

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 27 2020 03:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 75920

**APPELLANTS’ REPLY IN SUPPORT OF THEIR OBJECTION TO
RESPONDENT’S BILL OF COSTS**

On April 22, 2020, Appellants 145 East Harmon II Trust and Anthony Tan as Trustee of the 145 East Harmon II Trust (collectively, the “Trust”) timely objected to the bill of costs filed by Respondent The Residences at MGM Grand – Tower A Owners’ Association’s (the “Association”). While NRAP 39 does not permit a response to objections, the Association nevertheless filed one (misabeled as a “reply”) on April 24, 2020. The Trust submits that if the Association’s response is permissible, then this must be because the Trust’s Objections are

appropriately treated as a motion.¹ As a result, if the Association’s response is accepted, the Trust should be permitted to reply.

In its memorandum of costs, the Association did not explain the reason why its copying costs for three copies of its own brief and appendix were necessary. Now, in its response to the Trust’s objection, the Association confirms that its copying costs were in fact not necessary; incurred for the Association’s convenience. Such a cost is not taxable pursuant to NRAP 39, which is narrowly tailored to *necessary* copying costs. If there were any doubt about the scope of allowable copying costs, the “necessary copies” language of NRAP 39(c)(1), mirrors Fed. R. App. P. 39(c), which the U.S. Court of Appeals for the Ninth Circuit has explained allow a party to tax only one copy of a filed brief that is not submitted or served, and zero copies of an appendix. *See* Ninth Circuit Rule 39-1.1. The Ninth Circuit also permits a maximum charge of \$0.10 per copied page. *See* Ninth Circuit Rule 39-1.3.

Here, Respondent apparently made three copies of its own brief *and appendix* after filing it for its own convenience, and seeks to charge a rate (\$0.25) that at least the Ninth Circuit deems unnecessarily high for this area.

¹ Indeed, NRS 18.110(4) treats objections to costs as an affirmative motion, to which presumably normal motion practice is applied.

The Association's allowable costs should be reduced to a single copy of its 53-page brief at \$0.10 per page, or a total of \$5.30.

DATED: April 27, 2020

/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' REPLY IN SUPPORT OF THEIR OBJECTION TO RESPONDENT'S BILL OF COSTS** 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 27, 2020

/s/ David J. Kaplan