

1 BRIAN W. BOSCHÉE, ESQ. (NBN 7612)

2 E-mail: bboschee@nevadafirm.com

3 WILLIAM N. MILLER, ESQ. (NBN 11658)

4 E-mail: wmiller@nevadafirm.com

5 HOLLEY, DRIGGS, WALCH,

6 FINE, WRAY, PUZEY & THOMPSON

7 400 South Fourth Street, Third Floor

8 Las Vegas, Nevada 89101

9 Telephone: 702/791-0308

10 Facsimile: 702/791-1912

11 *Attorneys for Respondents West Edna, Ltd., dba Mojave Electric, Western Surety*
12 *Company, The Whiting Turner Contracting Company, QH Las Vegas, LLC, PQ*
13 *Las Vegas, LLC, LWTIC Successor LLC, and FC/LW Vegas*

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Clerk of Supreme Court

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

10 CASHMAN EQUIPMENT COMPANY,
11 a Nevada corporation,

12 Appellant,

13 v.

14 WEST EDNA ASSOCIATES, LTD. dba
15 MOJAVE ELECTRIC, a Nevada
16 corporation; WESTERN SURETY
17 COMPANY, a surety; THE WHITING
18 TURNER CONTRACTING COMPANY,
19 a Maryland corporation; FIDELITY AND
20 DEPOSIT COMPANY OF
21 MARYLAND, a surety; TRAVELERS
CASUALTY AND SURETY
COMPANY OF AMERICA, a surety; QH
LAS VEGAS LLC, a foreign limited
liability company; PQ LAS VEGAS,
LLC, a foreign limited liability company;
LWTIC SUCCESSOR LLC, an unknown
limited liability; FC/LW VEGAS, a
foreign limited liability company,

22 Respondents.

Supreme Court Case No.: 61715

Supreme Court Case No.: 65819

Supreme Court Case No.: 66452

EJDC Case No.: A642583 & A653029

**RESPONDENTS' OPPOSITION
TO APPELLANT CASHMAN
EQUIPMENT COMPANY'S
MOTION TO STRIKE
RESPONDENTS' ANSWERING
BRIEF**

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24 Respondents West Edna Associates, LTD. dba Mojave Electric, Western
25 Surety Company, The Whiting Turner Contracting Company, QH Las Vegas,
26 LLC, PQ Las Vegas, LLC, LWTIC Successor LLC, and FC/LW Vegas
27
28 (collectively the "Mojave Parties"), by and through their undersigned counsel of

1 record, hereby file this Opposition to Appellant Cashman Equipment Company's
2 Motion to Strike Respondents' Answering Brief (the "Opposition"). As set forth
3 below, there is no reasonable or rational basis for this Court to strike the Mojave
4 Parties' Answering Brief filed in this matter. Thus, the Mojave Parties respectfully
5 request this Court deny Appellant Cashman Equipment Company's Motion to
6 Strike Respondents' Answering Brief (the "Motion") in its entirety.
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9 This Opposition is made and based upon the following Memorandum of
10 Points and Authorities, the papers and pleadings on file, and such oral argument as
11 may be adduced at a hearing of this matter.
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13 MEMORANDUM OF POINTS AND AUTHORITIES

14 I. INTRODUCTION/STATEMENT OF RELEVANT FACTS¹

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16 In this consolidated appeal, Appellant Cashman Equipment Company
17 ("Cashman") has filed three separate notices of appeals. First, on or about
18 September 18, 2012, Cashman filed a notice of appeal relating to the district
19 court's order regarding an injunction for codes on the relevant project.² Second,
20 and after a bench trial in this matter, on or about June 5, 2014, Cashman filed
21 another notice of appeal relating to the district court's Findings of Facts and
22 Conclusions of Law ("FFCL").³ More specifically, this June 5, 2014 Notice of
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26 ¹ Unless indicated otherwise, all page numbers referenced in this Opposition are
27 from the Joint Appendix filed with this Court on June 17, 2015.

² See Notice of Appeal, Volume 3, pages 610-619.

28 ³ See Notice of Appeal, Volume 32, pages 7751-7772.

1 Appeal stated that Cashman “files this Notice of Appeal, appealing to the Nevada
2 Supreme Court from the Findings of Fact and Conclusions of Law, entered in this
3 matter by the Honorable Judge Rob Bare on or about May 5, 2014.”⁴ Attached as
4 Exhibit “1” to this June 5, 2014 Notice of Appeal was the FFCL.⁵ Third, on or
5 about September 2, 2014, Cashman filed another notice of appeal relating to
6 attorneys’ fees.⁶ This third notice of appeal stated that Cashman was appealing,
7 among other things, the Decision and Order made by the district court, which said
8 Decision and Order related to the district court denying both the Mojave Parties
9 and Cashman their respective attorneys’ fees.⁷

13 Since Cashman appealed the FFCL in its June 5, 2014 Notice of Appeal, any
14 and all claims for relief adjudicated in the district court have been appealed. Also,
15 since Cashman appealed the district court’s Decision and Order regarding the
16 parties’ respective attorneys’ fees in the September 2, 2014 Notice of Appeal, the
17 Mojave Parties assert their attorneys’ fees and costs have been appealed as well,
18 given that the district court denied all parties’ attorneys’ fees and costs.

21 Furthermore, after the Judgment was entered into this case by the district
22 court, the Mojave Parties were the prevailing party, as Cashman was only awarded
23 approximately a quarter of what is was originally seeking. Thus, the Mojave
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26 ⁴ See *id.* at page 7752.

27 ⁵ See *id.* at pages 7754-7772.

28 ⁶ See Notice of Appeal, Volume 32, pages 7813-7829.

⁷ See *id.* at page 7814.

1 Parties did not appeal, or cross appeal, the Judgment, given that they believe the
2 district court came to a reasonable conclusion, including, but not limited to, the
3 district court balancing the fault percentages, in equity, of the Mojave Parties and
4 Cashman, in terms of CAM and Carvalho's actions.
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7 Subsequently, on June 18, 2015, Cashman filed its Opening Brief in this
8 matter, asserting six issues under its "Statement of the Issues"⁸. On August 19,
9 2015, the Mojave Parties filed their Answering Brief. Since the Mojave Parties
10 were dissatisfied with Cashman's statement of the issues, pursuant to NRAP 28(b),
11 in their Answering Brief, the Mojave Parties listed their own six issues under the
12 "Statement of the Issues".⁹ The Mojave Parties' Answering Brief discusses, in
13 detail, all six of these issues.
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16 In their Answering Brief, the Mojave Parties wanted to give this Court a
17 complete breakdown of all the claims relief decided by the district court at trial,
18 which included Cashman's claim under the payment bond, Cashman's lien claim,
19 Cashman's claim for fraudulent transfer, Cashman's foreclosure of security
20 interest, Cashman's unjust enrichment claim, and the Mojave Parties' counterclaim
21 for misrepresentation. The Mojave Parties wanted to emphasize why the district
22 court properly, or improperly, ruled on all of these claims at trial, as well as the
23 parties' respective attorneys' fees motions after trial. In other words, the Mojave
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27 ⁸ See Cashman's Opening Brief at pages x-xi.

28 ⁹ See the Mojave Parties Opening Brief at page ix.

1 Parties wanted to give the Court an accurate and full picture of the district court's
2 complete disposition below.

3
4 Now, with no reasonable rationale, Cashman moves to strike the Answering
5 Brief in its entirety, or in the alternative, to strike the portions that Cashman did not
6 address in its Opening Brief. This is not reasonable, equitable, or proper for the
7 reasons described below. Therefore, the Mojave Parties respectfully request that
8 the Motion be denied in its entirety.
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11 **II. LEGAL ARGUMENT**

12 Cashman's argument boils down to the fact that since the Mojave Parties did
13 not appeal the judgment, or file a notice of cross appeal, they cannot make any
14 arguments not included in Cashman's Opening Brief. This logic is incorrect.
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16 First, in its various notices of appeals, Cashman appealed, among other
17 things, the entire FFCL and the Decision and Order. This included, among other
18 things, all six claims for relief adjudicated by the district court, as well as both
19 parties' respective attorneys' fees motions. Cashman did not appeal only parts of
20 the FFCL or the Decision and Order. Thus, the Mojave Parties analyzed in their
21 Answering Brief, all six claims for relief that were adjudicated by the district court,
22 as well as the parties' requests for attorneys' fees and costs and relevant codes.
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25 Second, in relevant part, NRAP 28(b) states that a respondent's brief "shall
26 conform to the requirements of Rule 28(a)(1)-(8) and (10), except that none of the
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1 following need appear unless the respondent is dissatisfied with the appellant's
2 statement . . . (2) the statement of the issues." Thus, if a respondent is not
3 satisfied with appellant's statement of the issues in the case, pursuant to this rule, a
4 respondent can draft his own issues. That is exactly what the Mojave Parties did.
5 The Mojave Parties articulated what they believed were the issues on appeal and
6 articulated these six issues in their "Statement of the Issues" on page ix of their
7 Answering Brief. These issues all related to the six adjudicated claims, as well as
8 the attorneys' fees motion (and code issue). In their Answering Brief, the Mojave
9 Parties then addressed each and every single issue noted their "Statement of the
10 Issues". As such, Mojave properly analyzed the scope of this appeal.

11 Third, as is evident in the FFCL, the district court ruled in favor of the
12 Mojave Parties on some issues, and Cashman on others. In their Answering Brief,
13 the Mojave Parties wanted to give the Court a full, complete, and accurate
14 portrayal of the district court's dispositions. This is the reason why the Mojave
15 Parties analyzed all six adjudicated claims and the attorneys' fees issues, and
16 articulated how and why the district court either properly or improperly ruled on all
17 of these relevant issues. In its Opening Brief, Cashman tries to give the Court only
18 a piece of the puzzle by leaving out many of the adjudicated issues. Again, the
19 Mojave Parties wanted this Court to have an accurate picture of what happened at
20 trial. This is why the Mojave Parties went into detail on all adjudicated claims.
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1 Fourth, since the Mojave Parties believed the end result was reasonable, they
2 were content with the district court awarding Cashman approximately a quarter of
3 what it was seeking. In other words, since the Mojave Parties were content with
4 the judgment (and judgment amount), they did not cross appeal, or file a notice of
5 appeal relating to, the judgment.
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8 However, even though the Mojave Parties did not cross-appeal, this does not
9 mean that they were not allowed to articulate in their Answering Brief all of the
10 adjudicated claims by the district court. Additionally, if this case gets remanded, it
11 is the Mojave Parties' position that all of the issues from the district court would
12 certainly be before the district court once again and thus, the Mojave Parties
13 wanted to clearly articulate each and every one of these issues.
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16 Moreover, the Mojave Parties' rationale to not file a cross appeal, and to
17 raise arguments that they believe the district court erred on or rejected, are
18 consistent with Nevada law as well. As this Court stated in *Ford v. Showboat*
19 *Operating Company*, "[t]he United States Supreme Court established seventy years
20 ago that a litigant who is not aggrieved by a judgment need not appeal from the
21 judgment in order to raise arguments in support of the judgment not necessarily
22 accepted by the district court." 110 Nev. 752, 755, 877 P.2d 546, 548 (1994).
23 Citing to a United Supreme Court Case, the *Ford* case further noted that:
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27 It is true that a party who does not appeal from a final decree of the
28 trial court cannot be heard in opposition thereto when the case is

1 brought here by the appeal of the adverse party. In other words, the
2 appellee may not attack the decree with a view either to enlarging his
3 own rights thereunder or of lessening the rights of his adversary,
4 whether what he seeks is to correct an error or to supplement the
5 decree with respect to a matter not dealt with below. *But it is likewise*
6 *settled that the appellee may, without taking a cross-appeal, urge in*
7 *support of a decree any matter appearing in the record, although his*
argument may involve an attack upon the reasoning of the lower court
or an insistence upon matter overlooked or ignored by it.

8 *Id.* (emphasis in original). The *Ford* Court continued that “[a] respondent may,
9 however, without cross-appealing, advance any argument in support of the
10 judgment even if the district court rejected or did not consider the argument.” *Id.*
11 As such, “[a] party who prevails in the district court and who does not wish to alter
12 any rights of the parties arising from the judgment is not aggrieved *by the*
13 *judgment.*” *Id.* at 756, 877 P.2d at 549 (emphasis in original).

16 Thus, pursuant to Nevada law in *Ford*, since the Mojave Parties prevailed at
17 trial and did not necessarily wish to alter the judgment, they were allowed to
18 “advance any argument in support of the judgment even if the district court
19 rejected or did not consider the argument.” *Id.* at 755, 877 P.2d at 548; *see also*
20 *Alcantara v. Wal Mart Stores, Inc.*, __ Nev. __, 321 P.3d 912, 916 (2014); *see also*
21 *Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1549, 908 P.2d 226, 229 (1995).
23 This is exactly what the Mojave Parties did in their Answering Brief. They
24 articulated each and every issue that the lower court adjudicated, as well as the
25 issues relating to attorneys’ fees and the relevant codes.
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1 Given that the Mojave Parties wanted to give the Court a full, complete, and
2 accurate portrayal of the events in the district court, the Mojave Parties analyzed
3 each and every adjudicated claim, as well as the issues relating to the codes and the
4 attorneys' fees. Not only is this in the scope of NRAP, but Nevada law dictates
5 that the Mojave Parties properly analyzed the scope of the appeal. Cashman
6 however, complains that this is not fair and wants to make the unreasonable
7 request of striking a brief. Additionally, Cashman filed the instant Motion without
8 first conducting a meet and confer with the Mojave Parties' counsel or requesting
9 that certain sections be removed. Instead of trying to reach a resolution, Cashman
10 simply filed the instant Motion. This Court should deny the request in its entirety.

11 Finally, as a passing note, Cashman seeks a stay of the briefing schedule
12 until the Court rules on the Motion.¹⁰ Cashman gives no basis for this request,
13 except for an allegation that it will be prejudiced by having to respond to the
14 Answering Brief. Cashman has not demonstrated any prejudice hereto.

15 First, almost immediately after the Mojave Parties filed their Answering
16 Brief, Cashman's counsel requested from the Mojave Parties' counsel a thirty-day
17 extension to file a reply brief. As a matter of professional courtesy, the Mojave
18 Parties' counsel agreed, giving Cashman a total of sixty days to file a reply brief.¹¹

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¹⁰ See Motion at page 7.

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¹¹ Earlier, Cashman's counsel requested two extensions to file its Opening Brief.
As a courtesy, the Mojave Parties' counsel agreed to these two extensions.

1 Unbeknownst to the Mojave Parties' counsel, this request was made by Cashman's
2 counsel, knowing that Cashman would be filing the Motion. Cashman has
3 received twice the amount of time allotted under NRAP 31 to file a Reply Brief.
4 This is more than enough time to respond to the arguments in the Answering Brief.
5

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7 Second, NRAP 28(c) notes that "[a] reply brief . . . must be limited to
8 answering any new matter set forth in the opposing brief." Thus, Cashman had
9 adequate notice that it needed to respond to any material set forth in the Answering
10 Brief. Given the amount of time that Cashman had to file a reply brief, as well as
11 the fact that it knew it was responsible for addressing any issues in the Answering
12 Brief, there is absolutely no prejudice to Cashman to respond to the Answering
13 Brief sixty days after it was served. Cashman's stay request must be denied.
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16 **III. CONCLUSION**

17 Accordingly, and based upon the above, the Mojave Parties respectfully
18 request that this Court deny the Motion in its entirety.
19

20 DATED this 2nd day of October, 2015.

21 **HOLLEY, DRIGGS, WALCH, FINE,**
22 **WRAY, PUZEY & THOMPSON**

23 /s/ BRIAN W. BOSCHEE
24 Brian W. Boschee, Esq. (NBN 7612)
25 William N. Miller, Esq. (NBN 11658)
26 400 South Fourth Street, Third Floor
27 Las Vegas, Nevada 89101
28 *Attorneys for Respondents*

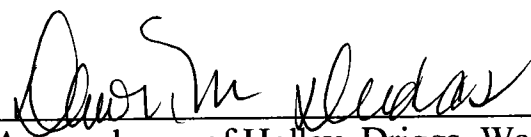
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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I am an employee of Holley, Driggs, Walch, Fine,
5 Wray, Puzey & Thompson, and that on the 2nd day of October, 2015, I caused to be
6 served a true and correct copy of this **RESPONDENTS' OPPOSITION TO**
7 **APPELLANT CASHMAN EQUIPMENT COMPANY'S MOTION TO**
8 **STRIKE RESPONDENTS' ANSWERING BRIEF** in the following manner:

9 ☒ (ELECTRONIC SERVICE) The above-referenced document was
10 electronically filed on the date hereof and served through the Notice of Electronic
11 Filing automatically generated by that Court's facilities.

12 ☒ (UNITED STATES MAIL) By depositing a copy of the above-
13 referenced document for mailing in the United States Mail, first class postage
14 prepaid, at Las Vegas, Nevada, to:

15 Jennifer R. Lloyd, Esq.
16 Marisa L. Maskas, Esq.
17 **HOWARD & HOWARD ATTORNEYS PLLC**
18 3800 Howard Hughes Parkway, Suite 1000
19 Las Vegas, Nevada 89169
20 *Attorneys for Appellant Cashman Equipment Company*

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An employee of Holley, Driggs, Walch,
Fine, Wray, Puzey & Thompson