IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands corporation,

Petitioner,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 58294

District Court Case Number A627691-B

REPLY IN SUPPORT OF MOTION TO RECALL MANDATE AND OPPOSITION TO COUNTERMOTION TO LIFT STAY

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP, JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 000267
3800 Howard Hughes Pkwy, 17th Fl.
Las Vegas, Nevada 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1759
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

INTRODUCTION

Jacobs' Response gives short shrift to the important legal issues raised by Petitioner SCL's Motion to Recall the Mandate, instead treating it as an invitation to launch yet another baseless, ad hominem attack on SCL, its co-defendant, Las Vegas Sands Corp. ("LVSC"), and their counsel. When he finally purports to address the merits of SCL's Motion, Jacobs completely misses the mark. Contrary to his argument, *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), represents a substantial change in the law governing the assertion of general jurisdiction over foreign corporations. Under *Bauman*, it does not matter how many contacts SCL may have with Nevada; because SCL is not "at home" here, principles of due process preclude Nevada from exercising general jurisdiction over SCL. Under these circumstances, the stunningly costly jurisdictional discovery that the district court ordered was all wasted effort and there is no need for an evidentiary hearing before SCL is dismissed from the litigation.

Jacobs' countermotion to lift the partial stay imposed by this Court so that he can immediately begin pursuing merits discovery should be denied. As this Court recognized in August 2011, sound principles of judicial economy require the jurisdictional issue to be resolved first.

ARGUMENT

I. *Bauman* Is Dispositive.

Jacobs acknowledges that a "supervening change in governing law" is one of the circumstances that may justify recalling the mandate. Jacobs' Resp. at 2. But then he mistakenly asserts that *Bauman* does not represent a change in the law with respect to general jurisdiction. In fact, Bauman represents a fundamental shift away from a "contacts" analysis toward a

presumption that general jurisdiction will ordinarily be limited to those forums in which the company is incorporated or has its principal place of business.

Before *Bauman*, the general view was that a corporation was subject to suit in any jurisdiction in which it was doing business. Indeed, general jurisdiction was often referred to as "doing business" jurisdiction. 134 S.Ct. at 761. *Bauman* specifically rejects this expansive view of general jurisdiction, holding that it is ***not*** enough that a corporation has "continuous and systematic contacts" with the forum state. *Id.* Instead, the Court stressed that the contacts must be not only "continuous and systematic" but of such a magnitude as to render a corporate defendant "essentially at home in the forum State." *Id*. (internal quotations omitted).

Bauman also stresses that a corporation will ordinarily be deemed "at home" ***only*** in jurisdictions in which it is incorporated or has its principal place of business. In a footnote, the Court stated that it was not "foreclos[ing] the ***possibility*** that in an ***exceptional*** case . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Id*. at 761 n. 19 (emphasis added). But the Court found it unnecessary to explore that possible exception because Daimler's activities in California "did not approach that level." *Id*.

In reaching that conclusion, the Court assumed that "Daimler's activities in California" included the activities of its U.S. subsidiary (Mercedes Benz USA or "MBUSA"). *Id*. at 760. MBUSA had "multiple California-based facilities" and was the largest supplier of luxury vehicles

in California, with 10% of its U.S. sales in California and 2.4% of Daimler's worldwide sales. *Id*. at 752. But even when those substantial contacts with California were attributed to Daimler, the Court concluded that they did not approach the level at which it would have to analyze whether the German entity could be deemed "at home" in California and therefore subject to general jurisdiction there.

In his Response (at 7-8), Jacobs notes that the *Bauman* Court said it "need not pass judgment on invocation of an agency theory in the context of general jurisdiction," *id.* at 759, and argues that the law with respect to attributing the actions of an agent in the forum to a non-resident defendant remains unchanged. But the only reason *Bauman* did not decide the agency issue is that the Court held that, even after attributing the contacts of its purported agent to Daimler, due process prohibited the assertion of general jurisdiction over Daimler in California. Furthermore, the Court clearly indicated its reluctance to apply agency principles to the general jurisdiction context, noting that "[a]gency relationships . . . may be relevant to the existence of ***specific*** jurisdiction. . . . It does not inevitably follow, however, that similar reasoning applies to ***general*** jurisdiction." *Id*. at 759 n. 13.[1]

Just as in *Bauman*, the Court in this case does not have to decide whether actions that LVSC or its executives may have undertaken on behalf of SCL in Nevada should be attributed to SCL because even if their

---

[1] *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 702 (1993), which Jacobs cites (at 8) for the proposition that the contacts of an agent are attributable to the principal in determining whether personal jurisdiction exists, was a specific jurisdiction case.

activities are attributed to SCL, SCL's activities in Nevada do not approach the level at which SCL could even arguably be found to be "at home" in Nevada. To repeat: ***it is undisputed that SCL is a Cayman Islands corporation, that its stock is traded on the Hong Kong Stock Exchange, and that all of its operations are located outside of the United States.*** Under *Bauman*, these indisputable facts preclude the exercise of general jurisdiction over SCL in Nevada.

Jacobs argues that SCL should bring *Bauman* to the attention of the district court and ask that court to decide the jurisdictional issue in the first instance. But the district court correctly believes itself bound under this Court's August 2011 Order to hold an evidentiary hearing before it can rule on the issue of jurisdiction — even though *Bauman* demonstrates that such a hearing is wholly unnecessary. Given the enormous costs SCL and LVSC have already borne as a result of unnecessary jurisdictional discovery, the fact that the only jurisdictional issue left is a legal one, and the lengthy delay since the issuance of this Court's Order, SCL respectfully submits that a recall of the mandate is the proper course to follow.

II. Jacobs' Complaints About Discovery Are Groundless.

Jacobs spends much of his Response trying to re-write history and accusing SCL and LVSC of concealing jurisdictional facts. For example, Jacobs argues (at 3) that because the district court found general jurisdiction over SCL, "it did not address or even take up the other applicable grounds, including specific jurisdiction." But this ignores the fact that, until this Court issued its August 2011 Order, Jacobs argued ***only***

general and transient jurisdiction. He ***never*** claimed — either in the district court or this Court — that there was specific jurisdiction over SCL.

The omission of a specific jurisdiction argument was not an accident; instead, it was a recognition that specific jurisdiction does not lie on the only claim that Jacobs alleges against SCL — for alleged breach of an options agreement that is governed by Hong Kong law and that was entered into, to be performed and allegedly breached in Macau, where (as Jacobs admits) his termination occurred. Response at 5. Jacobs argues that discovery shows that the internal decision to terminate him as SCL's CEO was made while SCL's Chairman happened to be in Las Vegas. But even if that is true, it would be entirely irrelevant to the specific jurisdiction analysis, which focuses on where the contract was negotiated, where it was to be performed, and what law the parties chose to govern its enforcement. *See, e.g., Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009).[2]

Jacobs also accuses SCL and LVSC of concealing their true relationship, which supposedly demonstrates that there is general jurisdiction over SCL in Nevada. But *Bauman* makes clear that the kinds of contacts Jacobs sought to discover — whether SCL had an agency relationship with LVSC or purchased goods and services, either directly or

---

[2] Jacobs tries to conceal the fatal flaw in his specific jurisdiction argument by suggesting that he is pursuing a wrongful termination claim against SCL in addition to his breach of contract claim. But that is not true: his wrongful termination claim is against LVSC alone, who he claims was his employer. Jacobs contends that LVSC lied about its relationship with Jacobs. But LVSC's position is and always has been that Jacobs' employer was Venetian Macau Ltd. ("VML"), which is SCL's operating subsidiary. *See* Jacobs APP 101-02. Jacobs chose not to sue VML.

indirectly, from Nevada — are entirely irrelevant to the question of whether SCL is subject to general jurisdiction in Nevada. Indeed, even before *Bauman*, LVSC's alleged "control" of SCL from Nevada or SCL's supposed principal/agent relationship with LVSC were insufficient to subject SCL to suit here.

III. Jacobs' Countermotion Should Be Denied.

Jacobs characterizes the stay this Court imposed as the "product of illegitimacy," which the defendants then supposedly abused by refusing to agree to Jacobs' suggestion that the parties should simply disregard this Court's Order. Response at 7. Contrary to Jacobs' argument, SCL did not somehow hoodwink this Court into staying proceedings while the jurisdictional issue was decided. This Court properly chose to impose a blanket stay of any further merits discovery in order to spare SCL the enormous cost of submitting to merits discovery if it turned out that there was no personal jurisdiction over SCL. This Court no doubt believed that the district court would act swiftly to implement this Court's Order to hold an evidentiary hearing and make findings and conclusions on jurisdiction. That the proceedings were delayed is attributable to Jacobs' ever-increasing demands for jurisdictional discovery and not to any flaw in the Court's decision to stay any other proceedings until the jurisdictional issue is resolved.

That decision was right in August 2011 and remains correct today: the jurisdictional issue should be resolved first before the case proceeds on the merits.

MORRIS LAW GROUP

By:/s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1759
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Attorneys for Petitioners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **REPLY IN SUPPORT OF MOTION TO RECALL MANDATE AND OPPOSITION TO COUNTERMOTION TO LIFT STAY** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Steven C. Jacobs, Real Party in Interest

I further certify that I caused a copy of the aforementioned document to be hand delivered, in a sealed envelope to the addressee(s) shown below:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

DATED this 25th day of February, 2014.

By: /s/ Fiona Ingalls