

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

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3 SANDS CHINA, LTD.,
4 Petitioner,
5 v.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF
8 NEVADA, IN AND FOR THE
9 COUNTY OF CLARK; AND THE
10 HONORABLE ELIZABETH GOFF
11 GONZALEZ, DISTRICT JUDGE,

12 Respondents,

13 and

14 STEVEN C. JACOBS,

15 Real Party in Interest.

16 SANDS CHINA LTD., A CAYMAN
17 ISLANDS CORPORATION

18 Petitioner,

19 v.

20 THE EIGHTH JUDICIAL DISTRICT
21 COURT OF THE STATE OF
22 NEVADA, IN AND FOR THE
23 COUNTY OF CLAK; AND THE
24 HONORABLE ELIZABETH GOFF
25 GONZALEZ, DISTRICT JUDGE,

26 Respondents,

27 and

28 STEVEN C. JACOBS,

 Real Party in Interest,

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

 Petitioners,

v.

Case No.: 68265 Electronically Filed
 Aug 31 2015 11:24 a.m.
District Court Case No. A627691-B
 Trace K. Lindeman
 Clerk of Supreme Court

**REAL PARTY IN INTEREST
STEVEN C. JACOBS' RESPONSE
TO MOTION TO SUPPLEMENT
RECORD**

Case No.: 68275

Case No. 68309

1 THE EIGHTH JUDICIAL DISTRICT
2 COURT OF THE STATE OF
3 NEVADA, IN AND FOR THE
4 COUNTY OF CLARK; AND THE
5 HONORABLE ELIZABETH GOFF
6 GONZALEZ, DISTRICT JUDGE

7 Respondents,

8 and

9 STEVEN C. JACOBS,

10 Real Party in Interest.

11
12 Petitioner Sands China, Ltd. ("Sands China") continues its assault upon
13 reality as well as the District Court with its Motion to Supplement Record, citing
14 two recent discovery rulings that it claims warrants the District Court's
15 disqualification. In short, Jacobs has no objection to supplementing the record
16 because these rulings only confirm the lack of substance of Sands China's position.

17 The first ruling did not go the way of Sands China's parent, Las Vegas Sands
18 Corp. ("LVSC"), because it knowingly did not comply with its discovery
19 obligations or the extension of time that had been offered and agreed to by Jacobs.
20 Instead, LVSC made repeated representations as to its purported good faith in
21 cooperating only to, at the last minute, object to every deposition topic and
22 announced that it would not comply with the timetable that Jacobs had offered as an
23 accommodation. It only did so after the passing of the deposition date because it
24 then thought it had the "leverage" to obtain greater delay. As the District Court
25 found, LVSC provided no excuse for this conduct. LVSC simply let the deposition
26 date pass without appearing and without an agreement to excuse its noncompliance
27 so that it might procure a delay in the District Court's resolution of the deposition
28 objections. It succeeded at securing delay through noncompliance and the District
Court thus rightly imposed modest consequences for it having done so.

1 The second so-called plight for Sands China is that the District Court did not
2 sanction Jacobs' counsel for an emergency motion that was necessitated by Sands
3 China's failure to properly and forthrightly serve subpoenas that had been issued.
4 Tellingly, the following mea culpa – provided by Sands China to the District Court
5 – is omitted in Sands China's Motion:

6 My secretary's been out all week on medical leave. When I found out
7 that that was done [failure to serve all counsel and staff through the
8 electronic filing system] I initially thought it was just Wiznet's problem
9 we had to get the court's involved with. That's why my email. When I
10 found out that was done I made sure to go back and tell them – Bill
11 Coulthard's secretary did this. And when I found out about it I said,
12 you screwed up, don't do that again. (Sands China's Mot. Ex. 8 at pp.
13 13-14).

14 Ultimately, the District Court recognized that the urgency and need for
15 prompt action arose precisely because the system broke down since Sands China
16 failed to follow the service protocol. That Sands China would try to claim
17 sanctions over defects that it caused speaks volumes as to how it has conducted
18 itself throughout this case. Indeed, the District Court ultimately granted Jacobs'
19 motion for protective order in part, requiring any documents produced by the
20 subpoenas to be provided to Jacobs' counsel in an unopened fashion and to not be
21 reviewed by the Defendants or their counsel, a ruling which Sands China itself all
22 but offered the District Court in light of the service irregularities.

23 But it is not just Sands China's assault upon the truth that is the problem here.
24 Again, Sands China confirms that any judge who does not acquiesce in its conduct
25 or who confronts it must be pushed aside in favor of someone who will supposedly
26 give it a pass. The surest path to subversion of the litigation process by litigation
27 bullies is to reward misconduct. To paraphrase John Stewart Mill: "Bad men need
28 nothing more to compass their ends, than that good men and women should look on
and do nothing." (St. Andrews 1867). And so it is here.

1 There is a long history of misconduct in this case by Petitioner, including a
2 finding of outright "deceit" against the judicial process, which it and LVSC did not
3 even dare challenge. *See Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 331 P.3d 876,
4 878 (Nev. 2014) (Explaining that LVSC and Sands China "did not challenge" the
5 sanctions order where the District Court found that they had "deceived" the
6 judiciary by knowingly hiding evidence and falsely denying their review of it).

7 As this Court should also recall, the requested recusal is the exact same
8 request these Petitioners made in a prior Petition, Case No. 67576. On April 2,
9 2015, this Court denied that request. And it did so for good reason. As Jacobs
10 pointed out then, Sands China's attempt to disqualify any jurist that rules against it
11 is not the law. First of all, NRS 1.235 provides that "[a]ny party ... who seeks to
12 disqualify a judge for actual or implied bias or prejudice must file an affidavit
13 specifying the facts upon which the disqualification is sought." The affidavit "must
14 be accompanied by a *certificate of the attorney of record* that the affidavit is filed
15 in good faith and not interposed for delay . . . [and] filed "(a) [n]ot less than 20 days
16 before the date set for trial or hearing of the case; or [n]ot less than 3 days before
17 the date set for the hearing of any pretrial matter." NRS 1.235(1) (emphasis added).
18 Tellingly, no counsel made a motion in conformity with the rules then or now. No
19 affidavit could remotely be signed in good faith. *See Obert v. Republic Western*
20 *Ins. Co.*, 264 F. Supp. 2d 106, 110-11 (D.R.I. 2003) (Motion to Disqualify Judge
21 brought without proper basis or in good faith warrants entry of sanctions, including
22 revocation of pro hac vice applications of out-of-state counsel, because
23 disagreement with judge's decisions is not grounds for disqualification); *see also*
24 *Liteky v. United States*, 510 U.S. 540, 555 (1994) (Judges' critical, disapproving or
25 even hostile remarks to counsel and their clients because of conduct in the case does
26 not support a bias or partiality claim); *In re Beard*, 811 F.2d 818, 830 (4th Cir.
27 1987) (same).

1 And, "if new grounds for a judge's disqualification are discovered after the
2 time limits in NRS 1.235(1) have passed, then a party must file a motion based on
3 [Nevada Code of Judicial Conduct] Canon 3E as soon as possible after becoming
4 aware of the new information." *Towbin Dodge, LLC v. Eighth Judicial District*
5 *Court*, 121 Nev. 251, 260, 112 P.3d 1063, 1069 (2005). "The motion must set forth
6 facts and reasons sufficient to cause a reasonable person to question the judge's
7 impartiality, and the challenged judge may contradict the motion's allegations." *Id.*
8 As this Court has ruled, a motion filed pursuant to Canon 3E must be referred to
9 another district court judge for hearing. *Id.*

10 Sands China filed neither an affidavit pursuant to NRS 1.235 nor a motion
11 under Canon 3E, cognizant that the charge is groundless and simply an attempt to
12 bully anyone who dares confront its misconduct. "[R]ulings and actions of a judge
13 during the course of official judicial proceedings do not establish legally cognizable
14 grounds for disqualification." *In re Dunleavy*, 104 Nev. at 789, 769 P.2d at 1275.
15 Rather, "[t]he personal bias necessary to disqualify must 'stem from an extrajudicial
16 source and result in an opinion on the merits on some basis other than what the
17 judge learned from his participation in the case." *Id.* at 790, 769 P.2d at 1275;
18 *Liteky*, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid
19 basis for a bias or partiality motion. ... Almost invariably, they are proper grounds
20 for appeal, not for recusal."); *Garity v. Donahoe*, No. 2:11-cv-01805-RFB-CWH,
21 2014 WL 4354115, (D. Nev. Sept. 3, 2014)).

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1 Sands China's proposed supplement only proves Jacobs' point. Complaining
2 that the District Court does not allow the Defendants to undermine Jacobs' legal
3 rights is hardly a basis for requesting recusal. If that were the law, litigants would
4 only be encouraged to misbehave, deceive the court, hide evidence, and stall
5 because once they do so, they can claim that the case should be reassigned to a new
6 judge so that such behavior can start all over again.

7
8 DATED this 31st day of August, 2015.

9 PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 31st day of August, 2015, I electronically filed and served a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST STEVEN C. JACOBS' RESPONSE TO MOTION TO SUPPLEMNET RECORD** properly addressed to the following:

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SERVED VIA HAND-DELIERY ON 08/31/15
The Honorable Elizabeth Gonzalez
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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC