

IN THE SUPREME COURT OF THE STATE OF NEVADA

145 EAST HARMON II TRUST,
ANTHONY TAN AS TRUSTEE OF
THE 145 EAST HARMON II
TRUST,

Appellants,

vs.

THE RESIDENCES AT MGM
GRAND – TOWER A OWNERS’
ASSOCIATION,

Respondent.

Electronically Filed
Apr 08 2019 03:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 75920

**APPELLANTS’ RESPONSE TO RESPONDENT’S SECOND REQUEST
FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF**

Appellants 145 East Harmon II Trust and Anthony Tan as Trustee of the 145 East Harmon II Trust (collectively, the “Trust”) timely submitted their opening brief on January 29, 2019. Respondent The Residences at MGM Grand – Tower A Owners’ Association’s (the “Association”) Answering Brief was due on March 1, 2019. The day that its brief was due, the Association moved for an extension, its counsel asserting that it was needed for two reasons: (i) he was on an “extended vacation;” and (ii) through his “inadvertence and oversight,” he did not review the transcripts that were put at issue in this appeal months prior, and as a result only determined at the last minute that he needed to belatedly request an additional

transcript. (Association's March 1, 2019 Request for Extension at 1–2.) The Court granted the Association's request for a 30-day extension until April 1, 2019.

The Association now requests another 30-day extension. While the Trust regrets the reasons for the extension, as set forth in the declaration of the Trust's counsel below, the Trust does not understand why the extension is necessary. First, the Association elected to ignore this appeal while persistently expending efforts to enforce the order that is the subject of it. Indeed, the Association's counsel prepared and filed a legal brief and presented oral arguments against the Trust in the days prior to the date its brief was due in this appeal. Second, the Association demanded that the Trust post a bond for \$11,000 for the Association to stay its enforcement of the judgment until the end of this appeal. The Trust must therefore continue to suffer the Association's judgment enforcement efforts or else tie up funds through the end of this appeal. As a result, while the Association has given this appeal a low priority, the Trust has been and continues to be harmed by delay. Third, the exhibits with the Association's motion show that this is not a new issue and it is unclear why this could not be planned for earlier.

While the Trust is sympathetic to the Association's counsel's reasons for a further extension, the Trust notes that it seeks a resolution to this appeal as soon as possible and defers to this Court as to the Association's instant motion.

DECLARATION OF DAVID J. KAPLAN, ESQ.

I represent the Trust as counsel of record in this matter.

At approximately 3:15 p.m. in the afternoon on April 1, 2019 – the day its answering brief was due – the Association’s counsel called me to request a second 30-day extension. Counsel stated that the extension was for medical reasons.

Most importantly, I expressed and reiterate condolences for any personal issues that the Association’s counsel is going through.

However, I was surprised by the Association’s request given that it was made only hours before the Association’s brief was due, and particularly in view of the other recent actions of the Association’s counsel. For example, during this appeal, the Association’s counsel has expended significant efforts to enforce the order that the Trust is appealing. Those efforts led to the initiation of another lawsuit, Case No. A-19-786816-C in the Eighth Judicial District Court in Las Vegas, Nevada (“the District Court Case”), that has ensnared two other parties that were not previously part of this case.

Moreover, in the District Court Case, the Association, a named defendant, took the unusual step of opposing a motion to dismiss by the Trust, another named defendant, seemingly as retribution. As part of these efforts, the Association’s counsel prepared a 7-page legal brief with over 80 pages of exhibits, and appeared at oral argument to contest the Trust’s motion to dismiss. The Association’s

counsel appeared and presented arguments against the Trust at a hearing on the Trust's motion to dismiss on March 26, 2019. The Trust nevertheless prevailed on its motion.

At the same time, the Association has refused to stay its judgment enforcement efforts unless the Trust posts \$11,000 with the District Court (more than the amount currently due, including post-judgment interest).

Moreover, given that the Association's counsel is part of a law firm, and the instant appeal presents a straight forward legal issue, it is unclear why this matter could not have been timely handled by another member of the firm.

The Trust therefore has an interest in getting this appeal resolved as soon as possible. In contrast, it appears that this appeal is a low priority for the Association.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: April 8, 2019

/s/ David J. Kaplan

DAVID J. KAPLAN (Bar No. 14022)
5538 S. Eastern Avenue
Las Vegas, Nevada 89119
Telephone: (702) 948-9770 ext. 2020
Email: djkaplan5@gmail.com

Attorney for Appellants 145 EAST
HARMON II TRUST and ANTHONY TAN
AS TRUSTEE OF THE 145 EAST
HARMON II TRUST

CERTIFICATE OF SERVICE

I hereby certify that on this date **APPELLANTS' OPENING BRIEF** was filed electronically with the clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list on:

Brent A. Larsen, counsel for Respondent

Luis A. Ayon, counsel for Appellants

DATED: April 8, 2019

/s/ David J. Kaplan