

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 68265

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SANDS CHINA LTD., A CAYMAN  
ISLANDS CORPORATION,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case No. 68275

LAS VEGAS SANDS CORP., A  
NEVADA CORPORATION; SANDS  
CHINA LTD., A CAYMAN ISLANDS  
CORPORATION; AND SHELDON G.  
ADELSON, AN INDIVIDUAL,

Petitioners,

vs.

Case No. 68309

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

**OPPOSITION TO PLAINTIFF'S MOTION TO SUPPLEMENT RECORD  
WITH NEWLY PRODUCED EVIDENCE**

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## INTRODUCTION

Petitioner Sands China Ltd. ("SCL") objects to Real Party in Interest Steven C. Jacobs' Motion to Supplement the Record with what he characterizes as "newly produced evidence" because the motion is based on a demonstrably false premise. Jacobs claims that SCL led this Court to believe that the Macanese government required it to redact all personal data from documents SCL produced from Macau, with no exceptions. Jacobs says that in fact SCL was and is permitted to produce documents in unredacted form with the consent of the data subject and seeks to supplement the record with copies of consents SCL recently obtained to "prove" this point. This is yet another example of Jacobs' penchant for hurling accusations of misconduct at SCL, while he himself engages in the rankest form of deception.

A quick review of SCL's filings makes clear that SCL never led this Court or the district court to believe that it was required to redact personal data regardless of whether the subject consented to release of that data. On the contrary, as Jacobs well knows, SCL has *always* made it crystal clear that it was required *either* to redact personal data *or* to obtain the subject's consent to disclose the data. Furthermore, SCL explained in its filings in the district court and this Court that, in an effort to accommodate the ludicrously overbroad jurisdictional discovery the district court allowed Jacobs to take, SCL obtained consents from the four Las Vegas Sands executives Jacobs deposed—Sheldon Adelson, Michael Leven, Robert Goldstein and Kenneth Kay—and unredacted all of their personal data from the documents SCL had originally produced in redacted form. SCL also explained that it asked Jacobs to consent to unredact his personal information in those documents, but, in a transparent act of litigation

gamesmanship, Jacobs declined to consent. Finally, SCL explained that it had offered to seek additional consents or conduct additional searches to find duplicates in the United States if Jacobs identified specific documents SCL had produced with personal data redactions that were relevant to jurisdiction. This was something Jacobs could easily have done had the documents been important to Jacobs' jurisdictional case—the substance of the documents remained and only personal data had been redacted. But Jacobs never asked for more information about a single document.

In short, SCL *never* misled either this Court or the district court. Accordingly, the fact that SCL has obtained additional consents now that Jacobs has been allowed to embark on merits discovery has no bearing whatsoever on the jurisdictional writ pending before this Court.

## **ARGUMENT**

### **I. SCL HAS ALWAYS BEEN FORTHRIGHT WITH THE COURT ABOUT THE MACAU GOVERNMENT'S REDACTION REQUIREMENTS.**

Jacobs claims that one of SCL's "core representations" with respect to the sanctions issue was that the Macau government required the company to redact all personal data from documents produced from Macau and that it was not allowed to seek consents from the data subjects. To support this misstatement, Jacobs points only to a snippet from SCL's Reply brief. In that brief, SCL first noted that Jacobs argued that the Sanctions Order was moot insofar as the district court's jurisdictional ruling was concerned because it had no bearing on the outcome of the jurisdictional hearing. After responding to that argument, SCL pointed out that Jacobs "provides no challenge to the major factual predicates of SCL's argument, including the following:

1. The Macanese government required SCL to redact all personal data from documents produced in jurisdictional discovery;
2. SCL undertook extensive good faith efforts to provide alternative sources for the redacted data; and
3. The redacted personal data information had absolutely no jurisdictional relevance or importance.

Reply at 22. Jacobs latches onto the first point, emphasizing the word "required" as proof that SCL misled the Court. But he completely ignores the much longer explanation SCL provided both in its Petition in this matter and in its earlier Petition seeking relief from the Sanctions Order itself (No. 67576) (referred to herein as "Sanctions Petition"). Both of those documents made it crystal clear that under Macanese law SCL was permitted to produce documents with unredacted personal data so long as it had the consent of the person whose data was being disclosed.

In its Sanctions Petition, SCL explained that in 2012 "Macanese officials told the General Counsel [of SCL] that 'under no circumstances could data of a personal nature be transmitted to Las Vegas in accordance with any requirement imposed on SCL' without *either the consent of the data subject or OPDP's approval*. PA4115:1-18." Sanctions Petition at 6 (emphasis added). SCL went on to explain that on August 8, 2012, Macau's Office of Data Protection (the "OPDP") had not only rejected SCL's request to transfer data to the United States to respond to document requests in this case and other matters, but had barred SCL from even searching for responsive documents. Although documents with personal data could be transferred out of Macau with the data subject's consent, SCL explained that "the OPDP had warned SCL in writing that consents to data transfers had to be 'freely' given, 'specific' and 'informed' and that, particularly

insofar as SCL's employees were concerned, it was important to ensure that the data subject was not 'influenced by his or her employer' and was able to freely make a choice to consent or not. PA15921." Sanctions Petition, at 8-9.

The Sanctions Petition further explained that in November 2012, the OPDP had finally agreed to allow SCL's subsidiary, Venetian Macau Ltd. ("VML"), to search for documents responsive to Jacobs' jurisdictional RFPs, so long as Macanese lawyers reviewed the documents identified as responsive. Sanctions Petition, at 9. And it repeated the testimony of SCL's then-General Counsel that "[b]eginning at the end of November 2012 the deputy director of the OPDP advised SCL monthly that the company was not to transmit data out of Macau *unless it had the data subject's consent.*" *Id.* (emphasis added).

The Sanctions Petition also explained the herculean (and stunningly expensive) task SCL faced in complying with the district court's December 18, 2012 order to produce all responsive documents from Macau over the Christmas/New Year holidays, by January 4, 2013. SCL complied with the OPDP's requirements and met the district court's deadline by redacting all of the personal data in those documents. SCL explained that after the documents were produced in January, it took "extensive steps" to "mitigate the effects of the personal data redactions." Sanctions Petition, at 11. SCL explained that

(1) LVSC had located 2100 duplicates of the redacted documents in the U.S. and produced them in unredacted form; and (2) SCL had created a "Redaction Log" that identified the entity that employed the individuals whose personal data was redacted. SCL also stressed that if Plaintiff identified any specific redacted documents that he believed could be relevant

to the jurisdictional issue, SCL would conduct additional searches for unredacted copies of such documents in the U.S. *or attempt to obtain the consents of the specific individuals whose information was redacted.*

Sanctions Petition, at 11-12 (emphasis added). SCL noted that Jacobs never responded to SCL's offer, but instead immediately renewed his motion for sanctions, which the district court granted. Sanctions Petition, at 12.

This Court granted full briefing and oral argument on SCL's petition from the district court's March 27, 2013 sanctions order (No. 62944). The Court denied the petition as premature on August 7, 2014, but directed the district court to consider a variety of factors in deciding whether and to what extent to impose sanctions on SCL. As SCL explained in its Sanctions Petition challenging the district court's imposition of evidentiary sanctions and a monetary fine, *before* the district court held an evidentiary hearing on the sanctions issue, SCL had "secured MPDPA consents from Messrs. Adelson, Leven, Goldstein and Kay—the four LVSC executives Plaintiff had deposed—and . . . their names [were] "unredacted from the Macau documents." Sanctions Petition, at 14-15. SCL noted that "it had asked Plaintiff to consent to have his personal data unredacted to facilitate discovery to him, but he refused to do so." Sanctions Petition, at 15.

SCL recounted the very same story (albeit in a more compressed form) in the Petition at issue here, in which it seeks to overturn the district court's finding of jurisdiction over SCL. SCL noted the OPDP's repeated statements that SCL "was not to transmit personal data out of Macau without the data subject's consent." Petition at 9, 12. SCL also explained that it had "obtained 'consents' from the four key LVSC executives to 'unredact' their names from any documents originating in Macau—thus ensuring that the names of the executives who allegedly controlled SCL

from Nevada were unredacted in *all* of the [thousands of] responsive documents produced by Defendants." Petition, at 36-37; *see also id.*, at 12. Once again, SCL pointed out that it had "asked Plaintiff to consent to have his personal data unredacted, but he refused to waive his rights under the MPDPA." Petition, at 12.

SCL *never* represented to this Court (or the district court) that the Macanese government required it to redact personal information regardless of whether the data subject consented. And, although SCL pointed out the warning it had received about ensuring that consent was freely given, it *never* claimed that it was precluded from seeking consents. On the contrary, SCL pointed out that it had obtained consents from the very individuals Jacobs had identified as key witnesses in a good faith effort to provide Jacobs with as much information as possible—an effort Jacobs spurned, by refusing to give his own consent or to identify any specific documents with personal data redactions that he supposedly needed to support his jurisdictional claims. As SCL argued, the very fact that Jacobs had no interest in cooperating demonstrated that his goal was to obtain jurisdiction-by-sanction, rather than evidence he needed to prove his jurisdictional case.

## **II. THE EXTENT OF SCL'S OBLIGATION TO REDACT IS NOT AT ISSUE HERE.**

Jacobs' motion should also be denied because the "evidence" he seeks to put in the record is simply irrelevant to the jurisdictional issue. To be sure, SCL contends that the sanctions order was erroneous for a long list of reasons and that it was a denial of due process for the district court to preclude SCL from putting on evidence at the jurisdictional hearing to punish it for purported discovery abuses. But whether or the extent to



which SCL could have or should have sought additional consents with respect to the jurisdictional discovery is not an issue that is now before the Court. Instead, the key questions with respect to the sanctions order are (1) whether the district court properly balanced the factors this Court directed it to consider and (2) whether the evidentiary sanctions were appropriately tailored in light of the lack of any proof that the redacted information was relevant to jurisdiction or that redacting that data hampered Jacobs' ability to put on his jurisdictional case. The answer to both of these questions is unequivocally "no." The key point for present purposes is that the new "evidence" Jacobs seeks to supplement the record is not new, and it is utterly irrelevant to either question.

### **CONCLUSION**

For the foregoing reasons, Jacobs' motion to supplement the record should be denied.

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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 following document: **OPPOSITION TO PLAINTIFF'S MOTION TO SUPPLEMENT RECORD WITH NEWLY PRODUCED EVIDENCE** 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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DATED this 25th day of August, 2015.

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