

1 BRIAN W. BOSCHKEE, ESQ.
2 Nevada Bar No. 7612
3 E-mail: bboschkee@nevadafirm.com
4 WILLIAM N. MILLER, ESQ.
5 Nevada Bar No. 11658
6 E-mail: wmiller@nevadafirm.com
7 HOLLEY, DRIGGS, WALCH,
8 PUZEY & THOMPSON
9 400 South Fourth Street, Third Floor
10 Las Vegas, Nevada 89101
11 Telephone: 702/791-0308
12 Facsimile: 702/791-1912

Electronically Filed
Sep 03 2014 09:10 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

13 *Attorneys for Respondents West Edna, Ltd., dba Mojave Electric, Western Surety*
14 *Company, The Whiting Turner Contracting Company and Fidelity and Deposit*
15 *Company of Maryland, Travelers Casualty and Surety Company of America, QH*
16 *Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor LLC, and FC/LW Vegas*

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

18 CASHMAN EQUIPMENT COMPANY,
19 a Nevada corporation,

20 Appellant,

21 v.

22 WEST EDNA ASSOCIATES, LTD. dba
23 MOJAVE ELECTRIC, a Nevada
24 corporation; WESTERN SURETY
25 COMPANY, a surety; THE WHITING
26 TURNER CONTRACTING COMPANY,
27 a Maryland corporation; FIDELITY AND
28 DEPOSIT COMPANY OF
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,

Respondents.

Supreme Court Case No.: 61715
Supreme Court Case No.: 65819

EJDC Case No.: A642583

**RESPONDENTS' REPLY TO
CASHMAN EQUIPMENT
COMPANY'S RESPONSE TO
ORDER TO SHOW CAUSE**

...

1
2 **RESPONDENTS' REPLY TO CASHMAN EQUIPMENT COMPANY'S**
3 **RESPONSE TO ORDER TO SHOW CAUSE**

4 Respondents Western Surety Company, The Whiting Turner Contracting
5 Company, Fidelity and Deposit Company of Maryland, Travelers Casualty and
6 Surety Company of America, West Edna Associates, LTD. dba Mojave Electric,
7 QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor LLC, and FC/LW
8 Vegas (collectively "Respondents"), by and through their attorneys, Brian W.
9 Boschee Esq. and William N. Miller, Esq. of the law firm of Holley, Driggs,
10 Walch, Puzey & Thompson, hereby files their Reply to Cashman Equipment
11 Company's Response to Order to Show Cause (the "Reply").
12
13

14 On July 24, 2014, this Court filed its Order Consolidating Appeals and
15 Order to Show Cause (the "Order to Show Cause"), consolidating two appeals and
16 also requiring Appellant Cashman Equipment Company ("Cashman" or
17 "Appellant") to establish why the appeals should not be dismissed for lack of
18 jurisdiction. In the Order to Show Cause at page 3, this Court specifically stated
19 that "Respondents may file any reply within ten days from the date that appellant's
20 response is served." As such, this Reply is filed to that effect.
21
22
23

24 First, the appeal hereto was premature. This is evident by the fact that: (1)
25 the District Court filed its Judgment regarding its Findings of Fact and Conclusions
26 of Law on August 18, 2014, well after this appeal was filed and after the Order to
27
28

1 Show Cause was filed;¹ and (2) the District Court recently entered judgments
2 against Tonia Tran, Michael Carvalho, Bernie Carvalho, Angelo Carvalho, and
3 CAM Consulting, Inc., which judgments were entered after this appeal was filed
4 and after the Order to Show Cause was filed;² thus, at the time this appeal was
5 filed, there were still claims against several other parties, and the District Court did
6 not certify its order as final pursuant to NRCP 54(b). Notwithstanding these
7 procedural defects, and since these defects appear to be resolved now, Respondents
8 do not have an issue with this appeal proceeding forward and request that the
9 appeal proceed to the settlement program before briefing is reinstated.
10
11
12

13
14 Second, Respondents would like this Court to be aware that after the Order
15 to Show Cause was filed on July 24, 2014, on or about August 4, 2014, the District
16 Court entered its Decision and Order regarding Appellant's request for attorneys'
17 fees in the District Court action, Respondents' request for attorneys' fees in the
18 District Court's action, and Respondents' request for the District Court to vacate a
19 prior interim award of fees and costs to Appellant.³ The District Court heard all
20 three of these items on May 8, 2014 and took the matters under advisement. As is
21 evident in the Decision and Order, the District Court: (1) denied both Appellant's
22
23
24

25 ¹ See the Judgment, attached as Exhibit "1" to Cashman's Response to Order to
26 Show Cause filed with this Court on August 25, 2014.

27 ² See these judgments, attached as Exhibits "2" through "5" to Cashman's
28 Response to Order to Show Cause filed with this Court on August 25, 2014.

³ See a true and correct copy of the District Court's Decision and Order, attached
hereto as **Exhibit "A"**.

1 and Respondents' request for attorneys' fees; and (2) granted Respondents' request
2
3 to vacate the interim award of fees and costs to Appellant.⁴

4 DATED this 2 day of September, 2014.

5 **HOLLEY, DRIGGS, WALCH,**
6 **PUZEY & THOMPSON**

7
8 
9 BRIAN W. BOSCH, ESQ. (NBN 7612)
10 WILLIAM N. MILLER, ESQ. (NBN 11658)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

11 *Attorneys for Respondents West Edna, Ltd.,*
12 *dba Mojave Electric, Western Surety*
13 *Company, The Whiting Turner Contracting*
14 *Company and Fidelity and Deposit*
15 *Company of Maryland, Travelers Casualty*
16 *and Surety Company of America, QH Las*
17 *Vegas, LLC, PQ Las Vegas, LLC, LWTIC*
18 *Successor LLC, and FC/LW Vegas*
19 *Counterclaimant and Crossclaimant*

20
21
22
23
24
25
26
27
28 ⁴ *See id.*


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COMPLIANCE

I hereby certify that **Respondents' Reply to Cashman Equipment Company's Response to Order to Show Cause** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this Reply has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Times New Roman type style. I hereby further certify that I have read this Reply and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify this Reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the Reply regarding matters in the record to be supported by a reference to the page of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2 day of September, 2014.

**HOLLEY, DRIGGS, WALCH,
PUZEY & THOMPSON**


BRIAN W. BOSCH, ESQ. (NBN 7612)
WILLIAM N. MILLER, ESQ. (NBN 11658)
*Attorneys for Respondents West Edna, Ltd.,
dba Mojave Electric, Western Surety
Company, The Whiting Turner Contracting
Company and Fidelity and Deposit
Company of Maryland, Travelers Casualty
and Surety Company of America, QH Las
Vegas, LLC, PQ Las Vegas, LLC, LWTIC
Successor LLC, and FC/LW Vegas*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

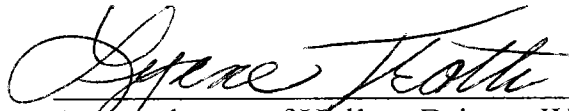
I hereby certify that I am an employee of Holley, Driggs, Walch, Puzey & Thompson, and that on the 24 day of September, 2014, I caused to be served a true and correct copy of **Respondents' Reply to Cashman Equipment Company's Response to Order to Show Cause**

in the following manner:

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

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

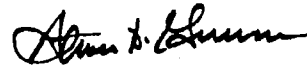
Jennifer R. Lloyd, Esq.
PEZZILLO LLOYD
6725 Via Austi Pkwy, Suite 290
Las Vegas, Nevada 89119
Attorneys for Appellant, Cashman Equipment Company



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

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 *****

6
7 CASHMAN EQUIPMENT
8 COMAPANY, a Nevada
corporation,

9 Plaintiff,

10 vs.

CASE NO.: A-11-642583-C

DEPT. NO. 32

11 CAM CONSULTING INC., a
12 Nevada corporation; ANGELO
13 CARVALHO, an individual; JANEL
14 RENNIE aka JANEL CARVALHO,
an individual; WEST EDNA
15 ASSOCIATES, LTD., dba MOJAVE
ELECTRIC, a Nevada corporation;
16 WESTERN SURETY COMPANY, a
surety; THE WHITING TURNER
17 CONTRACTING COMPANY, a
Maryland corporation; FIDELITY
18 AND DEPOSIT COMPANY OF
MARYLAND, a surety;
19 TRAVELERS CASUALTY AND
SURETY COMPANY OF
20 AMERICA, a surety; QH LAS
VEGAS LLC, a foreign limited
21 liability company; PQ LAS VEGAS,
LLC, a foreign limited liability
22 company; L W T I C SUCCESSOR
LLC, an unknown limited liability
23 company; FC/LW VEGAS, a foreign
24 limited liability company; DOES I -
10, inclusive; and ROE
CORPORATIONS I
- 10, inclusive;

Defendant.

RECEIVED

AUG 04 2014

CLERK OF THE COURT

DECISION AND ORDER

I. Findings of Fact

At the previous hearing on April 16, 2013, the Court granted Defendants' Motion to Expunge or Reduce Mechanics' Lien and the order denying the motion was filed on May 3, 2013. The Court found in a May 3, 2013 order that the Plaintiff's Notice of Lien for \$755,893.89 was not frivolous, was made with reasonable cause and the amount was not excessive. Based on our finding in the May 3, 2013 order, Plaintiff filed a Motion for Attorney Fees and Costs Pursuant to NRS 108.2275, which the Court granted on July 11, 2013. Plaintiff was awarded \$9,513.25 for attorneys' fees and \$651.91 in costs. The Order pursuant to that hearing was filed on September 20, 2013.

Subsequently, this case came on for a bench trial on January 24, 2014. During the trial Plaintiff filed an Amended Lien for \$683,726.89. After the commencement of the trial, this Court found in favor of the Defendants regarding the first, second and fourth causes of action. Further, the Court found in favor of the Plaintiff regarding the third and fifth causes of action. Accordingly, the court distributed the financial award based on equitable fault, finding Plaintiff 67% responsible and Defendant Mojave 33% responsible.

On March 20, 2014, Defendants/Counterclaimants filed a Motion for Relief Pursuant to NRCP 60(b) and a Motion for Attorneys' Fees and Costs Pursuant to NRS Chapter 108. The motion for relief requested that this court vacate the September 20, 2013 Order Granting Chashman Equipment Company's Motion for Award of Attorney's Fees and Costs Pursuant to NRS 108.2275. In response, Defendant filed its own countermotion for Attorneys' Fees on April 15, 2014 and the Court heard oral arguments on the various motions.

///

///

1 **II. Conclusions of Law**

2 a. Defendants' Motion for Relief Pursuant to NRCP 60(b)

3
4 First, Defendants argued that the July 11, 2013 order granting fees and costs
5 must be vacated because Defendant was the prevailing party and the Lien was
6 excessive and Plaintiff knew that at the time of the April 16, 2013 hearing. Under
7 NRS 108.2275, a Court may award attorneys' fees and costs if it is found that a
8 lien is not excessive. Under NRCP 60(b), relief from a judgment may be granted if
9 there is newly discovered evidence. Based on the evidence presented at the time of
10 the April 16, 2013 hearing, this Court concluded the \$755,893.89 lien by Plaintiff
11 was not excessive, but different evidence came to light at the trial due to the
12 Amended Lien for \$683,726.89. The relief granted at the April 16, 2013 hearing
13 was interim relief, not final relief. The combination of the reduction of the lien
14 before trial and the Court finding in favor of Defendant on the lien issue during
15 trial leads the court to grant NRCP 60(b) relief in this instance.

16
17 b. Defendants' Motion and Plaintiff's Countermotion for Fees and Costs

18
19 Next, Defendants filed a motion for fees and costs pursuant to the following
20 statutes: NRS 18.010, NRS 18.020, NRS 108.2275 and NRS 108.237(3).
21 Under NRS 18.010(2)(b), a court is allowed to award attorneys' fees "when the
22 court finds that the claim counterclaim, cross-claim or third-party complaint or
23 defense of the opposing party was brought or maintained without reasonable
24 ground or to harass the prevailing party." NRS 18.020 allows for a court to award
25 costs to the prevailing party in certain situations. NRS 108.2275 allows a court to
26 award costs and reasonable attorneys' fees if it is determined that a notice of lien is
27 excessive or frivolous. Lastly, NRS 180.237 gives the Court authority to award
28 fees and costs if a lien claim is not upheld and the lien was pursued without

1 reasonable basis. To counter these claims for fees and costs, Plaintiff filed a
2 countermotion for fees under NRS 104.9607, arguing they prevailed in the
3 enforcement of a security interest. This Court concludes that based on the outcome
4 of the trial, there is no obvious prevailing party and none of the claims at trial were
5 unreasonable. Therefore, an award for attorneys' fees and costs to either side based
6 on the outcome of the trial is not warranted.

7 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND
8 DECREED that Defendants' Motion for Relief Pursuant to NRCP 60(b) is
9 GRANTED. As such, the September 20, 2013 Order Granting Chashman
10 Equipment Company's Motion for Award of Attorney's Fees and Costs
11 Pursuant is VACATED, each side to bear their own costs and fees.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
13 Defendants' Motion for Attorneys' Fees and Costs is DENIED.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's
15 Countermotion for Attorneys' Fees is DENIED.

16
17 Dated this 1 day of August, 2014.

18
19 
20 Rob Bare
21 Judge, District Court, Department 32

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Brian Boschee, Esq.
Holley, Driggs, Walch, Puzey & Thompson
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Fax: (702) 791.1912
Email: bboschee@nevadafirm.com

Dated this 1st day of August, 2014.

Page 5 of 5