

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS
REALTY, LLC, A NEVADA LIMITED
LIABILITY COMPANY; MIC
Respondents/Cross-Appellants.

THE FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

Supreme Court No. 69399

District Court Case No. A689113

Electronically Filed
Mar 29 2017 11:15 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 70478

**RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF IN SUPPORT
OF CROSS-APPEAL**

Respectfully submitted by:

J. Randall Jones, Esq. (NV #1927)

Spencer H. Gunnerson, Esq. (NV #8810)

Matthew S. Carter, Esq. (NV #9524)

Kemp, Jones & Coulthard, LLP

3800 Howard Hughes Parkway

Seventeenth Floor

Las Vegas, Nevada 89169

Telephone: (702) 385-6000 / Fax: (702) 385-6001

Attorneys for Respondent/Cross-Appellants

TABLE OF CONTENTS

I.	ARGUMENT	1
A.	The Trust’s sole argument against the cross-appeal is incorrect, because MacDonald did ask the district court for post-judgment interest.	1
B.	Nevada law provides that post-judgment interest was required to be added to the judgment in favor of MacDonald.	3
II.	CONCLUSION	4

TABLE OF AUTHORITIES

CASES

<i>RTTC Commc'ns, LLC v. Saratoga Flier, Inc.</i> , 110 P.3d 24 (Nev. 2005)	3
<i>Uniroyal Goodrich Tire Co. v. Mercer</i> , 890 P.2d 785 (Nev. 1995)	1, 3

STATUTES

NRS § 17.130	2, 4
NRS § 17.130(2)	1
NRS § 18.120	3

RULE 26.1 DISCLOSURE

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

Respondents MacDonald Highlands Realty, LLC, FHP Ventures, LP, and Michael Doiron (collectively referred to herein as “MacDonald”) are all represented in this action by Kemp, Jones, & Coulthard, LLP. MacDonald Highlands Realty, LLC is a Nevada Limited Liability company. FHP Ventures, LP, is a Nevada limited partnership. No publicly-held company owns 10% or more of either MacDonald Highlands, LLC or FHP Ventures, LP. Michael Doiron is an individual currently residing in Nevada.

Dated this 29th day of March, 2017.

KEMP, JONES, & COULTHARD, LLP



J. Randall Jones, Esq. (NV #1927)
Spencer H. Gunnerson, Esq. (NV #8810)
Matthew S. Carter, Esq. (NV #9524)
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
Attorneys for Respondent/Cross-Appellants

I.

ARGUMENT

A. The Trust's sole argument against the cross-appeal is incorrect, because MacDonald did ask the district court for post-judgment interest.

Appellant/Cross-Respondent Frederic and Barbara Rosenberg Living Trust ("Trust") spent a single paragraph late in its final brief addressing the cross-appeal in this matter. *See* Appellant's Reply Brief and Answering Brief on Cross-Appeal, on file herein, at 34. The sole argument offered there is that Cross-Appellants (referred to collectively herein as "MacDonald") waived their request for post-judgment interest because they "never asked for it" from the district court. *See id.*

As MacDonald already highlighted in its prior brief on this issue, the Trust is mistaken. In MacDonald's motion for attorney fees and costs, starting in the Joint Appendix at 12:2527, MacDonald made the following argument regarding post-judgment interest:

D. Moving Defendants are also entitled to an award of post-judgment interest.

NRS 17.130(2) provides that interest on a judgment will continue to accrue until it has been satisfied. According to the Nevada Supreme Court, losing parties are obligated to pay post-judgment interest on a judgment. *See Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 890 P.2d 785 (1995). Therefore, the award of

post-judgment interest should be applied to the total amount of the fees and costs awarded.

Pursuant to NRS 17.130, then, Moving Defendants respectfully request that an Amended Judgment for costs and fees be entered which specifically states that “such Amended Judgment shall continue to accrue post-judgment interest, calculated at the prime rate plus two percent (2%), until such time as the debt is completely satisfied.”

JA 12:2536 (heading and emphasis original). As the Court is further aware from the record, the district court did not grant this part of MacDonald’s request. *See* JA 13:2775-77. The situation is therefore as follows:

- (1) the record reflects MacDonald’s request for post-judgment interest;
- (2) the district court did not award post-judgment interest;
- (3) MacDonald cross-appealed on this basis; and
- (4) the Trust’s only argument in response is that MacDonald did not ask for post-judgment interest, when the record clearly indicates that it did.

The sole argument offered by the Trust on the cross-appeal, then, is demonstrably incorrect.

B. Nevada law provides that post-judgment interest was required to be added to the judgment in favor of MacDonald.

With the Trust's sole argument against the cross-appeal put to rest by MacDonald's direct citation to the record, there is no reason for this Court not to grant the relief requested by the instant cross-appeal as argued by MacDonald in its previous brief on the subject. Nevada law makes the issue before the Court even plainer, as it does not allow for discretion by the district court regarding post-judgment interest:

The clerk shall include in the judgment entered up by the clerk any interest on the verdict or judgment of the court or master, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained . . .

NEV. REV. STAT. ANN. § 18.120 (West) (emphasis added). *See also Mercer, supra*, 890 P.2d at 790 (recognizing that NRS § 18.120 "requires post-judgment interest on the court's judgment").¹ The district court therefore should have included post-judgment interest in its award to MacDonald, and there is no other authority, factual or legal, before this Court indicating any other conclusion.

¹ *Superseded by statute on other grounds as recognized in RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 110 P.3d 24, 29, fn. 20 (Nev. 2005).

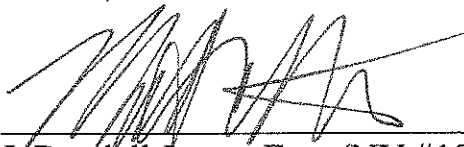
II.

CONCLUSION

Accordingly, and for all the foregoing reasons, MacDonald asks on its cross-appeal that the award of fees and costs be upheld, with a partial reversal and remand instructing the district court to issue an amended judgment explicitly providing that MacDonald's fee and cost award include post-judgment interest pursuant to NRS § 17.130.

Dated this 29th day of March, 2017.

KEMP, JONES & COULTHARD, LLP



J. Randall Jones, Esq. (NV #1927)

Spencer H. Gunnerson, Esq. (NV #8810)

Matthew S. Carter, Esq. (NV #9524)

3800 Howard Hughes Parkway

Seventeenth Floor

Las Vegas, Nevada 89169

Attorneys for Respondent/Cross-Appellants

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the type-face requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman, 14 point.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 28.1(e)(2)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 628 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or 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 brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of March, 2017.

KEMP, JONES & COULTHARD, LLP

A handwritten signature in black ink, appearing to be 'J. Randall Jones', written over a horizontal line.

J. Randall Jones, Esq. (NV #1927)

Spencer H. Gunnerson, Esq. (NV #8810)

Matthew S. Carter, Esq. (NV #9524)

3800 Howard Hughes Parkway

Seventeenth Floor

Las Vegas, Nevada 89169

Attorneys for Respondent/Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March, 2017, the foregoing
**RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF IN SUPPORT
OF CROSS-APPEAL** was served via this Court's electronic e-filing system to all
parties listed on the service list.

/s/ Pamela Montgomery
An employee of Kemp, Jones & Coulthard, LLP