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Tracie K. Lindeman
Clerk of Supreme Court

IN THE

SANDS CHINA, LTD.

Supreme Case No. 58294

Petitioner,

District Court Case No. A-10-627691-C

VS.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
in and for the COUNTY OF CLARK and
THE HONORABLE ELIZABETH
GONZALEZ,

**STEVEN C. JACOBS' RESPONSE TO
PETITIONER SANDS CHINA, LTD'S
MOTION TO STAY PROCEEDINGS
PENDING WRIT PETITION**

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.



700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

POINTS AND AUTHORITIES

I. INTRODUCTION

On March 15, 2011, District Court Judge Elizabeth Gonzalez denied the efforts of Sands China, Ltd. ("Sands China") to dismiss the underlying proceedings on grounds that no personal jurisdiction existed over the company in Nevada. Nearly two months later, on May 6, 2011, Sands China filed a writ petition with this Court seeking review of Judge Gonzalez's decision on the jurisdiction issue. *See* Stay Motion, Exh. A. Sands China thereafter twice-moved for a stay of proceedings before the district court on grounds it should not be forced to participate in the discovery process while its writ petition is pending. *Id.* at Exhs. H and J. The district court twice-denied Sands China's motions to stay the lower court proceedings.

Undoubtedly hoping the third time will be a charm, Sands China now brings its plea to shut down the district court proceedings to this tribunal. The primary grounds upon which Sands China seeks a stay are the same as those presented to the district court, which Sands China summarizes as follows:

While this Court considers the Writ Petition and the parties' briefs, the District Court and the Nevada Rules of Civil Procedure are requiring SCL to expend over One Million Dollars (US\$1,000,000.00) to review documents stored in the Macau Special Administrative Region of the People's Republic of China ("Macau"), while also seeking compliance with Macanese laws concerning the transfer of private data out of Macau.

Stay Motion at 2:7-11. The foregoing contentions notwithstanding, this Court's precedent, the admissions of counsel for Sands China's and Defendant Las Vegas Sands Corp. ("LVSC"), as well as additional legal authorities, all demonstrate that a stay of proceedings is not remotely justified here.

To set the stage, we begin with the admissions of defense counsel as they play a central role in the analysis of the stay factors contained in NRAP 8. At the hearing on Defendants' respective Motions to Dismiss, counsel for Sands China, Ms. Glaser, plainly stated that "[t]here's



1 *no question, and we don't dispute this, that Sands Las Vegas controls Sands China.*"¹ Mr.
2 Peek, counsel for LVSC, likewise admitted:

3 It would be remiss to not report to those who are going to buy stock in Sands
4 China Limited that Sands China Limited at the conclusion of the initial public
5 offering is going to be owned by LVSC up to 70 percent. *The last I looked under
6 corporate governance, 70 percent gives one control.*

7 Exhibit 1 at 42:10-14 (emphasis added). Jacobs has consistently argued that LVSC's undisputed
8 control over Sands China establishes that Sands China will be required to participate in the
9 discovery process in this action regardless of whether it ultimately succeeds on its writ petition.
10 *See, e.g., Stay Motion, Exh. K (Plaintiff's Opposition to Sands China's Renewed Motion to Stay*
11 *Proceedings).* Despite the fact that Jacobs has raised this issue in both of his opposition briefs to
12 Sands China's stay motions before the district court, Sands China has never addressed the matter.
13 The latest Stay Motion before this Court once again ignores the glaring issue of LVSC's
14 undisputed control over Sands China. The company's continuing silence on this issue is telling.

15 Nor do Macau's data privacy laws warrant a stay of proceedings in this action. United
16 States Supreme Court precedent as well as that of many lower courts makes clear that secrecy
17 statutes of foreign countries may not be used to deprive an American court of the power to order a
18 party subject to its jurisdiction to produce evidence even though the production may violate the
19 foreign statute. Again, the outcome of Sands China's pending writ petition has no impact on this
20 principle. Because LVSC is undisputedly subject to jurisdiction in the lower court, and because
21 LVSC undisputedly controls Sands China, Jacobs will be able to pursue discovery from Sands
22 China through its controlling shareholder, LVSC, even if this Court finds jurisdiction over Sands
23 China to be lacking (which it should not). For these and other reasons set forth below, the Court
24 should deny the Stay Motion in its entirety.

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28 ¹ See Hearing Tr. dated 3/15/11, true and correct excerpts of which are attached hereto as
Exhibit 1, at 60:5-6 (emphasis added).



II. ARGUMENT

A. Governing Standards.

Rule 8 of the Nevada Rules of Appellate Procedure states, in part, as follows:

In deciding whether to issue a stay or injunction, this court will generally consider the following factors: (1) whether the object of the appeal will be defeated if the stay or injunction is denied; (2) whether appellant will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant is likely to prevail on the merits in the appeal.

NRAP 8(c). *See also, Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657-58, 6 P.3d 982, 986-87 (2000) (applying requirements and factors of NRAP 8 to petitions for extraordinary relief). At least one Circuit Court of Appeals has characterized the showing necessary under Rule 8 of the Federal Rules of Appellate Procedure, the federal counterpart to NRAP 8, as a “heavy burden.” *See United States v. Bogle*, 855 F.2d 707, 708 (11th Cir. 1988).

Indeed, motions to stay discovery in general—the primary goal of Sands China’s instant motion—are widely viewed with disfavor. *See Thomas v. Tyler*, 841 F.Supp. 1119, 1131 n. 6 (D.Kan. 1993). Courts have routinely instructed that “[a] party seeking a stay of discovery carries the heavy burden of making a ‘strong showing’ why discovery should be denied.” *Turner Broadcasting System, Inc. v. Tracinda Corporation*, 175 F.R.D. 554, 556 (D.Nev. 1997) (quoting *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)). Sands China has failed to satisfy its heavy burden here as each of the NRAP 8 factors tips decidedly in favor of denying any stay in these proceedings.

B. Application Of The NRAP 8 Factors Warrants The Denial Of Sands China’s Motion.

1. The Object of the Writ Petition Will Not Be Defeated.

Sands China argues that its request to stay is meritorious, in large part, because this Court directed Jacobs to respond to the writ petition. *See Stay Motion* at 8:6 – 9:11. While it is certainly true that the Court has directed Jacobs to respond to the writ petition, this hardly means that the



1 object of Sands China's writ petition will be defeated in the absence of a stay. To the contrary, this
2 Court has expressly denied a request to stay proceedings in nearly the identical context presented
3 here. In *Hansen v. Eighth Jud. Dist. Ct.*, the petitioner moved to quash service of process for lack of
4 personal jurisdiction, which the district court denied. 116 Nev. at 652, 8 P.3d at 983. The Petitioner
5 then filed a writ with the Nevada Supreme Court challenging the district court's ruling. *Id.* After
6 first moving unsuccessfully before the district court to stay the proceedings pending its writ petition,
7 the petitioner then moved this Court for a stay of proceedings. *Id.*

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9 In rejecting the petitioner's request for a stay, the *Hansen* court found that "the object of the
10 writ petition will not be defeated if the stay is denied." *Id.* at 657, 8 P.3d at 986. That was because
11 the petitioner had timely challenged jurisdiction in the lower court, the lower court ruled on the
12 matter without an evidentiary hearing and, thus, "implicitly ordered that the hearing and
13 determination of personal jurisdiction be deferred to trial." *Id.* at 658, 8 P.3d at 986 (citing *Hospital*
14 *Corp. of America v. Dist. Court*, 112 Nev. 1159, 1161, 924 P.2d 725, 726 n. 2 (1996), *Trump v.*
15 *Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692-93, 857 P.2d 740, 743-45 (1993)). Because the
16 petitioner in *Hansen* would still be free to challenge personal jurisdiction at the time of trial, the
17 Court found that the first factor did not warrant a stay of proceedings. *Id.*

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19 The same logic applies here. Sands China timely challenged jurisdiction in this action,
20 and the court denied its motion to dismiss using a *prima facie* standard (*i.e.*, considering affidavits
21 and discovery materials as opposed to an evidentiary hearing). Accordingly, the final
22 determination on the question of Sands China's personal jurisdiction in Nevada—the object of Sands
23 China's current writ petition—is reserved for trial in the district court. *See Trump*, 109 Nev. at 692-
24 93, 857 P.2d at 743-45 (where plaintiff makes a *prima facie* showing of jurisdiction prior to trial,
25 it must still prove personal jurisdiction by preponderance of evidence at trial).

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27 The order directing Jacobs to respond to the writ petition is only one step in the
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CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 procedures contemplated by NRAP 21; it does not signal victory for the petitioner. Nor does the
2 order do anything to undermine this Court's precedent refusing to stay proceedings in the district
3 court merely because a party is challenging personal jurisdiction by way of a writ petition.
4 Accordingly, the analysis of this factor demonstrates that a stay is unnecessary.
5

6 **2. Sands China Will Suffer no Irreparable or Serious Harm**

7 **a. Nevada Supreme Court precedent**

8 Sands China asserts that the "*possibility*" of irreparable harm is "timely and more tangible"
9 now that the Court has directed Jacobs to respond to the writ petition. *See* Stay Motion at 9:15-15.
10 While it is unclear how this Court's decision merely to consider the writ petition has any impact on
11 the irreparable harm calculus, Sands China's use of the word "*possibility*" is most appropriate as its
12 claims of irreparable harm are speculative indeed. Sands China specifically highlights the "ongoing
13 costly and time-consuming discovery process," "the heavy burden of reviewing and producing the
14 information currently stored and controlled by SCL's subsidiaries in Macau," and the limitations
15 imposed by the Macau data privacy act as the potential sources of irreparable harm in this action. *Id.*
16 at 9:18 – 12:5. None of these considerations justify a stay.
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18 Though it is never mentioned by Sands China in its "irreparable harm" analysis, *see* Stay
19 Motion at 9:18 – 12:5, *Hansen* is once again helpful on this point. Echoing Sands China here, the
20 petitioner in *Hansen* argued that it was entitled to a stay under NRAP 8 so that it would "not be
21 required to participate 'needlessly' in the expense of lengthy and time-consuming discovery, trial
22 preparation, and trial" since it was challenging the threshold issue of personal jurisdiction. *Id.* at
23 658, 6 P.3d at 986-87. The *Hansen* court rejected the petitioner's argument and denied the motion
24 for stay, declaring that "[s]uch litigation expenses, while potentially substantial, are neither
25 irreparable nor serious." *Id.* (emphasis added). *See also, Mikohn Gaming Corp. v. McCrea*, 120
26 Nev. 248, 253, 89 P.3d 36, 39 (2004) (irreparable harm "will not generally play a significant role in
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CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 the decision whether to issue a stay.”). This principle guides the analysis in the case at bar.

2 **b. LVSC’s undisputed “control” of Sands China completely undermines any**
3 **claim of irreparable harm caused by the production of documents.**

4 In an effort to buttress its claim of irreparable harm, Sands China invokes the specter of
5 certain Macau data privacy laws to argue that absent a stay the company “will be forced into a
6 precarious position where it must choose either to violate either Macau or Nevada law.” Stay
7 Motion at 10:15-16. While this argument may have a superficial appeal, its veneer quickly
8 dissipates when one examines the applicable law.
9

10 Simply put, Sands China—irrespective of the ruling on its writ petition and irrespective of
11 the strictures of Macau law—will be required to participate in the discovery process because it is
12 undisputedly under LVSC’s control. Nevada Rule of Civil Procedure 34 governs the production of
13 documents in civil proceedings. This Rule provides that documents “which are in the possession,
14 custody, or control of the party upon whom the request is served” must be produced. NRC
15 34(a). The general principle of “control” has been aptly described as follows:
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17 The governing standards are established. Rule 34 requests may be used to inspect
18 documents, tangible things, or land in possession, custody, or control of another
19 party. The party seeking production of documents bears the burden of proving that
20 the opposing party has such control. ***Property is deemed within a party’s***
21 ***possession, custody, or control if the party has actual possession, custody, or***
22 ***control thereof, or the legal right to obtain the property on demand.*** A party
23 having actual possession of documents must allow discovery even if the
24 documents belong to someone else; legal ownership of the documents is not
25 determinative.

26 ***‘Control’ need not be actual control; courts construe it broadly as ‘the legal***
27 ***right to obtain documents upon demand.’*** ‘Legal right’ is evaluated in the
28 context of the facts of each case. The determination of control is often fact-
specific. ***Central to each case is the relationship between the party and the***
person or entity having actual possession of the document. The requisite
relationship is one where a party can order the person or entity in actual
possession of the documents to release them. This position of control is usually
the result of statute, affiliation or employment.

Stone v. Vasquez, 2009 WL 2581338, **1-2 (E.D. Cal. Aug. 20, 2009) (analyzing federal



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 counterpart to NRCP 34) (multiple citations omitted and emphasis added). *See also, Estate of*
2 *Young v. Holmes*, 134 F.R.D. 291, 294 (D. Nev. 1991) (analyzing “control” under FRCP 34 and
3 “the legal right to obtain documents”).

4 The issue of “control” frequently arises in corporate litigation where a party attempts to
5 shirk its discovery obligations by arguing that the requested documents are in the possession of a
6 parent, subsidiary, or sister corporation. Suffice to say, courts are unreceptive to this ploy. For
7 example, “[a] litigating parent corporation has control over documents in the physical possession
8 of its subsidiary corporation where the subsidiary is wholly owned or controlled by the parent.”
9 *Uniden America Corp. v. Ericsson Inc.*, 181 F.R.D. 302, 305 (M.D.N.C. 1998) (quotation
10 omitted). Such a relationship has been referred to as an “absolute form of legal control,” *see id.*,
11 which is perfectly consistent with the admissions of defense counsel in this action, *see supra* at 1-
12 2, and LVSC’s undisputed status as Sands China’s majority shareholder.

13 That Sands China may be a “foreign” corporation is of no moment as courts have
14 consistently ordered domestic corporations to produce documents in the hands of affiliated
15 entities located outside the United States. *See, e.g., Uniden America*, 181 F.R.D. at 307-08
16 (ordering production from sister corporation where there was a commonality of ownership and
17 officers and a regular exchange of documents); *Camden Iron and Metal, Inc. v. Marubeni*
18 *America Corp.*, 138 F.R.D. 438, 443-44 (D.N.J. 1991) (ordering production from Japanese parent
19 corporation); *Afros S.P.A. v. Krauss-Maffei Corp.*, 113 F.R.D. 127, 132 (D.Del. 1986) (ordering
20 production from German parent corporation that shared multiple managerial employees with the
21 defendant subsidiary); *Cooper Indus., Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918, 919-20
22 (S.D.N.Y. 1984) (ordering production from British affiliate).

23 The court’s ruling in *Afros S.P.A.* is particularly instructive here. In that case, the court
24 addressed the defendant’s argument that it should not be required to produce documents in the
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CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 possession of its German parent company because the parent company had already been
2 dismissed for lack of personal jurisdiction. 113 F.R.D. at 131. The court disagreed and found
3 that the defendant's "argument is flawed [] because the jurisdiction issue rested on a minimum
4 contacts analysis, while the [issue of control under Rule 34] requires the [c]ourt to analyze the
5 relationship" between the two corporations. *Id.* Here, counsel for Sands China and LVSC have
6 expressly admitted that LVSC controls Sands China. *See supra* at 1-2. As such, LVSC will be
7 required to produce relevant documents in the possession of Sands China regardless of whether
8 the lower court has properly exercised personal jurisdiction over Sands China (which it has).²

10 Nor is the Court required to write on a clean slate when it comes to Sands China's
11 argument that its production of documents in this action may actually violate Macau law. The
12 United States Supreme Court grappled with this issue years ago in *Societe Internationale v.*
13 *Rogers*, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958). In that case, a Swiss holding
14 company filed suit against the United States to recover property seized during World War II as
15 property owned by an enemy national. *Id.* at 198-99, 78 S.Ct. at 1089. The U.S. Government
16 served the holding company with a Rule 34 request for production seeking documents from a
17 non-party Swiss bank affiliated with the plaintiff holding company. *Id.* at 199-200, 78 S.Ct. at
18 1089-90. The plaintiff refused to produce any documents on grounds it did not "control" the
19 Swiss bank and that doing so would violate provisions of the Swiss Penal Code and Swiss Bank
20 Law. *Id.* The district court ultimately dismissed the complaint due to plaintiff's failure to

23 ² See also, *Steele Software Sys., Corp. v. Dataquick Info. Sys., Inc.*, 237 F.R.D. 561, 565-66
24 (D.Md. 2006) (ordering production from corporate affiliate where companies were closely related
25 and shared common ownership); *Alcan Int'l Ltd. v. S.A. Day Mfg. Co.*, 176 F.R.D. 75, 78-79
26 (W.D.N.Y. 1996) (ordering production from German corporate affiliate where companies were
27 under the common control of parent company); *M.L.C., Inc. v. North American Phillips Corp.*,
28 109 F.R.D. 134, 137-38 (S.D.N.Y. 1986) (ordering production from Dutch parent corporation
where subsidiary corporation "could easily obtain [the documents] when it was in their interest to
do so."); *Alimenta, Inc. v. Anheuser-Busch Co.*, 99 F.R.D. 309, 312-13 (N.D.Ga. 1983) (ordering
production from Dutch sister corporation where companies shared close relationship and
participated in disputed transaction).



1 produce the documents, and the Court of Appeals affirmed. Though the Supreme Court reversed
2 the dismissal with prejudice that had been entered by the district court as a discovery sanction, it
3 nonetheless agreed that the potential impact of foreign law will not shield a party from producing
4 documents pursuant to Rule 34 where the requisite "control" otherwise exists. *Id.* at 204-05, 78
5 S.Ct. at 1091-92.

6
7 The court in *Uniden America, supra*, succinctly distilled the Supreme Court's teaching on
8 this point:

9 ***[T]he Supreme Court held that compliance with a Rule 34 request for***
10 ***documents held by a company's Swiss bank was not excused merely because the***
11 ***turnover would violate foreign law. Rule 34 was given a broad construction.***
12 The Supreme Court made a point of distinguishing the situation before it from
13 actual inability to produce, such as "where documents required by a protection
14 order have ceased to exist or have been taken into the actual possession of a third
15 person not controlled by the party ordered to produce, and without that party's
16 complicity." *Id.* at 204. ***This language indicates a direction to lower courts to***
17 ***closely examine the actual relationship between two corporations and guard***
18 ***against not just fraud and deceit, but also sharp practices, inequitable conduct,***
19 ***or other false and misleading actions whereby corporations try to hide***
20 ***documents or make discovery of them difficult. Certainly, this broad***
21 ***construction of Rule 34 is consonant with American civil process which puts a***
22 ***premium on disclosure of facts to ascertain the truth as a means of resolving***
23 ***disputes.***

24 181 F.R.D. at 306 (emphasis added).³ See also, *In re Air Crash at Taipei, Taiwan on Oct. 31,*

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³ Sands China takes Jacobs to task for citing *Societe Internationale*, claiming that he has
"consistently misapplied" the case. See Stay Motion at 10 n. 8. Jacobs has done nothing of the
sort. Sands China's first basis upon which it seeks to distinguish the case—that the plaintiff
resisting discovery in *Societe Internationale* was admittedly subject to the jurisdiction of the
American court whereas Sands China allegedly is not—in no way detracts from the Supreme
Court's holding that a party cannot evade its discovery obligations simply by alleging a conflict
with foreign law. That is the salient point being made by Jacobs. Sands China's second basis of
distinction—that the holding in *Societe Internationale* does not apply "universally" and that there
may be instances where refusal to produce documents is appropriate—simply states the obvious.
Discovery disputes, by their very nature, are fact specific. It is Jacobs' contention that this is not
a situation where documents are being properly withheld. Finally, to the extent Sands China
questions the vitality of *Societe Internationale* because it was "decided just after World War II,"
Jacobs would point out that the Supreme Court reaffirmed the subject principle nearly three
decades later when it stated: "It is well settled that [foreign secrecy] statutes do not deprive an
American court of the power to order a party subject to its jurisdiction to produce evidence even



1 2000, 211 F.R.D. 374, 377 (C.D. Cal. 2002) (analyzing factors set forth in Restatement (Third) of
2 Foreign Relations Law § 442(1)(c) (1986) and concluding that the Singapore Official Secrets Act
3 did not preclude the production of documents regarding airline crash that occurred in Republic of
4 China); *Arthur Andersen & Co. v. Finesilver*, 546 F.2d 338, 342 (10th Cir. 1976) (“An anomalous
5 situation with great potential effect would result from recognition of the right of a litigant to avoid
6 discovery permitted by local law through the assertion of violation of foreign law.”), *cert denied*,
7 97 S.Ct. 1113 (1977); *In re Uranium Antitrust Litig.*, 480 F.Supp. 1138, 1145 (N.D.Ill. 1979)
8 (“Once personal jurisdiction over the person and control over the documents by the person are
9 present, a United States court has the power to order production of documents. The existence of
10 foreign law which prohibits the disclosure of the requested documents does not prevent the
11 exercise of this power.”); *Cooper Indus.*, 102 F.R.D. at 920 (holding British sovereignty would
12 not be violated by a discovery order because “[d]efendant cannot be allowed to shield crucial
13 documents from discovery by parties with whom it has dealt in the United States merely by
14 storing them with its affiliate abroad. . . . If defendant could so easily evade discovery, every
15 United States company would have a foreign affiliate for storing sensitive documents.”).

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18 “The party relying on foreign law has the burden of showing such law bars the production
19 [of documents].” *United States v. Vetco, Inc.*, 691 F.2d 1281, 1288 (9th Cir.), *cert. denied*, 454
20 U.S. 1098, 102 S.Ct. 671, 70 L.Ed.2d 639 (1981). Sands China has not met this burden. The
21 only “evidence” it offers regarding the purported threats it faces from the Macau data privacy
22 laws and the procedures required to comply therewith is the affidavit of its General Counsel,
23 David Fleming. See Stay Motion, Exh. J. Mr. Fleming—who does not appear to be a Macau
24 attorney—simply describes a meeting he had with Macau government officials and then recounts
25
26 though the act of production may violate that statute.” *Societe Nationale Industrielle
27 Aerospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 544 n. 29, 107 S.Ct. 2542, 2556 n. 29, 96 L.Ed.2d
28 461 (1987) (citing *Societe Internationale*).



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 the alleged hearsay statements of those officials. *See id.* Sands China has provided nothing from
2 the Macau government itself or, for that matter, a licensed Macau attorney. Even if it had, more
3 is required to satisfy this burden. *See In re Air Crash*, 211 F.R.D. at 379 (letter written on behalf
4 of Attorney General of Singapore to defendant airline outlining provisions of Singapore's secrecy
5 act and requesting defendant's compliance therewith was "not persuasive proof that defendant or
6 managing agents will be criminally prosecuted for complying with an order of this Court.").

8 To summarize, LVSC undisputedly (i) controls Sands China, and (ii) is subject to the
9 jurisdiction of the district court. Jacobs will therefore be able to obtain relevant documents in the
10 possession of Sands China by propounding discovery requests to LVSC. Neither the outcome of
11 Sands China's writ petition nor the application of Macau's data privacy laws will change this fact.
12 *See, e.g., Afros*, 113 F.R.D. at 129 ("The fact that a court cannot exercise jurisdiction over a
13 person does not necessarily mean documents in that person's possession are shielded from the
14 reach of Rule 34, which applies only to parties to the litigation."). As such, Sands China will
15 suffer no irreparable harm if a stay is denied.⁴

17 3. Irreparable or Serious Harm to Jacobs.

18 Jacobs has previously acknowledged the diminished role that the irreparable harm factor
19 plays in the stay analysis. *See supra* at 6-7 (citing *Mikohn Gaming*). Nevertheless, the *Hansen* court
20 has recognized that "unnecessar[y] delay[]" of the "underlying proceedings" supports the denial of a
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23 ⁴ Sands China also raises the issue of Jacobs' appeal of the dismissal of his defamation
24 claim against Sheldon Adelson. *See Stay Motion* at 11 n.9. In short, Sands China argues that if
25 Jacobs' appeal proves to be successful, Sands China will be forced to alter its scope of discovery
26 to encompass the defamation claim. Sands China is incorrect. From a practical standpoint, the
27 reinstatement of Jacobs' defamation claim would have only a slight impact on the scope of
28 discovery. The defamation claim centers on certain comments made by Adelson to the press *after*
the commencement of this action. Given the discrete timeframe and acts involved, any
subsequent discovery required from Sands China on the defamation claim would be minimal.
Staying discovery on the remainder of Jacobs' claims based on the possibility that the appellate
proceedings may ultimately reinstate the defamation claim—a process that can take well over one
year—is the epitome of the tail wagging the dog.



1 stay under NRAP 8. *See Hansen, supra*, 116 Nev. at 658, 6 P.3d at 987. As set forth above, Sands
2 China will have to participate in discovery regardless of whether its writ petition is ultimately
3 successful or not. It makes no sense to prevent the parties from accomplishing the tasks required
4 during the discovery process while Sands China's writ petition remains pending for an unknown
5 period of time. Indeed, Sands China's desire for delay is directly contrary to NRCP 1, which requires
6 the Rules of Civil Procedure to be "construed to secure the just, speedy, and inexpensive
7 determination of every action." This factor, at best, is neutral on the stay determination.
8

9 **4. Sands China Is Not Likely to Succeed on the Merits.**

10 While a party seeking a stay pending appeal or a writ petition "does not always have to show
11 a probability of success on the merits," *Hansen*, 116 Nev. at 658-59, 6 P.3d at 987, it must at least
12 "present a substantial case on the merits when a serious legal question is involved and show that the
13 balance of equities weighs heavily in favor of granting a stay." *Id.* (quoting *Ruiz v. Estelle*, 650 F.2d
14 555, 565 (5th Cir. 1981)). Sands China has done neither.
15

16 With respect to the latter inquiry, Sands China's writ petition presents a garden variety
17 question of personal jurisdiction. The *Hansen* court has made clear that a challenge to personal
18 jurisdiction does not raise a "substantial legal question." *Id.* With respect to the first inquiry, Sands
19 China's contention that it is likely to prevail on the merits is premised on recycled arguments from its
20 original motion to dismiss. *See* Stay Motion at 12-16. Because the parties have thoroughly briefed
21 the jurisdiction issue before the district court and this Court, *see, e.g.*, Stay Motion, Exhs. A, B, and
22 G, Jacobs will not rehash those arguments here. Jacobs does, however, wish to address one new item
23 now being relied upon by Sands China to defeat jurisdiction, to wit: the U.S. Supreme Court's recent
24 decision in *Goodyear Dunlop Tire Operations, S.A. v. Brown*, --- U.S. ---, 131 S.Ct. 2846, 180
25 L.Ed.2d 796 (2011).
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CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 In *Goodyear*, North Carolina residents whose sons died in a bus accident outside Paris,
2 France filed a wrongful death action in North Carolina state court against Goodyear USA (an Ohio
3 corporation) and three of its foreign subsidiaries that operated in Luxembourg, Turkey, and France.
4 131 S.Ct. at 2851-52. Because a small percentage of tires manufactured by the foreign subsidiaries
5 were ultimately distributed in North Carolina by other Goodyear USA affiliates, the trial court denied
6 their motion to dismiss arguing lack of personal jurisdiction. *Id.* at 2852. The North Carolina Court
7 of Appeals affirmed, finding that North Carolina had general jurisdiction over the foreign
8 subsidiaries based on a “stream of commerce” theory. *Id.*

9
10 The Supreme Court reversed, concluding that the foreign subsidiaries did not have the type of
11 “continuous and systematic general business contacts” required to allow North Carolina to exercise
12 jurisdiction over them in a lawsuit that was unrelated to anything that connected them to the state. *Id.*
13 at 2857. The lower courts’ reliance on a “stream of commerce” theory was improper as that inquiry
14 is germane to specific jurisdiction, not general jurisdiction. *Id.* at 2855. Because the underlying
15 accident occurred in France, not North Carolina, specific jurisdiction was not at issue.
16

17 As for general jurisdiction, the foreign subsidiaries had only attenuated contacts with the state
18 and were, thus, “in no sense at home in North Carolina.” *Id.* at 2857. That, of course, is not the case
19 with Sands China where, *inter alia*, two of its directors (one of whom is the company’s chairman and
20 the other of which was its chief executive officer) live in and conduct pervasive company business
21 from Nevada, the company has engaged in multiple ongoing and “arms-length” commercial
22 transactions with the Nevada-based LVSC, and it has routinely transferred tens of millions of dollars
23 to the state in order to advance its business interests. In the end, *Goodyear* does nothing to
24 undermine the lower court’s finding of jurisdiction over Sands China in this action. Accordingly,
25 this factor—like the rest of the NRAP 8 factors—warrants the denial of Sands China’s Motion.
26

27
28



CAMPBELL
S. WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

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III. CONCLUSION

For the reasons set forth above, Real Party in Interest Steven C. Jacobs respectfully requests that Petitioner Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition be denied in its entirety.

DATED this 9th day of August, 2011.

CAMPBELL & WILLIAMS

By /s/ J. Colby Williams

DONALD J. CAMPBELL, ESQ. (#1216)

J. COLBY WILLIAMS, ESQ. (#5549)

700 South Seventh Street

Las Vegas, Nevada 89101

Tel. 702.382.5222

Fax. 702.382.0540

*Attorneys for Real Party in Interest
Steven C. Jacobs*



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 9th day of August, 2011, I served via e-mail and U.S. Mail, first
3 class postage pre-paid, a true and correct copy of the foregoing **Steven C. Jacobs' Response to**
4 **Petitioner Sands China Ltd.'s Renewed Motion to Stay Proceedings Pending Writ Petition to**
5 **the following counsel of record:**

6
7 Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLP
8 Patricia Glaser, Esq.
9 Stephen Ma, Esq.
10 3763 Howard Hughes Parkway, Suite 300
11 Las Vegas, NV 89169
12 E-Mail: pglasser@glaserweil.com
sma@glaserweil.com

13 *Attorneys for Defendant Sands China Ltd.*

14 Holland & Hart, LLP
15 J. Stephen Peek, Esq.
16 Justin C. Jones, Esq.
17 9555 Hillwood Drive, 2nd Floor
18 Las Vegas, NV 89134
19 E-Mail: speek@hollandhart.com
jcjones@hollandhart.com

20 *Attorneys for Defendant Las Vegas Sands Corp.*

21 s/Lucinda Martinez



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

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DECLARATION OF PHILIP R. ERWIN

STATE OF NEVADA)
).ss
COUNTY OF CLARK)

I, Philip R. Erwin, subject to the penalties of perjury of the State of Nevada and the laws of the United States, hereby declare that the assertions in this Declaration are true and correct and are based on my personal knowledge.

1. I am an attorney licensed to practice law in Nevada and am one of the lawyers representing Real Party in Interest Steven C. Jacobs in the above-captioned matter. I make this declaration in support of Steven C. Jacob's Response to Petitioner Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition in Nevada Supreme Court Case No. 58294 (the "Response").

2. I am over eighteen years old and am competent to testify in this matter if called upon to do so. The information set forth herein is based on my personal knowledge unless stated on information and belief.

3. True and correct excerpts from the transcript of the hearing held before the Court on March 15, 2011 are attached to the Response as Exhibit 1.

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

DATED this 9th day of August, 2011.



PHILIP R. ERWIN



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

EXHIBIT 1

EXHIBIT 1

ORIGINAL

Alvin L. Blum

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CLERK OF THE COURT

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANTS' MOTIONS TO DISMISS

TUESDAY, MARCH 15, 2011

APPEARANCES:

FOR THE PLAINTIFF:

DONALD JUDE CAMPBELL, ESQ.
COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JUSTIN C. JONES, ESQ.
PATRICIA GLASER, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

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CLERK OF THE COURT

MAR 18 2011

RECEIVED

1 a control doesn't create a contract. The instrument itself
2 creates the contract. The terms sheet itself creates a
3 contract, not the parties who negotiated it. It's what those
4 terms and conditions contained within the body of the contract
5 are that control who the employer is. Just because it was
6 negotiated by Mr. Levin doesn't make it a contract with LVSC,
7 it makes it a contract with ListCo, Sands China Limited. He
8 says that, well, there's the IPO disclosures that -- in
9 Exhibit 3 that LVSC is in control of its subsidiary.
10 Absolutely. It would be remiss to not report to those who are
11 going to buy stock in Sands China Limited that Sands China
12 Limited at the conclusion of the initial public offering is
13 going to be owned by LVSC up to 70 percent. The last I looked
14 under corporate governance, 70 percent gives one control. So
15 they're telling the public, and that's what the Exhibit 3 IPO
16 does, is tell the public that, we're going to be owned by LVSC
17 up to 70 percent and that will create control so you should
18 know that as potential investors, that this entity will own
19 70 percent and it will be in control. Majority rules.
20 Corporate governance, not a very difficult concept, but one
21 that is necessary to report to those who are going to buy the
22 stock. So again, it doesn't say there's a contract, it just
23 says, going to be in control.

24 He focuses on the earnings call, Exhibit 21, and I
25 certainly don't disagree with what Mr. Levin says. But what

1 CEO of Sands China. There are three independent directors who
2 have no prior affiliation with any Sands entity who are in the
3 Far East and only in the Far East, and they don't come here
4 ever. And they have three votes. The board is made up I
5 believe of eight people. There's no question, and we don't
6 dispute this, that Sands Las Vegas controls Sands China. But,
7 Your Honor, not one case was provided to Your Honor where
8 interaction between a 70 percent or 51 percent or 40 percent
9 subsidiary/parent -- there isn't one case that you have been
10 provided that says normal interaction facilitating, for
11 example, customers from one to the other, none of that, there
12 isn't one case that stands for the proposition therefore you
13 have jurisdiction in this court over Sands China.

14 The irony, I guess, of a lot of this, a lot of the
15 facts that were presented to Your Honor, the irony is,
16 frankly, Your Honor, that all of the things that have been
17 alleged, except for frankly their blatant lies, and I -- Mr.
18 Campbell I think just made a mistake. He said there was no
19 declaration on our side. Well, Ann Salt is not nothing, and
20 she is a significant player in Sands China. She's a counsel
21 over there, and she provided two, not one, not zero, two
22 declarations.

23 THE COURT: Well, one's attached to the reply, and
24 one's attached to the motion.

25 MS. GLASER: I'm sorry?

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

3/17/11

DATE