There is a stay at the Supreme  
2 Court on that issue, and now Ms. Wynn says, well, I just want  
3 to disregard the Court's ruling and I still want to call her a  
4 whistleblower and then hide behind the stay on discovery  
5 directed at Ms. Wynn, but then come into the Court and say,  
6 please disregard your prior ruling, that says that she isn't a  
7 whistleblower because I want to argue about retaliation for  
8 whistleblowing.

9           Your Honor, the standard has to be the same. If we  
10 are stayed on that issue with the Supreme Court, Ms. Wynn  
11 can't say, well, the Court's ruling saying that she's not a  
12 whistleblower doesn't bind her. It does bind her. She has a  
13 challenge of it at the Supreme Court.

14           THE COURT: Mr. Ferrario, did you want to say  
15 anything else? Your team is rapidly running out of town.

16           MR. FERRARIO: No. Your Honor, I'll answer any  
17 questions. It's the same --

18           THE COURT: So the motion's granted with the  
19 exception of Requests for Production Numbers 79 and 80, which  
20 deal with Rolexes and Ferraris.

21           MR. FERRARIO: Got it.

22           THE COURT: All right. And please don't use the  
23 general objection that says, unless the Court orders me to.  
24 That's an inappropriate objection. You may certainly claim  
25 that the material is beyond the scope or won't lead to the

1 discovery of admissible evidence, but drawing me into your  
2 general objection is inappropriate.

3 So can I go to the accounting stuff.

4 MR. FERRARIO: Your Honor, on the privilege issues,  
5 as well, they had these generic objections. Your Honor  
6 requires a privilege log; correct?

7 THE COURT: I do require a privilege log.

8 MR. FERRARIO: Thank you.

9 THE COURT: Which is why I'm going next to the  
10 accounting stuff, which has a very nice privilege log with  
11 checkboxes, and we're discuss whether independent third  
12 parties for purposes of public filings then are a protected  
13 relationship. Does that sort of focus on what I want to talk  
14 about?

15 MR. KRAKOFF: I'm sorry, Your Honor.

16 THE COURT: Whether independent third parties for  
17 purposes of public filings are a protected relationship.

18 MR. KRAKOFF: They are not. That's our motion, Your  
19 Honor. You've read the papers, you know where we're coming  
20 from. We're seeking the accountants' documents because  
21 they're critical, because Wynn hired the accountants to  
22 evaluate the fair value of the redemption note, and the law is  
23 clear. They claim, Your Honor, that there is an accountant-  
24 client exception that applies. But it doesn't. Why? Because  
25 in the first instance they waived whatever privilege they may

1 have had; second, because they used some of the communications  
2 and they put them into the public domain; second, there are  
3 two exceptions, Your Honor, to the accountant-client  
4 privilege. The first is the public financial statement  
5 disclosure. And that's -- here they claim that they can  
6 withhold the documents because of the exceptions don't apply.  
7 But they do. The first exception says that for public  
8 reporting the accountant's work on public financial statements  
9 is not privileged, the privilege doesn't apply. And the  
10 reason for that is very simple; because the investor public  
11 relies upon the integrity and the accuracy of the financial  
12 statements. Here there's no dispute, Your Honor, that Wynn  
13 Resorts used the PWC and the E&Y analyses. They used them to  
14 support their claim that the actual fair value of the  
15 redemption note is \$1.9 billion.

16           We take a totally different approach, Your Honor.  
17 We contend, Your Honor, the actual fair value is \$1.3 billion.  
18 But Wynn claims you can't even get at that, you don't get --  
19 we don't have to produce any of the documents even though we  
20 relied upon them in our financial statements, we relied upon  
21 the accountants when we wrote letters to the SEC, we put this  
22 issue, the accountants' evaluations and analyses into this  
23 case, at issue into this case when we used them in our  
24 responses to the interrogatories. And they used them, Your  
25 Honor, by saying, we intend to rely upon the accountants'



1 evaluations that \$1.9 billion is the actual fair value of the  
2 redemption note. It's not. It's 1.3 billion, because they  
3 didn't factor in that there's a below-interest rate, they  
4 didn't factor in that there's a 10-year payoff, they didn't  
5 factor in that there is -- that the note stands behind any and  
6 all debt of Wynn Resorts.

7           So, Your Honor, when the investor public relies upon  
8 the financial statements, as they do, they're relying upon the  
9 integrity and the accuracy of the accountants. That's what  
10 they did here, Your Honor. In each 10-K that they filed since  
11 2012 they've relied upon the accountants to say \$1.9 billion  
12 is correct. That's their position. They relied upon them in  
13 letters to the SEC. That's their position. They've revealed  
14 some of the communications. They can't then say, we don't  
15 have to produce the rest of the communications. So, Your  
16 Honor, that is our response to that issue. I'm happy to  
17 address any other issues.

18           There's an exception to -- as you know from our  
19 papers, to the account-client privilege that applies here on  
20 breach of a fiduciary duty claim. That also applies. So  
21 again, Your Honor, they've waived neither both exceptions  
22 compel production of these documents. So we accordingly ask  
23 the Court to order production of the accountants' documents.

24           THE COURT: Thank you.

25           MR. KRAKOFF: Thank you.

1 THE COURT: Mr. Bice.

2 MR. BICE: Yes, Your Honor. Your Honor, this  
3 motion, I would submit and Mr. Krakoff's arguments prove it,  
4 rests upon a rewrite of what the articles of incorporation  
5 provide. In order to try and make this fit into 49.205(4)  
6 about the communications concerning the examination audit of a  
7 financial statement notice the sleight of hand. We went from  
8 what the articles talk about is the fair value of the stock  
9 that is redeemed to the fair value of the note. That's, I  
10 would submit, Your Honor, the trick here, to try and make this  
11 fit into the exception under the statute.

12 That's actually not what the articles say. The  
13 articles say the fair value is the price of the stock on the  
14 date redeemed. The articles then go on to talk about if that  
15 is paid out in the form of a note what the terms of that note  
16 will be. Mr. Krakoff, I think quite tellingly, doesn't want  
17 to talk about what the articles actually say. In fact, all  
18 these requests are rewritten to say fair value of the note,  
19 fair value of the note is not the issue and it's not relevant  
20 to an issue. That's the problem here. They use that word  
21 "relevant to an issue" on the financial statements. They're  
22 not a member of the investing public, they aren't relying upon  
23 these statements. These statements have nothing to do with  
24 them. What they're trying to say is, well, because we have  
25 recast the issue as being the value of the note as opposed to

1 the value of the shares, which is what the articles talk  
2 about, we can somehow invade their privilege by simply  
3 recharacterizing what the articles of incorporation say. Your  
4 Honor, this is an exception under the statute. Exceptions, of  
5 course, they have the burden of demonstrating that they  
6 qualify under the exception. They don't qualify under the  
7 exception, because by their own little word play they're  
8 admitting they have to change the terms of the articles of  
9 incorporation to make their theory fit into the exception that  
10 they are trying to claim. That is Telling Point Number 1.

11 Telling Point Number 2, Your Honor, then they fall  
12 back to, well, we have a breach of fiduciary duty claim.  
13 Actually, the statute creates an exception for shareholders  
14 that have a breach of fiduciary duty claim. Mr. Okada's  
15 entities nor himself nor any of his entities were shareholders  
16 at the time of this note characterization in the financials,  
17 because, as the Court well knows, the note exists because he  
18 was no longer a shareholder. You can't simply say, well, I  
19 was at one time a shareholder and since I'm suing for breach  
20 of fiduciary duty, everything that the company has ever done  
21 in the accounting context is now within the purview of my  
22 discovery because I was at one point in time a shareholder.  
23 That's not what the statute is about. The statute creates an  
24 exception for shareholders that have a direct claim or a  
25 derivative claim. The definition being a shareholder, which,

1 again, he doesn't qualify under.

2           And then lastly, they say, well, you've put it at  
3 issue. This is the exact same argument. With all due  
4 respect, they say it's not the same argument that they have  
5 made on the Brownstein and the Freeh documents. It is the  
6 exact same argument that is currently pending up in front of  
7 the Supreme Court. They're trying to claim you can't -- you  
8 can't reference the fact that you took action based upon input  
9 from professionals without waiving the privilege. And that is  
10 the issue that is in front of the Supreme Court right now on  
11 both Freeh and on Brownstein. And that's why we have made the  
12 additional point that if this Court is going to entertain this  
13 argument that somehow because this is a public filing that,  
14 although it has nothing to do with their claim, that somehow  
15 they can get around the privilege. Then it would have to be  
16 -- it should be stayed pending what the court does on the  
17 Brownstein and the Freeh documents, because it is the same  
18 argument.

19           THE COURT: Thank you.

20           MR. BICE: Thank you.

21           THE COURT: Anything else?

22           MR. KRAKOFF: Can I just make a couple comments,  
23 Your Honor?

24           THE COURT: Quickly.

25           MR. KRAKOFF: The sleight of hand is clearly by Wynn

1 Resorts. When the Wynn board determined, Your Honor --

2 THE COURT: Keep going.

3 MR. KRAKOFF: When the Wynn board determined that  
4 the fair value of Aruze's shares was \$1.9 billion, under the  
5 articles of incorporation it was obligated contractually to  
6 pay Aruze that amount, \$1.9 billion. And it didn't. They  
7 created a note that's not worth \$1.9 billion. That's why --  
8 and they got their accountants to support for this litigation  
9 the \$1.9 billion valuation. That's why we are entitled to go  
10 behind the curtain here, Your Honor, and see how it was that  
11 they really got to \$1.9 billion.

12 Finally, Your Honor, this last-gasp request to delay  
13 the issue of protective or and not issue a ruling on this  
14 motion until the Supreme Court rules on the Freeh and  
15 Brownstein documents, that is -- there's absolutely no  
16 connection between those petitions and what we have here.  
17 What we've asked for, Your Honor, is simply -- this is just a  
18 delaying tactic. We just were simply asking and the issue is  
19 whether or not the exceptions to the accountant-client  
20 privilege compel production. And they do. Thank you, Your  
21 Honor.

22 THE COURT: Thank you.

23 The motion to compel is granted in part. To the  
24 extent the value of the note for public reporting issues has  
25 been reviewed and is the subject of the documents that are

1 listed on the privilege log those will be produced.

2 I'm trying to say it that way because if there is  
3 other work that was done by either of the entities, I'm not  
4 pulling that into the public disclosure issue.

5 All right. Now --

6 MR. KRAKOFF: Excuse me, Your Honor. You mean other  
7 unrelated work? Just to be clear.

8 THE COURT: Yes. Other unrelated work.

9 MR. KRAKOFF: Thank you, Your Honor.

10 THE COURT: So I've got apparently three motions  
11 delivered on Friday you wanted me to hear this morning and one  
12 that was delivered this morning you want me to hear this  
13 morning.

14 MR. PISANELLI: Your Honor, before we move on we're  
15 trying to digest what it is that you're requiring by way of  
16 this last motion of whether a privilege is now at risk and  
17 therefore a stay is needed.

18 THE COURT: Give me an order and we have a written  
19 order, then it's really appropriate for you to ask me for a  
20 stay. I don't like to see stays in status reports. I know  
21 that we sometimes do stays in open court, but at this point  
22 you don't have a written order that would be enforceable yet.  
23 So can you get an order. Because sometimes it takes you guys  
24 six weeks to get an order together.

25 MR. PISANELLI: We'll get you an order in due course

1 with a request for a stay right on its tail.

2 THE COURT: And you can send them together.

3 So on my calendar currently I have a motion to  
4 redact the Wynn parties' motion to compel special master  
5 review of the Okada parties' set, disclosure of search terms,  
6 and improvement of recall, and seal Exhibits 18 and 20  
7 thereto. Did anyone have an objection to that motion?

8 MR. CASSITY: No, Your Honor.

9 THE COURT: That one will be granted.

10 And then I have three motions to redact that are on  
11 the other calendar for today. Is there any objection to  
12 those?

13 They're all granted.

14 And then I have the ones you gave me Friday that you  
15 want heard today. I'll read them. If anybody objects, I will  
16 put them on a real calendar. Steven A. Wynn's motion to  
17 redact his opposition to Elaine P. Wynn's motion to compel  
18 Wynn Resorts Limited, Steven A. Wynn, Kimmarré Sinatra, and  
19 Mark Shore to respond to written discovery requests and  
20 countermotion for protective order and order shortening time.  
21 Any objection to me granting that motion that we heard this  
22 morning?

23 That motion is granted.

24 I also have a motion to redact Exhibits A and C to  
25 defendants' motion for issuance of an amended letter of

1 request for international judicial assistant to Hong Kong  
2 under the Hague Convention. This has got to be you, Mr.  
3 Cassity.

4 MR. CASSITY: Yes, Your Honor.

5 THE COURT: Okay. Anybody object to a redaction of  
6 Exhibits A and C to the letters rogatory?

7 MS. SPINELLI: Your Honor, I didn't get a chance to  
8 review it.

9 THE COURT: Then I'll set it for hearing. You want  
10 me to set it on my chambers calendar to this Friday?

11 MS. SPINELLI: [Inaudible].

12 THE COURT: Okay. That would be the 9th?

13 THE CLERK: Yeah, June 9th.

14 THE COURT: Mr. Cassity.

15 And then I have another one from Mr. Cassity, which  
16 is a motion to redact defendants' reply in support of  
17 defendants' motion to compel Wynn Resorts Limited to produce  
18 documents subpoenaed from Ernst & Young and Price Waterhouse.  
19 Anybody object to that motion to redact being heard today?

20 MS. SPINELLI: No.

21 THE COURT: That motion is advanced to today and is  
22 granted. I'm going to give it to the clerk so she has the  
23 title and can make sure it gets handled appropriately.

24 Were there any others? Oh. Here's one more. This  
25 is the one that was delivered this morning. Motion to redact



1 Wynn Resorts Limited, Kimmarré Sinatra, and Mark Shore's  
2 joinder to Steven A. Wynn's opposition to Elaine Wynn's motion  
3 to compel and countermotion for protective order and  
4 opposition on order shortening time. Any objection to the  
5 motion to redact that?

6 MR. FERRARIO: I just want to lodge a general  
7 objection to this entire process. It's insanity.

8 THE COURT: Imagine my life.

9 MR. FERRARIO: No, I can't even imagine your life.  
10 I can't imagine what your calendar looks like. And we're  
11 going to bring that to Your Honor's attention here.

12 THE COURT: I'm going to grant it.

13 Okay. Anything else on Wynn today?

14 MR. FERRARIO: Your Honor, I don't know what the  
15 protocol's been, but we have been looking -- this speaks to  
16 something Mr. Campbell said about length of time to do  
17 discovery. We've been looking at the schedule. There's been  
18 a lot of discussion regarding deposition dates and what have  
19 you. Would you prefer if we talk about scheduling to address  
20 it in a status conference, do you want us to file a motion for  
21 like a kind of a pretrial conference? I don't know what the  
22 practice in this case is.

23 THE COURT: Here's what the practice is supposed to  
24 be.

25 MR. FERRARIO: Okay.

1 THE COURT: If you have stuff that we can use  
2 mechanics on and I can use a little wrench and move things a  
3 little bit and not disrupt things too terribly much --

4 MR. FERRARIO: I'm very familiar with that process.

5 THE COURT: -- those are really good for status  
6 conferences.

7 MR. FERRARIO: Okay.

8 THE COURT: Yes. In fact, we're going to talk about  
9 that in Cotter in a minute; right?

10 MR. FERRARIO: I'm going to be leaving, but --

11 THE COURT: No, you're not. You're going to stay.

12 MR. FERRARIO: Okay. Then I'm not leaving.

13 THE COURT: So those kind of things that are fairly  
14 simple we can do in a status conference and can be part of  
15 your status report.

16 MR. FERRARIO: Okay.

17 THE COURT: But when they get to be more complex and  
18 talk about moving dates and things significantly, it is more  
19 appropriate for those to be subject of motion practice,  
20 because sometimes there are people not in the room who want to  
21 object to everything.

22 MR. FERRARIO: Okay.

23 THE COURT: See, Mr. Peek's not here.

24 MR. FERRARIO: We'll make sure he's here. But we've  
25 been looking at this. I think there's some tweaks to the

1 schedule that could be accommodated.

2 THE COURT: Gosh, it sounds like Cotter --

3 MR. FERRARIO: Okay.

4 THE COURT: -- where you're going to take the

5 opposite position of the one you've been taking this morning.

6 MR. FERRARIO: Maybe not.

7 THE COURT: Okay.

8 MR. PISANELLI: So by tweaks to the schedule does

9 that mean that we should expect a motion or this is going to

10 be sprung on us on the fly?

11 THE COURT: So when it's sprung on you on the fly --

12 MR. FERRARIO: Actually, I'll call you and tell you

13 what I'm going to propose.

14 MR. PISANELLI: That works.

15 MR. URGAS: Your Honor, is the status next Monday,

16 the 12th?

17 MS. SPINELLI: Yes, it is.

18 MR. URGAS: It is?

19 THE COURT: I show we have a status conference on

20 June 12th.

21 MR. URGAS: Okay. Thank you.

22 THE COURT: Along with lots of motions. 'Bye.

23 THE PROCEEDINGS CONCLUDED AT 8:50 A.M.

24 \* \* \* \* \*

25

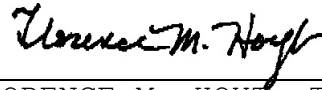
**CERTIFICATION**

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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6/5/17

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
corporation,

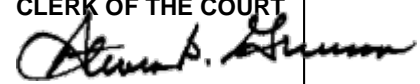
Plaintiff,  
v.

KAZUO OKADA, an individual, ARUZE USA,  
INC., a Nevada corporation, and UNIVERSAL  
ENTERTAINMENT CORP., a Japanese  
corporation,

Defendants.

AND ALL RELATED CLAIMS.

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6/22/2017 4:44 PM  
Steven D. Grierson  
CLERK OF THE COURT



CASE NO.: A-12-656710-B  
DEPT. NO.: XI

**NOTICE OF ENTRY OF ORDER  
GRANTING IN PART DEFENDANTS'  
MOTION TO COMPEL WYNN  
RESORTS, LIMITED TO PRODUCE  
DOCUMENTS SUBPOENAED FROM  
ERNST & YOUNG LLP AND  
PRICEWATERHOUSECOOPERS LLP**

Electronic Filing Case

Hearing Date:  
Hearing Time:

1 PLEASE TAKE NOTICE that an Order Granting in Part Defendants' Motion to Compel  
2 Wynn Resorts, Limited to Produce Documents Subpoenaed from Ernst & Young LLP and  
3 Pricewaterhousecoopers LLP was entered on the 14th day of June 2017. A copy is attached.

4 DATED this 22nd day of June 2017.

6 By /s/ Bryce K. Kunitomo  
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16 *and Universal Entertainment Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of June 2017, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART DEFENDANTS' MOTION TO COMPEL WYNN RESORTS, LIMITED TO PRODUCE DOCUMENTS SUBPOENAED FROM ERNST & YOUNG LLP AND PRICEWATERHOUSECOOPERS LLP** was served by the following method(s):

☐ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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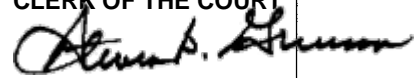
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Defendants/Counterclaimants Aruze USA, Inc.,  
and Universal Entertainment Corp.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
corporation,

Plaintiff,  
v.

KAZUO OKADA, an individual, ARUZE USA,  
INC., a Nevada corporation, and UNIVERSAL  
ENTERTAINMENT CORP., a Japanese  
corporation,

Defendants.

AND ALL RELATED CLAIMS.

CASE NO.: A-12-656710-B  
DEPT. NO.: XI

**ORDER GRANTING IN PART  
DEFENDANTS' MOTION TO COMPEL  
WYNN RESORTS, LIMITED TO  
PRODUCE DOCUMENTS  
SUBPOENAED FROM ERNST &  
YOUNG LLP AND  
PRICEWATERHOUSECOOPERS LLP**

Electronic Filing Case

Hearing Date: June 5, 2017  
Hearing Time: 8:00 a.m.

1 This matter came before the Court on June 5, 2017, concerning the Defendants' Motion  
2 to Compel Wynn Resorts, Limited to Produce Documents Subpoenaed from Ernst & Young  
3 LLP and PricewaterhouseCoopers LLP (the "Motion") (filed May 10, 2017) and Wynn  
4 Resorts, Limited's Opposition and Countermotion for Protective Order ("Countermotion")  
5 (filed May 24, 2017). James J. Pisanelli, Esq., Todd L. Bice, and Debra L. Spinelli, Esq., of  
6 PISANELLI BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts,  
7 Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller,  
8 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson,  
9 and Allan Zeman (collectively the "Wynn Parties"). Donald J. Campbell, Esq. and J. Colby  
10 Williams, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/Cross-  
11 defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., of JOLLEY URG  
12 WOODBURY & LITTLE, Mark E. Ferrario, Esq., of GREENBERG TRAURIG, LLP, and Scott D.  
13 Stein of SIDLEY AUSTIN LLP appeared on behalf of  
14 Counderdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). Robert J.  
15 Cassity, Esq. of HOLLAND & HART LLP and David S. Krakoff, Esq. of BUCKLEY SANDLER  
16 LLP appeared on behalf of Defendant Kazuo Okada ("Okada") and  
17 Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and  
18 Universal Entertainment Corp. ("Universal") (collectively the "Aruze Parties").

19 Having considered the Motion, Wynn Resorts, Limited's Opposition and Countermotion  
20 (filed May 24, 2017), and the Aruze Parties' Reply (filed May 31, 2017), and good cause  
21 appearing,

22 IT IS HEREBY ORDERED that the Motion is GRANTED IN PART as follows:

23 1. Wynn Resorts shall produce all documents on the *Wynn Parties' Privilege Log*  
24 *for Documents Produced by PricewaterhouseCoopers, LLP Pursuant to Subpoena Duces*  
25 *Tecum* and on the *Wynn Parties' Privilege Log for Documents Produced by Ernst & Young,*  
26 *LLP Pursuant to Subpoena Duces Tecum* (collectively, the "Privilege Logs") which relate to the  
27  
28

1 value of the Redemption Price Promissory Note (the "Note") for Wynn Resorts' public  
2 reporting issues.

3 2. The Motion is DENIED to the extent any documents on the Privilege Logs  
4 concern work performed by Ernst & Young or PricewaterhouseCoopers unrelated to Wynn  
5 Resorts' public reporting issues concerning the Note.

6 IT IS FURTHER ORDERED that Wynn Resorts' Countermotion is DENIED.

7 IT IS SO ORDERED.

8 DATED this 14 day of June 2017.

9  
10   
11 THE HONORABLE ELIZABETH GONZALEZ  
12 EIGHTH JUDICIAL DISTRICT COURT  
13 JW

13 Respectfully submitted:

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