

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3 WYNN RESORTS LIMITED,

4 Petitioner,  
5 vs.

6 THE EIGHTH JUDICIAL DISTRICT  
7 COURT OF THE STATE OF  
8 NEVADA, IN AND FOR THE  
9 COUNTY OF CLARK; AND  
10 THE HONORABLE ELIZABETH  
11 GONZALEZ, DISTRICT JUDGE,  
12 DEPT. XI

13 Respondent,

14  
15 KAZUO OKADA; UNIVERSAL  
16 ENTERTAINMENT CORP. AND  
17 ARUZE USA, INC.,

18 Real Parties in Interest.

Case Nos. 74591

Electronically Filed  
Dec 19 2017 08:06 a.m.  
Elizabeth A. Brown  
Supreme Court  
**WYNN RESORTS LIMITED'S  
OPPOSITION TO ELAINE P.  
WYNN'S MOTION TO  
INTERVENE AS REAL PARTY IN  
INTEREST**

19 **I. INTRODUCTION**

20 Elaine P. Wynn's ("Ms. Wynn") request to intervene in Wynn Resorts,  
21 Limited's ("Wynn Resorts" or the "Company") Petition for Writ of Mandamus or  
22 Alternatively, Prohibition (hereinafter "Petition") should be denied. She did not in  
23 any way participate in the motion for summary judgment which gives rise to the  
24 Petition. She made no appearance, submitted no briefs and made no argument.  
25 Instead, as she did when raising a last minute *amicus curiae* brief in support of the  
26 Okada Parties' unsuccessful petition for rehearing in Case Nos. 70050 and 70452, she  
27 simply seeks to interject her own agenda on matters not subject to any briefing before  
28 the District Court. Contrary to Ms. Wynn's wants, a litigant does not become a real  
party in interest to intervene any time this Court addresses a legal issue like the  
Business Judgment Rule. Ms. Wynn confessed her lack of standing and interest when  
she played no role in the District Court proceedings. This Court has already ordered

1 expedited briefing on the Petition and there is no basis for allowing Ms. Wynn to  
2 interject matters outside of the District Court's summary judgment decision.  
3 Accordingly, the Court should see the Emergency Motion to Intervene as Real Party  
4 in Interest (hereinafter "Motion") for what it is – an attempt to muddy the waters –  
5 and deny Ms. Wynn's Motion.

## 6 **II. ARGUMENT**

7 Ms. Wynn does not have a sufficient interest in the Petition to intervene as a  
8 real party in interest. A party is aggrieved "'when either a personal right or right or  
9 property is adversely and substantially affected' by a district court's ruling." *Valley*  
10 *Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting  
11 *Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)  
12 (applying NRAP 3A(e)). Having an interest in an "issue of law" is not enough.

13 In identifying what Ms. Wynn considers her "interest," she argues that the  
14 "argument [raised in the Petition] directly affects Ms. Wynn's claims against Wynn  
15 Resorts for contractual interference and aiding and abetting a breach of fiduciary duty  
16 – claims directed against the company's violations of substantive law rather than  
17 disagreement with the board's business judgment." (Mot. at 3.) Of course, she made  
18 no such claim in the District Court proceedings and Ms. Wynn does not identify how  
19 the Petition "directly affects" claims that were not subject to the motion, matters that  
20 were never briefed nor even discussed. Respectfully, this is the same effort to  
21 parachute in at the last moment and raise collateral issues just as she did with her  
22 unsupported *amicus curiae* brief on the Okada Parties' Petition for Rehearing.  
23 Nothing in that prior Petition concerned Ms. Wynn's claims, and the same is true  
24 here. She simply seeks to interject matter that were not before the District Court and  
25 are not the subject of the District Court's order.

26 Ms. Wynn's reference to how she was allowed to file an *amicus curie* brief in  
27 Case Nos. 70050 and 70452 – something she obtained on an emergency basis – is  
28

1 hardly support for her motion. As Wynn Resorts noted in opposing that unfounded  
2 brief, Ms. Wynn was not seeking to address matters that were actually before the  
3 Court, but to interject issues that Ms. Wynn had never presented to the District Court.  
4 She now seeks to do the same once again, having not participated in any fashion in  
5 the District Court proceedings that are the subject of the Petition. The Court need  
6 look no further than her prior *amicus curiae* brief and Wynn Resorts' response thereto  
7 to confirm that she has no standing to participate in this Petition.

8 Ms. Wynn's final argument is that the Petition will impact the upcoming trial,  
9 and therefore she has an interest in the expeditious resolution of the issues. That fact,  
10 of course, goes directly against her. Ms. Wynn's involvement in collateral matters on  
11 a petition that this Court has required expediting briefing upon is not warranted.  
12 Wynn Resorts have been given a short period of time to respond to the Okada Parties'  
13 answer over the holidays. It should not have to waste its time and resources  
14 responding to Ms. Wynn's collateral issues, particularly where Ms. Wynn did not  
15 participate in the District Court proceedings on any of the issues presented.

16 **III. CONCLUSION**

17 The Court should deny Ms. Wynn's Motion to Intervene.

18 DATED this 18th day of December, 2017.

19 PISANELLI BICE PLLC

20  
21 By: /s/ Todd L. Bice  
22 James J. Pisanelli, Esq., Bar No. 4027  
23 Todd L. Bice, Esq., Bar No. 4534  
24 Debra L. Spinelli, Esq., Bar No. 9695  
25 400 South 7th Street, Suite 300  
26 Las Vegas, Nevada 89101

27 Attorneys for Real Party in Interest  
28 Wynn Resorts, Limited

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLIBICE PLLC, and that on this 18th day of December, 2017, I electronically filed and served by electronic mail, a true and correct copy of the above and foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO ELAINE P. WYNN'S MOTION TO INTERVENE AS REAL PARTY IN INTEREST** properly addressed to the following:

Donald J. Campbell, Esq.  
J. Colby Williams, Esq.  
CAMPBELL & WILLIAMS  
700 South 7th Street  
Las Vegas, NV 89101  
*Attorneys for Stephen A. Wynn*

Melinda Haag, Esq.  
James N. Kramer, Esq.  
ORRICK, HERRINGTON &  
SUTCLIFFE  
405 Howard Street  
San Francisco, CA 94105  
*Attorneys for Kimmarie Sinatra*

J. Stephen Peek, Esq.  
Bryce K. Kunimoto, Esq.  
Robert J. Cassity, Esq.  
HOLLAND & HART LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, NV 89134  
*Attorneys for Kazuo Okada*

David S. Krakoff, Esq.  
Benjamin B. Klubes, Esq.  
Adam Miller, Esq.  
BUCKLEY SANDLER LLP  
1250 – 24th Street NW, Suite 700  
Washington, DC 20037  
*Attorneys for Aruze USA, Inc. and  
Universal Entertainment Corp.*

Steve Morris, Esq.  
Rosa Solis-Rainey, Esq.  
MORRIS LAW GROUP  
411 E. Bonneville Avenue, Suite 360  
Las Vegas, NV 89101  
*Attorneys for Defendants*

J. Randall Jones, Esq.  
Mark M. Jones, Esq.  
Ian P. McGinn, Esq.  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
17th Floor  
Las Vegas, NV 89169  
*Attorneys for Aruze USA, Inc. and  
Universal Entertainment Corporation*

William R. Urga, Esq.  
David J. Malley, Esq.  
JOLLEY URGA WOODBURY  
HOLTHUS & ROSE  
330 S. Rampart Boulevard, Suite 380  
Las Vegas, NV 89145  
*Attorneys for Elaine P. Wynn*

Mark E. Ferrario, Esq.  
Tami D. Cowden, Esq.  
GREENBERG TRAUERIG, LLP  
3773 Howard Hughes Parkway  
Suite 400  
Las Vegas, NV 89169  
*Attorneys for Elaine P. Wynn*

Daniel F. Polsenberg, Esq.  
Joel D. Henriod, Esq.  
LEWIS ROCA ROTHGERBER  
CHRISTIE  
3993 Howard Hughes Parkway, Suite  
600  
Las Vegas, NV 89169  
*Attorneys for Elaine P. Wynn*

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James M. Cole, Esq.  
SIDLEY AUSTIN LLP  
1501 K. Street N.W.  
Washington, DC 20005

Scott D. Stein, Esq.  
SIDLEY AUSTIN, LLP  
One South Dearborn St.  
Chicago, Illinois 60603  
*Attorneys for Elaine P. Wynn*

**SERVED VIA HAND-DELIVERY**

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

*Respondent*

/s/ Shannon Dinkel  
An employee of PISANELLI BICE PLLC