

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Appellant,

vs.

WEST EDNA ASSOCIATES, LTD., dba
MOJAVE ELECTRIC, a Nevada
corporation; WESTERN SURETY
COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY,
a Maryland corporation; FIDELITY AND
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; L W T I C
SUCCESSOR LLC, an unknown limited
liability company; FC/LW VEGAS, a
foreign limited liability company;

Respondents.

Case No: 66452

Case No: 61715

Case No: 65819 Electronically Filed
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District Court Case No.:

A642583

**APPELLANT CASHMAN
EQUIPMENT COMPANY'S
REPLY IN SUPPORT OF
MOTION TO STRIKE
RESPONDENTS'
ANSWERING BRIEF**

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1 Appellant, CASHMAN EQUIPMENT COMPANY (“Appellant” or
2 “Cashman”), by and through its counsel of record, HOWARD & HOWARD
3 ATTORNEYS PLLC, respectfully submits the following Reply in Support
4 of its Motion to Strike the Mojave Parties’ Answering Brief. This Reply is
5 based on the following memorandum of points and authorities and all papers
6 and pleadings on file herein.
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10 **I.**

11 **INTRODUCTION**

12 Cashman’s Motion to Strike the Mojave Parties’ Answering Brief
13 should be granted, as they acknowledge that they did not file an appeal the
14 judgment, or the denial of their motion for attorney’s fees. Despite this
15 failure, the Mojave Parties admit to raising new issues and arguments in
16 their brief that are not allowed by NRAP. *See* Opposition, p. 4, ln. 1-2.
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19 The Mojave Parties are limited to arguing in support of the judgment
20 entered because of their failure to file a notice of appeal or cross-appeal by
21 the Nevada Rules of Appellate Procedure (“NRAP”) and this Court’s prior
22 holdings. Their inclusion of claims not on appeal and arguments for reversal
23 of the judgment entered in favor of Cashman and seeking reversal of the
24 order denying their motion for attorney’s fees are offered in blatant disregard
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1 of NRAP. The Mojave Parties spend almost half of their Answering Brief
2 arguing as though they had appealed the judgment, when they did not.
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4 Cashman appealed because it asserts the court erred in denying full
5 recovery on certain claims, but that does not change that Cashman was the
6 prevailing party after trial. The Mojave Parties acknowledge they did not
7 appeal and were apparently satisfied with the outcome, however they then
8 proceeded to raise issues on claims not on appeal and include improper
9 arguments. *See* Opposition, p. 4, lns 1 - 2. The Mojave Parties were not
10 simply giving a full picture of the disposition below; rather, they were
11 including arguments and requesting relief as though they had appealed from
12 the judgment and the order denying attorney's fees.
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17 The Mojave Parties did not appeal and their assertion that Cashman's
18 notice of appeal means the Mojave Parties can raise any issue adjudicated by
19 the judgment or the order denying fees is without any basis. The Mojave
20 Parties' failure to appeal limits their response to arguing in favor of the
21 judgment rendered. They can offer alternative theories as to why the
22 judgment is correct as it stands, but they cannot, as they did, argue issues not
23 on appeal or to enlarge their rights or diminish Cashman's. Their disregard
24 of NRAP should be sanctioned by striking their Answering Brief.
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II.

ARGUMENT

Cashman's Motion to Strike their Answering Brief is based upon the Mojave Parties' flagrant disregard of NRAP by raising issues not on appeal and arguing for relief that would enlarge their rights and lessen Cashman's under the judgment. They have admitted to improperly including these arguments and then, despite this admission, attempt to find some justification for doing so. There simply is no justification. The Mojave Parties' try to obfuscate the basis for Cashman's motion because they acknowledge it does not comport with NRAP.

Cashman's request that the Mojave Parties' brief be stricken is appropriate in light of their disregard of NRAP. This Court has stated that all appeals are to be pursued with high standards of diligence, professionalism, and competence and the Court "may impose sanctions against appellate counsel for failing to comply with the [NRAP]." *Miller v. Wilfong*, 121 Nev. 619, 625, 119 P.3d 727, 731 (2005). The Court will not permit flagrant NRAP violations. *Id.* NRAP 28(j) provides further grounds for sanctions. "Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions against the offending lawyer." *Id.*

1 Here, the Mojave Parties admitted inclusion of irrelevant and improper
2 arguments and requests for relief in violation of NRAP.
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4 If it does not matter which party files a notice of appeal, as the
5 Mojave Parties argue, there would be no provision for the filing of a cross-
6 appeal. The Mojave Parties interpretation of NRAP procedure renders many
7 parts meaningless. For example, NRAP 4(a)(2) states that if “one party
8 timely files a notice of appeal, any other party may file and serve a notice of
9 appeal within 14 days after the date when the first notice was served...” If it
10 is sufficient that with one party’s appeal, all issues and claims are appealed,
11 there would be no need for NRAP 4(a)(2) and the ability to cross-appeal.
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15 The Mojave Parties incorrectly cite to NRAP 28 for the notion that as
16 respondents they can include any issues or claims they want. Again,
17 because they did not appeal, they are limited to the issues raised by
18 Cashman; they can reframe those issues, but they cannot, as they did, raise
19 new issues or claims on appeal. *See Sierra Creek Ranch, Inc. v. J.I. Case*,
20 97 Nev. 457, 634 P.2d 458 (1981); *Ford v. Showboat Operating Co.*, 110
21 Nev. 752, 877 P.2d 546 (1994).
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25 The Mojave Parties’ dissatisfaction with Cashman’s statement of the
26 issues is not the relevant inquiry as to what issues they are allowed to raise.
27 NRAP establishes the procedures to be followed on appeal. In order to raise
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1 their own issues or to seek to modify the judgment, the Mojave parties were
2 required to appeal. *See Ford*, 110 Nev. 752, 877 P.2d 546. They were not
3 simply trying to give this Court a full, accurate portrayal as they claim.
4 They were limited to the issues raised by Cashman on appeal by not
5 appealing the judgment.
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8 III.

9 CONCLUSION

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11 In conclusion, the Mojave Parties attempt to justify their disregard of
12 NRAP. Their brief raises new issues and seeks relief only allowed when a
13 party files an appeal. As they did not file an appeal from the judgment, the
14 Answering Brief must be stricken.¹
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16 DATED: Oct. 9, 2015

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27 ¹Cashman did request an extension due to a scheduling conflict. Cashman sought
28 a stay due to the Mojave Parties' violation of NRAP. Respondents also requested
and received a 30-day extension to file their Answering Brief.

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