

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 03 2013 03:45 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

LAS VEGAS SANDS CORP., a Nevada
corporation, and SANDS CHINA LTD., a
Cayman Islands corporation

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 62489

District Court Case Number
A627691-B

**MOTION TO
CONSOLIDATE
HEARINGS AND/OR
DISPOSITIONS OF
PENDING WRIT
PETITIONS IN NEVADA
SUPREME COURT CASES
62489, 62944 AND 63444**

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A. The Context for This Motion.

These three writ petitions are the consequence of three unprecedented orders issued by the trial judge after this Court remanded the case for the limited purpose of a jurisdictional hearing.¹ Two of the orders (the subjects of Writs 1 and 3) compelled the production of defendants' proprietary and privileged materials, including the en masse disclosure of 11,000 documents with no review of any of defendants' privilege, work product, or other objections. The third order (the subject of Writ 2) found that Sands China Ltd ("SCL"), a Hong Kong-listed company doing business in Macau, engaged in sanctionable conduct by redacting certain personal data in its document production, even though the court acknowledged that Macau's stringent data privacy laws required Sands SCL to make the redactions—and even though the court made no finding that the redacted data had any jurisdictional relevance.

The Court has accepted and ordered the plaintiff to answer each writ petition; he has done so for two of them, and the defendants have filed their replies. Writ 3 is in process and should be fully briefed in the next sixty days. Two of the writ petitions challenge orders of the district court that address important questions, undecided in Nevada, about the application of attorney-client privilege and the work product doctrine to discovery ordered by the district court. And Writ 2 raises important questions this Court has yet to decide about the extent to which Nevada courts should defer to another sovereign's data privacy laws, an issue that the district court appears to have side-stepped in its March 27 order by

¹These petitions are referred to in the order of their filing as "Writ 1" (No. 62489), "Writ 2" (No. 62944), and "Writ 3" (No. 63444).

directing the defendants to *disobey* Macanese law in responding to plaintiff's jurisdictional discovery. Moreover, all three Writs raise questions about whether the district court has properly followed this Court's order of August 26, 2011 (the "Remand Order"), which stayed the litigation on the merits while directing the district court to "revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction" over this foreign corporation. Appendix to Writ 1 at LVSC/SCL 0128.

B. Efficiency Would be Achieved by Consolidating the Three Writ Petitions.

The three challenged discovery orders were issued by the district court, ostensibly in the course of following this Court's Remand Order. In the January order, which is the subject of Writ 1, the district court issued an order compelling defendants to produce privileged documents and documents protected by attorney work product on the ground that one of the defendants' former lawyers had reviewed those documents to refresh his recollection of the timeline of events before testifying at a sanctions hearing the district court held in September 2012. The district court issued that order even though it was undisputed that the documents did not relate to jurisdiction.

The March order, which is the subject of Writ 2, found that SCL had engaged in sanctionable conduct by redacting personal data from documents produced out of Macau even though (i) there was no dispute that the Macanese government had required those redactions under the Macau Personal Data Protection Act (the "MPDPA"), (ii) the district court had stated in open court that redactions were permissible, and (iii) the district court never made any finding that the redacted information was

relevant to jurisdiction, which is the only issue that the district court is permitted to consider under the Remand Order. Furthermore, the March 27 order required SCL to search for still more documents —and to produce documents from Macau without making the redactions required under the MPDPA. The district court issued that order despite the fact that defendants had already produced four deponents and tens of thousands of documents in response to plaintiff's jurisdictional discovery requests — far more than plaintiff needs to support his various jurisdictional theories.² The three aberrant orders that are the subjects of Writs 1–3 command defendants to provide yet more discovery without regard to defendants' good faith, un rebutted claim that the additional discovery is privileged or not relevant to revisiting the issue of personal jurisdiction over SCL. Despite the limited nature of the jurisdictional issue specified in the Court's Remand Order, the defendants have already spent more than \$4 million in responding to plaintiff's discovery demands and orders of the district court. They have

1. produced more than 165,000 pages of unredacted documents;

² The district court has allowed plaintiff, over defendants' objections, to expand his jurisdictional theories to include, for example, the theory that the court has specific jurisdiction over plaintiff's breach of contract claim against SCL. The district court has done so even though the Remand Order specifically directs the court to hold a hearing and make findings on *general* jurisdiction, which is the only theory that plaintiff argued when SCL first sought extraordinary relief in this Court from the district court's order finding that SCL does business in Nevada because its parent company (Las Vegas Sands Corp.) is headquartered here.

2. produced 2,100 unredacted copies of Macau documents in the United States that had been previously produced with personal data redacted;

3. provided a "Redaction Log" that identifies the employers of each person whose name has been redacted in the remaining Macau documents; and

4. produced four of their senior executives for *multiple* days of depositions by Jacobs.

Writ 2 at 1–2; PA1919.

In evaluating this motion to consolidate, consider also Writ 3, which addresses the district court's June 19 order, which directs a court-appointed ESI vendor to turn over to plaintiff's counsel more than 11,000 documents that contain defendants' privileged information, for use against defendants at the jurisdictional hearing that the district court had scheduled on June 18 to commence on July 16.³ The court ordered these documents to be turned over without reviewing a single document or addressing the merits of defendants' claims of privilege, *after* defendants had complied with the

³ The district court *sua sponte* vacated the July 16 hearing date on June 28, immediately after this Court temporarily stayed production of these documents pending further briefing and consideration of Writ 3. In so doing, the district court apparently accepted plaintiff's assertion that he needed access to all of those privileged documents for the jurisdictional hearing. But plaintiff never showed that he had a particularized "need" for any of these privileged materials to prove that SCL– the company he himself ran as CEO in Macau for a little more than a year – is somehow doing business in Las Vegas. That raises a question regarding whether plaintiff really wants a hearing on jurisdiction. It also raises a question of efficient case management by the district court. It should not take two years and three Writs to ensure that the district court carries out this Court's Remand Order and holds a hearing on the only issue that is properly before the district court: whether SCL is subject to jurisdiction in Las Vegas because it supposedly does business here.

court's expensive and time-consuming protocol for identifying, segregating and logging the documents for which privilege is claimed. Writ 3 at 1–2, 8; PA 2813.

These three writ petitions present a number of issues that are closely related and, when considered together, raise substantial questions about the efficient management of this case following the Court's August 2011 Remand Order. For these reasons, the three pending writ petitions should be consolidated for disposition, as NRAP 3(b)(1) and *Levinson v. District Court* counsel:

These petitions, seeking writs of mandamus or, alternatively, writs of prohibition, challenge an order of the district court Because these petitions challenge the same order of the district court and present similar arguments, we hereby consolidate them for disposition. NRAP 3(b).

103 Nev. 404, 405, 742 P.2d 1024, 1025 (1987).

CONCLUSION

The three writ petitions should be considered together and granted in an order issued by this Court that, among other things, directs the district court to forthwith hold an evidentiary hearing and make findings regarding general jurisdiction over SCL based on the discovery done to date. Unless this action is taken, the experience of the past two years suggests that the parties may be delayed even longer in getting to the

merits, if any, of Jacobs' breach of contract claim either here in Nevada, or in Macau or Hong Kong, where SCL offered Jacobs the stock option agreement that it allegedly breached and where SCL does its only business.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **MOTION TO CONSOLIDATE HEARINGS AND/OR DISPOSITIONS OF PENDING WRIT PETITIONS IN NEVADA SUPREME COURT CASES 62489, 62944 AND 63444** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON 7/3/13

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

Respondent

VIA ELECTRONIC AND U.S. MAIL

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DATED this 3rd day of July, 2013.

By: /s/ Fiona Ingalls