

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

2 LAS VEGAS SANDS CORP., a
3 Nevada corporation, and
4 SANDS CHINA LTD., a Cayman
5 Islands corporation,

6 Petitioners,

7 vs.

8 CLARK COUNTY DISTRICT
9 COURT AND THE HONORABLE
10 ELIZABETH GONZALEZ,
11 DISTRICT JUDGE,

12 Respondents,

13 and

14 STEVEN C. JACOBS,

15 Real Party in Interest.

Case No. 62489

District Court Case No. A627691-B
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Tracie K. Lindeman
Clerk of Supreme Court

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

16 **I. INTRODUCTION**

17 Petitioners Las Vegas Sands Corp. ("LVSC") and Sands China Ltd.
18 ("Sands China") (collectively "Petitioners") request this Court to delay resolution of
19 two pending writ applications – those fully briefed and pending for months – by
20 consolidating them with a recently-filed petition that has yet to be briefed.
21 Petitioners notably decline to address why consolidation is suddenly appropriate
22 now, when their prior two petitions are ripe for decision. Real-Party-in-Interest
23 Steven C. Jacobs ("Jacobs") submits that their silence is not inadvertent.

24 The actual terms of their present motion say little about consolidation, but are
25 more about attacks upon the district court, claiming that this Court should order it to
26 hold an evidentiary hearing "forthwith." What Petitioners really mean is that this
27 Court should slow down and not issue any rulings which might result in production
28 of more problematic evidence while simultaneously telling the district court to
speed up before more facts come to light.

1 But keeping problematic facts from view has never been enough for LVSC
2 and Sands China. Thus, they request (in a footnote of all places) that this Court
3 limit Jacobs' jurisdictional theories. (Mot. at 3.) Because they were partly
4 unsuccessful in obstructing discovery about the fact that Jacobs' wrongful
5 termination was directed, staged and controlled from Nevada by executives acting
6 for both LVSC and Sands China, they now resort to claiming that any theory of
7 specific jurisdiction has already been rejected. Of course, citation to this or any
8 other court's decision on such a critical issue is never provided, because none
9 exists.¹

10 The traditional bases for consolidation – promoting judicial efficiency and
11 avoiding delay – are lacking here. The opposite is true. LVSC and Sands China
12 have employed deception and delay since this Court called for an evidentiary
13 hearing. Their staged exacerbation – that it should not take two years for the
14 district court to hold an evidentiary hearing – is both ironic and hypocritical. To be
15 sure, it would not in the ordinary course of good faith litigation take two years to
16 address personal jurisdiction. Good faith, however, took a back seat in this case to
17 LVSC and Sands China's win-at-all-costs strategy. Plainly, they cheated by
18 deceiving the district court and Jacobs as to the location and their review of
19 evidence. They similarly delayed by routinely obstructing the search for the truth,
20 with obstreperous discovery behavior, including directing witnesses not to answer
21 questions.² Respectfully, it is not the district court or Jacobs who are in need of this
22

23 ¹ Petitioners never explain, of course, how Jacobs supposedly lost the right to
24 invoke specific jurisdiction against Sands China since he asserted it on day one.
25 Their apparent "theory" is that because the district court originally found general
26 jurisdiction due to Sands China's pervasive contacts – thus never reaching the
27 question of specific jurisdiction – this Court's directive for an evidentiary hearing
somehow (conveniently for the benefit of Sands China) forecloses specific
jurisdiction now. Unremarkably, the district court rejected this perverse non-logic
and found that Jacobs remains entitled to demonstrate specific jurisdiction, one of
the very theories first advanced in opposition to Sands China's original motion.

28 ² In another of their revealing footnotes, LVSC and Sands China complain of
how four of their executives were burdened with "multiple days" of depositions.

1 Court's guidance as to case management, the proper scope of discovery, how to
2 conduct depositions, or a tutorial on the rules governing the judicial process.

3 **II. ANALYSIS**

4 **A. Consolidation Simply Procures More Delay While Providing No**
5 **Benefits.**

6 Despite the fact that two of the pending writ petitions are fully briefed and
7 awaiting decision, LVSC and Sands China propose to delay their resolution through
8 their latest writ petition (the fourth filed in this case). They argue now that all of
9 the four petitions present "a number of issues that are closely related." (Mot. at 5.)
10 They do not.

11 The only commonality of the three pending petitions is that they grow out of
12 a disturbing and repeated level of discovery misconduct at the hands of LVSC and
13 Sands China. Beyond that, the legal issues they present are not so intertwined as to
14 justify further delay:

15 (1) In Case No. 62489 (fully briefed), LVSC and Sands China seek to
16 evade the provisions of NRS 50.125, which provides that documents used to refresh
17 a witness' recollection – one of LVSC's own attorneys concerning the events
18 surrounding the concealment of evidence – are subject to discovery;

19 (2) In Case No. 62944 (fully briefed), LVSC and Sands China seek to
20 challenge (indirectly, because they did not do so timely) the district court's
21 longstanding sanctions order entered as a result of their concealment of evidence
22 and deceiving of the district court. That order precludes LVSC and Sands China
23 from further deployment of a foreign blocking statute in jurisdictional discovery or
24 at the yet-to-be-held evidentiary hearing; and
25

26 (Mot. at 3.) Of course, they omit how documents were not produced before
27 depositions and repeated improper instructions not to answer questions were
28 asserted in a misguided attempt to keep evidence from being disclosed about how
Jacobs' termination was orchestrated in Las Vegas by executives claiming to be
acting on behalf of Sands China.

1 (3) In Case No. 63444 (just filed), LVSC and Sands China seek to
2 belatedly claim privilege over documents (including those that Jacobs contends
3 establish how Nevada-based executives are directing Sands China's affairs) despite
4 the fact that those documents have long been in Jacobs' possession, custody and
5 control with Petitioners' knowledge and resolute inaction.

6 Resolution of these pending petitions is not dependent upon each other. Nor
7 does postponing resolution of the first two petitions in any way streamline this
8 Court's resolution of the later. Requests for consolidation that do not simplify
9 matters but engender further delay are properly denied at the trial court level. And,
10 the same should be true before this Court. *See Banacki v. OneWest Bank, FSB*,
11 276 F.R.D. 567, 572 (E.D. Mich. 2011) ("[C]onsolidation is not justified or required
12 simply because the actions *include* a common question of fact or law." (emphasis in
13 original)). Instead, a court should weigh "the interests of judicial economy against
14 the potential for *new delays*, expense, confusion, or *prejudice*." *In re Consol.*
15 *Parlodel Litig.*, 182 F.R.D. 441, 444 (D.N.J. 1998) (emphasis added). As such,
16 "consolidation should not be granted where it would cause prejudice to a party."
17 *Bradley v. Soo Line R. Co.*, 88 F.R.D. 307, 309-10 (E.D. Wis. 1980).

18 Petitioners' assertion – that their three distinct petitions raise a common
19 "question of efficient case management by the district court" – is, in a word,
20 specious. (Mot. at 5.) The same is true for their feigned frustration of how "[i]t
21 should not take two years and three [w]rits to ensure that the district court carries
22 out this Court's Remand Order and holds a hearing on the only issue that is properly
23 before the district court: whether SCL is subject to jurisdiction in Las Vegas
24 because it supposedly does business here." (*Id.* at 4.)

25 For the last two years, the district court endeavored to carry out its duties, one
26 of which is unraveling the beyond-dishonest acts of hiding evidence in an attempt
27 to corrupt the fact-finding process. Frankly, it is hard to envision a higher calling
28 for a district court than to put a stop to a fraud against the judiciary by belligerent

1 litigants who seek an illegitimate outcome. *See United States v. Shaffer*
2 *Equip., Co.*, 11 F.3d 450, 457 (4th Cir. 1993) ("Even the slightest accommodation
3 of deceit or lack of candor in any material respect quickly erodes the validity of the
4 [judicial] process. As soon as the process falters in that respect, the people are then
5 justified in abandoning support for the system in favor of one where honesty is
6 preeminent."). LVSC and Sands China's attempts to label themselves as "victims"
7 only confirms their lack of contrition over their dishonorable behavior. If anything,
8 it underscores how the district court's sanctions have thus far proved insufficient to
9 bring them to heel.

10 There can be no debate as to Jacobs' prejudice from Petitioners' belligerence.
11 They have ground this case to a standstill, abusing this Court's directive that a
12 temporary merits stay issue. Obviously, that stay has become anything but
13 temporary. Their present request for this Court to slow down resolution of two
14 unrelated writ petitions while simultaneously asking that the district court be told to
15 hurry up is transparent. They simply want the district court to act before more of
16 the evidence they hope to keep under wraps comes to light.

17 As addressed in Jacobs' opposition to Petitioners' most recent emergency
18 motion for stay (Petition No. 36444), LVSC and Sands China have profited long
19 enough through obstruction. This case is now three years old. No trial date is set.
20 Evidence is not being preserved; some has permanently disappeared and witnesses
21 and their memories are being lost. Further delay is contrary to this Court's
22 admonishment: "*[D]iligent parties are entitled to be protected against*
23 *interminable delay and uncertainty as to their legal rights.*" *Skeen v. Valley Bank*
24 *of Nev.*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973) (emphasis added).

1 **III. CONCLUSION**

2 There is no need to consolidate three pending writ petitions so as to further
3 reward LVSC and Sands China with more delay. The motion should be denied.

4 DATED this 15th day of July, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 15th day of July, 2013, I caused to be e-filed and sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **OPPOSITION TO MOTION TO CONSOLIDATE HEARINGS AND/OR DISPOSITIONS OF PENDING WRIT PETITIONS IN NEVADA SUPREME COURT CASES 62489, 62944 AND 63444** properly addressed to the following:

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SERVED VIA HAND-DELIVERY ON JULY 16, 2013

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An employee of Pisanelli Bice PLLC