

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 86462

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Elizabeth A. Brown
Clerk of Supreme Court

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; CRAIG GREEN; R SQUARED GLOBAL SOLUTIONS, LLC,
Derivatively on Behalf of DNT ACQUISITION, LLC; and GR BURGR, LLC,
Appellants,

v.

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY,
LLC; PHWLTV, LLC; and BOARDWALK REGENCY CORPORATION,
Respondents.

District Court Case No. A-17-760537-B;
Consolidated with District Court Case No. A-17-751759-B

RESPONDENTS' SUPPLEMENTAL APPENDIX

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INDEX

Description	Date	Bates nos.
Notice of Entry of 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	06/08/2021	SA001-SA020
Notice of Entry of 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	10/28/2021	SA021-SA040

DATED this 21st day of December 2023.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera
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Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of December 2023, I electronically filed and served a true and correct copy of the above and foregoing **RESPONDENTS' SUPPLEMENTAL APPENDIX** properly addressed to the following:

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By: /s/ Cinda Towne
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Corporation d/b/a Caesars Atlantic City
9

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
13 in Interest GR BURGR LLC, a Delaware
limited liability company,

14 Plaintiff,

15 v.

16 PHWL, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
17 DOES I through X; ROE CORPORATIONS I
through X,

18 Defendants,

19 and

20 GR BURGR LLC, a Delaware limited liability
company,

21 Nominal Plaintiff.

22 AND ALL RELATED MATTERS
23

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF 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**

24
25 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting
26 Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege

27 ///

1 Pursuant to the Crime-Fraud Exception was entered in the above-captioned matter on June 8,
2 2021, a true and correct copy of which is attached hereto.

3 DATED this 8th day of June 2021.

4 PISANELLI BICE PLLC

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10 *Paris Las Vegas Operating Company, LLC;*
11 *PHWL, LLC; and Boardwalk Regency*
12 *Corporation d/b/a Caesars Atlantic City*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 8th day of June 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF 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** to the following:

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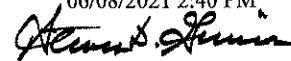
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Corporation d/b/a Caesars Atlantic City
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

10
11
12 ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
13 in Interest GR BURGR LLC, a Delaware
limited liability company,

14 Plaintiff,

15 v.

16 PHWLTV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
17 DOES I through X; ROE CORPORATIONS I
through X,

18 Defendants,

19 and

20 GR BURGR LLC, a Delaware limited liability
company,

21 Nominal Plaintiff.

22 AND ALL RELATED MATTERS
23

Case No.: A-17-751759-B
Dept. No.: XVI

Consolidated with A-17-760537-B

**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**

Date of Hearing: February 10, 2021

Time of Hearing: 9:00 a.m.

24
25 PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
26 Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
27 Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood,
28 "Caesars,") *Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege*

1 Pursuant to the *Crime-Fraud Exception* (the "Motion to Compel"), filed on January 6, 2021, came
2 before this Court for hearing on February 10, 2021, at 9:00 a.m. James J. Pisanelli, Esq.,
3 M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC,
4 appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq.
5 of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC
6 ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"),
7 LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"),
8 MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC
9 ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"),
10 (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green
11 ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on
12 behalf of Gordon Ramsay ("Ramsay").

13 The Court having considered the Motion to Compel, the opposition thereto, as well as
14 argument of counsel presented at the hearing, and good cause appearing therefor, enters the
15 following Findings of Fact and Conclusions of Law:

16 FINDINGS OF FACT

17 1. THE COURT FINDS THAT, Caesars and MOTI, TPOV, DNT, GR Burgr, LLC,
18 LLTQ, and FERG entered into a series of agreements governing the development, creation, and
19 operation of various restaurants in Las Vegas and Atlantic City beginning in 2009 (the "Seibel
20 Agreements");

21 2. THE COURT FURTHER FINDS THAT, Caesars is a gaming licensee and each of
22 the Seibel Agreements contained representations, warranties, and conditions to ensure that Caesars
23 was not involved in a business relationship with an unsuitable individual and/or entity;

24 3. THE COURT FURTHER FINDS THAT, Seibel began using foreign bank accounts
25 to defraud the IRS in 2004;

26
27
28 ¹ Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the
"Seibel Parties."

1 4. THE COURT FURTHER FINDS THAT, in 2016, after years of investigations,
2 numerous tolling agreements, and plea negotiations with the U.S. Government, Seibel pleaded
3 guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal
4 Revenue Laws, 26 U.S.C. § 7212, a Class E Felony;

5 5. THE COURT FURTHER FINDS THAT, Seibel did not inform Caesars that he was
6 engaging in criminal activity, being investigated for it, or that he pled guilty to one count of corrupt
7 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. §
8 7212, a Class E Felony;

9 6. THE COURT FURTHER FINDS THAT, Caesars found out through news reports
10 that Seibel pleaded guilty to a felony and thereafter, Caesars terminated the agreements – as it was
11 expressly allowed to do – due to Seibel's unsuitability and failure to disclose;

12 7. THE COURT FURTHER FINDS THAT, before Caesars learned of Seibel's
13 criminal conduct and in an effort to conceal his criminal conviction while still reaping the benefits
14 of his relationship with Caesars – ten days before entering his guilty plea – Seibel informed Caesars
15 that he was, among other things, (i) transferring all of the membership interests under certain Seibel-
16 Affiliated Entities that he held, directly or indirectly, to two individuals in their capacities as trustees
17 of a trust that he had created (the "Seibel Family 2016 Trust"); (ii) naming other individuals as the
18 managers of these entities; and (iii) assigning the Seibel Agreements to new entities;

19 8. THE COURT FURTHER FINDS THAT, Seibel did not disclose that he decided to
20 perform these purported assignments, transfers, and delegations because of his impending felony
21 conviction;

22 9. THE COURT FURTHER FINDS THAT, these purported transfers were made
23 specifically to avoid, undermine, and circumvent Caesars' rights to terminate the Seibel
24 Agreements;

25 10. THE COURT FURTHER FINDS THAT in this litigation, Seibel has alleged that
26 his unsuitability "is immaterial and irrelevant because, *inter alia*, he assigned his interests, if any,
27 in Defendants or the contracts;"
28

1 11. THE COURT FURTHER FINDS THAT, Seibel's long-time counsel, Brian Ziegler
2 ("Ziegler"), represented to Caesars that "great care was taken to ensure that the trust would never
3 have an unpermitted association with an Unsuitable Person and, as you can see, the trust is to be
4 guided by your . . . determination;"

5 12. THE COURT FURTHER FINDS THAT, Seibel always intended to receive
6 benefits/distributions from the Seibel Family 2016 Trust and Seibel took steps – with the assistance
7 of his attorneys – to be able to do so;

8 13. THE COURT FURTHER FINDS THAT, shortly before Seibel pleaded guilty, he
9 undertook a complex scheme that involved (1) creating new entities to which he was purportedly
10 assigning the interests in certain Seibel-Affiliated Entities; (2) creating the Seibel Family 2016 Trust
11 to receive the income from said entities; and (3) entering into a prenuptial agreement with his soon
12 to be wife Bryn Dorfman ("Dorfman") to, in part, continue benefitting from the Seibel Agreements;

13 14. THE COURT FURTHER FINDS THAT, Seibel worked with his attorneys and
14 Green to create new entities to which he would purportedly assign the Seibel Agreements;

15 15. THE COURT FURTHER FINDS THAT, after the new entities were created, Seibel
16 sent letters to Caesars purporting to assign the Seibel Agreements. In each of those letters, Seibel
17 told Caesars that the agreement would be assigned to a new entity whose membership interests were
18 ultimately mostly owned by the Seibel Family 2016 Trust. For some of the entities, approximately
19 less than 1% of the membership interest were held by Green, Ziegler, and Ziegler's children;

20 16. THE COURT FURTHER FINDS THAT, Seibel falsely told Caesars that the sole
21 beneficiaries of the Seibel Family 2016 Trust were Netty Wachtel Slushny, Dorfman, and potential
22 descendants of Seibel;

23 17. THE COURT FURTHER FINDS THAT, Seibel falsely represented that, "[o]ther
24 than the parties described in th[e] letter[s], there [were] no other parties that have any management
25 rights, powers or responsibilities regarding, or equity or financial interests in" the new entities;

26 18. THE COURT FURTHER FINDS THAT, these representations were all false and
27 were made with the intent to deceive Caesars;
28

1 19. THE COURT FURTHER FINDS THAT, at or around the same time that Seibel set-
2 up the new entities and purported to assign the Seibel Agreements to these new entities, Seibel was
3 secretly negotiating a prenuptial agreement with Dorfman that, by its plain terms, would require
4 Dorfman to share the distributions she received from the Seibel Family 2016 Trust with Seibel and
5 ensure that the entities assigned to the Trust would remain Seibel's separate property;

6 20. THE COURT FURTHER FINDS THAT, the prenuptial agreement has not been
7 amended or nullified;

8 21. THE COURT FURTHER FINDS THAT, Seibel used his lawyers to obtain advice
9 about setting up the trust and its interplay with the prenuptial agreement;

10 22. THE COURT FURTHER FINDS THAT, Seibel and his attorneys falsely
11 represented to Caesars that Seibel was disconnected from receiving benefits from the Seibel Family
12 2016 Trust and the business interests with Caesars;

13 23. THE COURT FURTHER FINDS THAT, the prenuptial agreement demonstrates
14 that Seibel always had an interest in receiving distributions from the Seibel Family 2016 Trust – a
15 direct contradiction to the false representations made to Caesars and this Court;

16 24. THE COURT FURTHER FINDS THAT, all of the statements made to Caesars
17 about Seibel's purported disassociation were false when made and designed exclusively for the
18 purpose of defrauding Caesars so that Seibel could continue to benefit from the relationship despite
19 his unsuitability to conduct business with a gaming licensee; and

20 25. THE COURT FURTHER FINDS THAT, an issue exists as to the effect of the
21 prenuptial agreement with Seibel's wife and its interplay with the Seibel Family 2016 Trust.

22 **CONCLUSIONS OF LAW**

23 1. In Nevada, the attorney-client privilege protects communications between a client
24 (or their representative) and their attorney (or their representative) "[m]ade for the purpose of
25 facilitating the rendition of professional legal services to the client, by the client or the client's
26 lawyer to a lawyer representing another in a matter of common interest." NRS § 49.095.

27 2. "The purpose of the attorney-client privilege 'is to encourage clients to make full
28 disclosures to their attorneys in order to promote the broader public interests of recognizing the

1 importance of fully informed advocacy in the administration of justice." *Canarelli v. Eighth*
2 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
3 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
4 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
5 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
6 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
7 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

8 3. Under Nevada law, no attorney-client privilege exists, "[i]f the services of the lawyer
9 were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew
10 or reasonably should have known to be a crime or fraud." NRS § 49.115(1).

11 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
12 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
13 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
14 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
15 will not protect communications 'made for the purpose of getting advice for the commission of a
16 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
17 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
18 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
19 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
20 the client consults an attorney for advice that will serve him in the commission of a fraud or
21 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289
22 U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an
23 attorney for advice that will serve him in the commission of a fraud will have no help from the law.
24 He must let the truth be told.").

25 5. Importantly, "[t]he planned crime or fraud need not have succeeded for the exception
26 to apply." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090. "The client's abuse of the attorney-
27 client relationship, not his or her successful criminal or fraudulent act, vitiates the privilege." *Id.*
28 (citation omitted). Indeed, "[t]he attorney need not have been aware that the client harbored an

1 improper purpose." *Lewis v. Delta Air Lines, Inc.*, No. 214CV01683RFBGW, 2015 WL 9460124,
2 at *2 (D. Nev. Dec. 23, 2015) (citation omitted).

3 6. "[T]he crime-fraud exception is not strictly limited to cases alleging criminal
4 violations or common law fraud." *Lewis*, 2015 WL 9460124, at *3. "The term 'crime/fraud
5 exception,' . . . , is 'a bit of a misnomer . . . as many courts have applied the exception to situations
6 falling well outside of the definitions of crime or fraud." *Rambus, Inc. v. Infineon Techs. AG*, 222
7 F.R.D. 280, 288 (E.D. Va. 2004) (internal citations omitted); *see, e.g., Cooksey v. Hilton Int'l Co.*,
8 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (upholding magistrate judge's application of the crime-fraud
9 exception and finding that "the facts of th[e] case demonstrate[d] if not an actual fraud, at least an
10 intent on the part of defendants to defraud plaintiff."); *Volcanic Gardens Mgmt. Co. v. Paxson*, 847
11 S.W.2d 343, 348 (Tex. App. 1993) ("The crime/fraud exception comes into play when a prospective
12 client seeks the assistance of an attorney in order to make a false statement or statements of material
13 fact or law to a third person or the court for personal advantage."); *Horizon of Hope Ministry v.*
14 *Clark Cty., Ohio*, 115 F.R.D. 1, 5 (S.D. Ohio 1986) ("Attorney/client communications which are in
15 perpetuation of a tort are not privileged.").

16 7. To invoke the crime-fraud exception, the moving party must first "show that the
17 client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of
18 counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal
19 quotations omitted). "Mere allegations of fraud or criminality do not suffice." *Garcia v. Serv. Emps.*
20 *Int'l Union*, No. 217CV01340APGNJK, 2018 WL 6566563, at *5 (D. Nev. Sept. 6, 2018) (citations
21 omitted). Instead, "[a] movant in a civil case must show by a preponderance of the evidence that
22 the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In*
23 *re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

24 8. Next, the moving party must "demonstrate that the attorney-client communications
25 for which production is sought are sufficiently related to and were made in furtherance of [the]
26 intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810 F.3d at 1113
27 (internal quotations omitted). This second step is accomplished through an *in camera* review of the
28 documents. *See id.* at 1114 (internal quotations omitted) ("[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.").

9. Caesars has met its initial burden of proof and established that Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his unsuitability to conduct business with a gaming licensee.

10. An issue exists as to the effect of Seibel's prenuptial agreement with his wife and its interplay with the Seibel Family 2016 Trust.

11. Thus, communications seeking legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Compel shall be, and hereby is, GRANTED.

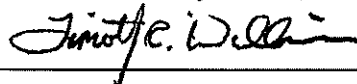
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Seibel Parties shall submit the following documents from their privilege log to the Court for *in camera* review within ten (10) days of notice of entry of this Order: CTRL00111548; CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146; CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764; CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775; CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843; CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272; CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285; CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346; CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476; CTRL00114871; CTRL00114872; CTRL00114873; CTRL00114874; CTRL00114968; CTRL00114969; CTRL00114970; CTRL00115207; CTRL00115208; CTRL00117851; CTRL00117852;

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7	CTRL00178167;	CTRL00178168;	CTRL00178169;	CTRL00178173;	CTRL00178174;
8	CTRL00178175;	CTRL00178176;	CTRL00178177;	CTRL00178178;	CTRL00178179;
9	CTRL00178238;	CTRL00333064;	CTRL00333065;	CTRL00333066;	CTRL00333067;
10	CTRL00333068;	CTRL00334493;	CTRL00334494;	CTRL00334495;	CTRL00334496;
11	CTRL00335096;	CTRL00335097;	CTRL00335098;	CTRL00336394;	CTRL00336395;
12	CTRL00366278;	CTRL00366279;	CTRL00366280;	CTRL00366281;	CTRL00366614;
13	CTRL00366615;	CTRL00366616;	CTRL00111325;	CTRL00114114;	CTRL00114410;
14	CTRL00114429;	CTRL00114432;	CTRL00114445;	CTRL00114604;	CTRL00114844;
15	CTRL00114870;	CTRL00114989;	CTRL00120720;	CTRL00120721;	CTRL00120723;
16	CTRL00120724;	CTRL00120726;	CTRL00145197;	CTRL00145198;	CTRL00145784;
17	CTRL00145876;	CTRL00173347;	CTRL00173350;	CTRL00173352;	CTRL00178020;
18	CTRL00178080;	CTRL00178092;	CTRL00178094;	CTRL00178115;	CTRL00178120;
19	CTRL00178137;	CTRL00178140;	CTRL00178155;	CTRL00178162;	CTRL00178191;
20	CTRL00178227;	CTRL00333242;	CTRL00333310;	CTRL00366304;	CTRL00366305;
21	CTRL00338414;	CTRL00338425;	CTRL00338426;	CTRL00338511;	CTRL00338513;
22	CTRL00338611;	CTRL00338612;	CTRL00339801;	CTRL00339802;	CTRL00339803;
23	CTRL00339848;	CTRL00339849;	CTRL00340482;	CTRL00346870;	CTRL00346871;
24	CTRL00346875;	CTRL00367769;	CTRL00367770;	CTRL00367771;	CTRL00367772;
25	CTRL00338593;	CTRL00113723;	CTRL00113754;	CTRL00113762;	CTRL00113768;
26	CTRL00114321;	CTRL00114322;	CTRL00145645;	CTRL00145661;	CTRL00145662;
27	CTRL00145663; CTRL00178086; CTRL00178090; and CTRL00178092.				
28					

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall examine, *in camera*, the above identified documents to determine whether they are sufficiently related to and were made in furtherance of intended or continued illegality and, thus, whether the same must be produced to Caesars.

IT IS SO ORDERED.

Dated this 8th day of June, 2021



AAA F5E 5E2F 4B5B

NS

Respectfully submitted by:

Approved as to form and content by:

Timothy C. Williams
District Court Judge

DATED June 4, 2021

DATED May 27, 2021

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ P.C.

By: /s/ M. Magali Mercera
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Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
400 South 7th Street, Suite 300
Las Vegas, NV 89101

By: /s/ Alan M. Lebensfeld
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(admitted *pro hac vice*)
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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating
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Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

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Kevin M. Sutehall, Esq.
FOX ROTHCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

*Attorneys for The Original Homestead
Restaurant, Inc*

Approved as to form and content by:

DATED May 27, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert
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Wade Beavers, Esq. (SBN 13451)
7800 Rancharra Parkway
Reno, NV 89511

Attorneys for Gordon Ramsay

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Thursday, May 27, 2021 6:17 PM
To: Magali Mercera
Cc: Joshua Gilmore; Stephanie Glantz; Paul Williams; Tennert, John; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Re: Desert Palace v. Seibel: FFCL Granting Motion to Compel Documents Pursuant to Crime-Fraud Exception

CAUTION: External Email

You may

Sent From AML iPhone

On May 27, 2021, at 8:04 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh/Stephanie –

Thank you for hopping on a call yesterday. Following our discussion, we went back and reviewed your proposed revisions to the findings of fact and conclusions of law. While we made a few changes you suggested, we cannot agree to the majority of your revisions. Please note that we did not change the reference of “Seibel-Affiliated Entities” to “Development Entities” as we discussed yesterday to remain consistent with how we referred to the parties in our briefing.

We believe our proposed findings of fact and conclusions of law are supported by the record and follows the Court’s minute order directing us to “prepare a Findings of Fact, Conclusions of Law and Order based not only on the court’s minute order but the pleadings on file herein, argument of counsel, and the entire record.”

Please advise if you are willing to sign this order or if competing orders will be necessary.

John/Alan – Please advise if we may apply your e-signature to this version of the findings of fact and conclusions of law.

Thanks,

M. Magali Mercera

PISANELLI BICE, PLLC
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Las Vegas, Nevada 89101
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Fax: (702) 214-2101
mmm@pisanellibice.com | www.pisanellibice.com



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This transaction and any attachment is confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2.docx>

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2 (redline).docx>

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Thursday, May 27, 2021 6:37 PM
To: Magali Mercera
Cc: Joshua Gilmore; Stephanie Glantz; Paul Williams; Alan Lebensfeld; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Re: Desert Palace v. Seibel: FFCL Granting Motion to Compel Documents Pursuant to Crime-Fraud Exception

CAUTION: External Email

Magali,
Please apply my e-signature.
Thanks,
John

Sent from my iPhone

John D. Tennert III, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511
T: 775.788.2212 | F: 775.788.2213
jtennert@fennemorelaw.com | [View Bio](#)



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COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

On May 27, 2021, at 5:05 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh/Stephanie –

Thank you for hopping on a call yesterday. Following our discussion, we went back and reviewed your proposed revisions to the findings of fact and conclusions of law. While we made a few changes you suggested, we cannot agree to the majority of your revisions. Please note that we did not change the

reference of "Seibel-Affiliated Entities" to "Development Entities" as we discussed yesterday to remain consistent with how we referred to the parties in our briefing.

We believe our proposed findings of fact and conclusions of law are supported by the record and follows the Court's minute order directing us to "prepare a Findings of Fact, Conclusions of Law and Order based not only on the court's minute order but the pleadings on file herein, argument of counsel, and the entire record."

Please advise if you are willing to sign this order or if competing orders will be necessary.

John/Alan – Please advise if we may apply your e-signature to this version of the findings of fact and conclusions of law.

Thanks,

M. Magali Mercera

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This transaction and any attachment is confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2.docx>

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2 (redline).docx>

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 6/8/2021

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robert@nv-lawfirm.com

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ksutehall@foxrothschild.com

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18 "John Tennert, Esq." .

jtennert@fclaw.com

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20 Dan McNutt .

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21 Debra L. Spinelli .

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22 Diana Barton .

db@pisanellibice.com

23 Lisa Anne Heller .

lah@cmlawnv.com

24 Matt Wolf .

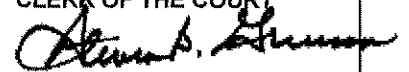
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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWL, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
in Interest GR BURGR LLC, a Delaware
limited liability company,

Plaintiff,

v.

PHWL, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
DOES I through X; ROE CORPORATIONS I
through X,

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF 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**

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting
Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege

///

1 Pursuant to the Crime-Fraud Exception was entered in the above-captioned matter on October 28,
2 2021, a true and correct copy of which is attached hereto.

3 DATED this 28th day of October 2021.

4 PISANELLI BICE PLLC

5 By: /s/ M. Magali Mercera
6 James J. Pisanelli, Esq., #4027
7 Debra L. Spinelli, Esq., #9695
8 M. Magali Mercera, Esq., #11742
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Las Vegas, Nevada 89101

9 *Attorneys for Desert Palace, Inc.;*
10 *Paris Las Vegas Operating Company, LLC;*
11 *PHWLTV, LLC; and Boardwalk Regency*
Corporation d/b/a Caesars Atlantic City

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 28th day of October 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF 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** to the following:

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Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.

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LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC; and R Squared
Global Solutions, LLC, Derivatively on Behalf of
DNT Acquisition, LLC, and Nominal Plaintiff
GR Burgr LLC*

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ksutehall@foxrothschild.com

*Attorneys for Plaintiff in Intervention
The Original Homestead Restaurant, Inc.*

/s/ Cinda Towne

An employee of PISANELLI BICE PLLC

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7 *Attorneys for Desert Palace, Inc.;*
Paris Las Vegas Operating Company, LLC;
8 *PHWLV, LLC; and Boardwalk Regency*
Corporation d/b/a Caesars Atlantic City
9

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
13 in Interest GR BURGR LLC, a Delaware
limited liability company,

14 Plaintiff,

15 v.

16 PHWLV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
17 DOES I through X; ROE CORPORATIONS I
through X,

18 Defendants,

19 and

20 GR BURGR LLC, a Delaware limited liability
company,

21 Nominal Plaintiff.

22 AND ALL RELATED MATTERS
23

Case No.: A-17-751759-B
Dept. No.: XVI

Consolidated with A-17-760537-B

**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**

Date of Hearing: February 10, 2021

Time of Hearing: 9:00 a.m.

25 PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
26 Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
27 Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood,
28 "Caesars,") *Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege*

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 Pursuant to the *Crime-Fraud Exception* (the "Motion to Compel"), filed on January 6, 2021, came
2 before this Court for hearing on February 10, 2021, at 9:00 a.m. James J. Pisanelli, Esq.,
3 M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC,
4 appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq.
5 of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC
6 ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"),
7 LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"),
8 MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC
9 ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"),
10 (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green
11 ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on
12 behalf of Gordon Ramsay ("Ramsay").

13 The Court having considered the Motion to Compel, the opposition thereto, as well as
14 argument of counsel presented at the hearing, and good cause appearing therefor, enters the
15 following Findings of Fact and Conclusions of Law:

16 FINDINGS OF FACT

17 1. THE COURT FINDS THAT Caesars and MOTI, TPOV, DNT, GR Burgr, LLC,
18 LLTQ, and FERG entered into a series of agreements governing the development, creation, and
19 operation of various restaurants in Las Vegas and Atlantic City beginning in 2009 (the "Seibel
20 Agreements");

21 2. THE COURT FURTHER FINDS THAT Caesars is a gaming licensee and each of
22 the Seibel Agreements contained representations, warranties, and conditions to ensure that Caesars
23 was not involved in a business relationship with an unsuitable individual and/or entity;

24 3. THE COURT FURTHER FINDS THAT Seibel began using foreign bank accounts
25 to defraud the IRS in 2004;

26
27
28 ¹ Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the
"Seibel Parties."

1 4. THE COURT FURTHER FINDS THAT, in 2016, after years of investigations,
2 numerous tolling agreements, and plea negotiations with the U.S. Government, Seibel pleaded
3 guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal
4 Revenue Laws, 26 U.S.C. § 7212, a Class E Felony;

5 5. THE COURT FURTHER FINDS THAT Seibel did not inform Caesars that he was
6 engaging in criminal activity, being investigated for it, or that he pled guilty to one count of corrupt
7 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. §
8 7212, a Class E Felony;

9 6. THE COURT FURTHER FINDS THAT Caesars found out through news reports
10 that Seibel pleaded guilty to a felony and thereafter, Caesars terminated the agreements – as it was
11 expressly allowed to do – due to Seibel's unsuitability and failure to disclose;

12 7. THE COURT FURTHER FINDS THAT before Caesars learned of Seibel's criminal
13 conduct and in an effort to conceal his criminal conviction while still reaping the benefits of his
14 relationship with Caesars – ten days before entering his guilty plea – Seibel informed Caesars that
15 he was, among other things, (i) transferring all of the membership interests under certain Seibel-
16 Affiliated Entities that he held, directly or indirectly, to two individuals in their capacities as trustees
17 of a trust that he had created (the "Seibel Family 2016 Trust"); (ii) naming other individuals as the
18 managers of these entities; and (iii) assigning the Seibel Agreements to new entities;

19 8. THE COURT FURTHER FINDS THAT Seibel did not disclose that he decided to
20 perform these purported assignments, transfers, and delegations because of his impending felony
21 conviction;

22 9. THE COURT FURTHER FINDS THAT these purported transfers were made
23 specifically to avoid, undermine, and circumvent Caesars' rights to terminate the Seibel
24 Agreements;

25 10. THE COURT FURTHER FINDS THAT in this litigation, Seibel has alleged that
26 his unsuitability "is immaterial and irrelevant because, *inter alia*, he assigned his interests, if any,
27 in Defendants or the contracts;"

28

1 11. THE COURT FURTHER FINDS THAT Seibel's long-time counsel, Brian Ziegler
2 ("Ziegler"), represented to Caesars that "great care was taken to ensure that the trust would never
3 have an unpermitted association with an Unsuitable Person and, as you can see, the trust is to be
4 guided by your . . . determination;"

5 12. THE COURT FURTHER FINDS THAT Seibel always intended to receive
6 benefits/distributions from the Seibel Family 2016 Trust and Seibel took steps – with the assistance
7 of his attorneys – to be able to do so;

8 13. THE COURT FURTHER FINDS THAT, shortly before Seibel pleaded guilty, he
9 undertook a complex scheme that involved (1) creating new entities to which he was purportedly
10 assigning the interests in certain Seibel-Affiliated Entities; (2) creating the Seibel Family 2016 Trust
11 to receive the income from said entities; and (3) entering into a prenuptial agreement with his soon
12 to be wife Bryn Dorfman ("Dorfman") to, in part, continue benefitting from the Seibel Agreements;

13 14. THE COURT FURTHER FINDS THAT Seibel worked with his attorneys and
14 Green to create new entities to which he would purportedly assign the Seibel Agreements;

15 15. THE COURT FURTHER FINDS THAT, after the new entities were created, Seibel
16 sent letters to Caesars purporting to assign the Seibel Agreements. In each of those letters, Seibel
17 told Caesars that the agreement would be assigned to a new entity whose membership interests were
18 ultimately mostly owned by the Seibel Family 2016 Trust. For some of the entities, approximately
19 less than 1% of the membership interest were held by Green, Ziegler, and Ziegler's children;

20 16. THE COURT FURTHER FINDS THAT, Seibel falsely told Caesars that the sole
21 beneficiaries of the Seibel Family 2016 Trust were Netty Wachtel Slushny, Dorfman, and potential
22 descendants of Seibel;

23 17. THE COURT FURTHER FINDS THAT Seibel falsely represented that, "[o]ther
24 than the parties described in th[e] letter[s], there [were] no other parties that have any management
25 rights, powers or responsibilities regarding, or equity or financial interests in" the new entities;

26 18. THE COURT FURTHER FINDS THAT these representations were all false and
27 were made with the intent to deceive Caesars;

28

1 19. THE COURT FURTHER FINDS THAT at or around the same time that Seibel set-
2 up the new entities and purported to assign the Seibel Agreements to these new entities, Seibel was
3 secretly negotiating a prenuptial agreement with Dorfman that, by its plain terms, would require
4 Dorfman to share the distributions she received from the Seibel Family 2016 Trust with Seibel and
5 ensure that the entities assigned to the Trust would remain Seibel's separate property;

6 20. THE COURT FURTHER FINDS THAT the prenuptial agreement has not been
7 amended or nullified;

8 21. THE COURT FURTHER FINDS THAT Seibel used his lawyers to obtain advice
9 about setting up the trust and its interplay with the prenuptial agreement;

10 22. THE COURT FURTHER FINDS THAT Seibel and his attorneys falsely represented
11 to Caesars that Seibel was disconnected from receiving benefits from the Seibel Family 2016 Trust
12 and the business interests with Caesars;

13 23. THE COURT FURTHER FINDS THAT the prenuptial agreement demonstrates that
14 Seibel always had an interest in receiving distributions from the Seibel Family 2016 Trust – a direct
15 contradiction to the false representations made to Caesars and this Court;

16 24. THE COURT FURTHER FINDS THAT all of the statements made to Caesars about
17 Seibel's purported disassociation were false when made and designed exclusively for the purpose
18 of defrauding Caesars so that Seibel could continue to benefit from the relationship despite his
19 unsuitability to conduct business with a gaming licensee;

20 25. THE COURT FURTHER FINDS THAT, on June 8, 2021, this Court entered its first
21 Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents
22 Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the
23 "June 8, 2021 Order"). In that order, the Court held that Caesars had met its initial burden of proof
24 and established that Seibel's representations as to the independence of the Seibel Family 2016 Trust
25 were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his
26 unsuitability to conduct business with a gaming licensee. As a result, communications seeking
27 legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are
28

discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars;

26. THE COURT FURTHER FINDS THAT, pursuant to the June 8, 2021 Order, the Court ordered the Seibel Parties to submit the following documents from their privilege log to the Court for an *in camera* review: CTRL00111548; CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146; CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764; CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775; CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843; CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272; CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285; CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346; CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476; CTRL00114871; CTRL00114872; CTRL00114873; CTRL00114874; CTRL00114968; CTRL00114969; CTRL00114970; CTRL00115207; CTRL00115208; CTRL00117851; CTRL00117852; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00334493; CTRL00334494; CTRL00334495; CTRL00334496; CTRL00335096; CTRL00335097; CTRL00335098; CTRL00336394; CTRL00336395; CTRL00366278; CTRL00366279; CTRL00366280; CTRL00366281; CTRL00366614; CTRL00366615; CTRL00366616; CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429;

CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870;
CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723; CTRL00120724;
CTRL00120726; CTRL00145197; CTRL00145198; CTRL00145784; CTRL00145876;
CTRL00173347; CTRL00173350; CTRL00173352; CTRL00178020; CTRL00178080;
CTRL00178092; CTRL00178094; CTRL00178115; CTRL00178120; CTRL00178137;
CTRL00178140; CTRL00178155; CTRL00178162; CTRL00178191; CTRL00178227;
CTRL00333242; CTRL00333310; CTRL00366304; CTRL00366305; CTRL00338414;
CTRL00338425; CTRL00338426; CTRL00338511; CTRL00338513; CTRL00338611;
CTRL00338612; CTRL00339801; CTRL00339802; CTRL00339803; CTRL00339848;
CTRL00339849; CTRL00340482; CTRL00346870; CTRL00346871; CTRL00346875;
CTRL00367769; CTRL00367770; CTRL00367771; CTRL00367772; CTRL00338593;
CTRL00113723; CTRL00113754; CTRL00113762; CTRL00113768; CTRL00114321;
CTRL00114322; CTRL00145645; CTRL00145661; CTRL00145662; CTRL00145663;
CTRL00178086; CTRL00178090; and CTRL00178092 (collectively the "Crime/Fraud Documents");

27. THE COURT FURTHER FINDS THAT the Seibel Parties submitted the Crime/Fraud Documents to this Court for *in camera* review on June 18, 2021;

28. THE COURT FURTHER FINDS THAT, following its review of the Crime/Fraud Documents, the Court issued a minute order on August 18, 2021 (the "Minute Order");²

29. THE COURT FURTHER FINDS THAT, following its review of the Crime/Fraud Documents, the Court determined that the Seibel prenuptial agreement was not legitimately prepared for estate purposes; and

30. THE COURT FURTHER FINDS 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.

² The Court *sua sponte* sealed the August 18, 2021 Minute Order. The Minute Order is incorporated herein by reference as if restated in its entirety.

CONCLUSIONS OF LAW

1
2 1. In Nevada, the attorney-client privilege protects communications between a client
3 (or their representative) and their attorney (or their representative) "[m]ade for the purpose of
4 facilitating the rendition of professional legal services to the client, by the client or the client's
5 lawyer to a lawyer representing another in a matter of common interest." NRS § 49.095.

6 2. "The purpose of the attorney-client privilege 'is to encourage clients to make full
7 disclosures to their attorneys in order to promote the broader public interests of recognizing the
8 importance of fully informed advocacy in the administration of justice.'" *Canarelli v. Eighth*
9 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
10 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
11 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
12 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
13 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
14 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

15 3. Under Nevada law, no attorney-client privilege exists, "[i]f the services of the lawyer
16 were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew
17 or reasonably should have known to be a crime or fraud." NRS § 49.115(1).

18 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
19 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
20 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
21 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
22 will not protect communications 'made for the purpose of getting advice for the commission of a
23 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
24 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
25 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
26 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
27 the client consults an attorney for advice that will serve him in the commission of a fraud or
28 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289

1 U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an
2 attorney for advice that will serve him in the commission of a fraud will have no help from the law.
3 He must let the truth be told.").

4 5. Importantly, "[t]he planned crime or fraud need not have succeeded for the exception
5 to apply." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090. "The client's abuse of the attorney-
6 client relationship, not his or her successful criminal or fraudulent act, vitiates the privilege." *Id.*
7 (citation omitted). Indeed, "[t]he attorney need not have been aware that the client harbored an
8 improper purpose." *Lewis v. Delta Air Lines, Inc.*, No. 214CV01683RFBGWF, 2015 WL 9460124,
9 at *2 (D. Nev. Dec. 23, 2015) (citation omitted).

10 6. "[T]he crime-fraud exception is not strictly limited to cases alleging criminal
11 violations or common law fraud." *Lewis*, 2015 WL 9460124, at *3. "The term 'crime/fraud
12 exception,' . . . , is 'a bit of a misnomer . . . as many courts have applied the exception to situations
13 falling well outside of the definitions of crime or fraud." *Rambus, Inc. v. Infineon Techs. AG*, 222
14 F.R.D. 280, 288 (E.D. Va. 2004) (internal citations omitted); *see, e.g., Cooksey v. Hilton Int'l Co.*,
15 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (upholding magistrate judge's application of the crime-fraud
16 exception and finding that "the facts of th[e] case demonstrate[d] if not an actual fraud, at least an
17 intent on the part of defendants to defraud plaintiff."); *Volcanic Gardens Mgmt. Co. v. Paxson*, 847
18 S.W.2d 343, 348 (Tex. App. 1993) ("The crime/fraud exception comes into play when a prospective
19 client seeks the assistance of an attorney in order to make a false statement or statements of material
20 fact or law to a third person or the court for personal advantage."); *Horizon of Hope Ministry v.*
21 *Clark Cty., Ohio*, 115 F.R.D. 1, 5 (S.D. Ohio 1986) ("Attorney/client communications which are in
22 perpetuation of a tort are not privileged.").

23 7. To invoke the crime-fraud exception, the moving party must first "show that the
24 client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of
25 counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal
26 quotations omitted). "Mere allegations of fraud or criminality do not suffice." *Garcia v. Serv. Emps.*
27 *Int'l Union*, No. 217CV01340APGNJK, 2018 WL 6566563, at *5 (D. Nev. Sept. 6, 2018) (citations
28 omitted). Instead, "[a] movant in a civil case must show by a preponderance of the evidence that

1 the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In*
2 *re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

3 8. Next, the moving party must "demonstrate that the attorney-client communications
4 for which production is sought are sufficiently related to and were made in furtherance of [the]
5 intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810 F.3d at 1113
6 (internal quotations omitted). This second step is accomplished through an *in camera* review of the
7 documents. *See id.* at 1114 (internal quotations omitted) ("[A] district court must examine the
8 individual documents themselves to determine that the specific attorney-client communications for
9 which production is sought are sufficiently related to and were made in furtherance of the intended,
10 or present, continuing illegality.").

11 9. Caesars met its initial burden of proof showing that Seibel was engaged in a
12 fraudulent scheme when he sought the advice of his counsel to further the scheme. *See In re*
13 *Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal quotations omitted). Specifically, Caesars
14 established that Seibel's representations as to the independence of the Seibel Family 2016 Trust
15 were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his
16 unsuitability to conduct business with a gaming licensee.

17 10. Following the Court's *in camera* review of the Crime/Fraud Documents, the Court
18 has determined that the Crime/Fraud Documents are sufficiently related to and were made in
19 furtherance of intended, or present, continuing fraud. *See In re Grand Jury Investigation*, 810 F.3d
20 at 1113. It appears to the Court that the documents are related to and were made in furtherance of
21 Seibel's fraudulent scheme. Accordingly, the Court determines that Caesars has met its second
22 burden of demonstrating that the Crime/Fraud Exception applies. Specifically, Caesars has
23 established that the Crime/Fraud Documents are sufficiently related to and were made in
24 furtherance of Seibel's intended fraudulent scheme that he could continue to benefit from the Seibel
25 Agreements despite his unsuitability to conduct business with a gaming licensee

26 11. Thus, the Crime/Fraud Documents are discoverable and subject to production under
27 the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to
28 defraud Caesars.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Compel shall be, and hereby is, GRANTED.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Seibel Parties shall produce the Crime/Fraud Documents³ to the parties in this action within fourteen (14) days of notice of entry of this Order;

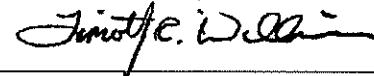
³ The Crime-Fraud Documents include documents from the Seibel Parties' privilege log bearing numbers CTRL00111548; CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146; CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764; CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775; CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843; CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272; CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285; CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346; CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476; CTRL00114871; CTRL00114872; CTRL00114873; CTRL00114874; CTRL00114968; CTRL00114969; CTRL00114970; CTRL00115207; CTRL00115208; CTRL00117851; CTRL00117852; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00334493; CTRL00334494; CTRL00334495; CTRL00334496; CTRL00335096; CTRL00335097; CTRL00335098; CTRL00336394; CTRL00336395; CTRL00366278; CTRL00366279; CTRL00366280; CTRL00366281; CTRL00366614; CTRL00366615; CTRL00366616; CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429; CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870; CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723; CTRL00120724; CTRL00120726; CTRL00145197; CTRL00145198; CTRL00145784; CTRL00145876; CTRL00173347; CTRL00173350; CTRL00173352; CTRL00178020; CTRL00178080; CTRL00178092; CTRL00178094; CTRL00178115; CTRL00178120; CTRL00178137; CTRL00178140; CTRL00178155; CTRL00178162; CTRL00178191; CTRL00178227; CTRL00333242; CTRL00333310; CTRL00366304; CTRL00366305; CTRL00338414; CTRL00338425; CTRL00338426; CTRL00338511; CTRL00338513; CTRL00338611; CTRL00338612; CTRL00339801; CTRL00339802; CTRL00339803; CTRL00339848; CTRL00339849; CTRL00340482; CTRL00346870; CTRL00346871; CTRL00346875; CTRL00367769; CTRL00367770;

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED the Seibel Parties
2 may produce the Crime-Fraud Documents under the Highly Confidential designation set forth in
3 the Stipulated Confidentiality Agreement and Protective Order entered by this Court on
4 March 12, 2019 (the "Stipulated Protective Order").

5 IT IS SO ORDERED.

Dated this 28th day of October, 2021



MH

8 Respectfully submitted by:

Approved ^{279 FE0 F29F EFA0} Timothy C. Williams
District Court Judge
Dated October 27, 2021

9 DATED October 27, 2021

10 PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ P.C.

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13 Debra L. Spinelli, Esq., Bar No. 9695
14 M. Magali Mercera, Esq., Bar No. 11742
400 South 7th Street, Suite 300
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16 *Paris Las Vegas Operating*
17 *Company, LLC; PHWL, LLC; and*
Boardwalk Regency
Corporation d/b/a Caesars Atlantic City

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Attorneys for The Original Homestead Restaurant

18 Approved as to form and content by:

19 DATED October 27, 2021

20 FENNEMORE CRAIG, P.C.

21 By: /s/ John D. Tennert
22 John D. Tennert, Esq. (SBN 11728)
23 Wade Beavers, Esq. (SBN 13451)
24 7800 Rancharra Parkway
25 Reno, NV 89511
Attorneys for Gordon Ramsay

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27 CTRL00367771; CTRL00367772; CTRL00338593; CTRL00113723; CTRL00113754;
CTRL00113762; CTRL00113768; CTRL00114321; CTRL00114322; CTRL00145645;
28 CTRL00145661; CTRL00145662; CTRL00145663; CTRL00178086; CTRL00178090; and
CTRL00178092.

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, October 27, 2021 10:45 AM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Magali,

You may apply my e-signature to the attached form of order.

Thanks,
John

John D. Tennert III, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511
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COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 9:47 AM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Wednesday, October 27, 2021 11:22 AM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 12:47 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Nevertheless, following our discussion yesterday, we understand that you also disagree with the findings in the order and intend to submit a competing order. Accordingly, since we are unable to agree on a form of order, we will submit our own as well.

John and Alan – Please confirm that we may apply your e-signature to the attached form of order.

Thanks,

M. Magali Mercera

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From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, October 26, 2021 1:54 PM
To: Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWLTV LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 10/28/2021

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