

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 58294

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Tracie K. Lindeman
Clerk of Supreme Court

SANDS CHINA, LTD., a Cayman Islands corporation,

Petitioner,

v.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

**REAL PARTY IN INTEREST STEVEN C. JACOBS' RESPONSE TO
MOTION FOR ORAL ARGUMENT ON SANDS CHINA'S MOTION
TO RECALL MANDATE [REMITTITUR]**

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vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
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Real Party in Interest

Sup. Ct. Case No. 58294

District Court Case No.
A-10-627691

**REAL PARTY IN INTEREST
STEVEN C. JACOBS' RESPONSE
TO MOTION FOR ORAL
ARGUMENT ON SANDS CHINA'S
MOTION TO RECALL
MANDATE [REMITTITUR]**

1 Petitioner Sands China Ltd.'s ("Sands China") request that this Court delay
2 ruling on pending motions – its Motion to Recall Mandate [Remittitur] and Real
3 Party in Interest Steven C. Jacobs' ("Jacobs") Countermotion seeking the same –
4 and hold oral argument should be denied. Sands China has already delayed the fair
5 presentation of this case long enough with the stay that it secured three years ago
6 with misrepresentations as to the location of and its ability to produce discoverable
7 information. As the district court has already found, Sands China and its
8 Co-defendant, Las Vegas Sands Corp. ("LVSC"), engaged in a long-standing
9 practice of "making inaccurate representations over a several month period [with]
10 the intention to deceive the Court" and prevent access to discoverable evidence.
11 (Case No. 62944, PA1366.)

12 Sands China criticizes any reference to these and the other findings of gross
13 misconduct, claiming that doing so constitutes an "ad hominem" attack on it and its
14 counsel. Yet, if exposing and combatting a fraud upon the judiciary – the wanton
15 concealment of evidence and the "intention to deceive the Court" – constitutes the
16 making of "ad hominem" attacks, then Jacobs and the undersigned plead guilty. No
17 legal system can expect to maintain the public's respect for its rulings if such
18 conduct is countenanced, or not exposed because the participants prefer that it be
19 swept under the rug. Nor can members of a profession that is sworn to uphold and
20 protect that legal system expect public confidence or respect if they dismissively
21 trivialize such misconduct by labeling its exposure as an "ad hominem" attack. *See*
22 *United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457 (4th Cir. 1993) ("Even
23 the slightest accommodation of deceit or lack of candor in any material respect
24 quickly erodes the validity of the process" and the public will rightfully dispense
25 with any judicial system that tolerates it.).

26 With perverse logic, Sands China claims that it seeks oral argument on the
27 pending motions, because at the last oral argument, it and its counsel were unfairly
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1 villianized and the record distorted.¹ But, if that were true, it would presumably
2 make more sense for the Court to promptly rule upon the motions based upon the
3 record without any supposed unfair oral presentation. Plainly, the argument is as
4 sad as it is transparent.

5 Sands China contends that the Court should delay ruling on the motions
6 because it would like to argue the merits of *Daimler AG v. Bauman*, 134 S. Ct. 746
7 (2014) without any context of its actions in discovery or the facts developed during
8 jurisdictional discovery. That is a wasteful exercise considering that the question is,
9 and has always been, whether Sands China is subject to Nevada jurisdiction
10 because of its contacts and the contacts of its agents, acting on its behalf, within
11 Nevada. Jacobs is more than happy to again expose Sands China's
12 misunderstanding of *Bauman*, which he will eagerly do before the district court,
13 where a record based upon the actual evidence will be made.

14 The same is true for Sands China's often-asserted (and repeatedly defeated)
15 wish that Jacobs has somehow waived (now it uses the word "forfeited") claims of
16 specific jurisdiction. That too is a contention that the district court can, and has on
17 multiple occasions, addressed and rejected. Jacobs concedes that Sands China is
18 desperate to avoid that issue. What limited evidence that was obtained during
19 jurisdictional discovery established that the very scheme to terminate Jacobs was
20 hatched, planned, and executed (but for informing Jacobs) right here in Las Vegas,
21 Nevada, by agents claiming to act for Sands China.

22 Of course, Sands China never revealed these facts to this Court when it
23 represented that it lacked contacts with the State of Nevada related to Jacobs' claims
24 and damages. Not coincidentally, that is the point of Jacobs' Countermotion to
25 recall the stay. Had Sands China been candid and forthright, there would have been
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28 ¹ A copy of Jacobs' response to the purported correction of the record is attached
hereto as Exhibit "A".

1 no basis for the abusive stay that it has used to grind this case to a standstill for over
2 three years.

3 There is no reason to continue to delay this case – one sabotaged by two
4 intransigent litigants that repeatedly violated their duties of candor. The record of
5 their conduct speaks for itself. Sands China's maneuverings have purchased it a
6 long enough delay in the resolution of pending matters before this Court. There is
7 no need to perpetuate more delay by trying to find time in this Court's
8 extraordinarily busy schedule for oral argument on the motions. Besides, the real
9 point of Sands China's instant request is that it wants to reargue the deficiencies of
10 its March 3, 2014, argument. It has now done that, so Jacobs asks this Court to rule
11 as expeditiously as possible.

12 DATED this 2nd day of April, 2014.

13 PISANELLI BICE PLLC

14
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to Nev. R. App. P. 25(b) and NEFR 9(d), that on this date I electronically filed the foregoing **REAL PARTY IN INTEREST, STEVEN C. JACOBS' RESPONSE TO MOTION FOR ORAL ARGUMENT ON SANDS CHINA'S MOTION TO RECALL MANDATE [REMITTITUR]** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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SERVED VIA HAND-DELIVERY ON APRIL 3, 2014

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
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DATED this 2nd day of April, 2014.

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT A

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10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 LAS VEGAS SANDS CORP., and
12 SANDS CHINA LTD.,

13 Petitioners,

14 vs.

15 CLARK COUNTY DISTRICT
16 COURT, THE HONORABLE
ELIZABETH GONZALEZ, DISTRICT
JUDGE, DEPT. XI,

17 Respondents,

18 and

19 STEVEN C. JACOBS.

20 Real Party in Interest

Sup. Ct. Case No. 62944

District Court Case No.
A-10-627691

**RESPONSE TO PETITIONERS'
NOTICE OF FILING IN
RELATED CASE RE
CORRECTION OF RECORD OF
MARCH 3, 2014 ORAL
ARGUMENT**

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1 **I. INTRODUCTION**

2 For Real Party in Interest Steven C. Jacobs ("Jacobs"), the victim of the
3 abhorrent discovery misconduct by Petitioners Las Vegas Sands Corp. ("LVSC") and
4 Sands China Ltd. ("Sands China"), their latest attempt to revise history is par for the
5 course. Petitioners undeniably wish that everyone would just look away from their
6 "knowing, willful and intentional [mis]conduct" that was undertaken "to deceive the
7 Court." (PA1365.)

8 It is not Jacobs or his counsel who failed to know the record at this Court's
9 March 3, 2014 oral argument. As the district court rightly observed, Petitioners
10 "violated numerous orders" before violating its order of December 18, 2012 (the
11 "December Order") commanding the production of responsive documents by
12 January 4, 2013. The reason the district court had to make successive orders is
13 because Sands China successively dishonored its obligations.

14 This contemptuous pattern repeats itself with Petitioners' newest argument to
15 this Court. Petitioners now represent, *with emphasis in italics no less*, that the district
16 court's September 14 Sanctions Order – prohibiting Petitioners from employing the
17 Macau Personal Data Privacy Act (the "MPDPA") because of their misconduct – did
18 not apply to documents located in Macau. (Notice, Ex. A at 4.) Petitioners represent,
19 *again in italics*, that the Sanctions Order only addressed documents that were *then* in
20 the United States. (*Id.*)

21 But, it seems that Petitioners have forgotten about what they told the district
22 court even before it imposed that sanction. They agreed "that Macau law does not
23 prohibit the production of documents already present in the United States." (PA587.)
24 In other words, if the documents are already in the United States, the MPDPA is not
25 even applicable. It only applied if the documents were located in Macau.

26 Yet, Petitioners now have the audacity to tell this Court that the district court's
27 subsequent sanction – precluding them from using the MPDPA as a basis for not
28 complying with jurisdictional discovery – only applied to those documents that were

1 in the United States. (Notice, Ex. A at 4.) According to Petitioner's latest maneuver,
2 the district court's sanction was completely meaningless because it only prohibited
3 them from raising the MPDPA objection when the documents are in a location where
4 the MPDPA does not even apply.

5 Jacobs thanks Sands China for its latest filing, which confirms its bad faith.
6 Perhaps this Court can now appreciate the lawlessness that Jacobs has had to combat
7 and against which the district court has struggled to bring these Petitioners into any
8 semblance of compliance.

9 **II. DISCUSSION**

10 **A. Petitioners "Violated Numerous Orders" Prior To The December** 11 **Order.**

12 Petitioners first purport to "correct" Jacobs' statement that "the reason the
13 district court put Petitioners on a such a 'short leash' at the December 18, 2012,
14 hearing to search for and produce data located in Macau in the next few weeks was
15 because the Macau data 'was discovery she had ordered over a year before and
16 [Petitioners] continued to not comply with her order." (Notice, Ex. A at 1 (quoting
17 Tr. dated Mar. 3, 2014).) Petitioners represent that "there was no discovery order that
18 defendants failed to comply with" prior to the December 18, 2013, Order. (*Id.*)

19 To begin, the district court's September 14 Sanctions Order notes just some of
20 the material events leading up to its finding of intentional misconduct and deceit.
21 Shortly after this Court instructed the district court to hold an evidentiary hearing on
22 Sands China's personal jurisdiction, Jacobs moved for leave to conduct jurisdictional
23 discovery for use during that hearing. (PA238-46.) The district court granted that
24 motion on September 27, 2011, ordering several jurisdictional depositions and for
25 both LVSC and Sands China to produce any documents in their possession, custody,
26 or control that were responsive to Jacobs' document requests that the district court
27 had expressly approved. (PA539-44; *see also* PA303-05.)
28

1 In response to the district court's order directing jurisdictional discovery,
2 Sands China pretended that it was prohibited from producing documents because of
3 a foreign blocking statute known as the Macau Personal Data Protection Act.¹
4 Sands China claimed that the Macau government had to review and approve the
5 release of any documents before they could leave the country. As the district court
6 would later find, this too was false, because Petitioners had a longstanding practice
7 of data flowing between Macau and Las Vegas and constructed contrary policies so
8 as to obstruct the discovery it had ordered. (PA1362; PA1364.)

9 When the truth finally began to emerge, the district court convened its
10 three-day evidentiary hearing and made its findings as to how Petitioners had
11 intentionally withheld discoverable evidence and proper claims concerning the
12 application of the MPDPA so as to obstruct and conceal jurisdictional discovery.
13 That is why one of the principal sanctions the district court imposed against
14 Petitioners for their lack of candor and forthrightness was that they "will be precluded
15 from raising the M[P]DPA as an objection or as a defense to admission, disclosure
16 or production of *any documents*." (PA1366 (emphasis added).)

17 Unfortunately, neither the district court's findings nor sanctions would bring
18 Petitioners to change their chosen path. Months later, they would subsequently reveal
19 that they had not yet even begun a review of any documents in Macau to fulfill their
20 discovery obligations. Accordingly, Jacobs sought relief pursuant to NRCP 37,
21 noting how Sands China's inaction violated a number of the district court's orders
22 regarding jurisdictional discovery. The district court agreed, and that is why it
23 wanted an explicit order for Sands China to produce "all information within their
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26 ¹ This proved to be just one of Sands China's untrue claims. Although it did not
27 disclose it to Jacobs or the district court, Sands China had already transferred data from
28 Jacobs' computers in Macau to Las Vegas to review for purposes of this litigation. It and
LVSC simply deceived Jacobs and the district court claiming that the documents were in
Macau and inaccessible.

1 possession that is relevant to the jurisdictional discovery" within two weeks.
2 (PA1686.)

3 Belying the very argument that Sands China now makes to this Court, Jacobs
4 confirmed that the failure to impose immediate sanctions did not turn on any belief
5 "that they [Sands China] have not yet violated an order." (PA1690.) The district
6 court explained to the contrary:

7 *Well, they've violated numerous orders.* They haven't violated an
8 order that actually requires them to produce information. I have said it,
9 we discussed it at the Rule 16 conference, I've had people tell me how
10 they're complying, I've had people tell me how they're complying
11 differently, I've had people tell me how they tried to comply but now
12 apparently they're in violation of law. I mean, I've had a lot of things.
13 *But we've never actually entered a written order that says, please
14 produce the ESI that's in Macau within two weeks.*

12 (PA1690-91 (emphasis added).) Thus, while Sands China had already "violated
13 numerous orders," it had not violated a specific order to produce all of its responsive
14 documents by a specific deadline. That was the purpose of the December Order –
15 putting them on a short lease – just as Jacobs noted at oral argument. Pretending
16 otherwise will never make it so.

17 **B. The District Court's Sanction Order is Not a Meaningless Farce.**

18 Petitioners also attempt to take issue with Jacobs' legal argument – as opposed
19 to statement of facts – that the "other issues that [Petitioners] have protested about
20 [in the March 27, 2013, Order] have since become moot." (Notice, Ex. A at 2.)
21 Petitioners claim that there are "at least two 'live' issues" with respect to that March 27
22 Order: (1) whether the district court abused its discretion by ordering Sands China
23 to expand its production of documents to include "a number of new custodians"; and
24 (2) "whether the district court properly ordered SCL to produce additional documents
25 in unredacted form from Macau, notwithstanding the requirements of Macanese law."
26 (Notice, Ex. A at 3.)

27 To begin with, the district court did not order Sands China to "expand" its
28 production from Macau to include "a number of new custodians" in the March 27

1 Order. The list of "new custodians," as Petitioners pretend call them, was actually
2 provided to counsel for both LVSC and Sands China on July 20, 2011, almost two
3 years prior to the district court's March 27 Order. (PA1704.) Sands China simply
4 wanted to pick and choose the particular custodians to be searched, no doubt
5 minimizing the number of adverse documents to produce.

6 But Petitioners truly outdo themselves with their last supposed "correction."
7 They claim that one of the "live" issues is whether their enlistment of the MPDPA as
8 a basis for nonproduction of discovery violated the September 14 Sanctions Order,
9 since they contend that the order only applied to those documents that were already
10 located in the United States. (Notice, Ex. A at 4.) They contend that there is nothing
11 in the order to suggest that the sanction imposed upon them was intended to apply to
12 documents that were then located in Macau. (*Id.*)

13 Of course, they previously conceded that the MPDPA was not even an issue
14 and did not apply if the documents were already located in the United States: For the
15 documents that they had clandestinely brought from Macau but had failed to disclose,
16 Petitioners conceded that "Macau law does not prohibit the production of documents
17 already present in the United States." (PA587.) Thus, Petitioners now propose that
18 the district court intended a meaningless sanction for their misconduct because they
19 are only forbidden from employing the MPDPA for documents that are not subject
20 to the MPDPA. Incredibly, their gamesmanship continues to this very day. *Proctor*
21 *v. Educ. Credit Mgmt. Corp.*, 2010 WL 491967, *4 (S.D. Ohio, Nov. 29, 2010)
22 ("Plaintiff's argument is disingenuous and provides an example of just the sort of
23 frivolous conduct plaintiff has engaged in and which sanctions are meant to deter.").

24 As Justice Saitta aptly noted during oral argument, Petitioners come asking this
25 Court to find that the district court does not understand its own orders. But it is
26 plainly not the district court that is in need of some supervision here. *See In re Fine*
27 *Paper Antitrust Litig.*, 695 F.2d 494, 498 (3d Cir. 1982) ("We must give particular
28 deference to the district court's interpretation of its own order."); *JTH Tax, Inc. v.*

1 *H & R Block E. Tax Servs., Inc.*, 359 F.3d 699, 705 (4th Cir. 2004) ("When a district
2 court's decision is based on an interpretation of its own order, our review is even more
3 deferential because district courts are in the best position to interpret their own
4 orders.").

5 **III. CONCLUSION**

6 Petitioners claim to have filed their "Notice of Correction" to correct the
7 record, but they did the opposite. They simply continue to try and revise history
8 hoping to avoid the consequences of their own misdeeds. The sad truth, as reflected
9 in the record, is that Sands China and LVSC "violated numerous orders" from the
10 district court in their quest to bring Jacobs' case to a standstill. Their latest ploy –
11 asserting that the district court's Sanctions Order was always meaningless because it
12 only barred them from employing a foreign blocking statute on documents for which
13 it did not apply – only underscores their contempt and why the district court rightly
14 scheduled further sanctions proceedings.

15 DATED 2nd day of April, 2014.

16 PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 2nd day of April, 2014, I electronically filed and served a true and correct copy of the above and foregoing **RESPONSE TO REQUEST FOR ORAL ARGUMENT** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows::

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