

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 62944

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

Petitioners,

v.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

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

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

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

13 Petitioners,

14 vs.

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

17 Respondents,

18 and

19 STEVEN C. JACOBS.

20 Real Party in Interest
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Sup. Ct. Case No. 62944

District Court Case No.
A-10-627691

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

1 **I. INTRODUCTION**

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

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

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

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

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

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

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

9 **II. DISCUSSION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **III. CONCLUSION**

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

15 DATED 2nd day of April, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 2nd day of April, 2014, I electronically filed and served a true and correct copy of the above and foregoing **RESPONSE TO PETITIONERS' NOTICE OF FILING IN RLATED CASE RE CORRECTION OF RECORD OF MARCH 3, 2014 ORAL ARGUMENT** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows::

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SERVED VIA HAND-DELIERY ON April 3, 2014
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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC