

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

IN THE SUPREME COURT  
OF THE STATE OF NEVADA

SANDS CHINA LTD,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK; AND  
THE HONORABLE ELIZABETH  
GONZALEZ, DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest

**FILED**

**AUG 26 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

Case No.: 58294

(D.C. No.: A-10-627691-C)

**PETITIONER SANDS CHINA LTD.'S REPLY IN SUPPORT OF MOTION  
TO STAY PROCEEDINGS PENDING WRIT PETITION**

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*Detached from motion filed on 8-10-11  
and filed per order 8-26-11.*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The Response filed yesterday by Real Party in Interest Steven C. Jacobs' ("Jacobs") to Petitioner Sands China Ltd.'s ("SCL") Motion to Stay Proceedings Pending Writ Petition (the "Motion") consists primarily of the same arguments made in his oppositions to SCL's prior motions to stay made to the District Court. In both instances, Jacobs filed and served his oppositions on the eve of the District Court hearings, and SCL was not given an opportunity to brief fully the issues for the District Court's consideration. The arguments in Jacobs' oppositions were without merit, and went unaddressed by the District Court, although Jacobs apparently saw fit to recycle such arguments here. Again, while Jacobs' arguments remain meritless and unpersuasive, he presents a particular point that should be addressed for the Court's clarification.

### II. LEGAL ARGUMENT

In his Response, Jacobs argues that, regardless of the Court's ruling on the Writ Petition seeking the dismissal of SCL for lack of personal jurisdiction, "[SCL] will be required to participate in the discovery process because it is undisputedly under LVSC's control." (Response at 7:11-12). Jacobs' argument is incorrect.

Jacobs' argument ignores the relevant case law cited in the Motion and misstates the cases relied upon in his Response. As demonstrated in SCL's Motion to Dismiss (Motion at p. 10), a court cannot force a party to produce documents if disclosure would subject that party to penalties under foreign law. *See Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130 (2d Cir. N.Y. 2007). Under this established legal authority, there is no merit to Jacobs' argument that the District Court could force either SCL or LVSC to produce information in violation of the Macau Act, which clearly prevents the transfer of any information containing personal information outside of Macau.

As set forth in the uncontested affidavit of David Fleming, SCL's General Counsel and Secretary, the Macau Personal Data Protection Act (the "Macau Act") prevents the disclosure of documents containing personal data. *See Fleming Aff'd.* ¶¶ 4-9 (Ex. J to Sedlock Aff'd. in support of SCL Motion). Production of such information stored in Macau will require strict compliance with relevant Macau law, specifically including the Macau Act, and failure to comply may result in

1 civil and criminal penalties. *Id.* at ¶¶ 4, 9. In order to comply, SCL's Macau subsidiaries will be  
2 required to review a vast amount of information in order to (i) identify and obtain consent from  
3 relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
4 consent from Macau's government representatives before transferring such personal data outside of  
5 Macau, depending on the sensitivity of the personal data at issue. *Id.* at ¶ 5. In the event consent is  
6 given by the data subjects, which is not guaranteed by any means, SCL's Macau subsidiaries must  
7 still provide notice that consent has been received before the transfer of data outside of Macau. *Id.*  
8 at ¶ 6.

9 This inability to compel SCL's production of information highlights Jacobs'  
10 mischaracterization of the cases cited in support of his argument that LVSC "controls" SCL for  
11 purposes of discovery. Specifically, in making this argument, Jacobs misstates the factors in the  
12 analysis cited in those cases which emphasize that in order to demonstrate that an entity has control  
13 over its affiliate for the purposes of document production, it must have both the legal right and the  
14 *actual ability* to obtain the requested information.<sup>1</sup> See *Uniden America Corp. v. Ericsson, Inc.*, 181  
15 F.R.D. 302, 305 (M.D.N.C. 1998); *Afros S.P.A. v. Krauss-Maffei Corp.*, 113 F.R.D. 127, 130 (D.  
16 Del. 1986). Under this established legal authority, LVSC cannot cause SCL to violate the Macau  
17 Act, and as stated above, the District Court cannot compel LVSC to produce documents that would  
18 result in civil or criminal penalties for SCL in Macau.

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21 <sup>1</sup> In addition to the "actual ability" to obtain information, Jacobs fails to acknowledge the  
22 distinction between standard corporate involvement between a parent and subsidiary and actual  
23 operational control over the subsidiary's business. This distinction is illustrated by the fact that  
24 LVSC is a 70% shareholder of SCL and maintains a commensurate level of corporate involvement,  
25 which is a standard business practice. See *Hargrave v. Fireboard Corp.*, 710 F.2d 1154 (5th Cir.  
26 1983). However, with regard to business operations, SCL is required by the listing rules of The  
27 Stock Exchange of Hong Kong Limited to demonstrate operational independence from LVSC.  
28 (Writ Petition at p. 33). SCL listed numerous uncontested facts in its Writ Petition to show that  
SCL operates as a separate independent company, including the maintenance of independent  
finances and management, as well as a mutual agreement with LVSC prohibiting overlapping  
business efforts. (Writ Petition at pp. 33-34).

Jacobs ignored all of the foregoing and instead recycles his arguments set forth in prior oppositions. Jacobs relies solely upon inapplicable cases such as *United States v. Vetco, Inc.*, 691 F.2d 1281 (9th Cir. 1981) in support of his argument that even when faced with both civil and criminal sanctions, the District Court could force both LVSC and SCL to produce information in violation of the Macau Act.<sup>2</sup> (Response at pp. 11-12). However, *Vetco* simply does not support Jacobs' contention. In fact, the court in *Vetco* stressed that there had been no evidence that compliance would violate foreign law, and the production request involved the investigation of criminal conduct.<sup>3</sup> *Id.* (finding that criminal matters "appear to serve a more pressing national function than civil discovery" and "are also more widely recognized in the international community than the broad civil discovery permitted in American courts.").

Therefore, SCL respectfully submits that this Court should reject Jacobs' baseless assertion that LVSC "controls" SCL for discovery purposes, or that LVSC can force SCL to comply with discovery requests that violate the Macau Act.

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<sup>2</sup> Another case cited by Jacobs in support of this argument is *Societe Internationale v. Rogers*, 357 U.S. 197 (1958), which SCL previously addressed in its Motion. (See Motion at p. 10, fn. 8).

<sup>3</sup> The holding in *Vetco* has been distinguished in other jurisdictions as well, where courts have consistently held that discovery orders that force a litigant to violate foreign law are both oppressive and unreasonable. See *U.S. v. Rubin*, 836 F.2d 1096, 1100 (8th Cir. 1987). The court in *Rubin* affirmed the trial court's order quashing a subpoena that would have forced the responding party to violate Cayman Island law and subject him to criminal sanctions. The *Rubin* court further distinguished *Vetco* by noting that cases where compliance has been required are frequently those where the government was seeking bank records of U.S. citizens who are also targets of criminal proceedings. *Id.* at 1102 (distinguishing *Vetco* which held that a foreign entity's interest in upholding its laws is "substantially diminished when the privacy interest is that of an American citizen (or entity) subject to American laws.").

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III. CONCLUSION

For the reasons set forth above, SCL respectfully requests that the Court grant the Motion to Stay pending disposition by the Nevada Supreme Court of SCL's pending Writ Petition.

Dated August 10, 2011.

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD  
AVCHEN SHAPIRO LLP and on the \_\_\_\_ day of August, 2011, I deposited a true and correct copy  
of the foregoing **PETITIONER SANDS CHINA LTD.'S REPLY IN SUPPORT OF MOTION  
TO STAY PROCEEDINGS PENDING WRIT PETITION** by U.S. Mail at Las Vegas, Nevada,  
in a sealed envelope upon which first class postage was prepaid and addressed to:

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