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13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 STEVEN C. JACOBS,  
16 Plaintiff,

17 v.

18 LAS VEGAS SANDS CORP., a Nevada  
19 corporation, SANDS CHINA LTD., a  
20 Cayman Islands corporation; SHELDON  
21 G. ADELSON, in his individual and  
22 Representative capacity, DOES I  
23 through X; and ROE CORPORATIONS  
24 I through X,

25 Defendants.

CASE NO. A-10-627691-C

DEPT. NO. XI

ORDER GRANTING  
MOTIONS TO DISMISS  
AND  
DIRECTING ENTRY OF  
FINAL JUDGMENT IN  
FAVOR OF SHELDON G.  
ADELSON [NRCP 54(b)]

26 On June 9, 2011, the Court heard Sheldon Adelson's, Las  
27 Vegas Sands Corp.'s and Sands China Ltd.'s Motions to Dismiss the Fifth  
28 Cause of Action for Defamation. Steve Morris appeared on behalf of  
defendant Sheldon G. Adelson; Donald Campbell and Colby Williams  
appeared on behalf of plaintiff Steven C. Jacobs; J. Stephen Peek appeared  
on behalf of defendant Las Vegas Sands Corp.; and Patricia Glaser  
appeared on behalf of Sands China Ltd.

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06-17-11P:4:41 RCVU

1           The Court has considered the motion papers of the parties and  
2 heard the arguments of counsel and finds as follows:

3           Plaintiff Steven Jacobs is suing the Las Vegas Sands Corp. and  
4 Sands China Ltd. for breach of an alleged contract of employment and, as  
5 to defendant Las Vegas Sands Corp., "tortious discharge in violation of  
6 public policy." Defendant Sheldon G. Adelson is alleged to be the  
7 Chairman of the Board and Chief Executive Officer of Las Vegas Sands  
8 Corp. and acting Chairman of the Board of Sands China Ltd. Mr. Adelson  
9 made a statement to the *Wall Street Journal* on March 15, 2011, following a  
10 hearing in this Court attended by members of the media, including a  
11 reporter for the *Wall Street Journal*. As a result of the *Wall Street Journal's*  
12 publication of his statement, the plaintiff filed an amended complaint the  
13 following day, alleging defamation against Mr. Adelson and the two  
14 corporate defendants as the fifth cause of action. Mr. Adelson's statement  
15 relates to the litigation and the allegations made against him in the  
16 plaintiff's complaint. The allegations were widely published by the *Wall*  
17 *Street Journal* and other media before and after the hearing on March 15,  
18 2011.

19           Based on the controlling law of privilege articulated by the  
20 Nevada Supreme Court in *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev.  
21 56, 657 P.2d 101 (1983) and *Clark County School Dist. v. Virtual Educ.*  
22 *Software, Inc.*, 125 Nev. Adv. Op. 31, 213 P.3d 496 (2009), the Court FINDS  
23 that Mr. Adelson's statement on March 15, 2011, to the *Wall Street Journal*  
24  
25  
26  
27  
28

1 was made during the course of this lawsuit and that the statement was and  
2 is absolutely privileged and is not actionable.<sup>1</sup>

3 Therefore, it is hereby ORDERED that:

4 (1) Adelson's, Las Vegas Sands Corp.'s and Sands China Ltd.'s  
5 Motions to Dismiss the Fifth Cause of Action are GRANTED;

6 (2) the First Amended Complaint against defendant Sheldon  
7 G. Adelson is dismissed with prejudice;

8 (3) the Fifth Cause of Action (defamation per se) is dismissed  
9 as to all defendants;

10 (4) the Court finds that there is no just reason to delay entry of  
11 final judgment in favor of defendant Sheldon G. Adelson; and

12 (5) accordingly, it is ORDERED that this Order granting  
13 Sheldon Adelson's Motion Dismiss is and shall be entered as a final  
14 judgment on plaintiff's fifth cause of action (defamation per se) against  
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25 <sup>1</sup> The Court is familiar with *State v. Eighth Jud. Dist. Ct.*, 118 Nev. 140, 42  
26 P.3d 233 (2002) ("Anzalone") which addresses the conditional privilege of  
27 reply. In view of my conclusion that Mr. Adelson's statement was  
28 absolutely privileged, I need not further consider the *Anzalone* decision.

1 defendant Sheldon G. Adelson, in accordance with Nevada Rule of Civil  
2 Procedure 54(b).

3 DATED this 20 day of June, 2011.

4  
5   
6 DISTRICT COURT JUDGE  
7

8 Submitted by:

9 MORRIS PETERSON

10 By: 

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12 Ryan M. Lower, Bar No. 9108  
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14 Attorneys for Defendant  
Sheldon G. Adelson

15  
16 Approved as to form:

17 CAMPBELL & WILLIAMS

18 By:  #9655 for

19 Donald J. Campbell  
20 J. Colby Williams  
700 South Seventh Street  
Las Vegas, Nevada 89101

21 Attorneys for Plaintiff  
22 Steven C. Jacobs

1 what he did here. When he -- and there's a demonstration of  
1 what he did here. When he -- and there's a demonstration of  
2 it. He thinks he knows, but he doesn't know. Mr. Adelson has  
3 had a long and rich and sordid history of suing individuals  
4 for defamation in this district, and you can take judicial  
5 notice of that fact.

6 THE COURT: I'm not going to, though.

7 MR. CAMPBELL: But that's -- but this is an issue  
8 that's certainly, that's certainly, Your Honor, going to be --  
9 going to be something that you should take notice of,  
10 particularly when we're dealing with an individual here that  
11 he's saying one thing, the counsels are saying another thing,  
12 and he's engaged in this process extrajudicially. So our  
13 point is this, Your Honor. Our point is that Mr. Adelson went  
14 ahead and made these statements to the Wall Street Journal,  
15 and they weren't a reply to anything. Nothing. The proper  
16 way to reply to what is in a complaint -- if that's the reason  
17 he did it, the proper way to reply to a complaint is with an  
18 answer. And if he didn't like the complaint because it was  
19 pled with particularity as is required by the courts, too bad.  
20 Then he shouldn't have fired him, and he shouldn't have  
21 engaged in the illegal conduct which resulted in my client  
22 being forced to say that he wouldn't do it.

23 So that's the bottom line in the case, Your Honor.  
24 I'm happy to address any other issues that the Court may  
25 believe are germane at this point. But, Your Honor, this is

1 something that should certainly all be flushed out in  
1 something that should certainly all be flushed out in  
2 depositions and discovery, because there's a lot more here  
3 than meets the eye.

4 THE COURT: Thank you, Mr. Campbell.

5 Paragraph 62 of the amended complaint is the basis  
6 for the fifth cause of action which cites to only one  
7 statement alleged to be defamatory, the statement we've been  
8 speaking about to the Wall Street Journal. The circumstances  
9 of that statement made by Mr. Adelson are not one in which  
10 there are factual issues. As I have indicated, there is a  
11 single statement, which leads the Court to believe that this  
12 particular statement is absolutely privileged as it relates to  
13 the litigation, and under the decision made by the Nevada  
14 Supreme Court in Clark County School District versus Virtual  
15 Education Software, Inc., which we've referred to today on the  
16 record as VESI, would provide for the Court making a legal  
17 determination as to the application of the privilege, and for  
18 purposes of this single statement that has been briefed today  
19 the Court grants the motion to dismiss.

20 Anybody want this certified?

21 MR. WILLIAMS: We would, Your Honor.

22 THE COURT: Mr. Morris, any objection to 54(b)  
23 certification in the -- getting you out of the case?

24 MR. MORRIS: I think it's completely unnecessary.  
25 This is a motion to dismiss.

1 THE COURT: But your guy's now all gone. Mr.  
1 THE COURT: But your guy's now all gone. Mr.  
2 Adelson as a party is totally out of this case as an  
3 individual, because that's the only claim for relief he was  
4 in.  
5 MR. MORRIS: And you've dismissed -- you've  
6 dismissed this fifth claim.  
7 THE COURT: As to all of you and as to Mr. Adelson  
8 only it would appear appropriate for me to certify it --  
9 MR. PEEK: Oh. Okay.  
10 THE COURT: -- even under the new 54(b) standard.  
11 MR. MORRIS: You can. You can. I have no objection  
12 to that.  
13 THE COURT: Okay.  
14 MR. PEEK: So this is just as to Mr. Adelson?  
15 THE COURT: Well, he's the only party who's been  
16 totally resolved.  
17 MS. GLASER: Correct.  
18 MR. PEEK: Correct.  
19 THE COURT: All the rest of you are stuck with me  
20 for a while.  
21 MR. PEEK: I just want to make sure, because it's  
22 also been dismissed as to Ms. Glaser's --  
23 THE COURT: Well, but as to Mr. Adelson it appears  
24 clearly appropriate for 54(b) certification --  
25 MR. MORRIS: Yes, Your Honor.

1 THE COURT: -- which will get the issue you want in  
1 THE COURT: -- which will get the issue you want in  
2 front of the Nevada Supreme Court. If they decide to  
3 entertain it, that's a different issue.

4 All right. If I can go to the rest of the motion to  
5 dismiss that Ms. Glaser filed, and if I could first go to the  
6 request for judicial notice. I typically do not take judicial  
7 notice of anything that is not already in this court or  
8 another court's file. For that reason I am going to decline  
9 to take judicial notice of Exhibit H of your proposed  
10 documents, which is a newspaper article. The others were  
11 previously attached as exhibits to other pleadings or are  
12 pleadings or transcripts themselves, so they're fair game.

13 MS. GLASER: Thank you, Your Honor. I will note,  
14 and it's minor, there was no objection to the request for  
15 judicial notice. But I take -- I heard Your Honor very  
16 clearly.

17 THE COURT: I have paranoia about it.

18 MS. GLASER: Your Honor, what I did was -- and I  
19 have extra copies, small copies if it -- because I'm not sure  
20 Your Honor can read this.

21 THE COURT: I can read it, but, if you'd like,  
22 please give a copy to everybody. I'll mark it as a Court's  
23 exhibit. If anybody feels like they need to move to see the  
24 big boards, please feel free to do so, unless, of course,  
25 you're in the gallery, in which case you're stuck.

1 MS. GLASER: Thank you, Your Honor.

1 MS. GLASER: Thank you, Your Honor.

2 THE COURT: Do you want me to mark it as a Court's  
3 exhibit?

4 MS. GLASER: I do, Your Honor.

5 THE COURT: If you have an extra copy, I will. Is  
6 it a two-page, or one page?

7 MS. GLASER: It's two pages, Your Honor. This is  
8 the first, and there's a second.

9 THE COURT: Mark those as Court's Exhibit 1 and 2.  
10 The longer one is 1, the shorter one is 2.

11 Okay. You may proceed.

12 MS. GLASER: Okay. Your Honor, thank you. And let  
13 me address this, because this is the motion to dismiss the  
14 second claim for breach of contract against Sands China, and  
15 we believe it should be granted, and we think there's plenty  
16 of authority, both factual in terms of what the Court can take  
17 judicial notice of and what the complaint says and what has  
18 been acknowledged by all the parties, including plaintiff.

19 Let me start. The plain and unambiguous language of  
20 the only contract Mr. Jacobs alleges is with Sands China,  
21 Limited, is the stock option grant letter. I've referred to  
22 it as SOGL. And it provides that unvested options are  
23 extinguished upon termination for any reason, cause, no cause.  
24 And that's unequivocal and unambiguous.

25 Now, what do I have for that? I have the SOGL,

1 appendix to subsection 2.1(2)(i). Quote, "If the grantee's  
1 appendix to subsection 2.1(2)(i). Quote, "If the grantee's  
2 employment with the company and its subsidiaries is terminated  
3 for any reason, including for cause, the unvested portion of  
4 the option shall expire on the date of termination." There is  
5 -- it's undisputed, it's alleged by plaintiff that he was  
6 terminated -- Mr. Jacobs was terminated in July of 2010 and no  
7 options by the terms of this agreement had vested under  
8 anybody's theory, and everyone acknowledges that. He is suing  
9 separately in the terms sheet for the options that are listed  
10 there. He got some of them under the terms sheet. He  
11 acknowledges that. And he says, you know what, there were  
12 250,000 more options in the terms sheet with Las Vegas Sands  
13 that need to be moved up so I can exercise those 250,000  
14 options. So it's completely disingenuous to suggest, oh, wait  
15 a minute, the terms sheet was referring to those -- you know,  
16 they're going to be converted when there was an IPO. He's  
17 claiming both all of the options under the terms sheet from  
18 Las Vegas Sands and two and a half million options from China,  
19 Sands China, in a completely separate document that comes  
20 literally months, almost a year after the terms sheet that he  
21 says is enforceable against Las Vegas Sands.

22 Now, there is no reference, of course, to the terms  
23 sheet in the SOGL. And that's Exhibit B to the request for  
24 judicial notice, Your Honor. Then we go to another part of  
25 authority, when a single transaction is evidenced by multiple

1 writings. which is what his contention is, seems to be his  
1 writings, which is what his contention is, seems to be his  
2 argument. Hong Kong courts -- and I -- you know, Your Honor,  
3 we sort of warned you about this before.

4 THE COURT: It's not my first case where we've had  
5 experts on foreign law have to come in. Mr. Peek knows how to  
6 do it.

7 MS. GLASER: And we did provide Your Honor copies of  
8 everything we relied on, and, of course, to the other side.  
9 Hong Kong courts will interpret those documents consistently  
10 unless this would result in a breach of the terms of the  
11 documents. And that's the HSH Nord Bank case that we cited,  
12 2009 Hong Kong case.

13 Lastly on this point, in Nevada the interpretation  
14 and construction of contractual terms is a question of law  
15 that can be and, based on the law as we understand it, should  
16 be determined by the Court at a motion to dismiss stage.

17 Now, the Court in our view is both entitled and  
18 required to interpret claim and unambiguous language of the  
19 alleged agreement at this stage. The plain -- our second  
20 point, the plain and unambiguous language of the SOGL requires  
21 Jacobs to sign and return it within 28 days. And you say to  
22 yourself, oh, come on, what's the big deal. Well, I'll tell  
23 you what the big deal is. The first amended complaint doesn't  
24 and cannot allege that he did so, and until that offer is  
25 accepted it may be rescinded at any time. How do we know

1 that? We gave you authority for that, Your Honor, Hong Kong  
1 that? We gave you authority for that, Your Honor, Hong Kong  
2 authority, which is also Hong Kong authority that in itself is  
3 clear and unambiguous. If you don't accept within 28 days,  
4 you are deemed to have declined it. And I'm going to just  
5 porch the language here. Subsection (5), if you wish to  
6 accept this offer of the option, you're supposed to sign it,  
7 pay a dollar -- we're not focusing on the dollar, Your Honor  
8 -- to a specific individual of the company within 28 days of  
9 the date, and if you don't receive that acceptance within  
10 28 days, it's gone. And the language is clear and  
11 unambiguous.

12 Now, if it's not enough, in their opposition to Las  
13 Vegas Sands's motion to add an indispensable party that we  
14 were talking about that hearing a few minutes ago, Your Honor,  
15 in another context, that was on March 15, 2011. And if you go  
16 -- if Your Honor has a chance to go to pages 26 to 37 of the  
17 transcript, which we were able to order, over and over and  
18 over again that terms sheet Mr. Campbell describes is with Las  
19 Vegas Sands. He says it over and over and over again. I  
20 won't even go to something which arguably is extrajudicial.  
21 When Mr. Campbell first made his claim on September 24, 2010,  
22 to Las Vegas Sands he actually says in that letter, that claim  
23 his deal, the terms sheet is -- again, not only does he say it  
24 in the complaint, not only does he say it in his initial  
25 disclosures which are before the Court, not only does he say

1 it in this court on March 15. when he starts this action he  
1 it in this court on March 15, when he starts this action he  
2 acknowledges, my fight, my terms sheet is with Las Vegas  
3 Sands. He does not say Sands China. He couldn't. Sands  
4 China hadn't even gone public by then. Sands China wasn't in  
5 existence then.

6 Let me go to my next point, if I might, Your Honor.  
7 And that's the second board. There are arguments that have  
8 been raised by the other side, and I wanted to address those  
9 directly. Which is slightly smaller print. I hope the Court  
10 can still see it.

11 Mr. Jacobs has several arguments. He argues that  
12 the terms sheet governs the rights and obligations of SCL  
13 under stock option agreement. Well, you say to yourself, wait  
14 a minute, there isn't even a reference to the terms sheet in  
15 the stock option grant letter. Sands China is not a party to  
16 the terms sheet. Everybody acknowledges that. And it's only  
17 a party to the stock option agreement. The stock option grant  
18 letter again contains no language that adopts or incorporates  
19 any provisions of the terms sheet. Mr. Jacobs argues that his  
20 allegation -- and this is a little odd, but I think it's just  
21 an apples and oranges confusion. He argues in his allegation  
22 that he performed all the contractual obligations under the  
23 SOGL -- that's in paragraph 46 of the first amended complaint  
24 -- alleges acceptance. Respectfully, Your Honor, so what?  
25 This isn't -- this isn't anything other -- what he alleges is,

1 I performed everything I was supposed to perform except what I  
1 I performed everything I was supposed to perform except what I  
2 was prevented from performing. Not an unusual provision. The  
3 problem is this goes to contract formation. This does not go  
4 to whether or not he performed everything he was supposed to  
5 perform under the contract and therefore I breached. We're  
6 not there. We never get to that step. We never get over this  
7 big bass canyon called offer and acceptance whether there's a  
8 contract or not.

9 Now, what we do is we tell you in I think no  
10 uncertain terms that we cite to Hong Kong law which stands for  
11 the propositions we articulated in our briefs. The terms  
12 sheet -- and I -- to say it to you once again, the terms sheet  
13 has 500,000 options it references, some of which he  
14 acknowledges he already received. They were not converted at  
15 the time of the IPO. Everybody concedes that. He's suing for  
16 all the options in the terms sheet plus and separately two and  
17 a half million options under the SOGL.

18 Now, he cites to paragraph 8.1, if I might, of the  
19 -- it's Exhibit B to your -- to the request for judicial  
20 notice. 8.1 says, "The grant of options and these terms and  
21 conditions shall not form part of any contract of employment  
22 between the Company or any subsidiary and any employee and the  
23 rights and obligations of any employee under the terms of this  
24 office or employment shall not be affected thereby."

25 Your Honor, the first sentence of 8.1 provides that

1 the stock option grant letter will not affect the terms of any  
1 the stock option grant letter will not affect the terms of any  
2 contract of employment, quote, "between the Company," capital  
3 C, "or any subsidiary and any employee." The company is  
4 defined in the same document in the notice of exercise portion  
5 of the stock option grant letter as Sands China. By its terms  
6 8.1 refers only to employment agreements with Sands China and  
7 subsidiaries of Sands China. It goes without saying that Las  
8 Vegas Sands is not a subsidiary of Sands China. Contrary to  
9 what Mr. Jacobs suggests, therefore, the terms sheet between  
10 Jacobs and Las Vegas Sands is not referenced, and you can't  
11 make up a phony argument to suggest it is in 8.1.

12           At paragraph 47 of the first amended complaint  
13 that's the only reference to any contract breached by Sands  
14 China, and that's a reference to the stock option grant  
15 letter. In short, the first amended complaint does not allege  
16 any other contract, including any employment agreement,  
17 between Mr. Jacobs and Sands China.

18           Now, Mr. Jacobs says -- talked about how he  
19 performed all the contractual obligations under the SOGL.  
20 Again I say to you he confuses, and I say it respectfully,  
21 acceptance with performance. Without acceptance there is no  
22 contract.

23           Now, we then cite to you an enforceable contract  
24 must include a valid offer and acceptance. We cite to you  
25 Chitty on Contracts, which is the thirtieth edition, 2008.

1 And the acceptance must be in writing, and we cite to you the  
1 And the acceptance must be in writing, and we cite to you the  
2 Yates Building case, which is again a 1976 case under Hong  
3 Kong law. And we also cite to you the stock option grant  
4 letter subsection (5), which requires it to be in writing.

5 Pursuant to Hong Kong law an offer may be terminated  
6 at any time. And that's the Payne versus Kay case. I  
7 apologize. It is a 1789 case, Your Honor, and I rarely go  
8 back one century, much less more than one century, to find  
9 authority. This is the prevailing authority in Hong Kong, and  
10 it's unequivocal. And in that case the facts were actually  
11 somewhat similar. He's essentially alleging, well, wait a  
12 minute, you terminated me before the 28 days was up, how could  
13 I possibly have done anything, how could I possibly have  
14 exercised it, my time wasn't up. And the response is, and  
15 Payne teaches us this, so what, it's an offer that can be  
16 rescinded at any time. That offer has no consideration until  
17 it's accepted. It was never accepted. He acknowledges it  
18 wasn't accepted.

19 Mr. Jacobs then argues, wait a minute, I was  
20 wrongfully terminated so I'm allowed to seek damages for the  
21 loss of the option to purchase the stock of Sands China. And  
22 I think, and again I say this respectfully, he seems to rely  
23 on a bunch of -- I say irrelevant, and I'm not being flippant,  
24 has nothing to do with this case. Hong Kong law applies  
25 pursuant to the SOGL. Its terms state SOGL, Hong Kong law

1 applies.

1 applies.

2           The irrelevant American cases on which Jacobs  
3 relies, however, if you want to look at American law, each  
4 provide that an employment contract with the entity granting  
5 the option is a prerequisite for this argument. In other  
6 words, most of those -- I think all those cases -- I can -- I  
7 could even give you some of them, Your Honor. One of them was  
8 a Knox case, another one was a Morschbach case. Morschbach  
9 was particularly interesting. But those cases, and those are  
10 just examples, are cases where you had an employment agreement  
11 that one of the provisions of the employment agreement was  
12 stock options were granted. That's not here. There's no  
13 employment agreement alleged with Sands China. Sands China  
14 does not belong in this lawsuit. The only reason it's here is  
15 because of the stock option grant letter, and that doesn't  
16 belong here, either, Your Honor. There is not any reason not  
17 to dismiss the motion.

18           Now, I just want to speak for a second about the  
19 Morschbach case. That's a 2002 case, and we cited that to  
20 Your Honor. There the plaintiff was a CEO of a defendant's  
21 subsidiary through a merger, her employment agreement with the  
22 parent. The claim was entitled to -- the claim is he was  
23 entitled to exercise options to purchase the subsidiary's  
24 stock after the merger which caused his wrongful termination.  
25 The court found the subsidiary's stock option agreement in

1 plan governed which had express clauses that there was no  
1 plan governed which had express clauses that there was no  
2 right to purchase once the employment ceased. Quote, "The  
3 stock option agreements are stand-alone grants which do not  
4 tie into any other contract." By its terms the stock option  
5 grant letter is a stand-alone agreement that does not tie into  
6 anything else, Your Honor. And the motion to dismiss should  
7 be granted.

8 I'm glad to answer any other questions the Court may  
9 have.

10 THE COURT: Thank you.

11 Mr. Williams.

12 MR. WILLIAMS: Yes, Your Honor.

13 We can leave these up, because I think they'll be  
14 helpful. I appreciate the review of basically what's been in  
15 the briefs. And I know Your Honor has read them, so I'll try  
16 to focus my statements on some of the new issues that have  
17 been touched on, or the inaccuracies that have just been  
18 presented to the Court.

19 First of all, back to the first board, obviously,  
20 Your Honor, we're here on a motion to dismiss. I don't need  
21 to rehash what those standards are. Your Honor's very well  
22 versed in them. And I think the defendants recognize that  
23 we're here on that, so they make this statement to you. They  
24 come down here and they say, "In Nevada interpretation of and  
25 construction of contractual terms is a question of law that

1 can be determined in a 12(b)(5) motion to dismiss." And they  
1 can be determined in a 12(b)(5) motion to dismiss." And they  
2 cite for that NGA #2 LLC versus Rains. Now, if you read NGA 2  
3 LLC versus Rains, that is a case dealing with summary  
4 judgment. It is not a motion to dismiss at all. And in fact  
5 the Nevada Supreme Court reversed the case because there were  
6 questions of fact that existed.

7           The same is true -- they cited -- it's not on this  
8 board, but they cited the Angoöey [phonetic] case for the same  
9 proposition. Same thing, Your Honor. It, too, was summary  
10 judgment. None of the cases that they have cited to you are  
11 motion to dismiss cases.

12           So, having gotten that out of the way, let's talk  
13 about this issue of Mr. Jacobs's alleged nonacceptance of the  
14 stock option grant letter. We've alleged in the second cause  
15 of action that there is a contract, that the contract was  
16 breached. Your Honor, I submit for purposes of this motion  
17 that's sufficient. We don't need to come in and present  
18 evidence of how he accepted it, when he accepted it, or any of  
19 that. We don't need to do it at this stage. If we did,  
20 however, Your Honor, I could present to you evidence from  
21 Sands China's public filings wherein they are telling the  
22 public that Mr. Jacobs had 2.5 million stock options in the  
23 company. And what they state is that those options lapsed,  
24 not because he didn't accept them, but because he was  
25 terminated. So they are representing to the public that he

1 had the options, in other words, he accepted them. So this  
1 had the options, in other words, he accepted them. So this  
2 whole issue in my opinion is a red herring, Your Honor.

3 The Hong Kong cases they cite inaccurately described  
4 by Ms. Glaser, respectively, the Payne case was dealing with  
5 an auction. The bidder bid a certain amount, and the  
6 auctioneer required him to accept certain additional  
7 obligations as part of that bid. He said, I'm not doing it;  
8 and they said, okay, you're not obligated on that bid.

9 The Dixon v. Dodds case is the other Hong Kong case  
10 they cited, and I think that's the one she was actually  
11 reciting the facts for. And in that case it is true the Hong  
12 Kong court stated that an offer that is held to be open for a  
13 specified period of time can be withdrawn prior to that time  
14 by the offeror. But what would that -- so I take it what  
15 they're saying is that's essentially what we did here with  
16 Jacobs. But, Your Honor, what would that require? That would  
17 require evidence. There's no evidence in the record that they  
18 withdrew this offer. If that's their position, then they're  
19 going to have to prove that. And we're entitled to get into  
20 discovery to go over that. So I think the issue of acceptance  
21 is a non issue.

22 Now, as I just touched on, the other three cases  
23 that they've cited with respect to contract interpretation  
24 being a question of law, the two Nevada cases were summary  
25 judgment cases reversed on appeal because genuine issues of

1 fact existed. The other one was the Morschbach case which Ms.  
1 fact existed. The other one was the Morschbach case which Ms.  
2 Glaser referenced at the end of her presentation. That was  
3 cited by them in response to our position that the terms sheet  
4 and the stock option grant letter should be construed  
5 together. And, as the Court knows, we've cited a number of  
6 cases saying that whether two documents are to be construed  
7 together is a question of fact.

8 In Morschbach the court -- again, this is summary  
9 judgment, Your Honor. It was not a motion to dismiss. In  
10 Morschbach the court found that the plaintiff's employment  
11 contract and the stock option agreements were stand alone  
12 because the employment agreement never referenced the issue of  
13 stock options at all. And, as Your Honor knows, that is not  
14 what we have here. The terms sheet expressly references stock  
15 options and contemplates that Mr. Jacobs is going to be  
16 getting stock options not just in Las Vegas Sands, but in  
17 Sands China. So we would submit that Morschbach is certainly  
18 distinguishable on that basis.

19 Now, Your Honor, a couple of other comments that  
20 were made was that Sands China was not in existence at the  
21 time of the terms sheet, didn't go public, and then was -- the  
22 statement was amplified on to say it wasn't in existence.  
23 Your Honor, if you go back to their motion to dismiss based on  
24 jurisdiction, and I'm talking about Sands China's, the  
25 lawyers', they state that Sands China was formed on July 15th,

1 2009 The terms sheet is in early August 2009. So it  
1 2009. The terms sheet is in early August 2009. So it  
2 absolutely was in existence. I don't know if they just forgot  
3 that they put that in their brief or if they aren't familiar  
4 with the corporate formation history, but that's the state of  
5 facts on that.

6 Ms. Glaser also said we acknowledge that the terms  
7 sheet -- or that the stock option agreement was never  
8 accepted. That is not what we say, Your Honor. We went  
9 through and presented an example with respect to his ability  
10 -- his potential inability to have accepted or performed  
11 because he was terminated before the expiration period lapsed.  
12 But we're not saying he didn't accept it. We're saying he  
13 did. And we'll get into discovery and we'll establish that.

14 So, Your Honor, I don't want to rehash everything  
15 else that's in the briefs. I know you've read everything.  
16 But I'm happy to answer any other questions you have on it.

17 THE COURT: I don't have any.

18 Because this is a motion to dismiss, the Court  
19 cannot make the determination that is being requested of it  
20 today. This is an issue that, if you believe appropriate,  
21 should be renewed on a motion for summary judgment. At this  
22 point the allegations that have been made have to be taken by  
23 the Court as true. And while I will make a legal  
24 determination about the scope and interpretation of the  
25 contract provisions, I'm not going to do it at the motion to

1 dismiss stage.

1 dismiss stage.

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: Thank you for including the foreign  
4 authorities. It's helpful, since there's no other way for me  
5 to access Hong Kong law.

6 MS. GLASER: Your Honor, I have two questions, if I  
7 might.

8 THE COURT: Yep.

9 MS. GLASER: One is I need to understand one thing,  
10 and if the Court would enlighten me.

11 THE COURT: Sure.

12 MS. GLASER: And if the Court doesn't choose to,  
13 it's fine, too. One is may we make a motion for summary  
14 adjudication now --

15 THE COURT: Yes.

16 MS. GLASER: -- and avoid the discovery? Because it  
17 is a -- it's in our view senseless.

18 THE COURT: File your motion for summary judgment.  
19 There's a different standard that applies on a motion for  
20 summary judgment. So file it, characterize it as a motion for  
21 summary judgment, they'll do what they're going to do, which  
22 may include some issues related to some other stuff, and then  
23 we'll talk about it.

24 MS. GLASER: Second issue, if I might. Thank you.  
25 I appreciate it. That's -- I needed that guidance.

1           The second issue is we -- and I don't know if the  
1           The second issue is we -- and I don't know if the  
2 Court wants to hear about this, but we have some not disputes,  
3 we're all working together --

4           THE COURT: How about before you go to those I hear  
5 the other case that's still waiting. You guys make sure all  
6 of you know what the issue is you want to talk to me about,  
7 and unless somebody objects, I'd be happy to talk to you about  
8 it. But I want to get those other folks out of here.

9           MS. GLASER: Thank you, Your Honor.

10          (Court recessed at 11:27 a.m., until 11:34 a.m.)

11          THE COURT: Mr. Morris, you're the one who's  
12 preparing the order on the defamation motion.

13          MR. MORRIS: Yes, I will, Your Honor.

14          THE COURT: And send it over to everybody to look  
15 at.

16          MR. MORRIS: Circulate it? Certainly I will.

17          THE COURT: Please.

18          MR. CAMPBELL: Your Honor, and I presume it's just  
19 basically going to reiterate what was in --

20          THE COURT: One would hope.

21          MR. CAMPBELL: -- the statement that the Court made.

22          THE COURT: I've found there's an absolute  
23 privilege, no factual issues related to the nature of the  
24 statement, motion granted, go up to the Supreme Court.

25          MR. CAMPBELL: On the basis of the VESI case.

1 THE COURT: Absolute privilege.  
1 THE COURT: Absolute privilege.  
2 MR. PEEK: You didn't need to get to the reply  
3 issue.  
4 THE COURT: Correct. Nor did I need to deal with  
5 conditional privileges since I found it to be an absolute  
6 privilege.  
7 Okay. What do you want to talk to me about?  
8 MS. GLASER: Your Honor, we want to just alert you,  
9 and we've alerted the other side, and we -- we think we have a  
10 general sort of understanding. There is --  
11 THE COURT: And Mr. Fleming is back.  
12 MS. GLASER: Good morning, good morning, good  
13 morning very early, Mr. Fleming.  
14 Two things. One, we will be filing a motion for  
15 summary adjudication, and I appreciate the Court's guidance.  
16 It's not a surprise.  
17 THE COURT: No problem.  
18 MS. GLASER: Two, with --  
19 THE COURT: There's a \$250 filing fee with that.  
20 MS. GLASER: Oh.  
21 MR. PEEK: Is that all you get for reviewing it,  
22 Your Honor?  
23 THE COURT: I don't get anything.  
24 MS. GLASER: Not a problem.  
25 Second, and this is what we were about to discuss

1 with Your Honor. there's something called the Privacy Act in  
1 with Your Honor, there's something called the Privacy Act in  
2 Macau, and the Privacy Act is a pretty laborious piece of  
3 legislation which requires something like the following. And  
4 we have explained it to the other side. They're going to get  
5 their own counsel, Macau counsel, because I don't want them to  
6 rely on us. And I'm sure they wouldn't anyway.

7 This is what happens. Documents get -- must be  
8 reviewed in Macau. We're starting that process now. We have  
9 gone through the process and represent to the Court we have  
10 gathered electronic documents, as well as hard copy.

11 THE COURT: Correct.

12 MS. GLASER: They're in Macau. They are not allowed  
13 to leave Macau. We have to review them there, and then to the  
14 extent that the Privacy Act, which is read very broadly --  
15 according to our Macau written opinion counsel, it's read very  
16 broadly, it then -- then you go to the office that supervises  
17 the Privacy Act, say, okay, with respect to these group of  
18 documents, not the whole universe, but these group of  
19 documents we want to take them out of Macau, produce them in  
20 this litigation, and we do that pursuant to a stipulation and  
21 hopefully court order that says, of course, these are only  
22 going to be used in connection with this litigation and for no  
23 other purpose.

24 We then hope to and anticipate being able to  
25 convince the Macau court, not a problem, okay, go -- Macau

1 office that we -- indeed the government says, yes, you can do  
1 office that we -- indeed the government says, yes, you can do  
2 these in the Jacobs litigation. Mr. Campbell said to me,  
3 well, okay, fine, we'll get our own counsel, no problem, and  
4 can you give me a date by which you think you will be able to  
5 produce whatever you can produce.

6 THE COURT: Is this related to the document  
7 production we issued -- talked about last time where you said  
8 there be a violation of Macau law? You didn't, you did.

9 MS. GLASER: Yes, ma'am.

10 THE COURT: And I said, well, then that would be the  
11 time to ask me about the stay.

12 MS. GLASER: Okay. So --

13 THE COURT: Is that what you're trying to intimate  
14 to me, we're getting closer to that time?

15 MS. GLASER: We're getting closer to that time.

16 THE COURT: Okay. Well, some day we'll actually get  
17 there; right?

18 MS. GLASER: But I simply -- somebody -- there's a  
19 rumor out there in Las Vegas that if people don't raise issues  
20 early with you, you might get a little testy with the lawyers.

21 THE COURT: I get frustrated.

22 MS. GLASER: And I don't want to get -- I don't want  
23 anybody being testy with me.

24 THE COURT: So are you entering into a stipulation  
25 and confidentiality order related to the Privacy Act in Macau?

1 MS. GLASER: They haven't agreed to that yet, Your  
1 MS. GLASER: They haven't agreed to that yet, Your

2 Honor.

3 MR. PEEK: Yeah, we did.

4 THE COURT: It was just a question.

5 MR. PEEK: It's --

6 THE COURT: There was a question mark at the end of  
7 my statement.

8 MR. PEEK: And the reason for that is we'd be able  
9 to tell the Office of Data Privacy counsel that we're --  
10 they're being used for this purpose so --

11 THE COURT: But I still need to hear Mr. Campbell's  
12 answer to my question.

13 MR. CAMPBELL: Thank you, Your Honor. The answer to  
14 that is no.

15 THE COURT: Okay.

16 MR. CAMPBELL: Would you like me to elaborate?

17 THE COURT: No. You're going to consult with  
18 somebody in Macau.

19 MR. CAMPBELL: No.

20 THE COURT: All right. You're not going to consult  
21 with somebody in Macau. They're going to do what they're  
22 going to do, they're going to produce documents with a  
23 privilege log which may include this unusual entry for us,  
24 which is Macau privacy law, and then we will deal with that  
25 some day.

1 MS. GLASER: Not a problem.  
1 MS. GLASER: Not a problem.  
2 THE COURT: Right?  
3 MR. PEEK: Your Honor --  
4 MR. CAMPBELL: I just -- now --  
5 MR. PEEK: -- let me just add one thing, because I  
6 didn't address this. That same Data Privacy Act, Your Honor,  
7 also implicates communications that may be on servers and  
8 email communication and hard document -- hard-copy documents  
9 in Las Vegas --  
10 THE COURT: Here in the States?  
11 MR. PEEK: -- Sands, as well.  
12 THE COURT: Well, you can take the position --  
13 MR. PEEK: Well, we are told that by the --  
14 THE COURT: It's okay.  
15 MR. PEEK: -- the Office of Data Privacy --  
16 THE COURT: You can take the position --  
17 MR. PEEK: -- counsel, Your Honor. And I'll --  
18 we'll brief that with the Court. Again --  
19 THE COURT: And then I'll decide.  
20 MS. GLASER: No problem. Your Honor, the only  
21 reason I want to emphasize this is this isn't a function of  
22 jumping through hoops. If we're in violation of the Privacy  
23 Act, there are criminal implications --  
24 THE COURT: I understand.  
25 MS. GLASER: -- and we treat that seriously.

1 THE COURT: We had that discussion about a month  
1 THE COURT: We had that discussion about a month  
2 ago.

3 MR. PEEK: We did, yeah.

4 THE COURT: And I said I thought it was premature  
5 and that when we got there we could talk about a stay.

6 MR. PEEK: And the reason why we're bringing it is,  
7 you may recall it, in our joint status report, Your Honor, we  
8 told the Court that we thought we would be able to produce  
9 documents by July 1. We're not going to be able to make that  
10 date, because --

11 THE COURT: Why not? You've had documents that  
12 aren't covered by this that you didn't produce --

13 MR. PEEK: Well, no, no. We will -- those documents  
14 that are not implicated, Your Honor, by the --

15 THE COURT: Certainly.

16 MR. PEEK: -- Data Privacy Act we will.

17 THE COURT: Okay.

18 MR. PEEK: The other --

19 THE COURT: Don't wait and produce all the documents  
20 after you think you can comply with --

21 MR. PEEK: Let me -- let me finish, Your Honor. The  
22 other thing is we haven't completed the ESI protocol  
23 negotiations and the search terms with Mr. Campbell and Mr.  
24 Williams yet. We have had many meetings with them, and we're  
25 I think at the last stage. Perhaps Mr. Williams could tell

1 us. because we had a couple meet and confers on that, and we  
1 us, because we had a couple meet and confers on that, and we  
2 haven't completed that process, so we haven't been able to  
3 even run search terms.

4 THE COURT: When are you going to finish the  
5 process?

6 MR. PEEK: I guess it's -- Mr. Williams can --

7 THE COURT: Mr. Justin Jones is going to come help  
8 us. He and Mr. Williams are probably the two who labored on  
9 this.

10 MR. PEEK: And Mr. Krum, as well, Your Honor.

11 THE COURT: And Mr. Krum.

12 MS. GLASER: Your Honor, the only thing that you  
13 said that --

14 THE COURT: Hold on a second.

15 MS. GLASER: -- I just didn't want you to --

16 THE COURT: So when is the ESI going to be  
17 completed, the negotiations on the scope of the ESI search?

18 MR. JONES: Mr. Williams and I talked a minute ago,  
19 and I think we'll get it wrapped up tomorrow. We met last  
20 week. There were a couple of issues that needed --

21 THE COURT: So you now have a 2:00 o'clock  
22 conference call with me to say, yes, Judge, we got it worked  
23 out, okay.

24 MR. JONES: 2:00 o'clock tomorrow?

25 THE COURT: 2:00 o'clock tomorrow. Mr. Jones,

1 you're --

1 you're --

2 Justin Jones is charge of organizing the call and  
3 calling in.

4 MR. JONES: I'll be in a vehicle at the time, but I  
5 will make sure that it happens.

6 THE COURT: It's okay. All right.

7 MS. GLASER: Your Honor, you made a comment, well,  
8 you should be able to start producing documents now.

9 THE COURT: True.

10 MS. GLASER: My only comment to you is that we have  
11 to get permission to get documents out of Macau.

12 THE COURT: All documents from Sands China have to  
13 get permission from the Office of Privacy?

14 MS. GLASER: Oh, yeah. Absolutely.

15 MR. PEEK: Yes.

16 THE COURT: Well, if that's -- if that's what you  
17 think the answer is, then somebody should file a protective  
18 order soon if you don't have a stip.

19 MS. GLASER: Understood. We'll -- we will do that,  
20 Your Honor, and be guided accordingly. Thank you.

21 MR. PEEK: Yeah. And that's -- we're also going to  
22 say we're going to do this on a briefing schedule, Your Honor,  
23 as well.

24 THE COURT: It's like I've been trying to say. At  
25 some point in time it's going to be ripe, and I'm almost

1 there. it sounds like. But I can't just do it on the fly with  
1 there, it sounds like. But I can't just do it on the fly with  
2 you guys telling me this at the last minute.

3 Mr. Campbell, you're waving at me.

4 MR. CAMPBELL: Thank you, Your Honor.

5 Your Honor, we don't accept nor deny what Ms. Glaser  
6 has proffered to the Court. We don't know what the situation  
7 is there. That's our position. We certainly would like to  
8 talk to someone with respect to some of the representations  
9 that have been made that has the knowledge of Macau law. But,  
10 irrespective of that, we are not waiving anything in that  
11 regard. There's a United States Supreme Court case right on  
12 point that says, we don't care what foreign law says, you've  
13 got to produce documents, particularly when they're in the  
14 jurisdiction in which the litigation is taking place like they  
15 are here.

16 But separate and apart from all that, she left  
17 something out. And that was she wants to hold back on  
18 producing Mr. Adelson and Mr. Levin for their depositions that  
19 I've been asking to take for weeks and weeks and weeks. So I  
20 talked to her about that, and I said, okay, here's the deal, I  
21 said, when do you want to hold back until; she says, about mid  
22 August. I said, not a problem. Mr. Peek says, we might need  
23 a little additional more time; I said, fine, let's go  
24 beginning September. We're all playing -- as the Court's fond  
25 of saying, we're all playing nicely.

1 THE COURT: Play nice in the sandbox, yeah.

1 THE COURT: Play nice in the sandbox, yeah.

2 MR. CAMPBELL: Let's go September. So I wanted to  
3 take, you know, Mr. Adelson and Mr. Levin a couple months ago,  
4 okay. But they want until September, that's fine, I want to  
5 take them in September. That's all I have to say.

6 THE COURT: Okay.

7 MS. GLASER: Your Honor, I have to say one thing. A  
8 month ago -- we sat in a meet confer approximately a month  
9 ago, and we urged Mr. Campbell to then hire Macau counsel to  
10 get separate advice from anything we were telling him, and  
11 that apparently has not occurred, number one. Number two --  
12 and that's not our fault. And we've had, believe me, four  
13 different opinions on this point from different Macau counsel  
14 because it's of such concern to us.

15 Number two, absolutely we had a conversation about  
16 Mr. Levin and Mr. Adelson. There was never -- and we have  
17 always told everyone that depositions will start once we  
18 review the documents.

19 THE COURT: Technically depositions can start March  
20 15th, when I suspended the requirement of a joint case  
21 conference report unless you file a protective order --

22 MR. PEEK: Your Honor --

23 THE COURT: -- after being properly noticed.

24 MR. PEEK: -- you may recall we filed a joint status  
25 report.

1 MS. GLASER: Yes.

1 MS. GLASER: Yes.

2 MR. PEEK: In that joint status report we both  
3 agreed, which we both signed, is that they would --

4 THE COURT: I know. That's why I said technically.

5 MR. PEEK: I know.

6 THE COURT: All right. So you guys have a dispute.  
7 Somebody's going to either notice a deposition or not. If  
8 somebody notices a deposition, maybe somebody will file a  
9 protective order motion if you guys can't work it out, and  
10 then, if you do, we'll talk about it.

11 MR. CAMPBELL: I don't think we have a dispute.  
12 That's the point.

13 THE COURT: I don't know if you -- I don't think you  
14 have a dispute yet.

15 MR. PEEK: We don't. We don't, Your Honor.

16 MS. GLASER: We're working on it.

17 MR. CAMPBELL: I didn't mean to suggest -- I didn't  
18 mean to suggest that Ms. Glaser and I had a dispute --

19 THE COURT: You will have disputes.

20 MR. CAMPBELL: -- on the deposition issue. I'm  
21 advising you --

22 THE COURT: It's okay.

23 MR. CAMPBELL: I'm advising you she's asked for --

24 THE COURT: When are you going to be ready for  
25 trial?

1 MR. CAMPBELL: Your Honor, could I just finish one  
1 MR. CAMPBELL: Your Honor, could I just finish one  
2 thing?

3 MS. GLASER: Tomorrow.

4 MR. PEEK: Ms. Glaser thinks she's ready right now,  
5 Your Honor.

6 MR. CAMPBELL: Your Honor, so I we don't have a  
7 dispute on that. I have told Ms. Glaser, yes, let's move the  
8 depositions out. I've also told Ms. Glaser I'll put on the  
9 record she asked me if I would take Mr. Levin first. I will  
10 take Mr. Levin first, and then we will take Mr. Adelson,  
11 beginning sometime on or after the 1st of September.

12 One additional matter. If they're coming back to  
13 the Court on this Macau issue, one of the things that Mr.  
14 Adelson has been saying publicly is that the United States  
15 Department of Justice and/or the Securities and Exchange  
16 Commission have been serving subpoenas and they have been  
17 producing documents to the United States Government either in  
18 a civil proceeding or criminal proceeding, I don't know. But  
19 we want to know if they're -- if they're producing documents  
20 to the United States Government. That certainly I think would  
21 have an impact upon what we're doing here.

22 MS. GLASER: Mr. Campbell, I'm sure unintentionally,  
23 is just wrong. And I'll be glad to discuss it out of Your  
24 Honor's presence.

25 THE COURT: I don't need to worry about it. Mr.

1 Campbell, you can always serve a document request or something  
1 Campbell, you can always serve a document request or something  
2 asking for that sort of information, or an interrogatory, and  
3 I'm sure you'll get an answer, or you could just talk.

4           When will you be ready for trial? Assume we work  
5 through the document production issue in say a period of time  
6 that the documents have been ruled on and either I've decided  
7 you don't have to produce them or I decide you have to produce  
8 them and then get them produced by October. With that  
9 assumption, when will you be ready for trial?

10           MS. GLASER: I'm hoping to be out of the case, so  
11 I'm going to not say anything right now, Your Honor.

12           MR. CAMPBELL: Well, I think we're currently set for  
13 end of June.

14           MR. PEEK: We --

15           THE COURT: You're not set.

16           MR. PEEK: We told the Court, Your Honor, based upon  
17 the schedule that we presented to the Court in the joint  
18 status report and we -- and we then attended it in August 22nd  
19 of this year. We told the Court that based on the schedule  
20 that we were hopeful we could meet that we should be able to  
21 be ready for trial by June of 2011 [sic]. Because the process  
22 with the Data Privacy Counsel is process and very laborious,  
23 we're not going to be able to meet the Sands China part of  
24 this equation, the production of documents, until I don't know  
25 when. I'm hopeful that we can get it done very soon. But

1 when they say to us that they have to review each and every  
1 when they say to us that they have to review each and every  
2 document that we propose to produce to determine whether or  
3 not, one, we have consent, whether it meets their statute,  
4 whether or not we have a stipulated protective order from Mr.  
5 Campbell that says that it will only be used in this  
6 proceeding -- that was one of the steps that we thought would  
7 be helpful to the data privacy counsel. So that process is  
8 very laborious. I don't think we can make this case in trial  
9 in June, Your Honor, of 2011.

10 THE COURT: Well, you're not going to make June  
11 2011, because it's June 2011 now. I think --

12 MR. PEEK: Excuse me. June 2012. My apologies.

13 THE COURT: I think we talked about June 2012 --

14 THE COURT: I apologize.

15 THE COURT: -- which leads me back to my burning  
16 question of Mr. Morris.

17 Mr. Morris, have you heard anything about a decision  
18 on the CityCenter case?

19 MR. MORRIS: You know, Your Honor, I wish I had, but  
20 I haven't.

21 THE COURT: Okay. All right.

22 MR. MORRIS: I know that it's coming.

23 THE COURT: Some day. They're worried about  
24 elections right now. Special elections I think is going to be  
25 their hot button topic for a little bit.

1 MR. PEEK: So I would be hopeful that we could make  
1 MR. PEEK: So I would be hopeful that we could make  
2 it June 2012, but I think it's going to be later than that,  
3 Your Honor.

4 THE COURT: Okay. Assume with me for a minute that  
5 you only get five and a half hours of trial time a day. How  
6 many days of trial, Mr. Campbell?

7 MR. CAMPBELL: Two weeks.

8 THE COURT: So I'm doubling that. So that's four to  
9 six.

10 MR. PEEK: Four to six, Your Honor.

11 THE COURT: Okay. Here's the problem. If you don't  
12 make the June date, I've already given the September date,  
13 which would be probably the next place I could put you with a  
14 firm setting, to the Planet Hollywood West Tower litigation,  
15 which is a four- to six-week. And I will have to give you a  
16 firm date because of your international witnesses. So I would  
17 encourage you to file whatever you're going to file about the  
18 Macau issue very soon. And if you do it on an OST, I'm going  
19 to set it out two to three weeks, even though that's shortened  
20 time technically, so that the briefing can be thorough so that  
21 we will have a well-reasoned discussion when we have the  
22 chance. But I don't want to have you guys just sitting  
23 around.

24 MR. PEEK: We are not, Your Honor.

25 THE COURT: Okay. I'm going to give you the trial

1 date in June 2012 for the record, with the understanding there  
1 date in June 2012 for the record, with the understanding there  
2 may be problems. And if there are problems, you'll tell me  
3 about them sooner, rather than later. That trial stack starts  
4 on June 25th, 2012. That is a firm setting for you.

5 The calendar call is June 21, 2012.

6 You've demanded a jury; right, Mr. Campbell?

7 MR. CAMPBELL: Yes.

8 THE COURT: June 1st, 2011 [sic], for the pretrial.

9 And my typical day for people to file their last set  
10 of motions, which for your purposes would be evidentiary  
11 motions and motions in limine, would be May 4th.

12 Motions for summary judgment, motions to dismiss,  
13 other dispositive motions would be due on April 13th, which  
14 means your discovery cutoff's probably going to be sometime  
15 around March 23rd.

16 MR. PEEK: And we'll back up from that the expert  
17 disclosures, as well.

18 THE COURT: I guess so. But I really need to get  
19 the document issue decided sooner, rather than later, because  
20 it impacts a number of other issues.

21 MR. PEEK: Your Honor, we do, as well.

22 MS. GLASER: Thank you, Your Honor.

23 MR. PEEK: Thank you very much.

24 THE COURT: Anything else? All right. Goodbye.

25 THE PROCEEDINGS CONCLUDED AT 11:50 A.M.

**CERTIFICATION**  
**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

6/15/11

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CLERK OF THE COURT  
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DISTRICT COURT  
DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

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

THURSDAY, JUNE 9, 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.  
STEVE L. MORRIS, ESQ.  
DAVID FLEMING, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
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1 LAS VEGAS NEVADA THURSDAY, JUNE 9, 2011, 10:03 A.M.  
1 LAS VEGAS, NEVADA, THURSDAY, JUNE 9, 2011, 10:03 A.M.

2 (Court was called to order)

3 THE COURT: All right. Are we ready with the hookup  
4 to Macau? I see you. Can you see us? Can you hear us?

5 Why don't you guys come on up. I apparently have --

6 MR. PEEK: This is 1:00 o'clock in the morning  
7 there, Your Honor.

8 THE COURT: I see a conference room.

9 MS. GLASER: Your Honor, that is Mr. David Fleming,  
10 who's general counsel of Sands China.

11 THE COURT: Good morning, Mr. -- Mr. Fleming, I  
12 think it's good morning for you.

13 MR. FLEMING: It certainly is, Judge. Good morning  
14 to you.

15 THE COURT: Thank you.

16 MS. GLASER: Good morning, Your Honor.

17 THE COURT: Good morning. Can I have everyone  
18 please identify themselves for purposes of the record,  
19 starting with Mr. Campbell.

20 MR. CAMPBELL: Good morning, Your Honor. Donald J.  
21 Campbell appearing on behalf of the plaintiff in this action,  
22 Campbell & Williams.

23 MR. WILLIAMS: Good morning, Your Honor. Colby  
24 Williams, Bar Number 5549, appearing on behalf of the  
25 plaintiff.

1 MR. JACOBS: Good morning, Your Honor. Steve  
2 MR. JACOBS: Good morning, Your Honor. Steve

3 Jacobs, plaintiff.

4 MS. GLASER: Good morning, Your Honor. Patricia  
5 Glaser for Sands China. And Mr. Fleming is here by whatever  
6 you call this device.

7 THE COURT: Video conference I think is what we're  
8 calling it today.

9 MR. PEEK: And good morning, Your Honor. Stephen  
10 Peek on behalf of Las Vegas Sands.

11 And good morning, David. How are you this morning?

12 MR. FLEMING: I'm not too bad, Steve.

13 MR. MORRIS: Good morning, Your Honor. Steve Morris  
14 on behalf of Sheldon Adelson.

15 THE COURT: All right. I would like to start with  
16 the defamation claim motion first, since I have three that are  
17 basically identical with an omnibus response. However you  
18 want to start.

19 And, Mr. Fleming, if you cannot hear because counsel  
20 are either not using robust voices or they've strayed away  
21 from a microphone, please let me know, and I will try and get  
22 them back in a position where you can hear them.

23 MR. FLEMING: I will, Your Honor.

24 THE COURT: All right. Mr. Morris, I'm going to  
25 start with you.

MR. MORRIS: Your Honor, thank you. Good morning

1 and greetings on behalf of Mr. Adelson.  
1 and greetings on behalf of Mr. Adelson.

2 I'm here to argue our motion to dismiss the  
3 defamation claim in this context. The claim made against Mr.  
4 Adelson was one to which he was invited to respond. The  
5 statement he made was by invitation of Mr. Jacobs in his  
6 pleadings that were completely and entirely unnecessary to  
7 support his claim for wrongful termination in breach of  
8 contract. That's the sum and substance of this lawsuit. Not  
9 a single characteristic that was attributed to Mr. Adelson was  
10 necessary to state Mr. Jacobs's claim for discharge in breach  
11 of contract. Not one requirement or interpretation of Rule 8  
12 with respect to a plain and simple statement of claim required  
13 him to describe in the complaint Sheldon Adelson's  
14 characteristics that he said led to or contributed to his  
15 discharge.

16 This isn't Mr. Jacobs's counsel's first rodeo with  
17 this defendant. This complaint was prepared, I submit and as  
18 we submitted in our papers with supporting reasons, to invite  
19 Mr. Adelson to respond to the allegations Mr. Jacobs makes  
20 against him in his complaint of criminal misconduct. And in  
21 so doing and in adopting this theatrical method of pleading  
22 and then publishing worldwide the allegations that were  
23 altogether unnecessary to support his single claim for  
24 wrongful termination in breach of contract Mr. Adelson,  
25 following the proceedings here on March the 15th, when all of

1 these allegations against him personally, rude and  
1 these allegations against him personally, rude and  
2 obstreperous, mercurial, demanding Mr. Jacobs engage in  
3 illegal conduct when all of those were republished again  
4 worldwide to the media which was present in court and to which  
5 this complaint and those allegations was plain, it is in this  
6 context during this judicial proceeding, during this lawsuit  
7 in this courtroom that Mr. Adelson made the single statement  
8 that he did on the evening of March the 15th to the Wall  
9 Street Journal, one of the media present in court and  
10 reporting and recycling the claims that Mr. Jacobs made  
11 against him in his complaint.

12 This is the context in which this fifth claim for  
13 defamation should be evaluated. And if it is evaluated in  
14 this context, the law that pertains to it, in particular as  
15 discussed in Circus Circus Enterprises versus Witherspoon and  
16 the Clark County -- excuse me, the VESI case involving this  
17 court, this Eighth Judicial District Court --

18 THE COURT: Not me that time.

19 MR. MORRIS: Not you. Not you.

20 -- the statements that Mr. -- the statement that Mr.  
21 Adelson made on the evening of March the 15th in the course of  
22 this proceeding was absolutely privileged. And Circus Circus  
23 tells us that absolute privilege is not something that we need  
24 to defer for discovery and for later summary judgment practice  
25 or trial, if necessary; that's a determination that can be

1 made here and now and should be made by you to dismiss this  
1 made here and now and should be made by you to dismiss this  
2 defamation claim which is altogether collateral. It's  
3 ornamental and is unnecessary to advance and to adjudicate the  
4 claim Mr. Jacobs comes to court on. And that is was he  
5 discharged in breach of contract or not.

6 The opposition to this motion is long on rhetoric  
7 and very short on specifics and almost silent, and that's why  
8 in our reply I called it an empty opposition, on the question  
9 whether in the context in which we face this claim Nevada law  
10 will support continuing this lawsuit for defamation against  
11 Mr. Adelson beyond today. But plaintiff makes a good deal in  
12 his papers in opposition to this motion that there is a  
13 question of fact here that has got to be fleshed out. That  
14 question, although not clearly articulated by the plaintiff,  
15 appears, from reading the opposition twice, to be this. New  
16 York law says that the question of malice with respect to the  
17 statement Mr. Adelson made is something that should be decided  
18 by the trier of fact. I won't quarrel with whether that is an  
19 accurate statement of the law in New York, because the law of  
20 New York, if that is the law, is not the law in Nevada.

21 This is what our court had to say on this subject in  
22 Circus Circus Enterprises versus Witherspoon. Even where --  
23 and I'm now looking at 99 Nev., page 57 -- I'm sorry, 61  
24 "The public interest in having people speaking freely  
25 outweighs the risks that individuals will occasionally abuse

1 the privilege by making false and malicious statements." That  
1 the privilege by making false and malicious statements." That  
2 conclusion, Your Honor, was reached after the court said on  
3 the preceding page, even where the defamatory statements --  
4 and we're not saying or contending that Mr. Adelson's  
5 statement was defamatory itself, but assuming that it was, as  
6 the plaintiffs say it was, even where the defamatory  
7 statements are published with knowledge of their falsity and  
8 personal ill will toward the plaintiff, the absolute privilege  
9 still protects them.

10 With respect to relevance to this proceeding that is  
11 raised elliptically in the opposition to this motion the court  
12 in Witherspoon went on to say, "The defamatory material need  
13 not be relevant in the traditional evidentiary sense, but need  
14 have only 'some relation' --" and "some relation" is in quotes  
15 by the court, "to the proceeding. So long as the material has  
16 some bearing on the subject matter of the proceeding it is  
17 absolutely privileged."

18 Now, consider what Mr. Adelson said on March 15th  
19 following the hearing in this court which gave rise to, as he  
20 said in his statement, the recycling of the allegations made  
21 by Mr. Jacobs against him that are wholly extraneous to the  
22 issues that arise as the consequence of his breach of contract  
23 action against the corporate defendants. All he said in  
24 response to that was, because of this recycling -- and we  
25 cited and have appended some examples -- at the time we wrote

1 this motion there were 90,000, 90,000 online hits for the  
1 this motion there were 90,000, 90,000 online hits for the  
2 search term "Steven Jacobs" and "Adelson." It is in that  
3 context of worldwide distribution of altogether scurrilous and  
4 insulting allegations unnecessary to support a claim for  
5 breach of contract made by Mr. Jacobs in his complaint and  
6 recycled as a consequence of the hearing in this Court on  
7 March the 15th that Mr. Adelson said, Mr. Jacobs's allegations  
8 that are now being republished against me are not true,  
9 they're based on lies and fabrications and seem to him to be  
10 the product of delusion. You don't make, I submit to you on  
11 the law that applies to this case, a claim for defamation out  
12 of responding to someone who says, you're a crook, by saying  
13 that that is a fabrication and a lie and it is delusional.  
14 There is nothing wrong, and the law does not say that all you  
15 can do in response to in attack like this that is initiated by  
16 the plaintiff is file an answer and say "denied," which is  
17 about all that opposition has to say.

18 Mr. Adelson was entitled to, and he did, accept Mr.  
19 Jacobs's invitation to dispute the personal and hostile and  
20 altogether unnecessary allegations of criminal misconduct made  
21 against him. And all he said was, they're not true and  
22 they're imagined.

23 The law says -- whether you call that absolute  
24 privilege or conditional privilege, the law says it's  
25 privileged, it isn't actionable. And the fact that it

1 occurred outside the immediate environs of this courtroom is  
1 occurred outside the immediate environs of this courtroom is  
2 immaterial. As the court pointed out in Clark County School  
3 District versus Virtual Education Software, Incorporated,  
4 that's the VESI case I referred to a moment ago, in that case  
5 what I told you a moment ago the court said several years ago  
6 in Witherspoon was brought forward and confirmed by the  
7 Supreme Court in 2009, and it said in that opinion that is  
8 applicable to the situation and the statement that brings us  
9 here today, "The absolute privilege affords parties to  
10 litigation the same protection from liability that exists for  
11 an attorney for defamatory statements made during or in  
12 anticipation of judicial proceedings." You can apply that  
13 statement in this manner. If the lawyers representing a party  
14 initiate an action accusing a defendant of criminal misconduct  
15 and the defendant replies and says, it isn't true, those are  
16 lies being told about me, that the defendant has a privilege  
17 to make that statement.

18 THE COURT: An absolute privilege under the Clark  
19 County-VESI case.

20 MR. MORRIS: Correct. And as I said a moment ago,  
21 and I'll close with this, Your Honor, even if this were an  
22 issue of conditional privilege as arises from time to time in  
23 New York, including the case relied on by the plaintiff in his  
24 opposition, it doesn't raise an issue of fact that must be  
25 determined by the jury. Our court said in the Anzalone case,

1 which is State versus Eighth Judicial District Court -- that's  
1 which is State versus Eighth Judicial District Court -- that's  
2 not you, either, Your Honor, it was Judge Mahan --

3 THE COURT: No, it's not me, either. You found a  
4 couple that weren't me today, Mr. Morris.

5 MR. MORRIS: -- applying this privilege is a  
6 question of law. And then the court went on to say with  
7 respect to the conditional privilege of reply, if somebody  
8 calls you a crook or a liar, you're free to respond to that so  
9 long as the reply does not include substantial defamatory  
10 matter that is irrelevant or nonresponsive.

11 Mr. Adelson's statement in this case was specific  
12 and wholly responsive to the allegations that had been made  
13 against him of criminal misconduct in discharging Mr. Jacobs  
14 or in the -- related to the discharge of Mr. Jacobs. The  
15 alleged defamatory material would have to be disproportionate  
16 to the initial statement. All Mr. Adelson said was, I can't  
17 remain silent while these terrible accusations made against me  
18 in a privileged pleading are being recycled by Mr. Jacobs.

19 So we have two of the four requirements of Anzalone  
20 being met. What's the third? It's the statement shall not be  
21 excessively publicized. The statement Mr. Adelson made was  
22 publicized to one of the many media that was invited to this  
23 court. But even if he had publicized it to all of them, the  
24 result wouldn't be any different, because this is the media to  
25 which Mr. Jacobs is playing, the same media that he encouraged

1 and invited to come to court to film and to report and to talk  
1 and invited to come to court to film and to report and to talk  
2 about and to distribute worldwide all of the nasty and vicious  
3 things he was saying about Sheldon Adelson is the same  
4 audience to whom Mr. Adelson made this response. And it is  
5 under State versus Eighth Judicial District Court entirely  
6 appropriate and not excessive.

7           And the fourth issue is whether a statement was made  
8 with malice in the sense of actual spite or ill will. Well,  
9 you've looked at the cases that we have and the opposition has  
10 cited to with respect to statements much more personal and  
11 inflammatory than those made by Mr. Adelson which were held to  
12 be within the privilege of reply, such as the plaintiff is  
13 insane, he or she is crazy, he is or she is delusional. These  
14 are the statements that courts have looked at and said in  
15 context, as I ask you to do here, if someone says of you  
16 publicly in a pleading, you're a vicious, nasty, evil person  
17 and you are a criminal, you have the absolute right to reply.  
18 And unless the law changes, you can say, you know, Mr. Jacobs,  
19 in my opinion those statements are based on lies and  
20 fabrications, some of the same lies that were articulated to  
21 you, Your Honor, in this courtroom on March the 15th by  
22 Patricia Glaser on behalf of Sands China, and in my opinion  
23 claiming that I have or am responsible for your discharge  
24 because I'm rude and obstreperous, I'm mercurial, I'm a  
25 difficult person to deal with and I'm a criminal in my opinion

1 is a lie. Those statements and my characterization of those  
1 is a lie. Those statements and my characterization of those  
2 statements are absolutely privileged under the circumstances  
3 and facts of this case. And even if they were not, if the  
4 conditional privilege applies, we have demonstrated and there  
5 isn't any argument to the contrary other than rhetoric, that  
6 the statement made by Mr. Adelson on March the 15th included  
7 substantial defamatory statement that was irrelevant or  
8 nonresponsive, that it was -- included material that was  
9 disproportionate to the initial statement, that it was  
10 excessively publicized, or that it was made in the sense of  
11 actual spite or ill will.

12 And on that last point consider what the court  
13 concluded with in discussing conditional privilege for  
14 defamation in State versus Eighth Judicial District Court.  
15 "The test for whether a statement constitutes fact or opinion  
16 is whether a reasonable person would be likely to understand  
17 the remark as an expression of the source's opinion or as a  
18 statement of existing fact." And I submit to you, Your Honor,  
19 and I don't want to say that I'm abandoning the proposition  
20 that Mr. Adelson's statement was absolutely privileged, but if  
21 you look at that statement in the context it was made, you  
22 can't conclude, I suggest, can't reasonably conclude other  
23 than Mr. Adelson was expressing his God-given and legally  
24 supported opinion that Mr. Jacobs was simply dead wrong in  
25 accusing him of the misconduct and criminal offenses that led

1 to his termination as an employee in Macau.  
1 to his termination as an employee in Macau.

2 On that basis, Your Honor, I ask you to terminate  
3 this claim in this litigation and let this case move on  
4 without the distraction of an altogether unnecessary and  
5 spiteful claim of defamation that was, as I said in our  
6 initial motion, not only invited, but was expected, and it  
7 exemplifies, I think, the adage that we closed with, and that  
8 is lawyers should be careful, lawyers speaking for parties  
9 should be careful what they ask for in their pleadings,  
10 because they may just get it. And in this case they did, and  
11 what they got is absolutely privileged, and it is not  
12 actionable. Thank you.

13 THE COURT: Thank you, Mr. Morris.

14 Ms. Glaser, as to the defamation claim which is a  
15 part of your motion would you like to add anything in addition  
16 to what Mr. Morris told us?

17 MS. GLASER: I would not at this time, Your Honor.

18 THE COURT: Mr. Peek, since you have a separate  
19 issue on this same basis --

20 MR. PEEK: Your Honor, I would not.

21 THE COURT: Thank you.

22 MR. PEEK: I wish Mr. Urga were here to see this so  
23 that he'd know I didn't speak.

24 THE COURT: Well, we'll make a note.

25 MR. PEEK: Thank you.

1 THE COURT: Perhaps we'll have the transcript made  
1 THE COURT: Perhaps we'll have the transcript made  
2 and send it around.

3 Mr. Campbell. Mr. Campbell, I again want to thank  
4 you for the cases that your office delivered while I was  
5 sitting in my car. With all my child's activity last night it  
6 made it a lot easier to read some of the cases. I had  
7 forgotten what they said.

8 MR. CAMPBELL: All right, Your Honor. I'm pleased  
9 to do so. Get myself organized here, if I could just a  
10 moment, Your Honor.

11 I'd like to begin today, Your Honor, by hopefully  
12 clarifying the positions of the parties. Now, in the reply  
13 that Mr. Morris filed he said that our opposition was  
14 disjointed and scattergunned and somewhat confusing. I do not  
15 believe that to be the case. In fact, I believe that what Mr.  
16 Adelson has filed is very disjointed and scattergunned and  
17 confuses a lot of issues, and I'd like to try to put those to  
18 rest.

19 What we're talking about in this particular case are  
20 three different things, essentially. Number one, we're  
21 talking about an absolute privilege; number two, we are then  
22 talking about conditional privileges; and number three is part  
23 of number two, we're talking about reply and opinion.

24 But let us begin before we address any of that with  
25 what we're here on. We're here on a 12(b)(5). Now, there's

1 been an awful lot of fugitive documents filed and, quite  
1 been an awful lot of fugitive documents filed and, quite  
2 frankly, extrajudicial and fugitive statements that have been  
3 made by Mr. Morris. He's a fine advocate, but he knows as  
4 well as I do this is neither the time nor the place. We're  
5 dealing here with the pleadings. Accordingly, everything that  
6 he attached and is relying upon in such statements as somehow,  
7 I think he said in his reply, that Mr. Jacobs spoke to the  
8 press after this case was last in court and that Mr. Jacobs  
9 invited all of the press in are absolutely not only false, but  
10 they're simply, even if they were true, not a part of these  
11 proceedings.

12 THE COURT: And they don't make a difference to me  
13 in my consideration of the determination of the privilege.

14 MR. CAMPBELL: No. I appreciate it, and I'll move  
15 off that point.

16 THE COURT: Now, in a minute I'll get to that with  
17 Ms. Glaser on her request for judicial notice, but I'm not  
18 there yet on that motion.

19 MR. CAMPBELL: Your Honor, we are also not dealing  
20 with any sort of admission here, as Mr. Adelson has claimed in  
21 his reply brief, to the effect that Mr. Jacobs had admitted  
22 that the defamatory statements made were made during -- quote,  
23 "during the course of this judicial proceeding." We do not  
24 admit that. In fact, it is just the opposite contention that  
25 Jacobs advances. Jacobs advances the contention that it was

1 an extrajudicial statement that we are dealing here with and  
1 an extrajudicial statement that we are dealing here with and  
2 that was completely and totally unprivileged in all regards.  
3 And we also know, Your Honor, that there's not a single case  
4 that is cited, including the Witherspoon case that was cited  
5 -- and I'll deal with that because it did apply to an absolute  
6 privilege -- or didn't apply to the issue of malice, rather --  
7 that was decided at a 12(b)(5) stage.

8           So let me begin. At the time that Mr. Adelson  
9 issued this press release he had issued this press release to  
10 the Wall Street Journal, and what he said in the press release  
11 was that my client was a liar, essentially, and that he was  
12 fired for cause.

13           Now, let's deal first with respect to whether or not  
14 that was absolutely privileged. I agree with Mr. Morris. Mr.  
15 Morris is correct. When we are dealing in the realm of  
16 absolute privileges it makes no difference if malicious intent  
17 was part of that, it makes no difference if ill will was part  
18 of that. I agree with him with respect to absolute privilege.  
19 But the cases that we cited with respect to issues of ill will  
20 and malice and how that must be decided by the jury related  
21 and were cited by the court, and I'll point them out, on  
22 conditional privilege, not on absolute privilege. Mr. Morris  
23 is confused, and I hope to basically take him through the --  
24 and the Court to show how that distinction is made.

25           THE COURT: But at this stage, Mr. Campbell, isn't

1 the legal determination as to whether the absolute privilege  
1 the legal determination as to whether the absolute privilege  
2 exists really one the Court needs to make under the dictates  
3 the Nevada Supreme Court gave us in the Clark County School  
4 District versus Virtual Education Software, Inc. or VESI case?

5 MR. CAMPBELL: No, Your Honor. We don't believe so.  
6 And we'll tell you why. We believe first of all that we're  
7 entitled to a full exploration of exactly what was done here.  
8 All we know is that there was apparently some sort of a press  
9 release. We get to find out the following and explore the  
10 following. We get to find out exactly who prepared it, we get  
11 to find out how many drafts of it were there, we get to find  
12 out what preceded it, a and what it and what it was in reply  
13 to. We also get to find out whether or not anything  
14 supplementary was distributed pursuant to it. As we stated,  
15 Your Honor, in our pleadings, we believe and we forecast we're  
16 going to be able this libel was enhanced by Mr. Adelson at the  
17 end -- at the -- what was it, I'll get the precise term so  
18 it's in the record and very clear -- at the JP Morgan Gaming  
19 Seminar when he engaged this --

20 THE COURT: Well, but let me stop you.

21 MR. CAMPBELL: -- ad homily attack. And with --

22 THE COURT: In your fifth amended complaint, Mr.  
23 Campbell, the only statement that you are basing your pleading  
24 on as being defamatory is the statement that was made to the  
25 Wall Street Journal, and you've quoted it.

1 MR. CAMPBELL: Yes.

1 MR. CAMPBELL: Yes.

2 THE COURT: And we all agree, I guess, that this  
3 statement was made shortly following a very long hearing that  
4 we had that day, the day before you filed the complaint.

5 MR. CAMPBELL: Correct, Your Honor. Yes, Your  
6 Honor.

7 THE COURT: And that's the only statement that  
8 you've included in this cause of action.

9 MR. CAMPBELL: That is -- that is true. And the  
10 reason for that, Your Honor, is that after we filed our  
11 complaint is when Mr. Adelson went out and made all sorts of  
12 additional statements.

13 THE COURT: Well, but that's not what's in this.

14 MR. CAMPBELL: And you're exactly right. But you're  
15 asking whether or not essentially you're limited at this stage  
16 of the proceedings. And we don't think so, because that's one  
17 of the considerations that you make, is there additional  
18 discovery that will help illuminate all of this. And our  
19 answer to that is yes, there is.

20 Number two, with respect to the VESI case what you  
21 were dealing with there was a very, very modest exchange that  
22 was -- and the Witherspoon case, that was a very modest  
23 exchange that was between two potential litigants in the form  
24 of letters going back and forth, and then with respect to  
25 Witherspoon there was an absolute privilege for letters that

1 were written by in that case hotel HR directors to the  
1 were written by in that case hotel HR directors to the  
2 Department of Employment Security detailing why this person  
3 was fired, we fired this person because this person was  
4 stealing at a blackjack or a craps game.

5 THE COURT: And why they didn't want him to get  
6 unemployment benefits.

7 MR. CAMPBELL: That's exactly right. And there's a  
8 specific privilege for that. There's a statute that says that  
9 is absolutely, totally, and completely privileged.

10 But that's not what we have here, Your Honor, not at  
11 all what we have here. What we have here is something far  
12 different. Now, what I'd like to do, Your Honor, today is  
13 address the issue of absolute privilege with the two principal  
14 cases that were cited by the defendants and the two principal  
15 cases that were cited by us.

16 Let's deal first with Rothman. This is precisely  
17 what Sands China placed in their brief and what they said was  
18 the applicable standard. They said that the absolute  
19 privilege has been recognized in other jurisdictions.

20 THE COURT: But it doesn't really matter what they  
21 say comes from other jurisdictions, because I have Nevada  
22 authority that is very clearly on point on this issue. So, I  
23 mean, I don't have that often, but I have that today.

24 MR. CAMPBELL: Tell me what it is. I'm happy to  
25 address it, Your Honor.

1 THE COURT: It's the Clark County-Virtual Education  
1 THE COURT: It's the Clark County-Virtual Education  
2 Software, Inc. case.

3 MR. CAMPBELL: But, Your Honor, what that deals  
4 with is that's just an exchange of letters to a very discrete  
5 group of people that were involved --

6 THE COURT: Correct.

7 MR. CAMPBELL: -- or potentially involved in  
8 litigation. That is not a situation where a complaint has  
9 been filed and then they go out and make extrajudicial  
10 statements about that. In fact, all of the caselaw, all of  
11 it, says that if you do that that it takes it completely out  
12 of the realm.

13 Look, for example, at the Rothman case, and this is  
14 the very point I wanted to make. In the Rothman case they  
15 said, lookit, if you file a complaint or whatever it is in a  
16 court of law, that is absolutely, totally, and completely  
17 privileged, but if you then go out and repeat the same  
18 allegations in an extrajudicial statement, you're on your own.

19 THE COURT: Not according to the Nevada Supreme  
20 Court in this VESI case, because this was pre litigation.

21 MR. CAMPBELL: Your Honor, that's fine if it's pre  
22 litigation. But the point of it is -- what VESI is relying on  
23 and all these cases are relying upon is the Restatement. And  
24 the Restatement basically says, lookit, if it's incidental to  
25 impending, that's also covered. But what they're talking

1 about is attorneys enaqing in this essentially. They extend  
1 about is attorneys engaging in this essentially. They extend  
2 it to the actual parties there because it's extremely limited.

3 That's not what we have here, Your Honor. We have  
4 something completely different. And every single case that  
5 has been cited to the Court on this in which the individual  
6 made extrajudicial statements, every single one, including the  
7 Oprah Winfrey case which was decided by the Seventh Circuit  
8 Court of Appeals and is directly on point, she said after the  
9 complaint was filed, it's a pack of lies and he's a liar and  
10 I'm going to fight it and I'm not paying him a penny. The  
11 Seventh Circuit Court of Appeals said, that is not privileged,  
12 that is absolutely subject to a cause of action and it should  
13 not have been dismissed by the court.

14 It's exactly the situation that we have here,  
15 precisely the situation we have here. The situation that we  
16 have here is not lawyers or the principals exchanging letters  
17 in a very modest, discrete, confined way. What you have here  
18 is something far different, Mr. Adelson going to an award-  
19 winning journalist from the Wall Street Journal, saying that  
20 my client is a liar and that he was fired for cause. And both  
21 of those, both of those have been held by the court -- those  
22 claims of liar and fired for cause, both of them have been  
23 held to be defamatory, absolutely defamatory.

24 And let me raise something with respect to that  
25 particular issue, all right. So we don't have this very, very

1 confined -- this very, very confined setting. They cited a  
1 confined -- this very, very confined setting. They cited a  
2 case in the reply, and I think it was Mr. Morris. But Mr.  
3 Peek also made this statement, and the statement was, you  
4 haven't cited any case which says that this reply that's being  
5 made to a statement that's been made in a pleading has to be  
6 exactly the same. In other words, our position is, wait a  
7 second, you weren't a lawyer, Mr. Adelson, you weren't a party  
8 in this case at that point personally, you weren't even a  
9 witness in the case. Protection occurs in and only in the  
10 courtroom or the quasi judicial proceeding. That is the  
11 teaching of Rothman and Green Acres. That's exactly what it  
12 is. That's exactly what the law holds.

13           So when he goes outside the courtroom and he says,  
14 I'm just replying, the courts say, nonsense, that's not at all  
15 what you're doing, Mr. Adelson, not at all what you're doing.

16           When you're dealing with discrete and conditionally  
17 privileged, conditionally privileged defense --

18           THE COURT: I understand the difference between the  
19 privilege issues.

20           MR. CAMPBELL: Okay. When you're dealing with the  
21 conditional privilege of reply it has to be in the same forum.  
22 It has to be in the same forum. And you don't have to believe  
23 me for this. Look at -- look at this case that they cited,  
24 this Foretich case. Here it is. It's at the bottom of --  
25 Foretich is 37 F.3d 1541. At the bottom of the page 1563 it

1 says. "The counterattack must be made primarily in the forum  
1 says, "The counterattack must be made primarily in the forum  
2 selected by the original attacker." I don't quibble with the  
3 suggestion that if my client went out and was talking to Ms.  
4 Berzon outside the courtroom and saying these things that Mr.  
5 Adelson would have been entitled to say, no, I disagree,  
6 that's a lie. He would have been entitled to do that if Mr.  
7 -- if that was what Mr. Jacobs did. Mr. Jacobs didn't do  
8 that. Mr. Jacobs did not do that. Mr. Jacobs hasn't said  
9 anything to the press other than they asked him what he  
10 thought, he said he had no comment, that he was looking  
11 forward to his trial. Nothing else, okay.

12           What they're saying is, lookit, he put this in a  
13 publicly filed complaint and he went overboard. Mr. Morris is  
14 right. This isn't my first rodeo on retaliatory discharge.  
15 On retaliatory discharge --

16           THE COURT: We all knew that Mr. Campbell.

17           MR. CAMPBELL: I beg your --

18           THE COURT: We all knew it wasn't your first rodeo.

19           MR. CAMPBELL: But on retaliatory discharge. As the  
20 Court knows, I represent a lot of executives, there've been a  
21 lot of decisions that have dealt with retaliatory discharge.  
22 I know what those decisions are, and there's an awful lot of  
23 decisions dealing with when you're dealing with retaliatory  
24 discharge in the public policy setting. When you're saying, I  
25 was fired as retaliatory discharge, in the public policy

1 setting you must plead with particularity. If we didn't put  
1 setting you must plead with particularity. If we didn't put  
2 everything down in there, Mr. Morris, being the very fine  
3 lawyer that he is, would be storming in here saying, dismiss  
4 this. And I can give you multiple cites to cases on that,  
5 because I've had to deal with him in other cases where they  
6 said I didn't plead with particularity.

7           So let's also deal now and continuing on with the  
8 absolute privilege, with exactly what the holding of Clemens  
9 was, the precise same factual setting. What the court said  
10 there is with respect to the allegation that was made by  
11 Clemens and Mr. Hardin, who, incidentally, used to be Mr.  
12 Adelson's lawyer in another case that we had against him, Mr.  
13 Hardin called Mr. Clemens's trainer, McNamee, a liar. Mr.  
14 Clemens also went on "60 Minutes" and said, it's all lies,  
15 he's lying. And the court said, too bad, yes, you had this  
16 does underway, yes indeed there had been appearances before  
17 Congress, doesn't make a difference, that's not where this  
18 took place, you went out of your way to impugn him and he's  
19 entitled to sue you for it. And it's a long and exhaustive  
20 opinion, and I won't go all the way there.

21           But if you read the Green Acres case, a case cited  
22 by them, which in fact was -- the original case cite by them  
23 was reversed, and there's no other way of putting it kindly,  
24 that case was reversed and they said just the opposite of what  
25 Mr. Adelson said the case stood for. If you look at Rothman,

1 a case cited by Sands China as controlling, okay, that, too,  
1 a case cited by Sands China as controlling, okay, that, too,  
2 is exactly the opposite. And they make the very point in  
3 there, lookit, if you're talking to the press, too bad, all  
4 bets are off.

5 Now, let me -- let me cite one thing, if I could,  
6 Your Honor, on that point before I move to conditional  
7 privileges. In Rothman, "An analysis of the policies --" and  
8 this is at -- this is at 1146. "An analysis of the policies  
9 which underline the litigation privilege compels our  
10 conclusion that similarity or even identity of subject matter  
11 is not connection or logical relation between litigation and  
12 communication, which is alone sufficient to trigger the  
13 litigation privilege." It goes on to say, "The litigation  
14 privilege exists so that persons who have been harmed or have  
15 other grievances calling for redress through the judicial  
16 process can and will use the judicial process, the courts,  
17 rather than self help," as Mr. Adelson did, "to obtain relief.  
18 The privilege thus affords its extraordinary protection to the  
19 uninhibited airing, discussion, and resolution of disputes,"  
20 and these words are in bold italics of the court, "**and only in**  
21 **judicial or quasi judicial arenas.**" Public mud slinging,  
22 while a less physically destructive form of self help than a  
23 public brawl, is nevertheless one of the kinds of unregulated  
24 and harmful feuding that the courts and their process exist to  
25 prevent. It would be counterproductive to afford it the same

1 protections "  
1 protections."

2 Accordingly, when an individual goes out, the court  
3 held, you are on your own, you take the risk that you're going  
4 to be sued for those statement.

5 Now, moving to the issue of conditional privilege,  
6 in speaking about conditional privileges, Your Honor, you'll  
7 see that -- and I'll make it fast on this point -- you'll see  
8 it's all fact driven and that universally the courts --

9 THE COURT: I agree. Conditional privilege is fact  
10 driven.

11 MR. CAMPBELL: It's all fact driven. So, you know,  
12 I'm really not going to get into all that. But there's one  
13 thing that has been cited in the Del Papa case, it's actually  
14 State versus --

15 THE COURT: And that's the Anzalone case.

16 MR. CAMPBELL: Yeah. It's State versus Eighth  
17 Judicial District Court.

18 THE COURT: It's the Attorney General firing their  
19 investigator case.

20 MR. CAMPBELL: Yeah. It's Frankie Sue Del Papa and  
21 one of her investigators, a guy by the name of Anzalone. And  
22 in Mr. Adelson's reply he states as follows. He -- and we'll  
23 get to this with respect to the issue of opinion, that this  
24 was just opinion. They've mixed apples and oranges there.  
25 There were multiple defendants in that case, multiple

1 defendants. It was Frankie Sue Del Papa, it was two of her  
1 defendants. It was Frankie Sue Del Papa, it was two of her  
2 senior deputies, and it was another investigator. And Mr.  
3 Adelson in his reply says that in State versus Eighth Judicial  
4 District Court there the court, quote, "issued a finding that  
5 a statement which reflected negatively on plaintiff's  
6 character, professional integrity, and honesty," end quote,  
7 was a statement of opinion. That is not what the court said  
8 there. He said that in his reply at page 9, lines 7 to 8.  
9 That is wholly incorrect.

10 If you look at the case, specifically 42 P.3d at  
11 page 240, what they're talking about is yet another defendant.  
12 It was J. T. Healy who was the investigator. And the court is  
13 grappling with the claim on the investigator, not Ms. Del  
14 Papa. And what they say there is that, "Anzalone says that  
15 his -- the statement by Healy reflected negatively on the  
16 plaintiff's character, professional integrity, and honesty.  
17 That was Anzalone's claim. That's not what the court said.  
18 And parenthetically, what the statement that Healy said was, I  
19 think the investigation that Anzalone conducted was crappy.  
20 And the court rightly said, that's an opinion, that's entirely  
21 absolutely protected, that's an opinion. So their citation in  
22 that regard is wrong.

23 Now, they also -- and we've also talked about the  
24 Lubin case in both of our pleadings. And, as Her Honor  
25 pointed out, the falsity of the statements in question in

1 Lubin were not subject to dismissal at the stage of 12(b)(5).  
1 Lubin were not subject to dismissal at the stage of 12(b)(5).

2 So, Your Honor, I'm not going to go any further if that's the  
3 Court's position, as well, and the Court is abiding by it.

4 They also said something else. "A statement that is  
5 capable of defamatory construction is not actionable if the  
6 communication is privileged. We observe, however, that  
7 privileges are defenses to a defamation claim and therefore  
8 the defendant has the initial burden of properly alleging the  
9 privilege and then proving the allegations at trial."

10 Now, there has also been a schizophrenia of sorts  
11 between what they're claiming -- and this is even more reason  
12 why we want to take some depositions in this case. Mr. Morris  
13 says this press release that was issued by Sheldon Adelson,  
14 the chairman of the board of Las Vegas Sands Corporation, was  
15 issued because --

16 MR. PEEK: Could you direct your comments to the  
17 Judge.

18 MR. CAMPBELL: -- what had been said had been put in  
19 a pleading and Mr. Adelson was responding to it. Mr. Peek  
20 says something completely different.

21 MR. PEEK: Address your remarks to her, please.

22 MR. CAMPBELL: I am addressing them -- Mr. Peek says  
23 something completely different. Mr. Peek says --

24 THE COURT: Don't point at -- don't point at Mr.  
25 Peek. It makes him get riled up, and then we have trouble.

1 MR. CAMPBELL: I don't want to get him emotional.  
1 MR. CAMPBELL: I don't want to get him emotional.

2 Mr. Peek says something different. He says the  
3 reason, okay, that this was done was something far different.  
4 And he says, you know, what we're dealing here with is a  
5 republication of what was said in the courtroom by Ms. Glaser,  
6 that's what Mr. Adelson was doing, he was republishing and  
7 that's privileged. Well, Mr. Peek, respectfully, has cited  
8 something that's not privileged, there's no such thing as  
9 republication privilege. I think what he's trying to say is  
10 that there -- it was a fair report privilege. But he's never  
11 pled that. He raises that for the first time in his reply.  
12 And, by the way, it doesn't apply in this particular setting,  
13 because Mr. Adelson wasn't saying, lookit, you know, I'm  
14 dealing here with a specific event that took place in court  
15 and I'm commenting on it and that's what I'm doing here. He  
16 doesn't say any of that. So none of that even applies.

17 But it's interesting that Las Vegas Sands is saying  
18 one thing and Mr. Adelson is saying something exactly the  
19 opposite. And Mr. Adelson, no matter how they try to paint  
20 this, has made this an extrajudicial statement in response  
21 supposedly to things that were happening in a courtroom.  
22 Every single case that has been cited says that that is not  
23 privileged.

24 Now, to sum up, Your Honor, I'd like to make a few  
25 observations. They've cited a case and relied upon it heavily

1 that was reversed. They then cited another case, Rothman, for  
1 that was reversed. They then cited another case, Rothman, for  
2 a proposition of law that was not the proposition of law for  
3 which it stood. It stood for just the opposite. They also  
4 said that we didn't properly plead because we didn't put in  
5 our pleading that the statement was unprivileged. We did in  
6 fact say exactly that. There's a whole paragraph where we  
7 said this statement by Mr. Adelson was unprivileged, and we  
8 cited it to the Court. So, you know, that's three strikes  
9 right there.

10 And with respect to this commentary that this is  
11 merely ornamental, this claim of defamation is merely  
12 ornamental, it is not merely ornamental. It's his life. He's  
13 an executive who has been harmed as being fired for cause.  
14 Mr. Adelson went out and said, I fired him for cause and  
15 there's lots of reasons for that. We've cited cases that have  
16 held just that exact statement, there are reasons that we did  
17 this, as saying that's defamatory, in and of itself, that's  
18 defamatory, and he's a liar, we have cited case after case  
19 after case, including the Oprah Winfrey and the Clemens case  
20 that says the same thing. The Pease case, all of these cases,  
21 when you say that extrajudicially, that is not privileged.

22 And while it's not my first rodeo on these issues,  
23 neither is it Mr. Adelson's first rodeo when it comes to  
24 defamation. Mr. Adelson knows exactly what he's doing and  
25 what he thinks he can get away with. He can't get away with

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

\*\*\*\*

LAS VEGAS SANDS CORP.,

Petitioner,

v.

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

Respondent,

and

STEVEN C. JACOBS

Real Party In Interest.

Sup. Ct. Case No. 58740

Electronically Filed  
Dec 19 2011 09:27 a.m.

Tracie K. Lindeman  
Clerk of Supreme Court

District Court Case No. A-10-627691

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**JOINT APPENDIX**

**VOL. 3**

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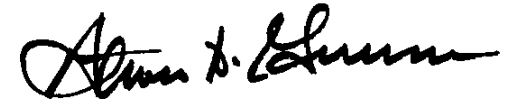
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CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,	}	CASE NO. A-10-627691-C
Plaintiff,		DEPT. NO. XI
v.		<b>REPLY IN SUPPORT OF SHELDON ADELSON'S MOTION TO DISMISS</b>
LAS VEGAS SANDS CORP., a Nevada corporation, SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and Representative capacity, DOES I through X; and ROE CORPORATIONS I through X,	}	DATE: June 10, 2011 TIME: 9:00 a.m.
Defendants.		

**I. INTRODUCTION**

Jacobs's opposition to dismissal of his defamation claim ignores controlling Nevada precedent. He does this for a good reason: It conclusively defeats his frivolous contention that in provoking Sheldon Adelson to respond to his public allegations that Adelson is a crook, Adelson "defamed" him by publicly responding that Jacobs is "delusional." This is precisely what Jacobs invited—and probably what he hoped for—but that does not make Adelson liable under Nevada law for defaming Jacobs. Adelson's statement, on which the fifth claim for relief is founded, was made during the course of *this judicial proceeding*. It is

1  
2 directly related to the subject of this controversy (plaintiff's alleged wrongful  
3 termination), and it is *not actionable* for that reason, as a matter of Nevada law.

4 The Court should disregard plaintiff's overblown, unfocused, and  
5 scatter-gun opposition and grant this motion because (1) Adelson's statement is  
6 absolutely privileged; (2) Adelson has a right conferred by the Nevada Supreme  
7 Court to reply to Jacobs's own defamatory statements about Adelson; and (3)  
8 Adelson's opinion of Jacobs's "claims" is not actionable.<sup>1</sup>

## 9 II. LEGAL ARGUMENT

### 10 A. Adelson's Statement Is Absolutely Privileged.

11 Nevada law unequivocally declares that "[C]ommunications uttered  
12 or published in the course of judicial proceedings *are absolutely privileged* so long  
13 as they are in some way pertinent to the subject of controversy." *Circus Circus*  
14 *Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983) (reversing and  
15 remanding for new trial where district failed to apply absolute privilege)  
16 (emphasis added). The protection of the absolute privilege extends to instances  
17 where a non-lawyer, like Adelson in this case, "asserts an alleged defamatory  
18 communication . . . during a judicial proceeding." *Clark County School Dist. v.*  
19 *Virtual Educ. Software, Inc.* 125 Nev. Adv. Op. 31 , 7, 213 P.3d 496, 503 (2009)  
20 (holding that district court improperly denied summary judgment on plaintiff's  
21 defamation claim where the non-lawyer defendant's letter was absolutely  
22 privileged).<sup>2</sup>

---

23  
24 <sup>1</sup> Adelson also joins in the reply brief filed by defendant Las Vegas Sands Corp.  
in support of its motion to dismiss the defamation claim.

25 <sup>2</sup> Instead of addressing these controlling Nevada cases, plaintiff criticizes  
26 Adelson for citing language from *Green Acres Trust v. London*, 688 P.2d 658, 671

1  
2 The policy underlying absolute privilege fosters "the public interest  
3 in having people speak freely [which] outweighs the risk that individuals will  
4 occasionally abuse the privilege by making false and malicious statements."  
5 *Circus Circus*, 99 Nev. at 61, 657 P.2d at 104. Thus, the absolute privilege applies  
6 "*even where the defamatory statements are published with knowledge of their*  
7 *falsity and personal ill will toward the plaintiff.*" *Id.*, 99 Nev. at 60, 657 P.2d at  
8 104 (emphasis added). Jacobs's defamation claim cannot be maintained in the  
9 face of this declared Nevada public policy.

10 The test for relevancy under the absolute privilege is very broad. *Id.*,  
11 99 Nev. at 61, 657 P.2d at 104 ("The defamatory material need not be relevant in  
12 the traditional evidentiary sense, but need have only 'some relation' to the  
13 proceeding; so long as the material has some bearing on the subject matter of the  
14

15  
16 (Ariz. App. 1983) which was affirmed in part, reversed in part, and remanded by  
17 the Arizona Supreme Court. Opp., 3:10–4:16. In trumpeting the passage from  
18 the Arizona Supreme Court's opinion that he endorses, Jacobs neglects to tell this  
19 Court that the Arizona Court of Appeals point cited by Adelson in his motion *is*  
20 *not* the point on which the supreme court reversed. Adelson relied on the court  
21 of appeals in *Green Acres Trust* for this point, with which the Arizona Supreme  
22 Court did not take issue: *a statement made to the news media may be covered by*  
23 *the privilege provided it has some relation to the proceeding.* Instead, the  
24 Arizona Supreme Court reversed the appellate court's ruling and found that the  
25 privilege did not apply under the facts of that case because the defamatory  
26 statements in issue were made by plaintiffs' lawyers to a reporter in a *private*  
27 meeting *before* they filed a class action complaint. *Green Acres Trust*, 688 P.2d at  
28 627 ("we conclude that a pleading must be filed with the court before this  
privilege may apply to reports which describe the pleading."). Here, in Las  
Vegas, we had not only a pleading on file, we had a judicial proceeding in  
progress when the allegedly defamatory statement was made. It was then, and is  
now, not actionable. *CCSD v. Virtual Educ. Software*, 125 Nev. Adv. Op. at 1, 213  
P.3d at 499 ("[T]he absolute privilege affords parties to litigation the same  
protection from liability that exists for an attorney for defamatory statements  
made during, or *in anticipation of, judicial proceedings*") (emphasis added).

1  
2 proceeding, it is absolutely privileged."); *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d  
3 640, 644 (2002) ("The defamatory communication 'need not be strictly relevant to  
4 any issue involved' in 'the proposed or pending litigation,' it only need be 'in  
5 some way pertinent to the subject of controversy.'"); *CCSD v. Virtual Educ.*  
6 *Software*, 125 Nev. Adv. Op. at 6, 213 P.3d at 502 ("because the scope of the  
7 absolute privilege is broad, a court determining whether the privilege applies  
8 should resolve any doubt in favor of a broad application"). The Court should  
9 apply this law to this case and reject Jacobs's request to narrow the scope of the  
10 absolute privilege to which Adelson is entitled. Opp. at 5:24–6:27.<sup>3</sup>

11           Jacobs admits that Adelson made the allegedly defamatory  
12 statement during the course of this judicial proceeding that Jacobs started. The  
13 First Amended Complaint ("FAC") specifically states that Adelson made the  
14 statement following the 90-minute hearing on the defendants' motions to dismiss  
15 the action, which "received widespread attention by members of the media, and  
16 particularly by journalists who report on affairs in the business community"  
17 including "Ms. Alexandra Berzon, a Pulitzer Prize winning journalist who  
18 attended the hearing on behalf of her employer, the Wall Street Journal® . . . one  
19 of the most respected and widely read publications in the world." FAC, ¶ 61.

20  
21 <sup>3</sup> Plaintiff's feeble and non-substantive attempt to distinguish the cases cited in  
22 the motion to dismiss actually adds further support to the motion and  
23 demonstrates the broad range of cases in which courts have applied the absolute  
24 privilege. *See, e.g., Libco Corp. v. Adams*, 426 N.E.2d, 1130, 1132 (Ill. App. 1981)  
25 (finding absolute privilege protected lawyer's statement even though he was not  
involved in the same litigation with the defendant); *Digerati Holdings, LLC v.*  
*Young Money Entm't, LLC*, \_\_ Cal. Rptr. 3d \_\_, \_\_, Civil Case B218639 (Cal Ct.  
App. April 26, 2011) (holding statements made prior to or in the course of  
litigation were protected by the litigation privilege).

1  
2 Adelson's statement was directly related to the subject of this lawsuit—plaintiff's  
3 claim for wrongful termination: "*We have a substantial list of reasons why Steve*  
4 *Jacobs was fired for cause and interestingly he has not refuted a single one of them.*  
5 *Instead, he has attempted to explain his termination by using outright lies and*  
6 *fabrications which seem to have their origins in delusion.*" FAC, ¶ 62 (emphasis in  
7 original); see also Opp. at 2:10–3:7.

8 Adelson's statement under the facts and law of this case is absolutely  
9 privileged. The fifth cause of action for defamation per se must be dismissed  
10 with prejudice.

11 **B. Adelson Has the Right to Reply to Jacobs's Own Privileged**  
12 **Defamation.**

13 Jacobs acknowledges a conditional privilege to reply to defamatory  
14 comments, but erroneously contends that Adelson's right to reply is limited to  
15 filing an answer with the Court. Opp. 7:23–9:3. This is wishful thinking. Jacobs  
16 fails to tender any authority to support this ridiculous contention. His attempt to  
17 distinguish the controlling case of *State v. Eighth Jud. Dist. Ct.*, 118 Nev. 140, 149,  
18 42 P.3d 233, 239 (2002) is not persuasive. That case clearly holds that the  
19 conditional privilege of reply gives Adelson the right to respond to Jacobs's  
20 personal false attacks on him.

21 Jacobs argues, without support, that Adelson "ventured beyond the  
22 limits of the privilege." Opp. 8:10–9:2. Although the privilege may be lost if the  
23 allegedly defamatory reply "(1) includes substantial defamatory matter that is  
24 irrelevant or non-responsive to the initial statement, (2) includes substantial  
25 defamatory material that is disproportionate to the initial statement, (3) is  
26 excessively publicized, or (4) is made with malice in the sense of actual spite or ill

1  
2 will",<sup>4</sup> none of these exceptions is invoked by Adelson's statement on the facts of  
3 this case. Here, Adelson made a *single* statement that was directly responsive  
4 and relevant to Jacobs's own defamatory statements hurled against Adelson in a  
5 privileged complaint. In point of fact, Adelson's statement that "We have a  
6 substantial list of reasons why Steve Jacobs was fired for cause" is no different  
7 from Jacobs's own allegations regarding the circumstances of his termination:

- 8 • He received a letter which "identified 12 pretextual items that  
9 allegedly support a 'for cause' termination of his employment" FAC, ¶ 33;
- 10 • "LVSC has breached the Term Sheet agreement by  
11 purportedly terminating Jacobs for 'cause'" FAC, ¶ 40;
- 12 • "Jacobs was terminated for 'cause'" FAC, ¶ 41;
- 13 • "LVSC has wrongfully characterized Jacobs' termination as  
14 one for 'cause'" FAC, ¶ 42;
- 15 • "LVSC and Sands China . . . characteriz[ed] Jacobs' termination  
16 as being for 'cause'" FAC, ¶ 47;
- 17 • "LVSC and Sands China have wrongfully characterized Jacobs'  
18 termination as being for 'cause'" FAC, ¶ 48; and
- 19 • "the wrongful characterization of Jacobs' termination as being  
20 for 'cause'" FAC, ¶ 51.

21 These allegations demonstrate that Adelson's statement did not include  
22 "substantial defamatory matter that is irrelevant or non-responsive to the  
23 initial statement," nor was it "disproportionate to the initial statement."  
24 *State*, 118 Nev. at 150, 52 P.3d at 240.

---

25 <sup>4</sup> *Id.* 118 Nev. at 150, 52 P.3d at 240.

1  
2 Moreover, Adelson's statement was not excessively  
3 publicized. In *Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1559–60 (4th  
4 Cir. 1994), which the Nevada Supreme Court relied on in adopting the  
5 conditional privilege of reply, the Fourth Circuit recognized that while the  
6 reply generally should "reasonably focus on the audience which heard the  
7 attack . . . where the original attack was widespread, the response can be  
8 widely disseminated as well." *Id.* Point taken? Here, Jacobs's own  
9 defamatory statements made against Adelson in the complaint were,<sup>5</sup> and  
10 continue to be,<sup>6</sup> published worldwide. Thus, Adelson's statement to a *Wall*  
11 *Street Journal* reporter, who attended and reported on the March 15th  
12 hearing, after Jacobs himself spoke to the press, was "not excessively  
13 publicized." *State*, 118 Nev. at 150, 42 P.3d at 240 (finding letter from the  
14 then-Attorney General that was sent not only to the *Las Vegas Sun*, which  
15 was the forum that addressed the allegations, but also to the Nevada  
16

17  
18 <sup>5</sup> See, e.g., Ex. A, *Wall Street Journal* report, October 22, 2010 (international  
19 byline and circulation) ("former chief executive of Sands China Ltd. says he  
20 was wrongfully fired after refusing to carry out Las Vegas Sands Corp.  
21 Chairman Sheldon Adelson's illegal demands"); Ex. B, compiled stories in  
22 the *Las Vegas Sun* and the *Las Vegas Review-Journal*, October 22, 2010 (Jacobs  
23 fired for resisting "improper and illegal demands" by Adelson; Jacobs  
24 saved the Titanic, which had been sinking as a result of Adelson's "rude  
25 and obstreperous behavior"; etc.); Ex. D, compiled stories in the *Las Vegas*  
26 *Sun* and the *Las Vegas Review-Journal* beginning at noon March 15, 2011; Ex.  
27 E, compiled stories by Bloomberg (at 3:16 p.m.) and Associated Press (at  
28 7:25 p.m.).

<sup>6</sup> See, e.g., Ex. G, *Las Vegas Review-Journal*, *Las Vegas Sun*, and *Macau*  
*Business* articles dated May 25–26, 2011 (reporting on the status of Jacobs'  
lawsuit for wrongful termination and his opposition to the motions to  
dismiss the defamation claim).

1  
2 Gaming Control Board, the Governor, and the Nevada Gaming  
3 Commission was not excessively published).

4 Finally, Adelson's statement was not gratuitous or malicious.  
5 It does not exhibit "malice in the sense of actual spite or ill will" that would  
6 take it out of the conditional privilege of reply. In *State v. Eighth Jud. Dist.*  
7 *Ct.*, the Nevada Supreme Court found that the statements in the Attorney  
8 General's letter that the attacker was an "obviously disgruntled former  
9 employee" who "has not been completely candid," and who "has chosen to  
10 distort the facts" fell well within the conditional privilege of reply. 118  
11 Nev. at 150, 42 P.3d at 239. Similarly, the Fourth Circuit in *Foretich*  
12 specifically found that statements that the attacking party was "'mentally  
13 ill,' 'sick,' and 'not in her right mind,' [and] label[ing] her allegations as  
14 'heinous lie[s],' 'downright filth,' and 'filthy dirt'-like from the bottom of a  
15 cesspool'" did not come "even close" to invoking the exception for malice.  
16 37 F.3d at 1562 (emphasis added). Adelson's opinion of Jacobs's claims that  
17 were expressed to the press Jacobs is playing to is well within the zone of  
18 privilege of reply to Jacobs's attacks on Adelson.

19 None of the exceptions to conditional privilege applies to  
20 Adelson's statement; it remains privileged as a reply to Jacobs's own  
21 defamatory comments about Adelson that he foolishly and unnecessarily  
22 put in his complaint.

23 **C. Jacobs's Efforts to Obfuscate Demonstrates that Adelson's**  
24 **Opinion on Jacobs's Claims is Not Actionable.**

25 Because Jacobs knows that his defamation claim against  
26 Adelson is infirm, he uses five pages of his lengthy opposition to address a  
27

1  
2 single footnote from Adelson's motion in which Adelson correctly states  
3 Nevada law on defamation. Opp. 9:17–14:10; Mot. p. 5 n. 3. Nevada law is  
4 poison to Jacobs's claim. The Court should disregard Jacobs's prolix detour  
5 because in Nevada, "only assertions of fact, not of opinion, can sustain a  
6 defamation claim." *State*, 118 Nev. at 150–51, 42 P.3d at 240 (finding that a  
7 statement, which "reflected negatively on [plaintiff's] character,  
8 professional integrity, and honesty," was a statement of opinion); *Lubin v.*  
9 *Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) ("Statements of opinion  
10 are protected speech under the First Amendment of the United States  
11 Constitution and are not actionable at law") (citation omitted).

12 "The test for whether a statement constitutes fact or opinion is:  
13 'whether a reasonable person would be likely to understand the remark as  
14 an expression of the source's opinion or as a statement of existing fact.'  
15 *State*, 118 Nev. at 150–51, 42 P.3d at 240; *see also Mast v. Overson*, 971 P.2d  
16 928, 932 (Utah App. 1998) ("In deciding whether a statement is capable of  
17 sustaining a defamatory meaning, 'the guiding principle is the statement's  
18 tendency to injure in the eyes of its audience' when viewed *in the context in*  
19 *which it was made*").

20 Adelson's statement that prompted the FAC was made on the  
21 same day as the hearing on the defendants' motion to dismiss. The hearing  
22 was open to the public, nationally reported, and well attended by  
23 journalists, including the *Wall Street Journal*. Adelson's allegedly  
24 defamatory statement was narrowly tailored to respond directly to Jacobs's  
25 own defamatory allegations and claims against Adelson that were the  
26 subject of the hearing on March 15th and led to the *Wall Street Journal's*

1  
2 reporting of it and the recycling of his defamatory allegations against  
3 Adelson. Contrary to plaintiff's dramatic contention that Adelson's  
4 statement was "designed to inflict the maximum amount of reputational  
5 damage possible,"<sup>7</sup> Adelson's statement that Jacobs has "attempted to  
6 explain his termination by using outright lies and fabrications which seem  
7 to have their origins in delusion" is, at most, "rhetorical hyperbole" that  
8 was "employed only in a loose, figurative sense," and therefore, it is not  
9 actionable. *Pease v. Int'l Union of Operating Engineers Local 150*, 567 N.E.2d  
10 614, 619 (Ill. Ct. App. 1991) (finding statements "He's dealing with half a  
11 deck" and "I think he's crazy" were not actionable).

12 Any reasonable person can see without squinting that the  
13 statement was merely Adelson's opinion of Jacobs's frivolous but vicious  
14 defamatory claims with which he commenced this wrongful termination  
15 lawsuit but that were completely unnecessary to do so. By going beyond  
16 Rule 8's admonition to make "a short and plain statement of . . . [his] claim"  
17 for wrongful termination and falsely accusing Adelson of unlawful and  
18 criminal conduct that resulted in this discharge from employment, Jacobs  
19 *invited* Adelson to speak up and disagree with him. In accepting the  
20 invitation Jacobs extended, Adelson did not "defame him." He merely  
21 expressed his opinion of the former CEO.

22 The cases relied on by plaintiff concerning Adelson's "for  
23 cause" statement do not change these facts because none of these  
24

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25 <sup>7</sup> Opp. 10:4–5.  
26  
27

1  
2 substantively distinguishable decisions is relevant to this case.<sup>8</sup> They  
3 merely occupy space in an otherwise empty opposition. Similarly,  
4 plaintiff's "celebrity/billionaire" cases should not distract the Court. Opp.  
5 at 12:16–14:10. These cases, which were undoubtedly cited because of  
6 Jacobs's worship of theatrical pleading, involve a plethora of facts that are  
7 wholly unlike the facts in this case. All we are dealing with here is a *single*  
8 statement that is directly related to the subject of this lawsuit. *See, e.g., Cook*  
9 *v. Winfrey*, 141 F.3d 322, 330 (7th Cir. 1998) (Winfrey's statements went  
10 beyond the allegations of the complaint); *McNamee v. Clemens*, 2011 WL  
11 323267, \*3–4 (E.D.N.Y. Feb. 3, 2011) (Clemens made numerous defamatory  
12 statements to several media outlets that went well beyond the scope of the

---

13  
14 <sup>8</sup> *See, e.g., Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993)  
15 (unsolicited summary of arbitration proceeding made to press after  
16 arbitration was concluded, which did not involve the litigation privilege or  
17 an opinion); *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 484, 851 P.2d 459, 463  
18 (1993) (statements about a doctor to hospital personnel and patient's  
19 mother did not relate to a judicial proceeding and were not statements of  
20 opinion); *Lubin v. Kunin*, 117 Nev. 107, 17 P.3d 422 (2001) (reversing order  
21 granting motion to dismiss where district court failed to accept plaintiff's  
22 allegations as true; finding statement was considered a "mixed typed" of  
23 opinion and fact; holding fair reporting privilege did not apply because  
24 statement "went beyond fair, accurate, and impartial reporting of child  
25 abuse complaint" and common interest privilege did not apply at NRCP  
26 12(b)(5) stage because parties did not allege sufficient facts to show that the  
27 privilege applied); *Carney v. Mem'l Hosp. and Nursing Home of Greene*  
28 *County*, 475 N.E.2d 451 (N.Y. 1985) (statement was not made during course  
of judicial proceeding and did not involve a privilege); *Vanover v. Kansas*  
*City Life Ins. Co.* 438 N.W.2d 524, 525 (N.D. 1989) (same); *Linkage Corp. v.*  
*Trs. of Boston Univ.*, 679 N.E.2d 191, 206 n. 30 (Mass. 1997) (statements  
made in context of a "hostile and forcible takeover" and not in context of  
litigation; vacating award of defamation damages because "there is no  
evidence of such damages").

1  
2 allegations against him in the government's investigation of steroid use by  
3 athletes). These are distinctions in facts that do make a difference: They  
4 mean that Adelson's opinion that he expressed on the merits of Jacobs's  
5 claims against him on March 15th is not actionable.

6 **III. CONCLUSION**

7 Based on the foregoing, Sheldon Adelson respectfully requests  
8 that the Court dismiss plaintiff's fifth cause of action (defamation per se)  
9 against him with prejudice.

10 MORRIS PETERSON

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of MORRIS PETERSON, and I am familiar with the firm's practice of collection and processing documents for mailing; that in accordance therewith, I caused the following to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below: **REPLY IN SUPPORT OF SHELDON ADELSON'S MOTION TO DISMISS**

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DATED this 31<sup>st</sup> day June, 2011.  
By Patricia Glaser

# EXHIBIT G

# EXHIBIT G

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# Fired Las Vegas Sands official seeks defamation trial

BY JEFF GERMAN  
LAS VEGAS REVIEW-JOURNAL

Posted: May 25, 2011 | 2:01 a.m.  
Updated: May 25, 2011 | 8:32 a.m.

Lawyers for Steven Jacobs, the fired top Macau executive of Las Vegas Sands Corp., filed court papers this week arguing that his claim Chairman Sheldon Adelson defamed him should be allowed to go to trial.

Jacobs added the defamation allegation to his wrongful termination lawsuit in March after Adelson told The Wall Street Journal that Jacobs was "using outright lies and fabrications" to explain his departure from Sands China Ltd., the Macau subsidiary of Las Vegas Sands.

Jacobs oversaw the company's three resorts in Macau from 2009 until last summer, when he was let go.

His Las Vegas attorneys, Don Campbell and J. Colby Williams, in court papers argued against dismissing the defamation claim, saying a jury must decide whether Adelson defamed Jacobs.

They contended Adelson's comments to The Wall Street Journal were "malicious" and "purposefully intended to harm Jacobs' reputation and good name," and likely were the result of Adelson's "frustration" at failing to get the lawsuit dismissed in March.

"By publicly defaming Mr. Jacobs to a worldwide investment community, Adelson ran headlong into a legal minefield where his explosive defamatory remarks have exposed him and the companies he heads to further substantial liability," the lawyers wrote.

Allegations Jacobs raised in the lawsuit have caused the Securities and Exchange Commission and the Department of Justice to open investigations of Las Vegas Sands for possible violation of the U.S. Foreign Corrupt Practices Act.

Campbell and Williams rebutted in court papers a Sands China attorney's claim

that Jacobs lied when he alleged the company had sent tens of millions of dollars by courier from Macau for use by Sands customers. In a footnote, they backed up the allegation by pointing to a May 2010 memo from David Law, Sands China's collection manager, who discussed sending a \$4.8 million company check by courier to Las Vegas. Law says in the memo that he preferred using a courier rather than flying himself to Las Vegas "as I need to declare the reasons I am in the U.S., which would be more risky."

Campbell and Williams said Adelson isn't the first "celebrity/billionaire to have publicly branded an adversary as a liar for merely having the temerity to seek legal redress."

Jacobs has alleged in his lawsuit that Adelson wanted him to use "improper leverage" against senior Macau government officials to help Sands China secure rights to sell apartments at its Four Seasons Macau. He also said in court documents that Adelson wanted him to employ a Macau attorney who held a government position. Jacobs says he objected over concerns about violating the U.S. Foreign Corrupt Practices Act, which bars companies from bribing foreign officials.

Las Vegas Sands Corp. and Sands China have denied the allegations and said Jacobs was fired for working on unauthorized deals and violations of company policy. Adelson's attorney, Steve Morris, could not be reached for comment.

Contact reporter Jeff German at [jgerman@reviewjournal.com](mailto:jgerman@reviewjournal.com) or 702-380-8135.

**Find this article at:**

<http://www.lvrj.com/business/fired-las-vegas-sands-off-u200aicial-seeks-defamation-trial-122574019.html>

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# Fired executive levels new charges at Las Vegas Sands, Adelson

By Steve Green (contact)

Wednesday, May 25, 2011 | 4:48 p.m.

Las Vegas Sands Corp. Chairman and CEO Sheldon Adelson tried to intimidate the Reuters international news service into retracting a story about the company by falsely claiming it was defamatory, a new court filing alleges.

The filing was made Tuesday in Clark County District Court in Las Vegas in the hotly-litigated lawsuit pitting Las Vegas Sands' fired Macau executive, Steven Jacobs, against Las Vegas Sands, its Macau subsidiary Sands China Ltd. and Adelson.

After he was fired last year, Jacobs sued in hopes of winning stock options and severance pay he had been denied because Sands China fired him as CEO for cause. His allegations of wrongdoing by Adelson and the company are believed to have prompted investigations in the United States and China as well as several shareholder lawsuits.

In the latest legal dustup in the case, attorneys for Jacobs filed papers Tuesday responding to a counterclaim filed against him by Las Vegas Sands denying Jacobs' allegations of wrongdoing and saying he was fired for violations of company policy, for working on unauthorized deals and because he was slow to separate the company from a Chinese organized crime figure. The counterclaim also accused Jacobs of extortion, saying that after he was fired he threatened to go public with damaging information unless he was paid.

In their response Tuesday, attorneys for Jacobs denied all these allegations.

They wrote that after Reuters published an investigatory story in March 2010 called "Special Report: High-rollers, triads and a Las Vegas giant," a background report investigation was commissioned by the company about triad (organized crime) figure Cheung Chi Tai, who was a central part of the Reuters story.

Reuters reported that testimony in a trial indicated that despite being a triad member, he was in charge of one of the VIP rooms at the Sands Macau casino in China and an investor in casino junket companies that attract high rollers to casinos.

The point of the Reuters story was that Las Vegas Sands' alleged relationship with Cheung Chi Tai could potentially violate gaming laws. Las Vegas Sands executives have said the company works to stay in compliance with gaming laws.

"Jacobs denies that the background investigation was done solely for due diligence purposes to 'discover' ties of Las Vegas Sands to Cheung Chi Tai as those ties were well known to Las Vegas Sands Chairman Sheldon Adelson, well before the Reuters' article," Jacobs court filing said.

The response to the counterclaim says Jacobs "raised important issues with respect to the Sands China Board not being fully informed as to information discovered; just as others raised issues regarding a scheme concocted by Adelson to intimidate and mislead Reuters and its investigative journalists as to the accuracy of the March 2010 article by sending Reuters a demand for retraction which falsely claimed defamation."

"Las Vegas Sands has brought and alleged its counterclaim as part of a bad faith defense to among other things conceal its employment relationship with Jacobs, conceal its relationship with Cheung Chi Tai and other related or similar parties, conceal the truth of those relationships from the Reuters investigative reporters, conceal Adelson's pervasive control of the Las Vegas Sands-related entities, including his personal demand that Leonel Alves be hired as general counsel for Sands China Ltd. and conceal material cost overruns and timing delays from the Sands China board and Sands China Ltd.'s shareholders," the response said.

The relationship between Sands China and Alves, a local lawmaker in Macau, is thought to be part of the probes under way by regulators, as Jacobs has alleged Alves' retention by Sands China "posed serious risks under the criminal provisions of the United States code commonly known as the Foreign Corrupt Practices Act," an anti-bribery statute.

Attorneys for Adelson, Las Vegas Sands and Sands China have not yet responded to these latest allegations.

After losing a motion for dismissal, Sands China appealed to the Nevada Supreme Court -- technically it filed a petition for writ of mandamus -- and is now attempting to have the lawsuit proceedings be put on hold until that appeal is resolved.

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before interest, tax, depreciation and amortisation were US\$272.8 million, a 50.2 percent increase.

On a conference call to announce the results, chairman Steve Wynn said the gaming operator already has approval from the Macau government for its Cotai casino. He said permission to begin construction was expected "any day now".

Morgan Stanley warns that, in the absence of a Cotai project until 2015, Wynn Macau may not have a catalyst for persistently big improvements in its results in the medium term.

In a note to investors by Praveen Choudhary and Calvin Ho, the investment bank said the gaming operator "could see market share loss" with the opening of Galaxy Macau and Sands China's development on parcels five and six, both in Cotai.

Wynn Macau's share price has surged by over 130 percent in one year. Notably, the market expects Wynn Macau to take the lead in its earnings per share growth. Investors are well aware of the demanding valuation of Wynn Macau but also appear in agreement that the top-notch management and the company's operations will continue to attract long-term business travellers and other customers to its property. According to Morgan Stanley, Wynn Macau is adding two more junket operators this quarter.

With the dispute over control of its major shareholder, STDM, behind it, SJM Holdings (880.HK) saw its share price rebound significantly from its year-to-date low of HK\$10.80 to HK\$16.96 at the market close on April 25, a bounce of 57 percent. Investors generally like the company's mixture of business from VIP high-rollers and from its dominance of the mass market. On the other hand, investors are still waiting for good news from SJM about its proposed Cotai development.

SJM stocks trade at about 16.7 times the consensus estimate of its earnings per share this year. In contrast, the equivalent figure for Sands China (1928.HK) is 27.0 and for Wynn Macau it is 24.2.

**Turning the tables**

Las Vegas Sands Corp. (NYSE:LVS) and subsidiary Sands China (1928.HK) have filed a counter-claim accusing the former chief executive of Sands China, Steve Jacobs, of extortion. The counter-claim is included in the case in which Mr Jacobs is suing his former employer for wrongful dismissal.

The counter-claim says that after Mr Jacobs was fired from Sands China, he threatened to go public with several allegedly false allegations unless "he was paid money to which he was not entitled". Among these allegations were claims that the company chairman, Sheldon Adelson, bribed or attempted to bribe Macau's chief executive and that he instructed subordinates to collect damaging information about public officials for Sands China to use for improper leverage.

The counter-claim says Mr Jacobs "engaged in intentional acts intended and designed to disrupt the prospective business relationship by wrongfully accusing Las Vegas Sands Corp. and its officers of engaging in criminal and improper activity".

It also accuses Mr Jacobs of violating a non-competition agreement between Las Vegas Sands and Sands China that prohibited Sands China from engaging in gaming business outside Greater China. Mr Jacobs allegedly did

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so when he announced that Sands China would be pursuing casino business in Japan.

The disclosure by Mr Jacobs that Sands China was interested in Japan injured “Las Vegas Sands’ prospective business relationship with necessary third parties in development of the Japanese market”, the counter-claim says.

Sands also alleges that Mr Jacobs commissioned an investigative report by consulting firm International Risk Ltd about Macau public officials, putting at risk the company’s relationship with the governments in Macau and Beijing. The counter-claim says Mr Jacobs did not seek authorisation before commissioning the report.

Finally, it alleges that Mr Jacobs refused to immediately end junket contracts involving alleged organised crime figure Cheung Chi Tai, identified as a triad member and junket operator by a Reuters report last year.

**Wheel turns at MGM**

MGM Macau’s listing may go ahead as soon as this month, according to media reports. The company is hoping to raise around US\$1 billion (MOP8 billion). MGM Macau’s initial public offering will be done through a vehicle registered in the Cayman Islands, MGM China Holdings Ltd.

The listing will mean big changes in the shareholding structure of the company, according to a deal reached last month between MGM Resorts International and businesswoman Pansy Ho Chiu King. After the IPO, MGM Resorts will own 51 percent of the company and have management control. Ms Ho will retain 29 percent, while the shareholding public will own 20 percent. At present, MGM Resorts and Ms Ho each own 50 percent of MGM Macau.

The IPO seems to be back on track after the settlement in March of the family tussle for control of Stanley Ho Hung Sun’s gaming and business empire. One of those involved in the dispute was Ms Ho, who was sued by Mr Ho, her father. The suit was eventually dropped. Several analysts say the family dispute could have harmed MGM Macau’s IPO if it had continued.

In another development, MGM Resorts has announced that Kirk Kerkorian will leave the company’s board and become an adviser. Mr Kerkorian founded MGM Resorts and is still its major shareholder, with a 27 percent stake.

By **Ray Chan**

Charts and graphics in our paper edition and MB online browseable

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