IN THE SUPREME COURT OF THE STATE OF NEVADA

DR PARTNERS, a Nevada General Partnership, d/b/a STEPHENS MEDIA GROUP,

Appellant,

vs.

LAS VEGAS SUN, INC., a Nevada Corporation,

Respondent.

Case No. 68700
District Court Case No. A-15-715008-B

RESPONDENT'S MOTION TO EXPEDITE APPEAL AND REMOVE CASE FROM SETTLEMENT CONFERENCE PROGRAM

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. Respondent the Las Vegas Sun, Inc., is owned entirely by Greenspun Media Group.

2. Greenspun Media Group is owned by three members of the Brian and Myra Greenspun family or their family Trusts.

3. Las Vegas Sun, Inc., is neither publicly owned or traded.

4. Las Vegas Sun, Inc., was represented in the underlying district court proceedings by E. Leif Reid, Esq., and Kristen L. Martini, Esq., of Lewis Roca Rothgerber LLP, and John T. Moran, Esq., and Jeffrey Bendavid, Esq., of Moran Brandon Bendavid Moran.

5. Las Vegas Sun, Inc., is represented by the same counsel in this appeal.

Dated this 27th day of August, 2015.

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Respondent Las Vegas Sun, Inc. (the "Sun"), through its counsel of record, Lewis Roca Rothgerber, LLP, and Moran Brandon Bendavid Moran, moves this Court for an Order expediting this appeal and removing this case from the settlement conference program. This Motion is made in accordance with NRAP 27 and pursuant to NRAP 2.

I. FACTUAL AND PROCEDURAL BACKGROUND.

The contractual relationship between the Sun and Appellant DR Partners, from which the underlying action stems, was formed under the Newspaper Preservation Act of 1970 (the "Act"). *See* 15 U.S.C. §§ 1801-04.

The Act authorizes the formation of joint operating agreements among competing newspaper operations within the same market area. 15 U.S.C. § 1803. It exempts newspapers from certain provisions of antitrust laws. *Id.* The purpose of creating the Act was to allow the survival of multiple daily newspapers in a given urban market where circulation was declining, and to protect at least one of the newspapers in that market from ceasing operations altogether. *See, e.g.*, *Salt Lake Tribune Pub. Co., LLC v. AT & T Corp.*, 320 F.3d 1081, 1086 n.3 (10th Cir. 2003) ("In order to preserve multiple editorial voices in a given market and assist financially distressed newspapers, Congress encouraged the formation of [joint operating agreements] by giving them a limited exception to the antitrust laws."); *Hearst Communications, Inc. v. Seattle Times Co.*, 115 P.3d 262, 271 (Wash. 2005) ("There is a clear national policy that supports maintenance of two newspapers as long as one of the newspapers is 'failing' at the time that the attorney general approves of the joint agreement.").

The Congressional Declaration of Policy set forth in 15 U.S.C. section 1801, expressly states the importance in maintaining competing editorial voices within a single market area:

> In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this chapter.

15 U.S.C. § 1801.

In 1989, the Sun found itself in the compromised position of economic distress. Therefore, pursuant to the Act, the Sun negotiated a joint operating agreement with Appellant DR Partners' predecessor-in-interest (the "1989 JOA") whereby the Sun could continue to publish a daily newspaper called the Las Vegas Sun. DR Partners was the owner and publisher of a competing newspaper, the Las Vegas Review Journal (the "Review Journal"), which is likewise circulated in within the Las Vegas metropolitan area. Through the 1989 JOA, the purpose of the Act was effectuated and the Las Vegas Sun's continued existence was guaranteed until at least 2040.

In 2005, the Sun renegotiated the 1989 JOA with DR Partners. The renegotiation resulted in the 2005 Amended and Restated [Joint Operating] Agreement (the "2005 JOA"). Under the 2005 JOA, DR Partners agreed to continue to produce and promote the Sun. Specifically, DR Partners agreed to print both the Las Vegas Review Journal and the Sun together in its facilities and to fund and execute payments to all costs, including capital expenditures of operations, with exception to the operation of the Sun's news and editorial department.

Similar to the 1989 JOA, the 2005 JOA provided that each entity was required to maintain its own, separate editorial staff. Unlike the 1989 JOA,

however, the 2005 JOA provided that each party would now be required to bear its own editorial costs, a material change:

> 4.2 News and Editorial Allocations. The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate.

Despite this significant amendment to Section 4.2, DR Partners has taken the position that it is entitled to include the Review Journal's editorial expenses in the total operating expenses of the 2005 JOA. The Sun's editorial expenses have not similarly been included, and the Sun has taken the position that the parties are not entitled to charge any editorial expenses against the 2005 JOA.

As a result of the parties' differing interpretations of Section 4.2, the Sun initiated the underlying action on March 10, 2015. Instead of filing a responsive pleading, DR Partners moved to compel arbitration. DR Partners argued that the dispute regarding Section 4.2 fell within the narrow arbitration provision contained in an appendix of the 2005 JOA, which concerns financial audits of the Review Journal's books and records, and calculation disputes regarding the Sun's Annual Profit Payment-arrearages. The district court held that the Complaint as drafted implicated the arbitration provision, but that the Sun could seek leave to amend its Complaint.

Shortly thereafter, the Sun sought leave to amend its Complaint. In doing so, the Sun sought to streamline the issues and limit the action to a single claim for declaratory relief regarding the meaning of Section 4.2. DR Partners opposed the Sun's request to amend, arguing that the dispute was still arbitrable and thus the amendment would be futile. On June 19, 2015, the district court granted the Sun's request for leave to amend. In its Order, the Court rejected DR Partners' assertion that the amendment was futile:

> Here, allowing Plaintiff Las Vegas Sun, Inc., to file its First Amended Complaint would not be futile. The proposed First Amended Complaint sets forth a controversy as to the meaning of Section 4.2 of the parties' Amended and Restated Joint Operating Agreement ("JOA"). Plaintiff Las Vegas Sun, Inc.'s, claim for declaratory relief alleged in its proposed First Amended Complaint does not implicate the arbitration provision contained in Appendix D of the JOA.

The district court ordered the Sun to file its First Amended Complaint and declaratory relief motion.

On June 22, 2015, the Sun filed its First Amended Complaint. On July 10, 2015, DR Partners filed a renewed motion to compel arbitration, reasserting its previously-stated and rejected argument that the dispute was arbitrable. That same day, the Sun filed its motion for summary judgment to resolve the question regarding the interpretation of Section 4.2. The Sun's and DR Partners' motions were scheduled to be briefed contemporaneously. DR Partners' renewed motion was calendared for a hearing to occur on August 11, 2015, and the Sun's motion for summary judgment was subsequently calendared for a hearing to occur on August 18, 2015.

Pleading in response to the Amended Complaint, DR Partners filed a motion to stay the proceedings pending a decision on its renewed motion. In doing so, DR Partners—for the fourth time—asserted its position that the dispute was arbitrable. On July 23, 2015, the district court heard argument on DR Partner's motion to stay proceedings. The district court denied DR Partners' request.

On August 11, 2015, with briefing on the Sun's motion for summary judgment and DR Partners' renewed motion completed, the district court heard and denied DR Partners' renewed arbitration request. However, the district court then stayed the underlying action pending DR Partners' appeal of the Order denying its

renewed motion to compel. Accordingly, the August 18, 2015, hearing on the Sun's motion for summary judgment was vacated. DR Partners filed its Notice of Appeal on August 21, 2015, and this appeal ensued.

II. Expedited Review is Warranted.

NRAP 2 provides,

> On its own or a party's motion, the Supreme Court may—to expedite its decision or for other good cause—suspend any provision of these Rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

This Court has stated that expediting an appeal under NRAP 2 is appropriate when a single issue of law is presented on appeal, and the parties have adequately apprised the Court of the uncontested facts and their respective legal contentions. *Cook v. Maher*, 108 Nev. 1024, 1025 n.1, 842 P.2d 729, 729 n.1 (1992).

This appeal is precisely the kind of appeal that warrants expedition. The single issue presented in this appeal is whether the district court erred by denying DR Partners' renewed motion to compel arbitration. This is an issue of contract construction—an issue of law. *Clark Cnty. Pub. Employees Ass'n v. Pearson*, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990). Therefore, like the Sun's declaratory relief claim, the issue presented to this Court now is a very simple issue, easily amenable to expedited review. While this Court reviews de novo a district court's decision denying arbitration, it need not be lost on the Court that DR Partners' argument that the underlying dispute is arbitrable has been briefed, heard and rejected three times already.

Other good cause exists to warrant expedited review of this appeal. DR Partners has continuously and strategically attempted to delay a binding determination on the meaning of Section 4.2. DR Partners has engaged in nearly six-months'-worth of protracted litigation procedures to delay the resolution of a

single issue of contract interpretation. After nearly six months of litigation, no progress has been made in the underlying case. And now, DR Partners initiated this appeal. Despite the Sun's motion for summary judgment being fully briefed and ready for disposition, even if the Sun succeeds in this appeal the district court will not be able to resolve the underlying dispute for several months, if not years.

There is motivation behind DR Partners' unreasonable interpretation of Section 4.2 and its attempts to delay. DR Partners is aware that its interpretation of Section 4.2 results in an improper shifting of cost burdens to the Sun. These improper cost burdens are substantial, amounting to hundreds of thousands of dollars each year. And, because the Sun relies on the Annual Profits Payments that the Review Journal pays to it as its sole source of revenue, the Sun's ability to gather news and report are gravely impaired. The reading public and the Sun are entitled to binding judicial determination on the meaning of Section 4.2 to ensure the Sun's continued existence—the core purpose of both the 2005 JOA and the Act.

In essence, this appeal is an exemplary candidate for expedited review. Not only is does this appeal present a single issue of contract interpretation easily resolved by this Court, but no reason exists to further delay the resolution of the underlying case. Thus, an expedited resolution of this appeal is warranted.

III. This Appeal Should be Removed From the Settlement Conference Program.

While "[a]ny civil appeal in which all parties are represented by counsel and that does not involve termination of parental rights may be assigned to the settlement conference program," this Court may remove an appeal from the settlement conference program. NRAP 16(a), (b) (providing that the Court may remove a case from the settlement conference program if the settlement judge reports that the case is not appropriate for the program during the early case

assessment); NRAP 2 (providing that the Court may suspend the rules of appellate procedure).

There is no compromise available in this case. The parties have been vehemently disputing whether the interpretation of Section 4.2 is arbitrable well before the inception of the underlying action. This issue of contract interpretation is either arbitrable or not arbitrable. There is no negotiation to be had. And, for the reasons discussed above, expedited resolution of this appeal is appropriate.

IV. Conclusion.

For the forgoing reasons, the Sun moves this Court to expedite this appeal and remove the case from the settlement conference program.

Dated this 27th day of August, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Lewis Roca Rothgerber LLP, and that on the 27th day of August, 2015, I caused the forgoing **RESPONDENT'S MOTION TO EXPEDITE APPEAL AND REMOVE CASE FROM SETTLEMENT CONFERENCE PROGRAM** to be served:

___ by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail at Reno, Nevada, postage prepaid, following ordinary business practices, addressed as follows:

_X_ by electronically filing the foregoing with the Supreme Court of Nevada's electronic filing system, which will send a notice of electronic filing to the following:

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___ by placing an original or true copy thereof in a sealed envelope and causing the same to be personally hand-delivered, addressed as follows:

An Employee of Lewis Roca Rothgerber LLP