

In the Supreme Court of Nevada

WYNN RESORTS, LIMITED; and
STEPHEN A. WYNN,

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,

Respondents,

and

KAZUO OKADA; UNIVERSAL
ENTERTAINMENT CORP.;
and ARUZE USA, INC,

Real Parties in
Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A656710

**ELAINE P. WYNN'S EMERGENCY MOTION
TO INTERVENE AS REAL PARTY IN INTEREST**

(Consented to by Real Parties in Interest)

(Action Requested by December 22, 2017)

Elaine P. Wynn, who is a counterdefendant, counterclaimant, and crossclaimant in the underlying litigation, moves to intervene as a real party in interest. Because this Court ordered real parties in interest to answer by Friday, December 22, 2017, Ms. Wynn asks that this Court

grant her motion by that date so that she may file her answer at the same time.¹ NRAP 27(e).

Real parties in interest consent to this request to intervene.

A. Parties with an Interest should be Allowed to Intervene

Parties with a “sufficient interest in the action to entitle [them] to be heard on the merits” should be designated as real parties in interest. *See* 6A CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 1542 (2d ed. Supp. 1998), *quoted in Univ. Creek Assocs., II, Ltd. v. Boston Am. Fin. Grp., Inc.*, 100 F. Supp. 2d 1337, 1339 (S.D. Fla. 1998). A party has standing to be heard on the merits when “either a personal right or right of property is adversely and substantially affected.” *Hughes’ Estate v. First Nat’l Bank of Nev.*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).

B. Ms. Wynn has a Compelling Interest

1. *The Petition Affects Ms. Wynn’s Claims in the Underlying Litigation*

Here, Ms. Wynn has an interest in the correct application of the business judgment rule as set forth in *Wynn Resorts, Ltd. v. Eighth Ju-*

¹ Ms. Wynn also requests that the clerk modify the caption accordingly.

dicial District Court, 133 Nev., Adv. Op. 52, 399 P.3d 334 (2017). Wynn Resorts argues that this Court’s opinion immunizes the company for decisions of the board of directors so long as that decision can be cast as an exercise of “business judgment,” even if that judgment is constrained by other substantive law. That argument directly affects Ms. Wynn’s claims against Wynn Resorts for contractual interference and aiding and abetting a breach of fiduciary duty—claims directed against the company’s violations of substantive law rather than disagreement with the board’s business judgment. Accordingly, Ms. Wynn has a direct interest in clarifying the ruling.

2. *This Court Previously Permitted Ms. Wynn to Appear to Address this Issue*

Based on this interest, this Court permitted Ms. Wynn to appear *amicus* in the petition that led to the prior opinion. (Doc. 17-30336.) For the same reason, this Court should allow Ms. Wynn to intervene as a real party in interest here.

3. *The Petition Affects the Upcoming Trial*

In addition, Ms. Wynn has an interest in the expeditious resolution of the issues in the petition before the trial of all of the parties’

claims on April 16, 2018. As this Court noted in each of the orders denying four of Wynn Resorts' petitions:

This case has been pending in the district court since 2012, several interlocutory issues of substantial magnitude already have been addressed by this court, *see, e.g., Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 52, 399 P.3d 334 (2017); *Okada v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 83, 359 P.3d 1106 (2015), and the underlying proceedings are approaching a set trial date.

(Orders Denying Petitions in Dockets No. 73949, No. 74063, No. 74500, and No. 73641.)

C. Intervention will be Efficient

Ms. Wynn will file her answer by December 22, so her intervention will not prolong the briefing in any way.

Dated this 14th day of December, 2017.

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NRAP 27(e) CERTIFICATE

A. Contact information

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B. Nature of emergency

On December 13, 2017, this Court ordered expedited briefing, with real parties in interest to answer by December 22. Unless Ms. Wynn is permitted to intervene and answer by that date, the Court's expedited schedule will be frustrated.

C. Notice and service

I personally called Todd Bice from Pisanelli Bice about this motion. I also called Steve Morris from Morris Law Group, counsel for the real parties in interest, who consented to this motion. My office is e-mailing copies of the motion and this certificate to each of the listed attorneys for petitioners and real parties in interest.

Dated this 14th day of December, 2017.

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NRAP 26.1 DISCLOSURE

Counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed for the judges of this court to evaluate possible disqualification or recusal.

Elaine P. Wynn is an individual. She has been represented in this litigation by William R. Urga and David J. Malley of Jolley Urga Woodbury Holthus & Rose; Mark E. Ferrario and Tami D. Cowden of Greenberg Traurig, LLP; James M. Cole and Scott D. Stein of Sidley Austin LLP; Daniel F. Polsenberg, Joel D. Henriod and Abraham G. Smith of Lewis Roca Rothgerber Christie LLP; and John B. Quinn, Michael T. Zeller, Susan R. Estrich, Michael L. Fazio and Ian S. Shelton of Quinn Emanuel Urquhart & Sullivan, LLP.

Dated this 14th day of December, 2017.

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CERTIFICATE OF SERVICE

I certify that on December 14, 2017, I submitted the foregoing “Elaine P. Wynn’s Motion to Intervene and Join in the Petition” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that a copy of this document will be served by
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/s/Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP