

IN THE SUPREME COURT OF NEVADA

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Elizabeth A. Brown
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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 16, LLC; R SQUARED GLOBAL SOLUTIONS, LLC, DERIVATIVELY ON BEHALF OF DNT ACQUISITION LLC; GR BURGR, LLC; AND CRAIG GREEN,

Petitioners,

vs.

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,

Real Parties in Interest.

District Court Case No. A-17-751759-B, consolidated with A-17-760537-B

**PETITIONERS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR A
STAY OF DISTRICT COURT PROCEEDINGS**

EMERGENCY MOTION UNDER NRAP 27(e)

RELIEF REQUESTED BY NOVEMBER 18, 2021

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Caesars' Opposition to Petitioners' Emergency Motion to Stay is not grounded in law (and defies common sense). *First*, Caesars argues that because the district court already erred in disclosing Petitioners' attorney-client privileged communications before Petitioners could seek appellate review, any alleged harm resulting from disclosure has already befallen Petitioners, such that a stay is unwarranted. The district court's error should not be compounded, let alone used against Petitioners. Even then, Caesars fails to mention that while the district court quoted two privileged communications in its Minute Order, Petitioners were ordered to disclose nearly 200 privileged communications. Immeasurable harm will befall Petitioners if all the privileged communications are required to be disclosed to Caesars before this Court considers the Writ Petition.

Second, this Court has held, several times in the past, that an appeal is an inadequate remedy when dealing with the disclosure of attorney-client privileged communications. Caesars' argument to the contrary is notably devoid of authority.

Finally, Caesars claims that Petitioners are trying to avoid summary judgment and trial. Not true. Petitioners seek to prevent (and claw back) the improper disclosure of their privileged communications. They have every right to do so. Further, as set forth in the Writ Petition, the district court made findings –

on a discovery motion – regarding the ultimate merits of this case that are not supported by substantial evidence. Those findings were erroneous (and gratuitous) and should be set aside before summary judgment motions are heard and decided.

Earlier today, the district court considered and denied Petitioners’ request to obtain a stay of the proceedings pending this Court’s review of the Writ Petition. Although the district court refused to enter a stay, it extended the deadline for Petitioners to produce the documents until on or before 5:00 p.m. on November 19, 2021. Because the object of the Writ Petition will be defeated if Petitioners are required to comply with the Supplemental Order, and because the remaining factors for a stay favor Petitioners, this Court should grant the Emergency Motion to Stay in its entirety on or before **November 18, 2021**.

II. ARGUMENT

A. The District Court’s Prior Error is *Not* a Basis to Deny a Stay.

Caesars argues that Petitioners are not entitled to a stay because the district court has already disclosed their privileged communications. (Opp. at 1, 6-7.) According to Caesars, the district court was permitted to do so *before* Petitioners could seek appellate review from this Court. (*See id.*) That is false.

Caesars cites *News+Media Capital Group LLC v. Las Vegas Sun, Inc.*, 137 Nev. Adv. Op. 45, 495 P.3d 108 (2021), for the proposition that the district court acted appropriately in quoting Petitioners’ privileged communication in its Minute

Order. The *News+Media Capital Group LLC* opinion says no such thing and, in fact, did not even involve attorney-client privileged communications. There, this Court addressed how the district court quoted from a private arbitration award in its decision confirming the award, and held that it was justified in doing so because the parties had voluntarily given up “some measure of confidentiality” by seeking judicial review. *See id.*, 495 P.3d at 111 n.4. Here, Petitioners have not chosen to voluntarily disclose their privileged communications to Caesars merely by seeking damages from Caesars for breach of contract. Petitioners have consistently advocated against disclosure, including initially seeking writ relief from this Court prior to the district court’s *in camera* review of the documents in order to avoid precisely what ultimately occurred: The district court unilaterally disclosed certain of Petitioners’ privileged communications to Caesars *before* Petitioners could file their Writ Petition. (*Compare* 17 PA 3481-82, *with* 5 PA 1095 (holding that Petitioners’ prior writ petition is denied “***without prejudice to petitioner’s ability to seek writ relief in the event he is ordered to disclose the subject documents to real parties in interest***”) (emphasis added).)

The district court could have (and should have) supported its ruling without actually quoting from any of the privileged communications. Caesars ignores the numerous cases cited by Petitioners stating that district courts should not disclose

privileged communications in order to avoid prejudicing a party's right to seek appellate review. (*See* Emergency Mot. to Stay at 7; Writ Pet. at 29-31.)

Without saying so directly, Caesars implies that because the district court quoted two privileged communications in its Minute Order, no harm will befall Petitioners if the remaining *182 privileged communications* are disclosed to Caesars before this Court considers the Writ Petition. Nonsense. Caesars does not presently know the contents of those communications; nor should it, because they are privileged. Petitioners will suffer irreparable harm if they are forced to produce them.

B. Erroneous Disclosure of Privileged Communications is Irreparable Harm.

Caesars denies that Petitioners will suffer irreparable harm if forced to produce nearly 200 privileged communications. (Opp. at 1, 8.) This portion of the Opposition is notably devoid of any legal authority. The reason: The law is plainly to the contrary. (*See* Emergency Mot. to Stay at 7; Writ Pet. at 13-14.)

C. Petitioners are Likely to Succeed on the Merits.

Caesars argues that the Supplemental Order was appropriately entered, such that a stay is improper. (Opp. at 1, 9.) Caesars' argument is self-serving and relies solely on the Supplemental Order rather than the actual evidence in this record.

As detailed in the Writ Petition, the district court's findings are not supported by substantial evidence and are based on an erroneous interpretation of

the Trust and Prenuptial Agreement. (Writ Pet. at 19-29.) Moreover, the district court went above and beyond what was needed to decide the issue presented and instead, made findings that go toward the ultimate merits of this case. (*Id.* at 31-33.) Petitioners are entitled to have those findings reviewed by this Court (and set aside) before summary judgment motions are heard and decided.

D. The District Court Declined to Enter a Stay.

On November 10, 2021, the district court heard argument on Petitioners' request for a stay pending the outcome of their Writ Petition. (*See* Exhibit 1, Decl. of Paul C. Williams, ¶ 3.) The district court declined to enter a stay, but extended the deadline to produce the documents to November 19, 2021. (*Id.*) As a result, emergency relief is needed from this Court by **November 18, 2021**. (*Id.* ¶ 4.)

III. CONCLUSION

The bell of privilege cannot be un-rung. So that this Court's ruling on the Writ Petition is not rendered moot and to avoid subjecting Petitioners to irreparable harm through compelled disclosure of their privileged communications, this Court should grant the Emergency Motion to Stay in its entirety.

DATED this 10th day of November, 2021.

BAILEY ❖ KENNEDY

By: /s/ Dennis L. Kennedy

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 10th day of November, 2021, service of the foregoing was made by electronic service through Nevada Supreme Court's electronic filing system, the Eighth Judicial District Court's electronic filing system, and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Respondent

/s/ Samantha T. Kishi
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Exhibit 1

Exhibit 1

DECLARATION OF PAUL C. WILLIAMS

I, Paul C. Williams, declare as follows:

1. I am a partner of Bailey❖Kennedy, LLP, counsel for Petitioners in the matter entitled *Rowen Seibel, et al. v. Eighth Judicial District Court*, Case No. 83723, currently pending before the Nevada Supreme Court.

2. I make this Declaration in support of Petitioners' Reply in Support of Emergency Motion for a Stay of District Court Proceedings (the "Emergency Motion to Stay"). I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and would do so if requested.

3. On November 10, 2021, the district court heard argument on Petitioners' Motion to Stay Proceedings Pending the Outcome of a Petition for Extraordinary Writ Relief (the "District Court Motion to Stay"). (See Ex. 1 to Pets.' Emergency Mot. to Stay, filed Nov. 5, 2011.) I argued the District Court Motion to Stay on behalf of Petitioners. James P. Pisanelli, Esq. of the law firm Pisanelli Bice argued in opposition to the District Court Motion to Stay on behalf of Real Parties in Interest, Caesars.¹ At the conclusion of the hearing, the district

¹ "Caesars" refers to PHWLTV, LLC ("Planet Hollywood"); Desert Palace, Inc. ("Caesars Palace"); Paris Las Vegas Operating Company, LLC ("Paris"); and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC").

court denied the request for a stay, but extended the deadline to produce the privileged communications from November 11, 2021, to November 19, 2021.

4. Because the Supplemental Order,² as modified by the district court this morning, requires Petitioners to disclose privileged communications to Caesars by November 19, 2021, Petitioners respectfully request a ruling from this Court on their Emergency Motion to Stay **by November 18, 2021**.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 10th day of November, 2021.

/s/ Paul C. Williams
PAUL C. WILLIAMS

² “Supplemental Order” refers to the Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on October 28, 2021. (6 PA 1262-78.)