

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. 79689
District Court Case No. A-18-772761-C

Electronically Filed
Sep 26 2019 04:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

EMERGENCY MOTION UNDER NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF
ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED
INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT

ACTION IS NEEDED BY OCTOBER 2, 2019 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION
THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

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AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY MOTION FOR STAY AND
NRAP 27(E) CERTIFICATE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

2. The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
(702) 735-0049
Attorneys for Real Party in Interest

3. The facts showing the existence and nature of Petitioners' emergency are as follows: An order was entered on July 31, 2019 directing Venetian to produce unredacted reports of other incidents involving Venetian guests without providing requested protection under NRCP 26(c). The motion for reconsideration brought on an order shortening time was thereafter denied. Venetian's motion for stay by the district court to allow for filing of a writ of mandamus and/or writ of

prohibition was denied. Therefore, immediate action is required to prevent Venetian and its guests from suffering irreparable harm.

4. Counsel for Real Party in Interest was served with Petitioners' Petition and this Motion via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Emergency Motion and Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

5. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

6. The relief sought in the Writ Petition is not available by the District Court. Petitioners made a written Motion for Stay with the District Court on August 12, 2019 and again orally on September 17, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained

from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

8. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
20 day of September, 2019.


NOTARY PUBLIC in and for said
County and State

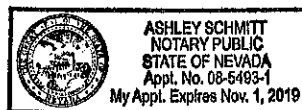


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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court for the following immediate relief related to Eighth District Court Case A-18-772761-C (“Case A772761”), JOYCE SEKERA (“Sekera”) v. VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (“Venetian”).

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information of guests ordered produced. Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

II. BASIS FOR RELIEF

1. The District Court failed to fairly consider the privacy rights of individual non-parties to the litigation by reversing the April 4, 2019 Discovery

Commissioner's Report and Recommendation granting Petitioners' motion for protective order under NRCP 26(c) .

2. The district court failed to weigh the issues of relevance and proportionality required under NRCP 26(b) (1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

Petitioners will be irreparably harmed without the issuance of a stay of the order directing Venetian to provide unredacted incident reports to Sekera. In discovery, Sekera requested reports of prior slip-and-fall incidents. Petitioners produced such reports with redactions to protect guests' personal private information. The July 31, 2019 District Court order requires Petitioner to produce these reports without redactions. Under the circumstances of the accident at issue in this matter, these prior incident reports have marginal relevance to the case in light of prevailing Nevada law.¹ Therefore, providing this unredacted information to Sekera without any of the requested protection under NRCP 26(c) will cause Petitioners (and the identified guests) irreparable harm. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the production of unredacted incident reports** until such time as the Court can rule on the writ of mandamus and/or prohibition that will be filed in this case.

¹ *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

III. STATEMENT OF FACTS

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving JOYCE SEKERA (“Sekera”). More specifically, Sekera alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped on water and fell, resulting in bodily injuries.

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. When Sekera objected to the production of redacted reports, Petitioners filed a motion for protective order pursuant to NRCP 26(c) on February 1, 2019 with the Discovery Commissioner.

Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners’ motion for protective order. (See Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner’s Report and Recommendation* (filed April 4, 2019).) Sekera filed an objection to the Discovery Commissioner’s Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court on May 14, 2019. Judge Delaney reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest

information. (See Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019); Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).)

The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay. (See Appendix, Vol. 3, Tab 20, VEN 456-83, *Transcript of Hearing on Motion for Reconsideration* (September 17, 2019).) On a related note, on September 18, 2019, the Discovery Commissioner ordered that Petitioners must now produce unredacted copies of incident reports after November 4, 2016 to the present, without redacting personal information or limitations on sharing of the documents to others outside the litigation. (See Appendix, Vol 3, Tab 21, VEN 484-85, *Court*

Minutes, Discovery Commissioner (September 18, 2019.) While the Discovery Commissioner's latest ruling is not directly related to this motion, it highlights the emergent nature of the circumstances.

IV. LEGAL ARGUMENT

A. **Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports**

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.² Although Sekera walked through the Grand Lux rotunda area hundreds of times previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.³

In *Eldorado Club, Inc.*, *supra*, 78 Nev. at 511, 377 P.2d at 176, the Nevada Supreme Court held that evidence of prior incident reports in cases involving the temporary presence of debris or foreign substances on a walking surface is not admissible for the purpose of establishing notice. Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

... Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake** in the action, the **amount in controversy**, the **parties' relative access to relevant information**, the **parties' resources**, the

² See Appendix, Vol. 1, Tabs 1-7, VEN 001-41, *generally*.

³ See Appendix, Vol. 1, Tab 5, VEN at VEN 021-025. See also Appendix, Vol. 1, Tab 1, VEN 001-06, Tab 2, VEN 038-41, *generally*.

importance of the discovery in resolving the issues, and whether **the burden or expense of the proposed discovery outweighs its likely benefit. . . .** (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of the above stated five factors. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.⁴ Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this

⁴ See Appendix, Vol. 2, Tab 15 at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, VEN at VEN 469, ln 16-25; VEN 470, ln 1-12.

information. Sekera is required to show that her need for this information outweighs the guests' need to protect their private information. Sekera failed to make this showing in the District Court.

B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection

Pursuant to the July 31, 2019 Order, the District Court has herein provided Sekera with unfettered access to personal and sensitive information from non-parties to this action, which is not relevant to any claims or defenses in this matter. She has already been provided with redacted prior incident reports to establish issues associated with notice.

The Nevada Supreme Court has recognized that individuals have privacy interests that are protected from disclosure in discovery under NRCP 26(b)(1). *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977). While Petitioners have not found Nevada case law applying the rule to individuals involved in prior incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal- Mart store, filed a motion to compel the defendant to produce evidence of

prior claims and incidents for the three (3) years preceding the subject incident.

The court evaluated the claim under the federal equivalent of NRCP 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls.

The plaintiff sought the incident reports including personal information of the other Wal-Mart customers. The federal district court found that the burden on defendant and the privacy interests of the non-litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non-litigant individual's private information. Accordingly, the District Court should have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff sought to compel the defendant to identify by name (with phone numbers and addresses) any person who had previously complained about the subject flooring.

The court not only found the request to be overly broad, but also determined that it violated the privacy rights of the persons involved. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. ... "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)).

(*Id.* at *7.)

Based upon the foregoing it is clear that the non-litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error.

C. An Emergency Stay is Necessary to Prevent Irreparable Harm

As set forth in more detail above, Petitioners have met the requirements of NRAP 8(a) and have set forth the need for an emergency stay under the

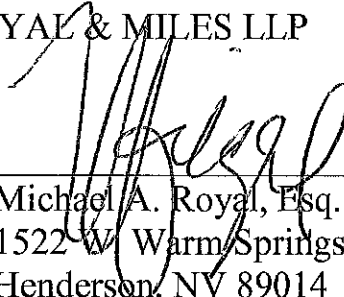
circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

V. CONCLUSION

The order by the District Court to compel Petitioners to provide private information of individuals who are not involved in the underlying action shocks the conscience. In a world where privacy of personal information is placed at a premium, it is difficult to comprehend that Nevada would be unwilling to protect this kind of information in a case where it has no relevance. Therefore, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners' Writ of Mandamus and/or Prohibition on a non-emergency basis. If the requested relief is not granted on an emergency basis then innocent third parties will have their privacy rights irreparably damaged.

DATED this 24 day of September, 2019.

ROYAL & MILES LLP

By 
Michael A. Royal, Esq. (SBN 4370)
1522 W Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

I, Michael A. Royal, hereby affirm, testify and declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and am a member of the law firm of Royal & Miles LLP, attorneys for Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC.

2. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

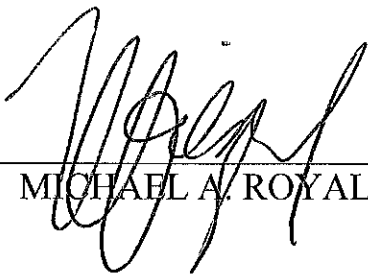
[X] This brief has been prepared in a proportionally spaced typeface using Word Perfect in Times Roman 14 point font.

3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains **2,212 words** in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

4. Finally, I hereby certify that I have read this motion, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 26 day of September, 2019, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT, by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
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An employee of Royal & Miles LLP