

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

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***Supreme Court Case No. 83723***

ROWEN SEIBEL; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; FERG, LLC; FERG, LLC; FERG, LLC; SQUARED GLOBAL SOLUTIONS, LLC, DERIVATIVELY ON BEHALF OF DNT ACQUISITION LLC; GR BURGR, LLC; AND CRAIG GREEN,

*Petitioners,*

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE TIMOTHY  
C. WILLIAMS, DISTRICT JUDGE,

*Respondents,*

and

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC;  
PHWLTV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a/  
CAESARS ATLANTIC CITY,

*Real Parties in Interest.*

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**REAL PARTIES IN INTEREST'S RESPONSE TO  
PETITIONERS' EMERGENCY MOTION FOR A STAY OF  
DISTRICT COURT PROCEEDINGS**

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## **I. INTRODUCTION**

Once again, Petitioners'<sup>1</sup> seek emergency relief from this Court. This is the *fourth* petition for writ relief that Petitioners have filed in this Court related to the underlying district court proceedings, the *third* filed this year, and the *second* on this exact issue.<sup>2</sup> However, a stay of compliance with the district court's order – much less a stay of the entire proceedings – is not appropriate here. Indeed, a review of the factors this Court must consider to issue a stay weighs heavily against Petitioners as the object of the writ has been disclosed and thus no imminent threat of irreparable harm exists. Petitioners' request to stay the entire case is designed to stall summary judgment proceedings. Finally, and most importantly, Petitioners are unlikely to succeed on the merits. Petitioners' Motion to Stay should be denied.

## **II. RELEVANT FACTUAL BACKGROUND**

The underlying facts giving rise to Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud

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<sup>1</sup> "Petitioners" refers to Rowen Seibel, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC, FERG, LLC, FERG 16, LLC, MOTI Partners, LLC, MOTI Partners 16, LLC, TPOV Enterprises, LLC, TPOV Enterprises 16, LLC, R Squared Global Solutions, LLLC, derivatively on behalf of DNT Acquisition LLC; GR Burgr, LLC; and Craig Green.

<sup>2</sup> Petitioners' prior petitions for extraordinary relief can be found at Case Nos. 76118, 82448, and 83071.

Exception (the "Motion to Compel") are not legitimately in dispute. For the sake of brevity and, in light of Seibel's request for emergency review, Caesars only briefly recites them here.

Caesars is a gaming licensee in Nevada and other jurisdictions. (6 PA001263.) Beginning in 2009, Caesars and certain Seibel-Affiliated entities, entered into various contracts "governing the development, creation, and operation of various restaurants in Las Vegas and Atlantic City." (*Id.*) In order to comply with Caesars' gaming licensee obligations, each of the agreements, "contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual and/or entity." (*Id.*) Unbeknownst at the time, Seibel and his affiliated entities were unsuitable. Specifically, Rowen Seibel ("Seibel") began using foreign bank accounts in 2004 to defraud<sup>3</sup> the Internal Revenue Service. (*Id.*) Thereafter, in 2016, following "years of investigations, numerous tolling agreements, and plea negotiations with the U.S. Government, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony." (*Id.* at PA001264.)

Despite the express obligations outlined in the various agreements between

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<sup>3</sup> While Petitioners' take issue with this finding, it is easily confirmed by even a cursory review of the docket in Seibel's criminal matter.

the parties, Petitioners did not inform Caesars of Seibel's criminal activity, conviction, or sentencing. (*Id.*) Instead, Petitioners chose the path of most resistance and actively attempted to conceal and deceive Caesars into believing that Seibel was no longer affiliated with the Seibel-Affiliated Entities so that he could continue benefitting from the affiliation with Caesars despite his unsuitability. (*Id.*) Even more egregiously – and what precipitated the Motion to Compel – Seibel used his attorneys to perpetrate this scheme. (6 PA 001264-65.) Indeed, while representing to Caesars that Seibel was no longer involved and had purportedly separated himself his affiliated entities, in reality he used his attorneys to hide his continuing involvement. (*Id.*)

Specifically, Seibel and his attorneys (1) created new entities to which Seibel purportedly assigned the interests in certain of his affiliated entities; (2) created the Seibel Family 2016 Trust to receive the income from those new entities; and (3) prepared a prenuptial agreement between Seibel and his soon to be wife Bryn Dorfman ("Dorfman") to, in part, continue benefitting from the agreements with Caesars. (6 PA 001265.) "[A]fter the new entities were created, Seibel sent letters to Caesars purporting to assign the Seibel Agreements." (*Id.*) In each of those letters, Seibel told Caesars that the agreements would be assigned to a new entity whose membership interests were ultimately mostly owned by the Seibel Family 2016 Trust." (*Id.*) Importantly, Seibel told Caesars that the *sole*

beneficiaries of a certain trust he created were his grandmother, Dorfman, and any potential descendants of Seibel and "that, '[o]ther than the parties described in th[e] letter[s], there [were] no other parties that have any management rights, powers or responsibilities regarding, or equity or financial interests in' the new entities." (*Id.*) This was not true. Instead, among other things, the prenuptial agreement ***required*** "Dorfman to share the distributions she received from the Seibel Family 2016 Trust ***with Seibel.***" (*Id.*) (emphasis added). Indeed, "all of the statements made to Caesars about Seibel's purported disassociation were false when made and designed exclusively for the purpose of defrauding Caesars so that Seibel could continue to benefit from the relationship despite his unsuitability to conduct business with a gaming licensee." (6 PA 001266.)

Once Caesars uncovered the scheme in discovery, it promptly moved to compel disclosure of any communications between Seibel and his attorneys regarding it. Caesars filed its Motion to Compel on January 6, 2021. The parties had a full opportunity to brief the Motion to Compel and the Court held oral argument February 10, 2021. (6 PA 001263.) The district court then issued a minute order finding that "Caesars has met its initial burden of proof by establishing that Plaintiff Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Plaintiff Seibel could continue to benefit from the agreements despite unsuitability to conduct business with a

gaming licensee." (4 PA 000904.)

Following entry of detailed findings of fact and conclusions of law, the district court ordered Petitioners to produce the documents for in camera review. (6 PA 001266-67.) Following that order, Petitioners filed a petition for extraordinary relief with this Court. (*See* Case No. 83071.) After their petition was denied, Petitioners produced the documents to the district court for *in camera* review. (6 PA 001268.) Following its review, the Court issued a minute order finding that "the Seibel prenuptial agreement was not legitimately prepared for estate purposes" and that "an issue exists as to the effect of the prenuptial agreement with Seibel's wife and its interplay with the Seibel Family 2016 Trust." (*Id.*) To support its findings and provide the parties with an understanding of how it reached its conclusion, the district court quoted some of the documents at issue which unequivocally supported Caesars' suspicions. (*Id.*; *see also* 17 PA003481.) Importantly, in explaining the basis for its decision to disclose the contents of the documents, the district court explained that, among other things, Caesars would have to know that content of the documents in order to meaningfully address any subsequent appellate challenge. (6 PA 001249.)

### **III. ARGUMENT**

The factors that this Court must consider in determining whether to issue a stay are: (1) whether the object of the writ petition will be defeated if the stay is

denied; (2) whether petitioner will suffer irreparable injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition. NRAP 8(c); *Hansen v. Eighth Jud. Dis. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). While no single factor is conclusive, the factors weigh heavily in favor of denying the Motion to Stay. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

***A. The Object of the Writ Has Already Been Disclosed***

Petitioners are seeking to stay the district court proceedings to prevent disclosure of the crime-fraud documents that the district court has ordered produced after a thorough review. However, as Petitioners concede, the district court already partially disclosed the content of certain documents by quoting specific portions in its minute order. These quotations – which fully confirm Caesars' suspicions about the fraud – effectively serve to "ring the bell" and the disclosure cannot be undone. But there was nothing improper about the district court's quotation of the documents in its minute order. As this Court has previously held, "[s]uch quotation is proper because, otherwise, readers would be unable to discern what the Court has done." *News+Media Cap. Grp. LLC v. Las Vegas Sun, Inc.*, 137 Nev. Adv. Op. 45, 495 P.3d 108, 114 n. 4 (2021). Therefore, this factor weights in favor of denying the

stay and, at least, partial mootness of the Writ Petition itself.

***B. None of the Parties Will Suffer Irreparable Injury***

The second and third factor this Court must consider in determining whether a stay is appropriate is whether Petitioners or Caesars will suffer irreparable injury if a stay is not granted. Irreparable harm is "harm for which compensatory damage is an inadequate remedy." *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough' to show irreparable harm." *Hansen*, 116 Nev. at 658, 6 P.3d at 987 (emphasis added).

Candidly, neither party will suffer irreparable injury in the truest sense. As discussed above, the content of the documents has already been disclosed in the district court's minute order. The district court has already determined that the documents expose a crime-fraud. Accordingly, a stay would not prevent Caesars or any other party from learning the subject of those communications. Moreover, as discussed below, by their very nature, the documents are not privileged and Petitioners will not be harmed by their disclosure.

As to Caesars, Petitioners are correct in noting that the effect of the stay would be delay in resolution of the litigation. While Caesars admits that this is not irreparable injury, it would be remiss if it didn't note that this matter has been pending since 2017. While Caesars will not be irreparably harmed by a stay, it is



well established that "justice delayed is justice denied." The parties have completed years of discovery, extensive motion practice, and even appellate review of various issues in this matter. All that remains to be completed at this stage is dispositive motions – which Caesars and other parties have already filed – and trial. Petitioners' motion to stay is calculated to avoid summary judgment and trial. If following dispositive motions or trial, Petitioners believe the district court and/or jury erred, they will have an opportunity to appeal those issues. Resolution of this matter, however, should not remain delayed by Petitioners' repeated piecemeal appellate practice.

***C. The Seibel Parties Are Unlikely to Prevail on the Merits***

The final factor this Court must consider weighs heavily against any stay. Under Nevada law, communications between a client (or their representative) and their attorney (or representative) "[m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest" are protected from disclosure. NRS 49.095. However, *"[t]here is no privilege under NRS 49.095 . . . [i]f the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud."* NRS 49.115(1) (emphasis added); see also *In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) ("Under

the crime-fraud exception, *communications are not privileged when the client consults an attorney for advice that will serve him in the commission of a fraud or crime.*") (internal quotations omitted) (emphasis added).

To invoke the crime-fraud exception, the moving party must first "show that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007), *abrogated on other grounds by Mohawk Indus., Inc.v. Carpenter*, 558 U.S. 100, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009) (internal quotations omitted). Next, the moving party "must demonstrate that the attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of [the] intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810 F.3d at 1113 (internal quotations omitted). The second step is accomplished through an *in camera* review of the documents. *See id.* at 1114 ("[A] district court must examine the individual documents themselves to determine that the specific attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality.")

Respectfully, the issue before the Court is one that was not taken lightly or rushed by either the district court or the parties. This issue was thoroughly and competently vetted by the parties and the district court. Indeed, the documents at

issue were ordered produced to Caesars<sup>4</sup> only following a *fully* developed record which included briefing by Caesars and Petitioners, oral argument, additional consideration by the district court, Petitioners' prior petition for extraordinary relief before this Court, *in camera* review of the contested documents by the district court, additional motion practice surrounding the district court's order, and finally, additional oral argument. Indeed, more than 10 months have elapsed since the filing of the original motion on this issue, with work by all parties continuously since that time. After this thorough vetting, Petitioners cannot legitimately argue that the district court abused its discretion in granting Caesars' motion and finding that certain communications are not privileged and thus subject to disclosure pursuant to the crime-fraud exception outlined in NRS 48. 115(1). Petitioners are unlikely to prevail on the merits and there is no basis for any stay, especially the entire case.

#### **IV. CONCLUSION**

Based upon the foregoing, Caesars respectfully requests that Petitioners' Motion to Stay be denied.

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<sup>4</sup> "Caesars" refers to Desert Palace Inc., Paris Las Vegas Operating Company, LLC, PHWLTV, and Boardwalk Regency Corporation d/b/a Caesars Atlantic City.

DATED this 9th day of November 2021.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and, pursuant to NRAP 25(b) and NEFR 9, that on this 9th day of November 2021, I electronically filed and served the foregoing **REAL PARTIES IN INTEREST'S RESPONSE TO PETITIONERS' EMERGENCY MOTION FOR A STAY OF DISTRICT COURT PROCEEDINGS** properly addressed to the following:

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