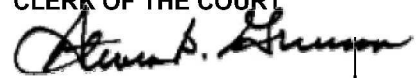


EXHIBIT A

EXHIBIT A



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

MONDAY, SEPTEMBER 25, 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.

1 just for her own edification.

2 THE COURT: Making notes yourself to refresh your
3 memory for purposes of your litigation is not work product.

4 MR. COLE: But she did, as her declaration points
5 out, share the substance of what she learned with her
6 attorneys for the purposes of that litigation. And so we
7 would submit that these were in fact -- and they can be taken
8 without the direction of an attorney, but we would submit that
9 these were done for the purpose of the litigation, the divorce
10 litigation, and her declaration --

11 THE COURT: And to refresh her memory so her memory
12 would remain fresh.

13 MR. COLE: Well, sometimes that's what work product
14 is done, Your Honor, so that you can have some sort of
15 recording of events so that you can use them in the
16 litigation.

17 THE COURT: Okay. So I'm going to advance your
18 motion to redact her opposition to today and I'm going to
19 grant your request to seal Exhibit A and B and redact.

20 But the motion is granted, and Ms. Wynn's notes will
21 be produced.

22 How was that? Was that your easiest argument today?

23 MR. PISANELLI: Timing on that production, Your
24 Honor?

25 MR. FERRARIO: We may run a writ on that.

1 THE COURT: You can run a writ if you want.
2 MR. FERRARIO: We need a stay.
3 THE COURT: Sure. How long do you need?
4 MR. FERRARIO: Thirty days.
5 THE COURT: No.
6 MR. FERRARIO: Fifteen.
7 THE COURT: Ten.
8 MR. FERRARIO: What? You gave them -- you gave them
9 45 days last time.
10 THE COURT: No, I didn't give them 45 days.
11 MR. FERRARIO: You gave them 30 and 15. That's 45.
12 THE COURT: Okay. You can have 15.
13 Okay. So now I'm on the eighth supplemental
14 disclosure, the Whennen and Glassford information. Anything
15 anybody wants to tell me?
16 MR. PISANELLI: Is this the motion for de-
17 designation of confidentiality?
18 THE COURT: Yes.
19 MR. PISANELLI: A few points, Your Honor. We're in
20 opposition, but I assume I go first because they're out of
21 time. Is that your point?
22 So there's a couple of fundamental flaws in this
23 brief, the first of which is that Ms. Wynn continues to
24 mistakenly believe that she's entitled to see records that
25 were available to her when she was affiliated with the

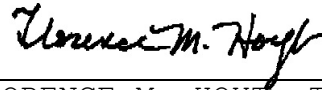
CERTIFICATION

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



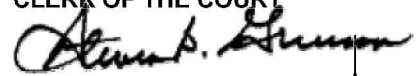
FLORENCE M. HOYT, TRANSCRIBER

9/26/17

DATE

EXHIBIT B

EXHIBIT B



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 EXTEND DISCOVERY,
AND MOTION TO STAY SPECIAL MASTER REVIEW**

TUESDAY, OCTOBER 10, 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.

1 that on the discovery that they gave us on the sanctions --

2 MR. PISANELLI: So he's going to take his time
3 anyway?

4 THE COURT: Mr. Ferrario.

5 MR. PISANELLI: Do I get more time, too?

6 MR. FERRARIO: Your Honor, could I add one --

7 THE COURT: Guys. Just sit down. I'm ready to
8 rule.

9 So the motion is denied. However, I'm precluding
10 the right to seek followup on late-produced documents.

11 So I have two motions to seal that were on for
12 today. Is there any objection to the motion to seal Exhibit A
13 or the motion to redact the joinder?

14 MR. PISANELLI: No, Your Honor.

15 THE COURT: Mr. Polsenberg, why are you standing up?

16 MR. POLSENBERG: Because I have a motion, Your
17 Honor. We're doing a writ petition today regarding Elaine
18 Wynn's notes and assertion of privilege. Our 15-day stay
19 expires tomorrow. I'm asking you to extend that. I know
20 historically in this case you don't do that and as recently as
21 yesterday.

22 THE COURT: Yes.

23 MR. POLSENBERG: I'm asking you to change that,
24 because --

25 THE COURT: Have you filed your writ petition yet?

1 MR. POLSENBERG: I'm doing it today.

2 THE COURT: So I'll give you 10 extra days.

3 MR. POLSENBERG: Thank you, Your Honor.

4 THE COURT: And then at the end of the 10 extra days
5 you have to ask the Supreme Court.

6 MR. POLSENBERG: Excellent. Thank you very much,
7 Your Honor.

8 MS. SPINELLI: Your Honor, related to the different
9 position from yesterday, I don't think that there is an order
10 entered on the Whennen notes, as opposed to Ms. Wynn's notes.
11 I asked Cassandra, and she said that it's in your log. I
12 emailed all counsel and didn't get a response. It might have
13 been signed and given to Ms. Wynn's counsel, but we haven't
14 seen it. I didn't see it on Odyssey. So in order for me to
15 seek that relief at the Supreme Court I need a written order.

16 THE COURT: Was it in the competing orders, or --

17 THE LAW CLERK: It was in our order log as signed
18 and sent out, but [inaudible].

19 THE COURT: Okay. I will check and see if it was a
20 competing order. Sometimes with competing orders I make
21 modifications, as you guys know, and sometimes I sign one of
22 the ones you submitted. I don't remember on that one, but I
23 am up to date on your competing orders and have been for a
24 while. But I'll go check. It may have been mislaid in the
25 box. Sometimes runners from one firm seem to inadvertently

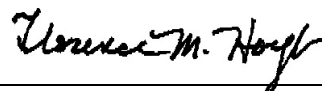
CERTIFICATION

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



FLORENCE M. HOYT, TRANSCRIBER

10/10/17

DATE

In the Supreme Court 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,

and

STEPHEN A. WYNN; WYNN RESORTS,
LIMITED; LINDA CHEN; RUSSELL
GOLDSMITH; RAY R. IRANI; ROBERT J.
MILLER; JOHN A. MORAN; MARC D.
SCHORR; ALVIN V. SHOEMAKER; KIMMARIE
SINATRA; D. BOONE WAYSON; and ALLAN
ZEMAN,

Real Parties in Interest.

Electronically Filed
Oct 12 2017 08:29 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION TO EXTEND DISTRICT COURT'S
STAY PENDING WRIT PETITION**

and

**RULE 27(e) EMERGENCY MOTION FOR
INTERIM EXTENSION OF STAY
*(Action Required by October 24, 2017)***

At a motions hearing on September 25, 2017, the district court granted the Wynn Parties' motion to overrule work product protection and compel production of notes prepared by petitioner Elaine P. Wynn

in the context of her then-pending divorce litigation. The district court recognized that a stay of that order was appropriate and granted Ms. Wynn's oral motion to allow Ms. Wynn to petition this Court for relief, but that stay expires on October 24.

Because of that approaching deadline, petitioner Elaine P. Wynn makes two requests. First, under NRAP 8(a)(2)(A)(ii), petitioner Elaine P. Wynn asks this Court to extend the district court's stay through the course of these writ proceedings. An extension of the stay is appropriate under the NRAP 8(c) factors, particularly as denying the stay would defeat the object of this petition. Second, Ms. Wynn requests under NRAP 27(e) a temporary, interim stay pending consideration of the full stay motion.

BACKGROUND

As set out in the petition, the Wynn Parties moved to overrule work product protection and to compel the immediate production of notes prepared by Ms. Wynn in 2009 in the context of the then-pending litigation over her divorce from Mr. Wynn. The notes concerned conversations with two individuals initiated by Ms. Wynn after she learned of allegations of serious personal misconduct and a multi-million dollar

settlement payment by Mr. Wynn. The district court granted the Wynn Parties' motion and ordered production of the notes, but entered a stay through October 24, 2017 to allow Ms. Wynn to petition this Court for relief.¹ (See Hr'g Tr. 9/25/17, at 27:20–28:12, Exhibit A; Hr'g Tr. 10/10/17, at 24:17–25:5, Exhibit B.) Ms. Wynn filed her petition on October 10.

**MOTION TO EXTEND DISTRICT COURT'S
STAY PENDING WRIT PETITION**

Extending the stay is the only way to preserve appellate review of the issue in the writ petition and to prevent an irreversible disclosure of privileged work product.

This Court has recognized that writ relief may be “necessary to prevent discovery that would cause privileged information to irretrievably lose its confidential nature and thereby render a later appeal ineffective.” *Aspen Fin. Services v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 57, 289 P.3d 201, 204 (2012). Consequently, when a district court overrules a claim of privilege or work-product protection, that order is often stayed pending resolution of a writ petition challenging that

¹ The district court has not yet entered an order on its ruling compelling production of Ms. Wynn's notes.

order. *Mitchell v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 21, 359 P.3d 1096, 1099 n.2 (2015), *reh'g denied* (July 23, 2015); *Coyote Springs Inv., LLC v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 18, 347 P.3d 267, 270 (2015); *L.V. Dev. Assocs. v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 37, 325 P.3d 1259, 1262 (2014); *Las Vegas Sands v. Eighth Judicial Dist. Court*, 130 Nev. Adv., Op. 13, 319 P.3d 618, 620 (2014). And the district court itself recognized the need for a stay in granting petitioner a stay until October 24, 2017 to file the petition. As all of the NRAP 8(c) factors continue to favor a stay, the extension of the district court's stay through this Court's resolution of the writ petition is warranted.

1. *Denying a Stay Would Defeat the Object of the Petition to Determine the Propriety of Disclosure*

The first factor in considering a stay is whether denying the stay would defeat the object of the appeal or writ petition. This factor weighs heavily in favor of a stay here, where the entire point of the petition is to *stop* the disclosure of protected work product, which only a stay will do. If a stay is denied and as a consequence the protected communications are disclosed, the petition asserting their protected status would become purely academic. No ruling in petitioner's favor

would undo the disclosure. This factor, therefore, strongly supports a stay. *See State v. Robles-Nieves*, 129 Nev. Adv. Op. 55, 306 P.3d 399, 406 (2013) (where “denying a stay would effectively eliminate the right to appeal,” “the first stay factor weighs heavily in favor of a stay,” and “the final factor will counterbalance the first factor only when the appeal appears to be frivolous or the stay sought purely for dilatory purposes”).

2. *Denying a Stay would Force Disclosure of Protected Work Product, Causing Irreparable Harm*

Similarly, denying a stay of the disclosure order would cause petitioner serious and irreparable harm. *See* NRAP 8(c)(2). The Nevada Supreme Court has recognized on several occasions that an order requiring disclosure of privileged information “is likely to cause irreparable harm” if review is not available until after final judgment. *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012). In such cases, a writ of prohibition is the appropriate avenue for relief because if “the discovery permitted by the district court’s order is inappropriate, a later appeal would not effectively remedy any improper disclosure of information.” *Id.*; *see also Wardleigh v. Second Judicial Dist. Court In & For Cty. of Washoe*, 111 Nev. 345, 350–51, 891 P.2d

1180, 1183–84 (1995) (“If improper discovery were allowed, the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal.”); NRS 34.330 (extraordinary writ is appropriate where “there is not a plain, speedy and adequate remedy in the ordinary course of law”).

Irretrievable loss of the confidentiality and privileged quality of the notes constitutes serious harm warranting a stay. *Cf. Mikhon Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) (granting a stay in the context of a motion to compel arbitration where the only harms were increased litigation costs and delay).

3. *A Stay of the Disclosure Order will Not Harm the Real Party in Interest*

By contrast, a stay of the disclosure order will cause no harm to real parties in interest. *See* NRAP 8(c)(3). If the Wynn Parties are truly entitled to Ms. Wynn’s notes, they will obtain the notes upon denial of the writ. In addition, Ms. Wynn’s notes concern two individuals she spoke to in connection with her divorce litigation, Ex. A, E. Wynn Decl. ¶4, and the Wynn Parties may seek any relevant, non-privileged information directly from them during the pendency of the stay. Indeed,

both individuals have already been deposed in this litigation.

4. *The Petition has Substantial Merit*

In these circumstances, where a writ petition is the only way to prevent disclosure, only a showing that the petition is frivolous or sought solely for dilatory purposes will defeat a stay. *See Robles-Nieves*, 129 Nev. Adv. Op. 55, 306 P.3d at 406. It is enough that the appeal presents a “substantial case on the merits when a serious legal question is involved.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)); accord *Simon Prop. Grp., Inc. v. Taubman Ctrs., Inc.*, 262 F. Supp. 2d 794, 798 (E.D. Mich. 2003). Indeed, this Court has granted a stay even where “the merits [were] unclear.” *Mikohn Gaming*, 120 Nev. at 254, 89 P.3d at 40.

Here, petitioner has shown that the district court’s ruling is likely to be reversed. Petitioner has demonstrated that under this Court’s totality of the circumstances test, her notes were prepared because of her then-pending divorce litigation and that the district court’s reasons for denying work product protection are contrary to the text of Rule 26(b)(3) and this Court’s work product precedent. At the very least, this case

presents a “serious legal question” warranting a stay. *Fritz Hansen A/S*, 116 Nev. at 659, 6 P.3d at 987. The balance of the NRAP 8 factors warrant extending the protections of the district court’s stay while this Court resolves this petition.

**RULE 27(e) EMERGENCY MOTION FOR
INTERIM EXTENSION OF STAY**

Because the protections from disclosing Ms. Wynn’s work-product protected notes expire in less than 14 days, on October 24, 2017, an interim extension of the lower court’s stay order is needed to avoid serious and imminent harm. *See* NRAP 27(e)(4).

Ms. Wynn and her counsel have worked diligently to prepare the petition and this motion for stay in within the deadlines set by the district court. Ms. Wynn recognizes, however, that this Court may want additional time to consider the request to extend the district court’s stay through the resolution of the writ petition. If so, this Court should at least stay the disclosure order while the Court considers that stay request. Absent this emergency relief, petitioner would have to disclose the notes, making both the stay and the underlying petition moot.

CONCLUSION

To avoid an irreversible disclosure and to allow this Court to eval-

uate the extra-textual limitations on work product protection imposed by the district court, this Court should grant the extension.

DATED this 11th day of October, 2017.

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NRAP 27(e) CERTIFICATE

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Marc D. Schorr; Alvin v. Shoemaker;
Kimmarrie Sinatra; D. Boone Wayson;
and Allan Zeman*

B. Nature of emergency

On September 25, 2017, the district court orally granted the Wynn Parties' motion to overrule work product protections and compel disclosure of notes prepared by petitioner in the context of her divorce litigation. The district court, however, stayed its ruling to allow petitioner to seek relief from this Court, but granted the stay only through October 24, 2017.

Without an immediate extension of the stay from this Court, petitioner will be required, under threat of contempt, to disclose the protected notes without appellate review of that order.

C. Notice and service

Today I personally called Todd Bice with Pisanelli Bice and Colby Williams with Campbell & Williams, notifying them of this motion for stay. I e-mailed copies of the motion for stay, and this certificate to each of the listed attorneys for real parties in interest.

DATED this 11th day of October, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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Attorneys for Elaine P. Wynn

CERTIFICATE OF SERVICE

I certify that on October 11, 2017, I served the foregoing “MOTION TO EXTEND DISTRICT COURT’S STAY PENDING WRIT PETITION and RULE 27(E) EMERGENCY MOTION FOR INTERIM EXTENSION OF STAY” by United States mail, postage prepaid, to the following:

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