

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
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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: 63444

District Court

Case No. A627691-B

**SUPPLEMENT TO
APPENDIX IN SUPPORT
OF EMERGENCY
PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS TO
PROTECT PRIVILEGED
DOCUMENTS**

**Volume 1
(PA3193 - 3230)**

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**SUPPLEMENT TO APPENDIX IN SUPPORT OF EMERGENCY
PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO
PROTECT PRIVILEGED DOCUMENTS
CHRONOLOGICAL INDEX**

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **SUPPLEMENT TO APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's 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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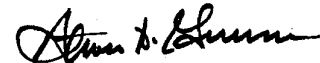
I further certify that I caused a copy of the **SUPPLEMENT TO APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** to be hand delivered, in a sealed envelope, on **August 28, 2013** and to the addressee(s) shown below:

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

Respondent

DATED this 28th day of August, 2013.

By: /s/ PATRICIA FERRUGIA



CLERK OF THE COURT

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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **LAS VEGAS SANDS CORP., a Nevada**
11 **corporation,**

Case No.: A-11-648484-B

Dept. No.: XI

12 **Plaintiff,**

13 **v.**

INTERIM ORDER

14 **STEVEN C. JACOBS, an individual;**
15 **VAGUS GROUP, INC., a Delaware**
16 **corporation; DOES I through X and ROE**
17 **CORPORATIONS XI through XX;**

18 **Defendants**

19 Plaintiff Las Vegas Sands Corp.'s ("LVSC") Application for Temporary Restraining Order
20 and Motion for Preliminary Injunction or in the Alternative for Protective Order ("Application")
21 came before the Court for hearing at 1:15 p.m., on September 20, 2011. J. Stephen Peek, Esq.,
22 and Brian G. Anderson, Esq., of the law firm Holland & Hart LLP, appeared on behalf of LVSC.
23 James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC,
24 appeared on behalf of Defendants Steven C. Jacobs ("Jacobs") and Vagus Group, Inc. ("Vagus")
25 (collective "Defendants").¹ The Court considered the papers filed on behalf of the parties and the
26 oral argument of counsel, and good cause appearing therefor:

27 ¹ Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen &
28 Shapiro LLP was in the audience but made no formal appearance on behalf of Sands China Ltd.
("Sands China").

STATES

THE COURT HEREBY FINDS AS FOLLOWS:

(1) The issues raised in the Application in the instant, above-referenced action appears to be an issue that the Parties have been dealing with for a year in the first, companion action, *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A-627691, also pending before this Court (the "First Action");

(2) After Sands China sought and received a writ from the Supreme Court of Nevada on the issue of personal jurisdiction in the First Action, the Supreme Court stayed the First Action pending an evidentiary hearing on personal jurisdiction over Sands China;

(3) This Court has previously advised LVSC that it cannot take any action in the First Action because of the stay, and suggested that LVSC seek clarification and/or move the Supreme Court to modify the stay so the Court may be permitted to address the discovery dispute without violating the stay;

(4) LVSC did not seek the suggested relief from the Supreme Court, but instead commenced the instant action, and simultaneously filed the Ex Parte Application for an injunction (which is essentially a motion for protective order on the discovery dispute in the First Action).

In light of the above findings, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that relief should be granted through the issuance of an Interim Order as follows:

(1) For a period of fourteen (14) days, from the date of the hearing up to and until ~~Friday, November 4, 2011~~ ^{October}, Defendants shall not disseminate to any third party the documents that Plaintiff believes are not rightfully in the possession of Jacobs and/or Vagus Group;

(2) During that time frame, Counsel for Jacobs and Vagus Group are permitted to review the documents and take any other action related to the documents (in accordance with the Nevada Rules of Professional Responsibility) ~~but for dissemination to third parties~~ ^{except};

(3) This Order shall remain in full force and effect until October 4, 2011, and will not be extended.

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1 THE COURT FURTHER ADVISED LVSI to seek relief from the Supreme Court related
2 to the stay issued in the First Action so that this discovery dispute can be addressed properly in
3 that Action.

4 DATED: September 29, 2011

5
6 

7 THE HONORABLE ELIZABETH GONZALEZ
8 EIGHTH JUDICIAL DISTRICT COURT

9 Respectfully submitted by:

10 PISANELLI BICE PLLC

11
12 By: 

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28

ORIGINAL

Ann L. Quinn

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LAS VEGAS SANDS CORP. .

Plaintiff .

vs. .

STEVEN C. JACOBS, et al. .

Defendants .

And related cases and parties

CASE NO. A-648484
A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR SANCTIONS

TUESDAY, OCTOBER 4, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

J. STEPHEN PEEK, ESQ.
BRIAN ANDERSON, ESQ.
STEPHEN MA, ESQ.

FOR THE DEFENDANTS:

JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

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CLERK OF THE COURT

PA3196

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 4, 2011, 9:31 A.M.

2 (Court was called to order)

3 THE COURT: Las Vegas Sands versus Jacobs.

4 Good morning, all.

5 MR. PEEK: Good morning, Your Honor.

6 THE COURT: I got the reply before I got the
7 opposition, but I did have an opportunity to review both.

8 Mr. Anderson, you're on the wrong side of the room.
9 Oh. No. They're plaintiffs in this case.

10 MR. PEEK: We're plaintiff in this case, Your Honor,
11 so I think that he actually did sit on the right --

12 MR. PISANELLI: My fault. I forgot.

13 MR. PEEK: Jim is used to being plaintiff, I know.

14 THE COURT: Before you start your argument may I
15 make an inquiry of you.

16 MR. PEEK: And I'll give you the answer, because we
17 just checked.

18 THE COURT: And what'd they say?

19 MR. PEEK: We checked with the Clerk's Office, and
20 all we are told is, yes, it has been filed, but, no, there has
21 been no action taken on the emergency writ that we have filed.

22 THE COURT: The Clerk's Office you're referring to
23 is not the District Court Clerk's Office?

24 MR. PEEK: Correct, Your Honor. It is the Nevada
25 Supreme Court Clerk's Office. We checked this morning, as I

1 anticipated that the Court would ask that question, which is a
2 very good question and one that I am anxious to also
3 understand. And we were told that, yes, they had received the
4 writ last Monday, the --

5 THE COURT: The emergency writ.

6 MR. PEEK: The emergency writ, the 26th. They at
7 least acknowledged that it was an emergency writ, that it had
8 been filed with them, and that there had been no action taken
9 on the emergency writ in the Supreme Court.

10 THE COURT: Okay. Thank you, Mr. Peek.

11 MR. PEEK: Thank you, Your Honor.

12 THE COURT: Would you like to argue now?

13 MR. PEEK: I would like to argue, Your Honor. And,
14 yes, I did file a reply before Mr. Pisanelli had filed his
15 opposition, and I know the Court has read it. And the reason
16 why I did file the reply is that anticipation of the arguments
17 and the fact that I wanted the Court to at least see what our
18 reply would be to what I anticipated the opposition was, and I
19 think I anticipated the opposition very well and did reply to
20 the opposition that was filed.

21 Let me go back with some of the history of this
22 case.

23 THE COURT: In other words, you guessed what Mr.
24 Pisanelli was going to say. And you did a pretty accurate
25 job.

1 MR. PEEK: I did my best, Your Honor. And I did
2 have some very good help from Mr. Anderson, as well, in
3 anticipating that argument.

4 But that said, I want to -- I want to go back,
5 because there's a lot of outrage and a lot of indignation
6 expressed in the opposition. And I get that. I understand
7 the outrage and the indignation. But I think it's misplaced,
8 because what we have here is -- if you go back to November of
9 2010 -- and Mr. Pisanelli brought this up to us at the last
10 hearing, on the 20th -- what we have in November 2010 is a
11 request from Mr. Jacobs to turn over to us documents that he
12 had improperly obtained during the course of his employment at
13 VML, Sands China Limited. And their response was that we have
14 these reports and we'll return those. But nowhere within the
15 body of any of those letters is there an acknowledgement that
16 he had 11 gigabytes of data.

17 And, Your Honor, I checked on what 11 gigabytes of
18 data is -- or actually Mr. Anderson did -- and what I was
19 told, 11 gigabytes of data, if you were to translate that into
20 just Word documents at about nine and a half pages apiece, it
21 comes out to over 700,000 pages. If there were emails alone
22 at one and a half pages per email, it comes out to over a
23 million pages of documents. So this isn't a small amount of
24 documents that Mr. Jacobs has.

25 And, yes, we know that Mr. Jacobs did disclose a

1 very small amount of documents in his oppositions to the two
2 motions to dismiss, but it wasn't until sometime in the summer
3 of 2011 that for first time did Mr. Jacobs advise us through
4 his counsel that he had 11 gigabytes of our data that he had
5 received during the time -- claimed that he'd received during
6 the ordinary course of his business. And we said, no, you
7 didn't receive it in the ordinary course and, if you did, you
8 were required to return it as per the employment guidelines of
9 VML and SCL, as well as the guidelines that were imposed upon
10 your consultancy agreement at Vagus, you should have returned
11 all those documents.

12 So what do the rules tell us? The rules tell us
13 that when you have notice, when you are told or you have
14 reason to believe that you had come into possession of
15 documents that were improperly obtained, whether you make that
16 judgment yourself or whether you are told by opposing counsel
17 that the documents that you obtained were obtained improperly,
18 what are you supposed to do under the rules? You are to, one,
19 cease your review of the documents; you are to notify opposing
20 counsel that you have those documents; and then the third
21 thing is that you're supposed to return those.

22 I get in this case that we are -- we're trying to
23 deal with the return of the documents. We certainly had from
24 Mr. Williams his expression to us of a notification, I have
25 11 gigabytes. When we said, they're improperly obtained, we

1 had from him an acknowledgement that he would cease the review
2 of those documents.

3 And so that's where we got brought up to at least
4 sometime in early September. And we had an agreement with the
5 prior counsel that we would establish -- that they would not
6 review the documents until such time as this Court could
7 determine whether or not those documents were improperly in
8 the hands of Mr. Jacobs and improperly now in the hands of his
9 counsel, Colby & Williams [sic]. We know what happened to
10 that process. It became frustrated as a result of the Supreme
11 Court's stay on the eve of our effort to implement that
12 agreement that we had reached with opposing counsel.

13 So now we are faced with a situation where those
14 documents, albeit ones that were previously disclosed in
15 oppositions to motions for -- motions to dismiss and before we
16 knew about the existence of the 11 gigabytes of data that he
17 had that are now attempted to be used by Mr. Jacobs.

18 So what do we know about some of those documents?
19 We know that in those disclosures that the emails that he
20 attached to the motions to dismiss are part of -- at least two
21 of them are part of a long email chain which includes
22 attorney-client privileged communications, but only one of
23 those long email chains is attached to the opposition.

24 Now, in order to get to the root of that email chain
25 one has to look at the other emails associated with that,

1 which are the attorney-client privileged communications.

2 THE COURT: And, Mr. Peek, you're not contending
3 that at the time Mr. Jacobs was an employee of the Macau
4 entity that he shouldn't be receiving those emails. He
5 received them in the course of his job duties. Your position
6 is that once he left his employment he should not have
7 retained those.

8 MR. PEEK: Actually, Your Honor, I had two positions
9 with respect to that. I would agree with the Court that
10 during the course of his employment he would have received
11 some of those emails, and I agree with the Court that it's my
12 position that those emails that he was rightfully the
13 recipient of, in other words, he was copied, he was the
14 addressee, or he was the author of, that those came into his
15 possession during the course of his employment.

16 What I also believe, Your Honor, but I don't have --
17 because I don't have the 11 gigabytes of data to identify or
18 to evaluate is I also believe that he is in possession of
19 documents that he was not the recipient, the addressee, or the
20 sender.

21 THE COURT: So you're saying there are two classes
22 of documents.

23 MR. PEEK: There are two classes of documents.

24 The other thing that I know, Your Honor, is at or
25 about the time -- and this would be something that we would

1 have vetted had we had a hearing --

2 THE COURT: As part of the discovery dispute in the
3 other case.

4 MR. PEEK: -- the process, whether it be in this
5 case or the other one, the first case, is that there -- I
6 believe that this data was downloaded, whether it be onto a
7 thumb drive or a hard drive or some disk, at or about the time
8 that Mr. Jacobs left the employment. In other words, this
9 isn't something that he was -- during the course of his
10 employment had a computer where, okay, here's data coming to
11 me and it's -- I'm sending it on to Vagus, I'm sending it on
12 someplace. You had to actually physically go in at or about
13 the time of the termination in July of 2010 and download that
14 information, because it was on his computer that was locked up
15 on the day of his termination. So before he's terminated he
16 has to, again, go into our system, insert some device, and
17 then copy these one million pages of emails or a combination
18 of emails and Word documents or Excel spreadsheets onto a
19 thumb drive or some other device to copy and take with him
20 when he left. This is not something that, I've got a laptop
21 and they're on my laptop and I walk out the door with them on
22 my laptop. This is something where they're on his desktop and
23 he has to insert and take with him.

24 So I hope that answers the Court's question.

25 THE COURT: I understand what you're saying. My

1 concern as I have expressed it repeatedly since before this
2 case was filed is this is really a discovery dispute in the
3 case I'm not allowed to do anything on.

4 MR. PEEK: And, Your Honor, I get that. So what
5 have I at least attempted to do? I saw in Mr. Pisanelli's
6 opposition a statement by Mr. Pisanelli that, oh, I'm just
7 going to honor the agreement that you reached with Campbell &
8 Williams. And the agreement that I had reached with Campbell
9 & Williams is set forth in the August correspondence, which is
10 -- from Mr. Williams, is that I will not review any of the
11 documents in the 11 gigabytes of data until this issue is
12 resolved by the Court.

13 So when I came before you on the 20th I received, of
14 course, the same indignation and outrage that you see now from
15 Mr. Pisanelli. And I get that. But I didn't get a commitment
16 from Mr. Pisanelli on the 20th of September that, I will not
17 at any time ever review these documents until this issue is
18 decided by this Court. In fact, what I saw from the
19 transcript -- I read it -- was the Court said to Mr. Pisanelli
20 is that he would be allowed to review those documents. That's
21 what the Court said.

22 THE COURT: That's what I said.

23 MR. PEEK: That is inconsistent, Your Honor, with at
24 least the cease, notify, and return. That is inconsistent
25 with what I pointed out or the rules of professional

1 responsibility and the cases that I cited, whether it's the
2 Bert Hill, the Zahodnik, or the Maldonado case out of New
3 Jersey. Each of those say is that when you're notified that
4 those documents are improperly in the possession of your
5 client you cease, you notify, and return. I get the return is
6 going to maybe be the province of the Court as to whether or
7 not it's something that this Court would order. But until
8 that happens there's a violation of those rules. You don't
9 get to make the determination, as Mr. Pisanelli seems to
10 argue, that they're rightfully in my possession, I don't care
11 what you say, they're rightfully in my possession, or, that I
12 am --

13 THE COURT: Mr. Peek, some of them are rightfully in
14 his possession. The ones to which Mr. Jacobs was an addressee
15 or a recipient are likely rightfully in his possession
16 regardless of how he came into possession of those.

17 MR. PEEK: I disagree with the Court, but I get what
18 the Court is saying. But I disagree with the Court.

19 THE COURT: There is clearly a class of information
20 that are alleging that should be treated differently. And I
21 recognize that. And if at some point in time I am authorized
22 to deal with the discovery dispute that had been teed up for
23 last summer, I would have been happy to deal with it. But I
24 recognize that what Mr. Williams suggested was probably the
25 appropriate protocol.

1 MR. PEEK: And we're all trying to do that. But
2 what we're faced with now is I tried to get the same agreement
3 from Mr. Pisanelli, because I saw in his papers that he said,
4 I'm going to honor it. So I spoke to -- I sent him an email
5 last night, and I spoke to him this morning about can I have
6 the same agreement with you that I had with Mr. Williams,
7 which is that you will not look at these documents until such
8 time as the Court makes a determination as to whether or not
9 you have proper -- you're properly in possession of them and
10 you can properly use them. And I got the answer that, I can't
11 commit to that and I also can't commit to the fact to whether
12 or not my client will disseminate them.

13 So I am now stuck with a position that the Court has
14 ordered, and I have an expiration date of today.

15 THE COURT: Yep.

16 MR. PEEK: I have documents that are now put -- put
17 more into the public domain with now disclosures, and I don't
18 have an agreement that he will not review those, will not
19 disseminate those documents until this Court can make a
20 determination.

21 THE COURT: Which I'm not allowed to do, because the
22 case is stayed.

23 MR. PEEK: I get that you're not allowed -- you say
24 you're not allowed to do it. But that's why I'm here in this
25 case, Your Honor. And I know you don't like this case because

1 you think, as Mr. Pisanelli points out, that it is my effort
2 to --

3 THE COURT: It's a game.

4 MR. PEEK: I understand you say it's a game. What
5 am I supposed to do, Your Honor?

6 THE COURT: Ask the Nevada Supreme Court to clarify
7 the --

8 MR. PEEK: I have asked the Nevada Supreme Court,
9 and now here's what I'm faced with, Your Honor, is I have an
10 order that is expiring. And I respectfully disagree with the
11 Court that Mr. Jacobs is rightfully entitled to documents in
12 which he is a recipient, an addressee, or an author of those
13 documents if they were improperly taken at the termination of
14 his employment. He may be entitled to them in discovery, but
15 he doesn't get to take them. That's what the cases that we
16 cited say to you. That's what the rules of professional
17 responsibility say to you. You don't get to go in and
18 download 11 gigabytes of data of a company from which you have
19 now been terminated and say, they came into my possession
20 rightfully during the time I was employed so now, even though
21 I'm obligated to return them, I get to take them. And that's
22 what happened, we believe, in this case.

23 So I get that Mr. Pisanelli is not going to commit
24 to that. I get that maybe this Court isn't going to do
25 anything until the Supreme Court allows, but I'm trying to get

1 some kind of relief from this Court, Your Honor, to prevent
2 the further review and the further dissemination of the
3 documents that he obtained improperly.

4 THE COURT: Okay.

5 MR. PEEK: And I don't have any other opportunity to
6 do that other than in this, Your Honor --

7 THE COURT: I understand.

8 MR. PEEK: -- and the rules which certainly Mr.
9 Pisanelli says he will be bound by them, but I don't have that
10 full commitment from him.

11 THE COURT: Mr. Peek, I recognize you are in a very
12 difficult position given the stay order by the Nevada Supreme
13 Court, which was why I gave a 14-day interim order even though
14 I think this entire case is improper. But that's a whole
15 different issue.

16 So let me hear from Mr. Pisanelli.

17 MR. PEEK: Thank you, Your Honor.

18 THE COURT: And perhaps we will work this out.

19 MR. PEEK: Trying to, Your Honor.

20 THE COURT: Because I'm trying not to violate a stay
21 order.

22 MR. PISANELLI: So when he asks you, what am I
23 supposed to do, I guess we can read from his actions that the
24 best he could come up with was a sanctions motion against me,
25 a sanctions motions that's premised on words like "unethical

1 conduct," like words from Ms. Glaser, who says that I have "no
2 compunction with violating basic ethical and professional
3 standards." Attack me because I -- as you recall last week,
4 didn't have the transcript, but you recall, I'm sure, as well
5 as I do last week sitting at this table they said that I have
6 read through the documents, I've attached, do you recall,
7 thousands of pages of additional documents in my witness and
8 exhibit list and therefore we find ourselves here today on the
9 sanctions motion. All of this hysteria and drama was
10 presented to you simply on the scheduling of today and a
11 scheduling of Ms. Glaser's parallel motion in the main case,
12 all based upon the fact that I had the audacity, they said, to
13 read documents and to put -- identify them in our exhibit
14 list. Sanction me, they ask you, because what else can I do,
15 Judge, the Supreme Court's not listening to me. So that's
16 what brings us here today.

17 I will get to how outrageous those allegations are,
18 how reckless both Mr. Peek and Ms. Glaser have been in making
19 them in a moment. But I have to touch upon a point that you
20 just made, Judge, that this is the same TRO that he asked for
21 a couple weeks ago. It's even the same authority that he's
22 coming forward with you and asking for relief that he's not
23 entitled to. Your Honor said it then, and you've said it now,
24 and you have left no question for any of us, including Team
25 Sands in the back of the room, that this is a game and this is

1 an inappropriate action and it's an attempt to get around the
2 Supreme Court's order. There's no way around that conclusion.
3 As a matter of fact, with all due respect to you, Your Honor,
4 no one in this room needed to hear you say it. We all knew it
5 before we walked into this room what was going on. And --
6 THE COURT: -- works better if I say it on the
7 record.
8 MR. PISANELLI: It does indeed. It certainly helps
9 me. And let there be no mistake about it --
10 THE COURT: Well, I'm trying to make sure the
11 Supreme Court understands.
12 MR. PISANELLI: Fair. Fair. But --
13 THE COURT: Somebody might give them a copy of the
14 transcript.
15 MR. PISANELLI: I'll write that note down. That's
16 not a bad idea.
17 MR. PEEK: Mr. Anderson took note of that, Your
18 Honor.
19 THE COURT: Yeah.
20 MR. PEEK: The same frustration that you have that
21 we have.
22 MR. PISANELLI: Let me also point Your Honor to the
23 other not so subtle game that's going on before you that is so
24 disrespectful as really to be shocking to the conscience,
25 especially for out-of-state counsel. We continue to have this

1 shill issue going on with Las Vegas Sands coming in here
2 claiming to be the aggrieved party while Sands Macau or Sands
3 China sits in the back of the room. Last time it was Ms.
4 Glaser in the front row. Now we have Mr. Ma in the back row.
5 What's interesting about him being here, Your Honor, is this
6 reply brief. When I get a reply brief filed before I file my
7 opposition, of course, the first question in our entire office
8 was, reply to what.

9 THE COURT: Who leaked it. Yeah, who leaked it.

10 MR. PISANELLI: Yeah. Yeah. What are you replying
11 to? I didn't even have to ask who leaked it, because while
12 Mr. Anderson and Mr. Peek pat themselves on the back for
13 having predicted our argument, I can tell you they address our
14 argument on page 10 from line 13 to 26. That's it.
15 Everything else in this 12-page brief is new. And guess where
16 it came from? It is Ms. Glaser and Mr. Ma's brief that we
17 have to oppose on Friday. There's times when it's cut and
18 paste, even the same highlights, the same commas, the same
19 citations. So what we have is again the right hand talking to
20 the left hand, we have other arguments you should have put
21 into that other case that we don't want to pretend that we're
22 participating in, so file a reply brief.

23 I would have respected both sets of counsel more if
24 they were just up front and called it what it is, a new brief
25 or a supplemental brief. That was objective -- clearly

1 objective number one, that we needed to hear Sands China's
2 position through this reply brief, and so they filed it
3 through Mr. Peek. Now, the other objective is they realized
4 what they had done in their opening briefs and they'd realized
5 what they'd done when they stood in this courtroom accusing us
6 of ethical violations.

7 This is what we have, very clearly, without debate.
8 Remember I told you -- and the bailiff even stood up because I
9 raised my voice a little too much -- that it was all on the
10 Internet and that -- and I predicted they would withdraw their
11 motions if they had any integrity. Do you recall that, Your
12 Honor? Well, this is what I was talking about. They filed a
13 motion and they stood up here and looked you in the eye and
14 called me unethical for attaching more emails, more records
15 from what they characterize as the stolen records. I told
16 them they're wrong, they should read them, and Ms. Glaser
17 shouted over my voice, that's untrue, that's untrue.

18 Well, they have -- now this reply brief clearly
19 shows they figured out what happened. Our exhibits are from
20 the Internet, their Website. Our exhibits are also from the
21 opposition that Campbell & Williams filed to the motion to
22 dismiss. That's really the set of emails that they're
23 complaining about and screaming about that they wanted me
24 sanctioned for and even Mr. Peek still holds onto tightly with
25 those 13 lines of text in his reply brief. But what they

1 forgot, Your Honor, is that Sands China listed the same
2 records.

3 So when they come in here asking you to sanction me
4 for listing records in an exhibit list, the same records Mr.
5 Ma listed in his exhibit list, I sarcastically, but with some
6 element of truth, have to ask Mr. Peek is he going to ask that
7 Mr. Ma be sanctioned, that Sands China be sanctioned for doing
8 exactly what I did. The hysteria and the drama was all
9 because they didn't read what we had listed. And so I'm
10 mixing a couple of issues here, and I'll do my best to clarify
11 it.

12 We have on the one hand an ill-founded and reckless
13 motion to begin with on sanctions. If there is anything that
14 is legitimate for you to consider in this rogue case, it's
15 whether I have done anything unethical. And the totality of
16 actions that they complain about was my witness and exhibit
17 list and the very outrageous behavior of Bates numbering the
18 documents from the witness exhibit list so that when we are in
19 this evidentiary hearing we would have a basis for identifying
20 those documents.

21 THE COURT: Because we have a rule that requires you
22 do that in the Eighth Judicial District.

23 MR. PISANELLI: We do indeed. And so having them
24 complain -- by the way, it shouldn't be lost in this debate
25 when Mr. Peek continues to hold onto this issue about the

1 documents that are in the public record, on the Internet,
2 anyone in the public can come up and look at them, they have
3 been there since the spring. Is it April, I think it was on
4 file. I didn't see an objection in the record of this case
5 against Campbell & Williams or Mr. Jacobs when their
6 opposition was filed. I didn't see anyone object when Mr. Ma
7 submitted -- and Glaser Weil submitted documents attached to
8 their own brief, and I didn't see since April 2, the day we
9 got this ridiculous motion, anyone objecting that those
10 documents were in the public record. The first time all this
11 hysterical and dramatic nonsense was raised was in this motion
12 for a sanction. That was the first time they complained about
13 it. How dare Pisanelli Bice put in their witness and exhibit
14 list documents that they have known about have been in the
15 record for seven, eight, nine months, whatever it has been.
16 It really was a manufactured sham, like this entire case is,
17 and it's been outrageous.

18 I have said without sarcasm, Your Honor, that I
19 demanded from Ms. Glaser and from Mr. Peek that they stand up
20 in the same courtroom where they accused me and my colleagues
21 of unethical conduct, they stand in this same courtroom and
22 tell you they were wrong, apologize to you for providing false
23 information and allegations to you, and apologize to Mr.
24 Jacobs for the false and reckless allegations that they've
25 made about him. You recall they love throwing -- so

1 comfortable with this word "stolen records." Now we have Mr.
2 Peek, understanding that he has probably been far, far too
3 reckless with that phrase, we're starting to see him say
4 "improperly obtained." We're seeing at least some pullback
5 from one of the lawyers on this concept of stolen records.

6 Mr. Jacobs is entitled to an apology, as well. And
7 Ms. Glaser, more than anyone, needs to come into this
8 courtroom and apologize to you and to Mr. Jacobs, as she has
9 in her brief, which we'll respond to on Friday, "criminal
10 conduct" is what she characterizes it.

11 So I can't wait for the debate when we talk about
12 these stolen records, when we see all of the extraordinary
13 effort that this company went to when they escorted Mr. Jacobs
14 out of their premises and figuratively out of the country. I
15 can't wait for them to tell you how hard they worked to make
16 sure that they were retrieving any documents in his computers.
17 I can't wait to see that evidence. I can wait to see the
18 letters, I can't wait to see the complaints, I can't wait to
19 see the TROs, I can't wait to see the motions for sanctions, I
20 can't wait to see any of it. But you know what we're all
21 going to find, Your Honor, the very first time they petitioned
22 the Court on anything having to do with these things is this
23 ridiculous sanction motion against me and my firm today.
24 That's the first time. They've known about all of these
25 records that were properly in the possession of Mr. Jacobs for

1 a year, and now they start labelling it, either for the press
2 or for Mr. Adelson or maybe to even taint you, start calling
3 them "stolen records." And it is a fraud upon this Court,
4 because everyone associated with this case knows that nothing
5 has been stolen, and it is time to start addressing this
6 reckless name calling. If not for the litigation privilege,
7 there would be people being sued left and right over the
8 behavior of the lawyers in this case.

9 THE COURT: Can I ask you a question, Mr. Pisanelli.

10 MR. PISANELLI: Yes, ma'am.

11 THE COURT: Mr. Williams in an email that was
12 authored on July 8th in the other case, clearly in the other
13 case, which is, for the record, Case Number A-627691,
14 addressed a procedure which, if I was allowed to do something
15 with respect to that case, I might say was an appropriate
16 procedure to follow.

17 MR. PISANELLI: Right.

18 THE COURT: What is your position related to that
19 procedure?

20 MR. PISANELLI: My position -- Mr. Peek tells you a
21 moment ago, and I wanted to bang my head on the table
22 listening to it, that -- he says, we are all trying to do
23 that, that's the proposal you're talking about, and that he
24 said that I will not agree. I'll tell you exactly what I told
25 him. I said that that is, as you said, as reasonable a

1 protocol as there is available, you want the extreme, Steve,
2 you want me to give it all back to you, and that's not going
3 to happen, we'll respectfully disagree on what the law is,
4 maybe you can fairly say I want the opposite extreme, I want
5 to start discovery and we'll give you mirror of it and let's
6 go into this case. And so the protocol seems to address
7 everyone's concerns.

8 What I told him I would not agree to do is to give
9 him a promise not to review anything and do anything and sit
10 on my hands waiting for them to do something. That protocol,
11 as you see, Your Honor, in my best recollection is several
12 months old now.

13 THE COURT: July 8th, 2011.

14 MR. PISANELLI: Yeah. Several months old. And you
15 don't have in the record, because it doesn't exist, anyone
16 from Sands China, anyone from LVSC accepting it. If they step
17 up and say, this is workable, let's get it done so we can
18 resolve all of the documents document by document, then we can
19 have all of the records available for everyone to use at the
20 evidentiary hearing and the remainder of the case. I will
21 not, however, handcuff myself and Mr. Jacobs and say, yes, you
22 get all the relief you want because I won't read them forever,
23 and then sit on their hands and never take any action to get
24 it resolved.

25 THE COURT: And you understand, Mr. Pisanelli,

1 though, that there is a risk to you that if you review those
2 records and I find that there are certain records that are
3 clearly inappropriately obtained that are attorney-client
4 privileged that your client should not have had in their
5 possession, it may result in your disqualification.

6 MR. PISANELLI: I understand the rules governing the
7 issue, Your Honor. And I'll tell, as I said in my briefs, I
8 have not reviewed anything other than the public record, not a
9 single additional document. And you would have thought that
10 Mr. Peek and Ms. Glaser would have at least asked me that
11 question before they stood up in this court and accused me of
12 having no compunction for violating ethical standards and
13 rules and all of the other nonsense that we heard.

14 So I understand your point. I've researched it, and
15 I wholeheartedly disagree with what Mr. Peek has to say about
16 what is appropriate protocol. I also find that -- it
17 compelling, to say the least, that all he ever does in this
18 case is try and get the totality of the relief that he has
19 asked through TROs, through sanctions and otherwise, but never
20 once addresses that protocol with you. Never once. And
21 there's a reason why, Your Honor. Because they don't want
22 that protocol because it is going to necessarily result in
23 most or all -- and I firmly believe the answer is all -- every
24 single document will remain where they're at. For Mr. Peek to
25 stand up here and give you this long speech about pre

1 termination Mr. Jacobs had to reach in with a thumb drive or
2 otherwise and take documents out. Where is this coming from?
3 Evidence? Declarations? Tell us where is this come from
4 where he has -- he knows where everything happened. Did they
5 go back and reconstruct Mr. Jacobs's hard drives or
6 activities? I suspect they know exactly every single document
7 he has. I have little doubt in my mind they have
8 reconstructed every moment of Mr. Jacobs's existence from a
9 computer-life standpoint and know every single thing he had
10 and every single thing he currently possesses. The act
11 worried and we don't know really is suspect. Let me leave it
12 at that.

13 And, so you know, getting back to your question,
14 Your Honor, this is a protocol that we can live with, and I'll
15 start it today if I get Sands China -- Mr. Ma's here, he can
16 stand up, unless he's terrified of what'll happen if he speaks
17 in this case -- and we've got Mr. Peek, stand up, let's start
18 talking about this issue and getting this resolved, because it
19 will be very, very unfair to us to find ourselves in November
20 not able to either review or use those documents in that
21 hearing simply because Sands China and Las Vegas Sands sat on
22 their hands and took the benefit of either the risk associated
23 with this analysis or the fact that I would have agreed and
24 given them a blank check to say, no, I won't do anything until
25 you actually move. That's unfair. And so stand up and let's

1 get it resolved. And that's what I'm prepared to do.
2 But it cannot be lost --
3 THE COURT: Especially since I've told you I'm not
4 moving your hearing on November 21st.
5 MR. PISANELLI: That was actually my last point of
6 why it really should be done.
7 MR. PEEK: Do you want me to stand up now, Your
8 Honor, or wait till he's finished?
9 THE COURT: Wait till he's finished, Mr. Peek.
10 MR. PISANELLI: Yeah. I would request that you wait
11 till I'm finished.
12 MR. PEEK: Okay. I just --
13 MR. PISANELLI: And so with all of that said, Your
14 Honor, these are all issues for the other case. The more we
15 entertain these issues, the more Mr. Peek and his team and Las
16 Vegas Sands becomes empowered to play this game. This is a
17 game and a fraud and a sham. They know that these are
18 discovery disputes. They know that this case has no merit
19 whatsoever, and they continue to recycle these old tired
20 arguments and these old tired allegations.
21 I would ask Your Honor give no relief. You've
22 already given some relief, which you acknowledged to us today,
23 and I think you did the first time around, that Las Vegas
24 Sands really wasn't entitled to what they got in the first
25 place, and I'll ask you let's not do anything else in this

1 case and give it more life than it's entitled to.

2 We have, I believe, two options available to us.
3 One is the Supreme Court, which Mr. Peek went to. He filed
4 his petition, accused me of unethical conduct in that
5 petition, too, because of my witness list. But I think it's
6 also an evidence issue before you relating to the
7 jurisdictional hearing. So, you know, I may be stretching it
8 to the limits for your comfort, but I think we can address
9 this issue in the context of jurisdictional -- the
10 jurisdictional analysis, because I think those documents will
11 go to the heart of what we're debating about. And so if we
12 resolve it in the context of jurisdiction, I think we're well
13 within the bounds of what the Supreme Court told us to do. I
14 offer that as a suggestion to get this -- get the real case
15 moving and stop this nonsense in coming into this phony case.

16 THE COURT: Thank you.

17 Mr. Peek.

18 MR. PEEK: So there's no mistake about the
19 discussion that I had with Mr. Pisanelli, and I think he
20 accurately identified where we reached disagreement, and where
21 we reached disagreement is his ability absent a Court
22 determination on -- and I'll use the words "stolen documents"
23 as I'm backing away from it, improper documents, however you
24 want to identify it, that Mr. Pisanelli, so long as until the
25 Court decides this you will not review, you will not

1 disseminate, then I am okay with the protocol that you propose
2 -- or that Mr. Williams proposed, we can give the documents --
3 a copy of the documents to a third party vendor so that we can
4 at least look at what it is that contained within the universe
5 of those documents and identify what's contained within the
6 universe of those documents that is privileged, that you
7 should not have, although we contend he shouldn't have any of
8 it, what is covered by the Data Privacy Act, what is covered
9 by trade secrets, what is covered by propriety and identify
10 all of those. I said, I'm happy to do that and go forward
11 with that protocol, but I want at least an assurance that
12 during that period of time until that's resolved by the Court
13 that you not look at those documents. That's where it broke
14 down.

15 But -- so I guess I want to go back, Your Honor,
16 because we can't seem to agree with Mr. Pisanelli and Jacobs
17 that he will refrain from reviewing and using 11 gigabytes of
18 data, that creates the reason for our being here today. That
19 creates the imminent risk that they will continue to review
20 and disseminate. So long as that exists, that there's that
21 dissemination, that there's this review of the documents, I'm
22 going to stand before you, I'm going to stand before the
23 Supreme Court, and I'm going to yell from the rooftops, I need
24 relief. I'm going to continue to do that, Your Honor.

25 They're not entitled to keep or use the documents.

1 They are the company's property. How do we know that? We
2 know certainly from the Vagus agreement, we know from the
3 Sands China policies, we know from the Las Vegas Sands
4 policies. So retention of the documents after termination,
5 Your Honor, the cases tell us breaches the agreement as well
6 as statutory and common-law duties. Zahodnik tells us that.
7 Zahodnik tells us that it is improper for an employee to
8 retain the documents obtained during employment and disclosure
9 to his counsel, particularly so when those documents include
10 attorney-client privilege and trade secret information. It
11 makes it even more critical to us.

12 I can't get that commitment from Mr. Pisanelli to do
13 that. So the important issue I think for us is what do we do
14 going forward for Jacobs and Vagus and counsel to commit to us
15 -- can I get that commitment from them. If I don't, what
16 relief do I have? So in similar circumstances where that
17 party or their counsel have improperly obtained documents
18 belonging to an adversary without the consent of the
19 adversary, Las Vegas Sands, the courts have consistently
20 required the recipient to cease the review, and in some
21 circumstances have at least required the return, and in many
22 circumstances have even said, you cannot not only use them,
23 but if you -- you can't even get them from the other side, you
24 can't get discovery of those very same documents. We have the
25 cases of Castalano and Bert Hill we cited to you.

1 The 11 gigabytes of data, Your Honor, we all know
2 does contain privileged information. Mr. Williams
3 acknowledged that. Mr. Williams said in his correspondence to
4 us, my initial review is there are attorney-client documents
5 so when I saw that I ceased the review and because of the risk
6 that I might inadvertently look at those I'm not going to look
7 at any of the 11 gigabytes of data. So did Mr. Pisanelli say,
8 as I start looking through this and do I do search terms and
9 do I exclude from my search terms the names of who the counsel
10 are or were, does he know who all the counsel are or were, or
11 is he just going to start looking through the data and just
12 flip through it page by page? And when he comes across a
13 document that is clearly attorney-client, he's looked at it.
14 That's what we don't want to have happen here.

15 So all of this outrage and indignation about what
16 happened before and what has happened over the course of the
17 last four or five months about what we have and have not done,
18 he doesn't have the same institution memory that I have,
19 because we have been working with Mr. Williams to resolve
20 these issues. We filed on September 13th in this case a
21 motion to amend and a motion for protective order to seek to
22 resolve, as we had told Mr. Williams we would do, the issue of
23 the entitlement to those documents and whether those documents
24 had or had not been improperly obtained by Mr. Jacobs. And,
25 of course, we know what happened with that motion we filed on

1 September 13. There was a hearing on the 16th, on Friday, the
2 16th, and the Court said to Mr. Jones, who filed that and
3 stood here with Mr. Pisanelli, gentlemen, I cannot address
4 this issue.

5 So to stand there and say we haven't -- we, Las
6 Vegas Sands, hasn't taken the steps necessary, we have, Your
7 Honor. We've had the meet and confers with Mr. Williams, had
8 the meet and confers with Mr. Pisanelli, and what we can't get
9 resolved is the fact that they will not review any of the
10 documents until this Court has made a determination as to
11 whether it is or is not proper to do so under the rules of
12 discovery and the rules of professional conduct. Thank you.

13 THE COURT: Thank you.

14 The motion is denied. There's no violation of the
15 order I issued which I characterized as an interim order in
16 the hopes that the Nevada Supreme Court would take some action
17 to modify the stay order they have entered in this case.

18 To the extent permitted under the stay order, the
19 Court will address the use of the documents in the
20 jurisdictional discovery hearing -- in the jurisdictional
21 discovery before the evidentiary hearing on the jurisdictional
22 issues that the Supreme Court has ordered in Case Number
23 A-627691.

24 Given the Court's inability to resolve what is truly
25 a discovery dispute in Case A-627691, the Court is limited in

1 what it may do. As I have told you, my belief is this case is
2 purely a discovery dispute. As a result, I am dismissing this
3 case without prejudice for you to pursue it as a discovery
4 dispute related to the jurisdictional evidentiary hearing
5 issue.

6 I am also going to now call Case Number A-627691,
7 which requires Mr. Ma to stand up and come close, since I'm
8 calling the case that he's actually appearing in.

9 Gentlemen --

10 MR. PISANELLI: Are both cases still open, Your
11 Honor?

12 MR. PEEK: Do you want me to move to the other side
13 of the room?

14 THE COURT: No. I want you guys to stay there.

15 Mr. Ma, come this way, please. I need you to
16 appear, because I'm calling the case that you're actually
17 appearing in.

18 Good morning, Mr. Ma. It's so nice of you to be
19 here.

20 MR. MA: Good morning, Your Honor.

21 THE COURT: Because --

22 MR. MA: And I do want to make sure I'm making my
23 appearance for the earlier-filed case, as opposed to the
24 second case.

25 THE COURT: Only on the earlier-filed case, which is

1 why I said that was calling that case now.
2 Because of the issue related to the discovery
3 dispute in A-627691 and the inability of the Nevada Supreme
4 Court to address the issue related to the stay that was
5 presented to it on an emergency petition for extraordinary
6 relief, I am going to vacate the November 21st hearing. That
7 will require us to go through a process that will be longer
8 than what we would anticipate to resolve what I'm going to
9 treat, at least as much as I can, as a discovery dispute
10 related to the jurisdictional discovery which has been raised
11 in a motion in limine. To the extent we set up a protocol for
12 the examination of documents as a result of that motion in
13 limine, we will do so, or you could all agree to it. But,
14 knowing how long it takes for those ESI issues to be resolved,
15 there is no way that you will be able to be ready for a
16 hearing on November 21st. So, despite my best efforts to make
17 sure we were able to do this, we are unable to accomplish that
18 hearing in the time scheduled, and I'm going to unfortunately
19 grant Mr. Pisanelli's request from a month ago to vacate that
20 hearing.

21 So we'll talk about rescheduling when I see you at
22 the motion in limine hearing and hopefully set up a protocol
23 and --

24 MR. PEEK: That's on the 13th, Your Honor, as I
25 recall.

1 MR. PISANELLI: Your Honor, on the case you just
2 dismissed pending before you and --

3 THE COURT: Wait. Mr. Ma has to now step back,
4 because he can't appear on that case.

5 MR. MA: Thank you, Your Honor.

6 THE COURT: A-648484.

7 MR. PISANELLI: -- pending before you in particular
8 on this ill-advised --

9 THE COURT: I dismissed this case.

10 MR. PISANELLI: -- motion for sanctions against us
11 we have requested that we be reimbursed for fees. In light of
12 the fact that the entire action was a sham, I think it's all
13 the more compelling that fees be awarded under these
14 circumstances.

15 THE COURT: You can make a separate motion in that
16 case if you feel it is appropriate. I will tell you that you
17 know it is rare for me to award fees, especially when somebody
18 is put in the difficult position by the Nevada Supreme Court,
19 as opposed to some of the rest of us. But I agree with you
20 there are some issues, and I may give fees, but you'll have to
21 file a separate motion. I'm not going to do it just on what
22 you asked for in your opposition that everybody got last
23 night, I got this morning.

24 MR. PISANELLI: A fair point on the difficulty
25 offered by the Supreme Court. My focus is on these reckless

1 allegations of misconduct that --

2 THE COURT: I understand.

3 MR. PISANELLI: -- that had no foundation whatsoever
4 that we had to oppose. So I'll file a separate petition.
5 Thank you.

6 THE COURT: And it'll be in the normal course, and
7 we'll deal with it some day later.

8 MR. PISANELLI: Very well. Thank you.

9 THE COURT: Mr. Peek, good luck with the Nevada
10 Supreme Court, but I will try to the extent it is possible,
11 since you presented this as a potential issue, to deal with it
12 in the context of the jurisdictional discovery issue.

13 MR. PEEK: Thank you, Your Honor. And I appreciate
14 Mr. Pisanelli's invitation, as well, to the Court to allow it
15 to be heard in the ordinary course of that jurisdictional
16 dispute.

17 THE COURT: We'll see how it works out, though.

18 MR. PEEK: Thank you, Your Honor.

19 THE COURT: Okay. Goodbye.

20 THE PROCEEDINGS CONCLUDED AT 10:17 A.M.

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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

10/4/11

DATE