

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU, LTD., a Macau corporation, DOES I-X; and ROE CORPORATIONS I-X,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE DAVID BARKER,
DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
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Clerk of Supreme Court

Case Number:

District Court Case Number
A627691-B

**EMERGENCY MOTION
UNDER NRAP27(e) TO STAY
ALL PROCEEDINGS IN THE
DISTRICT COURT PENDING
DECISION ON WRIT
PETITION RE ORDERS
DENYING MOTION TO
DISQUALIFY JUDGE
ELIZABETH GONZALEZ
WITHOUT A HEARING**

***RELIEF NEEDED ON OR
BEFORE FEBRUARY 24, 2016***

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INTRODUCTION

Petitioners Las Vegas Sands Corp. ("LVSC"), Sands China Ltd., ("Sands China"), Sheldon G. Adelson, and Venetian Macau Ltd. ("VML") and collectively "defendants"), respectfully move the Court to enter an order staying all proceedings in the district court, including the deposition of Defendant Sheldon G. Adelson scheduled to commence on February 24, 2016 for an unprecedented 49 uninterrupted hours, *in addition to* his nearly 49 hours of testimony already provided to plaintiff Steven Jacobs in this and another interrelated case.

We ask for this stay to give the Court an opportunity to consider and rule on defendants' Petition for Writ of Prohibition or Mandamus Re Orders Denying Motion to Disqualify Judge Elizabeth Gonzalez, (the "Petition") filed herewith. The Petition is the product of Chief Judge David Barker's January 29, 2016 Order denying LVSC's motion to disqualify, and the February 17, 2016 Order (collectively the "Barker Orders"), which denied reconsideration of the January 29, 2016 Order. Both orders were entered "in chambers" without a hearing or consideration of information responsive to Judge Gonzalez's two sworn declarations opposing disqualification and professing that she is not partial or prejudiced against the defendants.

The Petition seeks review of the Barker Orders following Judge Elizabeth Gonzalez's election to become a participant in the intense (and largely negative to defendants) media coverage of this case, particularly defendant Sheldon Adelson. Less than 24 hours after Chief Judge Barker ruled that her sworn declarations were proof of her impartiality (without hearing the defendants) Judge Gonzalez ruled that Mr. Adelson would have to testify for another 49 hours, notwithstanding Rule 30(d) *and* the fact

that he has already testified for more than 33 hours over six days in response to questions from Jacobs in this case, and more than 15 hours in two days of deposition in "related" Florida litigation. Ex. I, Feb. 18 Hrg. Tr. at 33.

At the same time, Judge Gonzalez denied defendants' reasonable request to compel plaintiff Steven Jacobs to sign a Macau Personal Data Protection Act ("MPDPA") form release to enable the production of critical unredacted documents in Macau bearing his name. Defendants requested the release in the same format as releases signed by LVSC and SCL executives to accommodate discovery from Jacobs. The district court – not the plaintiff – however, disputed that the release used by defendants to produce documents conforms to Macanese law while, at the same time, rejecting defendants' understanding of the law and the releases they signed, based on their direct contact with the Macau Office of Data Privacy. Ex. I at 22:1 – 11; 25:9 – 16; 26:12 – 16.

This Emergency Motion is based on the memorandum of points and authorities that follow and on the papers and pleadings on file herein and in case No. 68265 (Sands China Ltd.'s writ petition challenging jurisdiction over that Macau-based Chinese entity). The stay sought here was first sought from the district court, as Nev. R. App. P. 8 requires, in the defendants' February 9, 2016 Motion for Reconsideration, denied by Judge Barker in his February 17, 2016 Order. Ex. H, Request for Hearing.

Defendants seek a stay of proceedings while the Court considers and disposes of the writ Petition to review the Barker Orders declining to disqualify Judge Gonzalez under the Nevada Code of Judicial Conduct ("NCJC") and NRS 1.235. This Emergency Motion is necessary to ensure that defendants' constitutional and statutory right to an impartial

tribunal and impartial case management is maintained, and that they are not further prejudiced by what they reasonably believe to be continuing partial and erratic management of this very contentious case by Judge Elizabeth Gonzalez.

POINTS AND AUTHORITIES

I. PREFACE

Absent the requested stay, defendants will be irreparably prejudiced by being required to continue litigating before a judge whose impartiality is subject to reasonable doubt. Her recent comments to the media have contributed to favorable press coverage for her but negative to the defendants, particularly Sheldon Adelson. The defendants believe, with sound support in the record, that the district court's rulings have been improperly influenced by the district court's extra-judicial beliefs and interest in press coverage of this case. The brief delay in proceedings that would be occasioned by the requested stay will not harm Jacobs in any way, and will not "blow up" the trial date as plaintiff contends. In any event, a reasonable delay is warranted to ensure the defendants of an impartial tribunal and impartial case management as this case moves through contentious discovery and to trial.

The substantial good-faith issues of judicial qualification raised by the accompanying Petition warrant the Court's close attention. Defendants and all other litigants have a constitutional and statutory right to impartially administered justice in Nevada's courts. Guidance from this Court on the scope and application of NRS 1.235 would greatly benefit not only the defendants, the entire bar and bench, but it would serve the public's interest in impartially administered justice for all, without regard to social and economic standing.

II. RELEVANT FACTS

Following intense media coverage of this case in which Judge Elizabeth Gonzalez elected to participate, LVSC, moved to disqualify her under the NCJC and NRS 1.235. LVSC sought disqualification under the Nevada statute *only after* LVSC's request that Judge Gonzalez voluntarily recuse herself from ruling on the propriety of questions propounded to Patrick Dumont was rejected. Mr. Dumont is an LVSC officer who was being deposed in his personal capacity, purportedly about his personal knowledge of Jacobs's termination but ultimately focused on his contact with press representatives who were also reporting on issues involving the district court in this case and in which the court willingly participated.

Instead of recusing herself from ruling on the validity of the objections raised by this third-party deponent's counsel to wholly irrelevant questions about media coverage of this case in which she is a subject, Judge Gonzalez confirmed her interest in eliciting his answers to these irrelevant questions by setting up a procedure for other judicial officers to rule on the propriety of Dumont's counsel's objections to the questions without regard to relevance. This window-dressing procedure, followed her chastising Dumont's attorney for objecting to the irrelevant line of questioning about media issues, including the recent purchase of the *Las Vegas Review Journal* by the Adelson family (headed by Mr. Dumont, Mr. Adelson's son-in-law). She then overruled counsel's objections, and effectively ordered Mr. Dumont to answer questions about media issues and the *Review Journal*.

The Court knows the facts of this alleged wrongful termination action from prior writ proceedings. Plaintiff Jacobs claims to have been wrongfully terminated without cause under a "contract" that he is unable or unwilling to identify, including the identity of his alleged employer.

Not one to let the facts get in the way of extortion by smear litigation, however, Jacobs has made every effort to turn this mundane breach of contract case into litigation by sanction. The district court has facilitated his efforts, most recently by *electing* to contribute to the media frenzy surrounding the Adelson family's purchase of the *Review Journal*, a transaction that has absolutely nothing to do with this wrongful termination case.

Although the underlying case has been highly publicized since it began in October 2010, media coverage of the case in the past three months has greatly intensified. While media coverage alone does not erode the ability of a court to remain impartial and avoid even the appearance of impropriety, the assigned judge here **chose** to participate in the press' coverage of this case in a manner that suggested her comments were about one of the defendants in this case, Sheldon Adelson. The court's personal interest in Mr. Dumont's answers to irrelevant questions about the media coverage appears to have influenced her to indulge Jacobs's efforts to make media coverage of the case and the acquisition of the *Review Journal* an issue by authorizing him to question third-party deponent Patrick Dumont on those subjects. Jacobs and the district court want to know about Dumont's communications with *Review-Journal* personnel and others associated with the purchase of the newspaper, all of whom are media representatives. None of them, however, have any relevant information bearing on Mr. Jacobs's loss of employment in Macau in 2010, whether wrongful or not.

The media's coverage of the *Review-Journal* transaction and ruminations about its relationship to this case are irrelevant to Jacobs's claims. His counsel nevertheless made an issue of this activity by

questioning Mr. Dumont on the subject, apparently hoping to establish that he and/or the Las Vegas Sands is somehow interfering through the media with the prosecution of his claims. The district court indirectly supported these efforts by providing an interview to *Time* Magazine last month that included suggestive remarks adding to the speculative frenzy about the newspaper purchase being tied to this case.

Because of the district judge's election to become a part of the *Time* Magazine story, titled "Meet the Judge at the Center of Sheldon Adelson's Strange Deal to Buy a Newspaper," subtitled, "Elizabeth Gonzalez has emerged as a key figure in the casino magnate's surprising purchase," (emphasis added), LVSC asked that she recuse herself from addressing matters regarding the Adelson family's purchase of the newspaper. Only after she refused to recuse did LVSC's proceed with a narrowly-focused motion for disqualification based on her embrace of the media. Ex. A, Mot. to Disqualify. In response, Judge Gonzalez offered a sworn declaration proclaiming her neutrality, which appears to have been fully accepted by Judge Barker without affording LVSC an opportunity to respond to it. Ex. B, Jan. 15, 2016 J. Gonzalez Decl.

The declaration failed to address LVSC's clearly-articulated concern that her election to feed the press' story of this lawsuit created an appearance of bias. In fact, the motion was narrowly drawn to avoid interjecting her past conduct that defendants believe is evidence of *actual bias*. Given Judge Gonzalez's empty proclamations of impartiality, LVSC believes it was entitled to rebut her assertions by presenting evidence of how her actions belie her expressions of neutrality. At the very at least, LVSC should have been afforded a hearing to state its responses to her testimony.

Judge Barker, however prematurely ruled on LVSC's motion rather than allowing the defendant to close the briefing or be heard on the issues presented. Ex. C, Jan. 29, 2016 Order. Thus, LVSC sought reconsideration. Ex. D, Mot. for Reconsid. Again, Judge Gonzalez elected to respond with a sworn declaration. Ex. E, Feb. 12, 2016 J. Gonzalez Decl. The tone and choice of language in her second declaration appears to support LVSC's point that she has departed from the neutral role expected of Nevada judges. *Id.*; *see also* Ex. G, ¶ 14. Judge Gonzalez's second declaration again failed to address LVSC's contentions that her conduct would, under Nevada Judicial Canon 2.11, require her disqualification, in that a reasonable person reviewing the facts presented in the disqualification papers would have a reasonable basis to conclude that she is not impartial. Nonetheless, Judge Barker summarily denied the Motion for Reconsideration, without considering the appearance of partiality that requires disqualification under NCJC 2.11(A). Ex. F, Feb. 17, 2016 Order.

This Court need not find that Judge Gonzalez holds an actual bias to grant the pending Writ. Under Rule 2.11, disqualification is required because her conduct creates the appearance of partiality that Rule 2.11(A) makes disqualifying, without regard to her sworn denials of actual bias.

III. ARGUMENT

A. If the Stay is Not Granted The Object of the Pending Writ Petition Would Be Defeated

The purpose of defendants' forthcoming writ petition is to protect their constitutional right to – and the public's interest in – an impartial tribunal. Whether actual bias exists or not, the rulings and comments of Judge Gonzalez provide a sound basis for a disinterested reasonable person to doubt her impartiality. Her decision to join in the media frenzy knowing defendants had previously lost confidence in her

impartiality is telling. While careful to avoid direct references to this case in her recent interviews with the media for an article she knew focused on her and sought to connect the irrelevant purchase of the *Review Journal* to this case, she provided information for the *Time* article, "**Meet the Judge at the Center of Sheldon Adelson's Strange Deal to Buy a Newspaper,**" subtitled, "**Elizabeth Gonzalez has emerged as a key figure in the casino magnate's surprising purchase**". Her election to shine bright at the expense of a litigant in her courtroom, whether or not coupled with her plaintiff-partial rulings in this case, are more than sufficient for an objective observer to reasonably doubt her impartiality.

This Court has long recognized the importance of a neutral tribunal, stating that "any tribunal permitted by law to try cases and controversies *not only must be unbiased but also must avoid even the appearance of bias.*" *Matter of Ross*, 656 P.2d 832 (Nev. 1983) (emphasis added) (quoting *Commonwealth Coat. Corp. v. Continental Cas. Co.*, 393 U.S. 145, 150 (1968)). Due process – basic fairness – requires that defendants' questions regarding statutory disqualification be addressed before they are forced to continue litigating before a judge whose impartiality they have a reasonable, Canon-supported basis to question.

Unless this emergency motion is considered before the upcoming February 24, 2016, unnecessary and harassing 49-hour deposition of Mr. Adelson gets underway, defendants will continue to litigate what should be a simple breach of contract case under the gavel of continued sanctions from a judge that made her mind up long ago about who should prevail. Defendants respectfully ask this Court to enter a stay while it considers the defendants' writ petition challenging the Barker Orders denying Judge Gonzalez's disqualification.

B. Plaintiff Will Not Be Harmed if this Court Grants a Stay.

The right to an impartial judge is not one to be lightly disregarded. It has real constitutional significance. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980) (emphasis added). An impartial and disinterested forum "helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law," while at the same time "it preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done.'" *Id.* (quoting *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)).

Judge Gonzalez's declarations fail to even address, much less rebut, LVSC's contention that the NCJC and NRS 1.235 requires her disqualification because she elected to participate in media coverage of an active notorious case before her. NCJC 2.11, Comment 1 ("Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether . . . the specific provisions of paragraphs (A)(1) through (6) apply." As set forth in the Declaration of judicial ethicist Leslie Abramson, attached here as Exhibit G at paragraph 17 (which Judge Barker did not acknowledge or consider), the appropriate standard for evaluating disqualification was not Judge Gonzalez's disclaimers of bias, as Judge Barker seems to have applied. The standard to evaluate

the appearance of partiality is whether a reasonable person knowing all the facts could conclude that the judge's impartiality might reasonably be questioned. When it is plausible for a reasonable person to question the judge's impartiality, it is then appropriate for a party or counsel to challenge the judge's impartiality by motion.

Ex. G, ¶ 17.

The Court and Legislature recognized this salutary principle when adopting the Judicial Code of Conduct and set up the statutory disqualification framework to protect the public's interest in an impartial tribunal free from an appearance of partiality. Clarifying the appropriate standard and announcing whether the NCJC and statute entitles the moving party to, at least, a hearing when the disqualification is contested under oath by the challenged judge are both novel questions of substantial public importance in Nevada. Even if the Court ultimately denies defendants' Petition, Jacobs would not suffer harm by a brief delay while the Court considers the application of the NCJC and NRS 1.235 to the facts of this case presented by defendants' writ Petition.

C. Defendants Have Presented a Substantial Case on the Merits of These Important Legal Questions.

The Court has previously recognized that "when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, [but] the movant must 'present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.'" *Fritz Hansen v. District Ct.* 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (citations omitted). Defendants have met that standard, as this motion shows and the writ Petition confirms.

IV. CONCLUSION

Defendants respectfully request the Court to stay proceedings in the district court pending ruling on the Petition challenging Judge Barker's Orders denying LVSC's motion to disqualify Judge Elizabeth Gonzalez.

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**VERIFICATION AND NRAP 27(E)
CERTIFICATE OF NEED FOR EMERGENCY RELIEF**

I, Steve Morris, declare as follows:

1. I am a lawyer with Morris Law Group, appellate counsel of record for defendants and counsel of record for Defendant Sheldon G. Adelson in the district court action.

2. I verify I have read the foregoing **EMERGENCY MOTION UNDER NRAP27(e) TO STAY ALL PROCEEDINGS IN THE DISTRICT COURT PENDING DECISION ON WRIT PETITION RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING**; that the same is true to my own knowledge, except for those matter therein stated on information and belief, and as to those matters, I believe them to be true.

3. I certify emergency relief is needed because the district court, which the defendants believe is not impartial, continues to impose orders on them that are unreasonably burdensome and one-sided. For example, her February 18 ruling arbitrarily ordering Sheldon Adelson to appear for 49 hours of *additional testimony* in this case, commencing on February 24, although he has already given nearly 49 hours of testimony in this and an interrelated case. This oppressive deposition and the hundreds of hours of testimony already elicited from the Defendants are wildly disproportionate to the discovery NEEDED for Jacobs to contest he was terminated for cause.

At the same time, the district court ordered another *7 days* of testimony from Mr. Adelson, the district court denied defendants' request for discovery of documents in plaintiff's name that are in Macau because the court believes the form of consent for this discovery (which plaintiff must sign for defendants to search for and remove the documents from

Macau) does not meet the requirements of Macau law. She had no evidence on which to base that belief, and none was provided by plaintiff, who refused to consent to such production.

4. The names, telephone numbers, and office addresses of the attorneys for the other parties is as follows: The contact information (including telephone number) for the other attorneys in this case is James J. Pisanelli, Todd L. Bice, and Debra Spinelli, PISANELLI BICE PLLC, 400 South 7th Street, Las Vegas, NV 89101, (702) 214-2100, attorneys for Steven C. Jacobs, Real Party in Interest.

5. Todd Bice, lead counsel for plaintiff was given written notice of this motion on February 19, 2016 by email and a copy of this motion will be hand served or emailed to the attorneys in the foregoing paragraph as soon as it is submitted for filing.

6. I declare the foregoing under penalty of perjury under the laws of the State of Nevada.

Signed this 22nd day of February, 2016.

/s/ STEVE MORRIS

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **EMERGENCY MOTION UNDER NRAP27(e) TO STAY ALL PROCEEDINGS IN THE DISTRICT COURT PENDING DECISION ON WRIT PETITION RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING** to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY

Hon. David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Courtesy Copy To:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
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200 Lewis Avenue
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Respondent

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**Attorneys for Steven C. Jacobs,
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DATED this 22nd day of February, 2016.

By: /s/ Patricia Ferrugia