

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND A CAB SERIES,
LLC,

Appellants,

v.

MICHAEL MURRAY; AND
MICHAEL RENO, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Respondents.

) Supreme Court No. 77050

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**APPENDIX TO
APPELLANTS OPENING BRIEF
VOLUME LII of LII**

Appeal from the Eighth Judicial District Court
Case No. A-12-669926-C

HUTCHISON & STEFFEN, PLLC

Michael K. Wall (2098)
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23	Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding Statue of Limitations, filed 08/28/2015	IV	AA000600-AA000650
172	Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018	XLVI	AA009289-AA009297
8	Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's February 8, 2013 Order Denying Defendants' Motion to Dismiss, filed 03/18/2013	I	AA000181-AA000187
154	Plaintiffs' Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OST and Counter-Motion for Appropriate Judgment Enforcement Relief, filed 09/24/2018	XLIV	AA008919-AA008994
109	Plaintiffs' Response to Defendants' Motion in Limine to Exclude Expert Testimony, filed 01/12/2018	XXX, XXXI	AA006002-AA006117
184	Plaintiffs' Response to Special Master's	XLVII	AA009665-

	Motion for an Order for Payment of Fees and Contempt, filed 11/26/2018		AA009667
115	Plaintiffs' Supplement in Connection with Appointment of Special Master, filed 01/31/2018	XXXII	AA006239-AA006331
144	Plaintiffs' Supplement in Reply and In Support of Entry of Final Judgment Per Hearing Held June 5, 2018, filed 07/13/2018	XLI, XLII	AA008416-AA008505
146	Plaintiffs' Supplement in Reply to Defendants' Supplement Dated July 18, 2018, filed 08/03/2018	XLII	AA008576-AA008675
107	Plaintiffs' Supplement in Support of Motion for Partial Summary Judgment, filed 01/09/2018	XXX	AA005833-AA005966
75	Plaintiffs' Supplement to Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/23/2017	XX	AA003847-AA003888
156	Plaintiffs' Supplemental Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OSt, filed 09/27/2018	XLIV	AA009009-AA009029
46	Reply in Support of Defendants' Motion for Reconsideration, filed 03/24/2016	VII, VIII	AA001237-AA001416
170	Reply in Support of Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 10/16/2018	XLV	AA009272-AA009277
58	Reply in Support of Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statue of Limitation and Opposition to Counter Motion for Toll of Statue of Limitations and for an Evidentiary Hearing, filed 12/28/2016	XI	AA002179-AA002189

111	Reply in Support of Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts, filed 01/19/2018	XXXI	AA006180-AA001695
178	Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/05/2018	XLVII	AA009553-AA009578
187	Resolution Economics' Reply to Defendants' Opposition and Plaintiffs' Response to its Application for an Order of Payment of Special Master's Fees and Motion for Contempt, filed 12/03/2018	XLVII	AA009690-AA009696
100	Response in Opposition to Defendant's Motion for Summary Judgment, filed 12/14/2017	XXVII, XXVIII	AA005372-AA005450
31	Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/28/2015	V	AA000807-AA000862
3	Response in Opposition to Defendants' Motion to Dismiss, filed 12/06/2012	I	AA000016-AA000059
33	Response in Opposition to Defendants' Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 10/08/2015	V	AA000870-AA000880
34	Response in Opposition to Defendants' Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 10/08/2015	V	AA000881-AA000911
212	Second Amended Notice of Appeal, filed 03/06/2019	L	AA010285-AA010288
22	Second Amended Supplemental Complaint, filed 08/19/2015	III	AA000582-AA000599
130	Second Supplemental Declaration of Class Counsel, Leon Greenberg, Esq., filed	XXXIV	AA007015-AA007064

	05/18/2018		
213	Special Master Resolution Economics' Opposition to Defendants Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master's Fees and Order of Contempt, filed 03/28/2019	LI	AA010289-AA010378
78	Supplement to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 05/24/2017	XXI	AA004024-AA004048
79	Supplement to Defendants' Opposition to Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady From Liability of Corporate Defendants or Alternative Relief, filed 05/31/2017	XXI	AA004049-AA004142
72	Supplement to Order For Injunction Filed on February 16, 2017, filed 02/17/2017	XIX	AA003777-AA003780
129	Supplemental Declaration of Class Counsel, Leon Greenberg, Esq., filed 05/16/2018	XXXIV	AA006981-AA007014
38	Transcript of Proceedings, November 3, 2015	VI	AA001002-AA001170
66	Transcript of Proceedings, February 8, 2017	XVII	AA003549-AA003567
70	Transcript of Proceedings, February 14, 2017	XIX	AA003755-AA003774
77	Transcript of Proceedings, May 18, 2017	XX, XXI	AA003893-AA004023
83	Transcript of Proceedings, June 13, 2017	XXII	AA004223-AA004244
101	Transcript of Proceedings, December 14, 2017	XXVIII	AA005451-AA005509

105	Transcript of Proceedings, January 2, 2018	XXIV	AA005720- AA005782
114	Transcript of Proceedings, January 25, 2018	XXXI	AA006203- AA006238
117	Transcript of Proceedings, February 2, 2018	XXXII	AA006335- AA006355
122	Transcript of Proceedings, February 15, 2018	XXXII, XXXIII	AA006427- AA006457
137	Transcript of Proceedings, filed July 12, 2018	XXXVI, XXXVII	AA007385- AA007456
215	Transcript of Proceedings, September 26, 2018	LI	AA010385- AA010452
216	Transcript of Proceedings, September 28, 2018	LI, LII	AA010453- AA010519
175	Transcript of Proceedings, October 22, 2018	XLVI	AA009304- AA009400
189	Transcript of Proceedings, December 4, 2018	XLVIII	AA009701- AA009782
190	Transcript of Proceedings, December 11, 2018	XLVIII	AA009783- AA009800
192	Transcript of Proceedings, December 13, 2018	XLVIII	AA009813- AA009864

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO APPELLANTS OPENING BRIEF VOLUME LII of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 MS. DOVE: I don't have those transactions with me today or specific
2 knowledge of them. I am aware that there are daily trans-- my understanding is that
3 there are daily transfers between these accounts. And I could be incorrect, but that
4 the money goes into one and then there's transfers to other accounts on a daily
5 basis.

6 THE COURT: You heard his explanation of the meter --

7 MS. DOVE: Yes, I did.

8 THE COURT: -- that the meter is -- kind of is programmed, apparently, to
9 do this kind of divvying out of how much or what percentage goes to each of these
10 entities?

11 MS. DOVE: Yes. I mean, all I know at this point is that the transfers
12 between accounts are directed by the customer, is my understanding, and it's not
13 something that's just set up with the bank.

14 THE COURT: Do you know if that customer is Mr. Nady?

15 MS. DOVE: I don't know the person who -- the individual who gives the
16 instruction. I could find that out if Your Honor needs any more information --

17 THE COURT: No, I think that's --

18 MS. DOVE: -- to make your decision. That's part of why we're here, so
19 we can accommodate any requests for additional information. But I don't have the
20 details of nitty-gritty, so to speak.

21 THE COURT: All right. Thank you very much.

22 MS. DOVE: Thanks.

23 THE COURT: All right. Have you got anything to say, Mr. Greenberg, in
24 the two minutes remaining here?

1 MR. GREENBERG: Your Honor, there's quite a bit I could say. Your Honor
2 has talked about a great number of issues. You've obviously looked at the situation
3 very carefully and I appreciate that. What I hear from Your Honor is you reaching a
4 conclusion, as I understand it, that there is some not legitimate or not regular sort of
5 relationship here where fraud was used, Your Honor, a fraudulent sort of situation,
6 and based on that it's my understanding you're not going to grant the motion. I'm
7 not quite sure where you would go further at that point, Your Honor.

8 THE COURT: Well, let me clarify one thing. I have not said that this was
9 fraudulent activity. I have said that if I don't interpret this statute, and again, that's
10 86.141, as having some to do with the imperative placed upon A Cab LLC, which is
11 what it was known as, which is what it was, apparently, until 2017, some imperative
12 to give notice to, I don't know, the public or somehow to give notice that -- in this
13 instance that A Cab LLC was not the employer of these people. Otherwise, it would
14 appear to be concealing a business activity and it's only a short step from there
15 to arguing that it must have been done with fraudulent intent. Presumably the
16 fraudulent intent would simply be with the intent of avoiding legal process, execution
17 on a judgment, and avoiding any liability for the actions orchestrated and set out
18 and undertaken by Mr. Nady and A Cab LLC.

19 So I don't say that it was fraudulent, done with fraudulent intent, but
20 I do -- it does appear to me that if we do not at least apply this statute to what was,
21 as far as anybody including -- you know, anybody in the state knew until last year was
22 A Cab LLC. And I don't think that the Legislature intended to allow a series LLC to
23 be set up in the fashion that this was, again with the fact that there was no notice to
24 anybody, even in the name of the entity, until last year. I don't think the Legislature

1 intended to allow them to do that to escape liability under a constitutionally mandated
2 requirement to pay the minimum wage.

3 MR. GREENBERG: Your Honor, I would agree that that is absolutely
4 correct. What I was just going to state to bring us back to the narrow issue before
5 the Court concerning these particular assets that were attached, as I advised the
6 Court in my brief filed yesterday, the tying fact for all of these assets is their
7 identification under this EIN number.

8 THE COURT: Uh-huh.

9 MR. GREENBERG: And Your Honor has talked a lot about this question
10 of public notice and how the employees would know who the employer was, and
11 as I tried to explain to the Court in the submission I gave the Court yesterday, it is
12 not possible for anyone but the judgment debtor here, A Cab LLC, to have funds
13 identified with that Employee ID number, that EIN number that in turn are being
14 used to pay employees or operate a business because none of these LLCs, none of
15 these series LLCs have an EIN number. They couldn't possibly issue a W-2. For
16 example, the operating agreement you were referring to, Your Honor, it talks about
17 A Cab Employee Leasing Company having the purpose of hiring as W-2 employees.
18 They can't do that, Your Honor, because they don't have an EIN number. They use
19 the judgment debtor, the master's EIN number. The W-2s that I've introduced in
20 the court have the judgment debtor, A Cab LLC's name on them, along with that
21 EIN number.

22 So my point -- and again, Your Honor, what I'm just trying to clarify
23 with the Court is how far the Court wishes to go in dealing with the issues before the
24 Court at this point. I want to be respectful of the Court's due diligence here. You've

1 deliberated a lot on this and I appreciate that. I've limited my request to the Court,
2 as we were here on Wednesday, to simply maintain the status quo of keeping these
3 funds preserved and not granting the motion. And to the extent the Court is going
4 to make a determination as to, you know, these claims that these funds are not
5 properly subject to the judgment, let us develop a full record and let the Court reach
6 a further determination in the future. I don't know if the Court wants to go beyond
7 that today. That was my request on Wednesday and that's --

8 THE COURT: Are you speaking of a fuller determination as to the defense
9 motion to strike the -- was it strike or quash or what was it?

10 MR. SHAFER: Quash.

11 THE COURT: Quash.

12 MR. GREENBERG: I mean, in terms of the motion to quash, I think it
13 needs to be denied. In terms of the further implication of that denial, that's up to
14 the Court. The Court may not be making a determination at this time in terms of the
15 merits of the ownership of these funds, whether these funds are or are not in fact
16 subject to the judgment. I mean, the Court can make a more limited finding and
17 simply say, for the reasons Your Honor was discussing of what's before the Court,
18 there's certainly ample reason to keep these funds in escrow. It could be with the
19 bank, they could be placed in my IOLTA account pending a fuller determination,
20 a full record if the defendants insist that these are not in fact properly subject to
21 the judgment.

22 As I pointed out on Wednesday, Your Honor, we don't even have the
23 alleged possessors of these funds before the Court. These six series LLCs have
24 not intervened and appeared. We discussed this on Wednesday. In fact, the

1 documents before the Court, Your Honor, don't even establish that these series
2 LLCs exist. I mean, the operating agreement you were provided with, Your Honor,
3 if you look on page 2 where there's signatures, there is no signature or indication
4 of execution by the master, A Cab LLC. It is A Cab LLC, the registered agent, that
5 has the authority to create these series LLCs. They're not a party to this. They
6 didn't sign it. Assuming this document even is legitimate. I have serious questions
7 as to the legitimacy of the document in the first place, Your Honor. And in addition,
8 there's nothing in this -- this is not even an operating agreement because an
9 operating agreement would command the operations, the internal operations,
10 essentially like the corporate bylaws of the individual series, Employee Leasing
11 Company II, for example. This doesn't do that.

12 THE COURT: Who does -- normally who are the parties to an operating
13 agreement?

14 MR. GREENBERG: Well, the Nevada statute actually states that an LLC,
15 a series LLC, does not have to have an operating agreement and this has been
16 upheld in the case law. The question, though, in this case is, as we were discussing
17 on Wednesday, for this limitation of liability protection of assets to exist for a series
18 or a series of the master there must be a provision for that protection in a written
19 operating agreement or in the articles of incorporation for the master. And we
20 discussed this on Wednesday. And all the master says, Article 2 of the public
21 document which I think we were looking at earlier, it just simply says that A Cab LLC
22 may establish these series LLCs with these limitations on liability. It does not state
23 that if they are so established they have that limitation on liability.

24 And when you look at the operating agreement themselves, Your

1 Honor, all it does at the end of the operating agreement is parrot the language of
2 the statute. And I think Your Honor sort of understood this, it doesn't actually state
3 in those -- again, I don't see these are really operating agreements, these are
4 presumably contracts between two supposedly independent entities. It just parrots
5 the language of the statute. It doesn't actually identify any particular series LLC
6 that's placing its assets in this protective mode or any particular assets. And it says
7 nothing about those assets, whatever assets referring to, being insulated from the
8 liabilities of the company generally. It says the reverse. It says that the liabilities
9 of this series, of a series, a sub is not subject to being satisfied from the company
10 generally. It doesn't say anything about the reverse, Your Honor.

11 We had this discussion on Wednesday when I was pointing out to the
12 Court that the statute itself did not specifically authorize that sort of subsidiary or
13 lower level shield from the general's, you know, the creating entity's liabilities. But
14 assuming it was possible, there's nothing here actually confirming that this was ever
15 done.

16 So, Your Honor, there simply is nothing before this Court either
17 establishing the existence of these series LLCs, establishing that they complied
18 with the statutory requirements to enjoy this protection of their assets, assuming
19 that's even available. I do not see that the statute even authorizes that. But even
20 assuming the statute did authorize them to be immune from a judgment against
21 the general, against the master, it's not in anything before the Court. And the
22 requirements are also under the statute that they have to maintain regular books
23 and records. There are no business licenses for any of these operating entities.
24 They need to have a business license.

1 So, I mean, Your Honor's concerns are well placed. What I'm trying
2 to get to here is there was discussion about how the State of Nevada allows this.
3 Well, okay, let's just assume their interpretation of what the State allows under the
4 statute was correct. I disagree. But assuming it was, they need to comply with the
5 law. The law should be strictly construed here in terms of what they need to comply
6 with to enjoy these protections under the statute. So they need to comply. I mean,
7 there was a discussion about the defendants -- their complying with the statute
8 as written. They haven't complied with the statute as written, at least not on this
9 record, Your Honor. So --

10 THE COURT: What would it take to do that, to comply with the statute as
11 written? What is this missing here?

12 MR. GREENBERG: Well, they need to have an operating agreement for
13 each of these series LLCs if they're going to enjoy this asset immunity, and the
14 operating agreement --

15 THE COURT: And that operating agreement would be between whom?

16 MR. GREENBERG: It would be created to govern the internal operations
17 of each individual LLC. That's what the operating agreement is. They don't have
18 to have --

19 THE COURT: Well, who's -- if it's an agreement, you've got at least two
20 people who are agreeing to something.

21 MR. GREENBERG: Well, an operating --

22 THE COURT: So who are the parties to one that if it complied with the
23 statute?

24 MR. GREENBERG: If you look -- we were looking at the statute, Your

1 Honor, which is -- I think you had it in front of you. It's at Exhibit C of my response
2 that was filed on Monday, although it was also attached by defendants. In Article 1
3 it says -- this section 1 of the statute, "The articles of organization or operating
4 agreement" -- I'm sorry, I'm giving Your Honor the incorrect reference here. The
5 reference is at 86.286. I was just referring you to 296.

6 THE COURT: Okay.

7 MR. GREENBERG: I'm reading it off of my computer here. At 86.286
8 there's a section that says Operating Agreement. "A limited liability company may
9 but is not required to adopt an operating agreement." So it is the company that
10 adopts the operating agreement for its operations. "An operating agreement may be
11 adopted only by the unanimous vote or unanimous written consent of the members,
12 which may be in any tangible or electronic format or by the sole member." So it
13 needs to be -- an operating agreement, if it's going to exist -- it doesn't have to
14 have one, but if it's going to exist it has to exist in some written form. It could be in
15 electronic form, it could be in paper.

16 THE COURT: If it doesn't have an operating agreement to create this
17 separate entity, what else could they do to create it?

18 MR. GREENBERG: Well, that's a good question, Your Honor. It's not
19 clear from the statute what would constitute the creation of the entity. I would
20 submit they would have to have some sort of memorialization in writing to create
21 the entity. I don't believe that's addressed in the statute. But the reason why the
22 operating agreement is critical in the circumstances we're dealing with here, and
23 this was again discussed on Wednesday and this is in the language of 296, which
24 we've gone over a number of times, which is to enjoy the limitations of liability of

1 the assets, the asset protection, it must be provided in the operating agreement or
2 in the certificate of organization filed with the Secretary of State. There is nothing
3 in the record here meeting that requirement.

4 THE COURT: So you're saying this language in paragraph 9 of this
5 operating agreement does not do so?

6 MR. GREENBERG: Well, it says it has separate powers, rights or duties
7 in respect to specified property or obligations to the company. What property or
8 obligations of the company? It doesn't tell us. I mean, and then it goes on in
9 paragraph 10, it says, "Debts, liabilities, obligations and expenses incurred with
10 respect to a series." It doesn't say this series, it just says a series. Again, it is
11 simply reciting the language, okay. But even if it said this series, meaning -- well,
12 you've got two different series identified here, too. Again, this is actually a contract
13 allegedly between these two series groups. "Are only enforceable against the
14 assets of that series and not against the company generally," the master. It doesn't
15 say anything about the series liability for judgment against the master, which is our
16 situation here, okay.

17 And again, it recites the statute about separate and distinct records
18 must be held and so forth and so on. We don't have any proof that they're separate
19 and distinct records. In fact, we have proof that they didn't have proper records
20 because they didn't have proper licenses to be conducting businesses. All of these
21 entities should have business licenses. They're not even before this Court because
22 they haven't appeared.

23 My point, Your Honor, is just because you spent a lot of time on this
24 and there's a lot more I could discuss about the issues you raised. There's, you

1 know, quite a few other things. But to bring us to the immediate issue that brought
2 us here is the status of these funds. And if the Court has agreed to take the limited
3 approach that I was requesting of the Court, which is simply to deny this motion but
4 not necessarily make any final determination as to the status of the interest in this
5 property, then I understand and I think that is clearly the correct decision to be
6 made. You know, Your Honor had talked about its concern with there being
7 irregularities. And as I tried to stress to the Court, it's not about making a final
8 determination, it's about what's before the Court, the indicia that there's reason to
9 believe that these funds are properly attached under the circumstances, whether
10 as counsel for the defendant was saying it would be through the form of some sort
11 of writ of attachment, through a constructive trust, through some sort of equitable
12 order.

13 The Court has certified this class for equitable relief, as the Court is
14 aware. I mean, we have an alter ego claim pending against Mr. Nady that's stayed
15 for the moment, okay. And so presumably these assets could be reached on that
16 claim, even if -- a judgment on that claim even if not to be reached on a judgment
17 on the existing claim. I'd also like to point out --

18 THE COURT: But that would only be if you do alter ego and pierce the --
19 whatever veils we have here at play and reach through to Mr. Nady. Is that correct?

20 MR. GREENBERG: Well, if we could. But what I wanted to point out to
21 the Court is Mr. Nady has apparently perjured himself in his deposition because
22 when he was asked at his deposition who are the members and owners of each of
23 those cells, who is it? It's me.

24 THE COURT: Yeah.

1 MR. GREENBERG: He says it's me. If you look at the operating agreement,
2 it's in fact the Laurie Nady Family Trust.

3 THE COURT: Yeah. Yeah.

4 MR. GREENBERG: So as I pointed out in my response --

5 THE COURT: I forgot that point. That raised concerns for me as well.

6 MR. GREENBERG: Well, it concerns me, Your Honor, okay, and I think
7 it has to have -- the Court have some serious questions about the veracity of all of
8 Mr. Nady's representations, which quite candidly the most extensive element of the
9 record we have here is his deposition testimony which I've given to the Court. And
10 as I pointed out to the Court in the response that you got yesterday afternoon, and
11 the Court I think understand this in terms of this question of there being some sort of
12 -- skullduggery was the term that was used by the defendants here, at his deposition
13 Mr. Nady testified that there have been three different Employee Leasing entities
14 used by the A Cab Taxi business since February of 2012 when they were authorized
15 to issue series until the date of his deposition which was a little over five years later
16 in June of 2017. When he was asked at his deposition why this was done, he
17 refused to answer. He invoked the attorney-client privilege, saying it's based upon
18 legal advice.

19 Now, this is not a criminal proceeding, Your Honor, this is a civil
20 proceeding. I believe given his conduct at his deposition, his testimony, there is
21 ample reason in this record to believe that there is something, there is skullduggery
22 going on here to, you know, use the terminology that was used by the defendants,
23 at least enough at this point to maintain the status quo, which is all I'm asking for
24 in respect to these assets.

1 The Court needs to make a clear, proper decision here on a full record
2 as it deems appropriate. As I said, you spent a lot of time on this. I'm taking up
3 too much of your time I feel, Your Honor, myself. I want to assist the Court. So I'm
4 asking the Court to just clarify what it's doing today, where it wants us to go. I know
5 Your Honor told us you're going to be away from the jurisdiction for two weeks. I
6 mean, you could reconvene us when you return. You could direct us to, you know,
7 engage in some further development of the record or presentation of information for
8 the Court's consideration on this issue.

9 I would suggest that if we are going to have continued proceedings
10 relating to the nature and ownership of these assets and whether they are in fact
11 subject to the judgment, that two things be done. One is that every single series
12 LLC that they claim has an interest in these assets or that they claim they've
13 operated under appear in this action and file an appearance if they claim they're
14 entities, they provide discovery on those. We can hold a deposition in Your Honor's
15 absence. I mean, it will be difficult on such short notice, but I can find time in the
16 next couple weeks to do that, if necessary. And that the Court also issues an order
17 enjoining A Cab LLC from issuing any new series LLCs because as we have Mr.
18 Nady's testimony in his deposition, apparently they just keep issuing the series LLCs
19 to evade the liability that's presented in this case. I mean, he was actually asked at
20 his deposition about the liabilities posed by this case and, again, he invoked counsel
21 and did not really dispute that this was the motivation behind the conduct of the
22 business and what was going on with the series LLCs.

23 Your Honor doesn't have to get into any of that at this point. These
24 are just suggestions, thoughts that I would share with the Court. Is there anything

1 I can do to assist the Court in terms of any issues in its mind or anything else?

2 THE COURT: I don't think so.

3 MR. GREENBERG: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. DOVE: Your Honor, may I make one brief request?

6 THE COURT: Yes.

7 MS. DOVE: Just on behalf of Wells Fargo Bank, we just request that Your
8 Honor give us clear direction whether we should continue to attach the funds,
9 release the funds to either party in a release as we would get in an interpleader
10 scenario. We would be happy to file a motion for interpleader if Your Honor found
11 that necessary. However, these proceedings effectively are doing the same thing.

12 THE COURT: Uh-huh.

13 MS. DOVE: So if you would like us to file such a motion, we'd be happy to
14 if that would assist the Court.

15 THE COURT: I don't feel --

16 MS. DOVE: Otherwise we just would prefer to follow the Court's direction
17 and understand that by following whatever this Court orders that we would have a
18 coverable release of liability under that scenario.

19 THE COURT: I don't see the need to do that at this point. Does any party
20 feel the necessity of the bank filing it as an interpleader?

21 MR. SHAFER: No.

22 THE COURT: Assuming -- you know, that assumes, of course, that the
23 Court were to take action on the pending motion.

24 MS. DOVE: That's correct, Your Honor. It's just that as has been made

1 very clear, by continuing to attach the funds A Cab has represented that it will suffer,
2 you know, certain harms by the sort of status quo of the attachment.

3 THE COURT: Understood.

4 MS. DOVE: So I just was raising that for that particular reason.

5 THE COURT: Understood. I made a comment the other day about trying
6 to avoid killing the goose that lays the golden egg. That was partly in response
7 to the understandable desperation to get the funds to continue operation of the
8 company. It appears to me that it is unavoidable that I find, given these two --
9 given the issues that we've already discussed at great length, that I should deny the
10 motion for quashing the writ of execution. I recognize that this means most likely,
11 I assume, that the defendants will seek redress from the supreme court as an aid
12 to making those funds in the most -- keeping them where this Court could respond
13 promptly to whatever directive the supreme court gives. I would order that the funds
14 be transferred to the Clerk of this court pending further action by this Court.

15 It is true that we are not -- I was thinking that I would simply announce
16 my decision on the plaintiff's motion to amend, but it strikes me that so much is
17 going on here that it may -- because it was submitted on a chambers calendar for
18 yesterday or today -- yesterday, I am not in a hurry, I do not want to rush the
19 consideration of that motion. And so I'm not going to rule on that motion at this time.
20 I think that -- am I correct that the defendants will attempt some sort of redress with
21 the supreme court?

22 MR. SHAFER: I believe that is one of the options we're pursuing. There's
23 also the exemption process that still remains yet to be done pursuant to the writ of
24 execution statute. I'd like to make one request.

1 THE COURT: Yeah.

2 MR. SHAFER: I guess it's a two part request. The first is if the Court is
3 denying it, we would request maybe that you would grant it -- or deny it in part and
4 grant it in part as to the funds in the Employee Leasing Company. And if the Court
5 is not inclined to do that, that the Court would preclude further execution of the
6 funds against the company. Essentially we maintain the status quo until such time
7 as two weeks when we can -- for example, the person who drafted the agreement
8 with Holland & Hart has since deceased. And Mr. Oshins, we wanted him here
9 today, was detained unavoidably and couldn't come to testify about the records.
10 So I think there's still some arguments to be made here, so we would at least
11 request if the Court doesn't grant it in part and release only the Employee Leasing
12 funds, that the Court preclude further execution on the funds that might be
13 deposited into Wells Fargo accounts.

14 THE COURT: You mean further execution on yet other funds that would
15 be in the account?

16 MR. SHAFER: Correct. We maintain the status quo.

17 THE COURT: Mr. Greenberg, what's your take on such an order?

18 MR. GREENBERG: Your Honor, what I would submit to the Court is that
19 these funds were restrained because they were held in accounts under this EIN
20 number, which is the same EIN number we had when we started this lawsuit that's
21 on the W-2s issued to the employee class. To the extent that there are funds being
22 held under that EIN number for the purposes of paying the liabilities of that EIN
23 number, whether to the IRS or anyone else or just being held as an asset under that
24 designation, we believe they should properly be subject to execution. It is sufficient

1 to identify them as funds of the judgment debtor of A Cab LLC. So I -- we never
2 served a writ on just A Cab Series Leasing Company in the generic form, Your
3 Honor, I mean, and we're not going to do that. We don't even know that that
4 company exists. But we did serve an execution based upon the designation of
5 these funds being associated under that EIN. And I don't see that there's any basis
6 to restrain us from doing that. A Cab, if it wishes to stop the process of execution
7 here, can post a bond. It has an appeal currently pending. It automatically will
8 stay our action.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: Presumably they could post a bond and get this
11 \$230,000 released. We would consent to have the bond posted in the amount of
12 \$960,000, which is somewhat less than the full amount of the judgment your order
13 entered because your order restrained us from collection at this time of more than
14 that \$960,000 amount --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- because there is a question as to a certain credit
17 that Your Honor provided for A Cab to still receive of about \$60,000 or so. If they'll
18 post a bond for the \$960,000, they will restrain all action on the judgment at this
19 time. So they have options, Your Honor. They just don't want to post a bond
20 because they're afraid of what's going to happen on the appeal, Your Honor.

21 MR. SHAFER: Your Honor, we can't post a bond. Because these funds
22 are held, we cannot post a bond at this time. We would be inclined to pursue that
23 option, but we can't because they're holding the funds. We deny that the EIN --
24 he's correct --

1 THE COURT: In other words, your client, Mr. Nady and A Cab LLC are
2 not able to post a bond, they don't have the money?

3 MR. SHAFER: They don't have the collateral to secure that. The other --
4 and I'll just briefly make this because I know we've run very long in this instance.
5 He is correct, there was not a writ served with the EIN number. The EIN number
6 that they're saying belongs to one company, he's incorrect on who it belongs to.
7 That issue has not been briefed before the Court. We anticipate it will be at some
8 future point. That's why we're asking until the Court returns in two weeks and we've
9 submitted additional briefing, which we anticipate will be forthcoming very shortly,
10 that they don't dig the knife any deeper, that they don't take these unrelated
11 companies, who we argue are unrelated, and hurt them further. What's going to
12 happen is they're not going to put the money in Wells Fargo. They're going to
13 have to have other work-arounds which are going to disrupt the operations of the
14 company and kill the golden goose, as it were.

15 So if the Court is not inclined to release in part, I think that it is only
16 fair to just put a stay on the proceedings on this particular writ. I'm not asking you
17 to restrain their ability to file other motions or other proceedings, but just as to this
18 account so there's some security that Wells Fargo -- that my company or A Cab
19 can continue to operate. If there are transfers --

20 THE COURT: You're suggesting that I put a stay on what?

21 MR. SHAFER: On further execution on the writ that was served on Wells
22 Fargo beyond -- and we're not asking for a stay on A Cab or A Cab Taxi -- as to
23 these other separately named series LLCs, that money is not withheld from those
24 accounts in the future or at any bank, really, as to the separately held LLCs. They

1 can go against A Cab and the named parties to their heart's content and they can
2 file whatever motions they would like to do. But until such time as there's been
3 further briefing, let's put a stay on the --

4 THE COURT: Do you represent any of these series LLC entities?

5 MR. SHAFER: I had not presently been retained at that point. I anticipate
6 we will do so when we file a request for exemptions.

7 THE COURT: Do you represent any of those entities?

8 MS. RODRIGUEZ: I think Mr. Wall -- I'm not trying to make a joke, Your
9 Honor, but yesterday he was anticipating contacting the entirety of Hutchison &
10 Steffen to make an appearance on perhaps 120 plus series individual entities if the
11 Court was going to require representation for each one of the entities. I'm a sole
12 practitioner. I don't have 120 lawyers, fortunately or unfortunately in my firm.

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: But, no, in answer to the Court, I don't currently
15 represent the series.

16 THE COURT: These problems and these challenges come back to the
17 attempted use of Nevada's new -- relatively new series LLC statute. And, you know,
18 essentially for all the reasons that we've discussed and even more, this Court
19 concludes that they have not correctly in such a way as to assure due process to --
20 you know, you could say the public, but certainly to the plaintiffs, class members
21 who are employed by somebody in all of that. And so I don't -- you know, I've
22 wrestled with that myself as far -- I've taken it as far as I can without holding this
23 whole process up even further, which would simply keep the money out of anyone's
24 hands for even longer.

1 So that's why I've gone and ahead and ruled as I have and now the
2 defendant is free to seek redress on the central issue of whether or not these
3 separate entities have been created in such a way that it does not deny the rights
4 of the plaintiff class members. Or whether in order to assure that that has not
5 happened, the Court must construe the Nevada Series LLC statute in such a way
6 as to not have that happen. For example, falling back on the LLC statute like the
7 one that I read, 86.141. It's difficult to believe that the Nevada Legislature intended
8 to create something, the series LLC organizational statutes, and to on purpose
9 avoid the very important imperative in 86.141 that you can't use all these things as
10 a way to conceal the business activity in a way that winds up working a denial of
11 due process in the form of the execution, getting the monies that the plaintiff has
12 established were not paid to these individuals.

13 So anyway, I am only going to rule on that motion. I am denying it.
14 And if you wish to argue further on the -- I'm going to regret saying this, I know, but
15 I'm trying not to just rush through this as best as possible -- on plaintiff's motion,
16 rather than simply handling it on the calendar, if you wish we can do oral argument
17 on it, or handle it on the calendar. Does anybody wish oral argument on the
18 plaintiff's motion?

19 MR. GREENBERG: Your Honor, all I would like to say about that is I
20 believe the discussion we had today and defendant's counsel relating to A Cab LLC
21 and A Cab Series LLC establishes what I had represented to the Court, which is
22 that it is the same entity. There is no motion to amend to bring in a different entity.
23 A Cab LLC --

24 THE COURT: Actually I was just asking if you wanted to do further oral

1 argument. I wasn't asking for your argument.

2 MR. GREENBERG: I understand, Your Honor. I have not -- I mean, I think
3 this is all discussed in the papers. I mean, if the Court wants oral argument, if it
4 would help the Court, I want to help the Court, but.

5 THE COURT: Does the defense wish further oral argument on that motion?

6 MR. SHAFER: Yes, we would, on the motion for --

7 THE COURT: To amend the judgment.

8 MR. SHAFER: Yes. We would like further argument on that point.

9 THE COURT: All right. Is it a matter that can wait for two weeks?

10 MR. SHAFER: Well, I think at this point we have to wait because of the
11 Court's schedule.

12 THE COURT: Well, I'm not --

13 MR. SHAFER: And, you know, to be honest --

14 THE COURT: I'm here to serve. If I needed to be here in a week, I'd find
15 a way to do it.

16 MR. SHAFER: I appreciate that. We also would like to get -- we need to
17 go back to Holland & Hart and have them pull their client records because these are
18 not the total corporate records that have ever existed. And -- yes, so we would like
19 further argument on that point.

20 And I did have one question for clarification.

21 THE COURT: Yes.

22 MR. SHAFER: In the basis for its decision, is the Court ruling that the
23 February 2012 filing for the A Cab Series LLC was ineffective to notify the public of
24 the series election?

1 THE COURT: I don't think I would hold that. I think the way that it's set up
2 it appears to -- it appears to contemplate that if you're doing business with a series
3 LLC then you need to do this further scrutiny, as you've described it. The question
4 then becomes, well, does that mean if you sue an LLC and you go through litigation
5 for five years or more and then during the litigation the LLC changes what it is, that
6 is, a legally functioning series LLC by virtue of changing its name, then -- well, you
7 see where I'm going.

8 MR. SHAFER: Okay. All right, thank you.

9 THE COURT: All right. So is it sufficient if we set this for two weeks hence?

10 MR. SHAFER: Yes.

11 THE COURT: All right.

12 MR. GREENBERG: What day is that, Your Honor?

13 THE COURT: I haven't set it yet.

14 MR. GREENBERG: Oh, okay.

15 THE COURT: I'm just looking to see.

16 THE CLERK: Do you want a separate day?

17 THE COURT: Yeah, we'd have to have a separate day.

18 THE CLERK: We could do the 18th or the 19th, Thursday or Friday.

19 MS. RODRIGUEZ: Could we possibly do it maybe the following week,
20 because I anticipate -- well, I know I'll be in Prescott, Arizona on depositions the
21 17th, 18th and 19th.

22 THE COURT: Saturday?

23 MS. RODRIGUEZ: That's Wednesday, Thursday, Friday, I believe, Your
24 Honor.

1 THE COURT: Oh. Okay. So --

2 MS. RODRIGUEZ: Hopefully not Saturday. But I don't know if there's an
3 availability any time that following week, the 22nd through the 26th.

4 MR. GREENBERG: The 26th is Nevada Day. Yeah, that is Nevada Day.

5 MS. RODRIGUEZ: Or I can do it before then, the 15th or 16th.

6 THE CLERK: We're dark.

7 MS. RODRIGUEZ: Oh.

8 (The Court confers with the clerk)

9 THE COURT: Okay. Let's do Monday, October 22nd.

10 MR. GREENBERG: If that's what the Court believes is best, of course.

11 We're here to help the Court. I understand that.

12 THE COURT: Does that work?

13 MR. GREENBERG: It works, Your Honor. We will be here on the 22nd.

14 In terms of Your Honor's decision today, do you want an order submitted? And if
15 so --

16 THE COURT: I think we better because otherwise they won't have anything
17 to appeal.

18 MR. GREENBERG: I just want to be sure that I don't do anything beyond
19 what the Court -- I mean, we could have a very summary order that simply denies
20 the motion. If Your Honor wants findings in accordance with what I understood Your
21 Honor's view was of the record before it, I can try to draft some findings that aren't
22 extremely extensive. I don't know that we need extensive --

23 THE COURT: It would be extremely difficult to draft such findings. My
24 understanding is that you don't necessarily have to do that if it's a denial of a motion.

1 MR. GREENBERG: I would agree, Your Honor. I don't see -- I just want to
2 help the Court in terms of what the Court would like presented. I'm not asking the
3 Court to sign off on an order with lots of detailed findings.

4 THE COURT: Which means that you would need a transcript to take this
5 up. You know, this is the second time that this will have gone to the supreme court
6 and the supreme court did not like what I did last time, so I'm sensitive to that. I'm
7 sensible of it. And I want to do everything that the Court can to aid your process
8 so that the right decision can be made on what I think is a precedent-setting case.
9 I assume that you all agree with that?

10 MR. SHAFER: I agree this is likely -- this could very well be a published
11 opinion if the supreme court addresses it.

12 MR. DOVE: And just -- I'm sorry. I was just going to request that any
13 written order just include the direction to Wells Fargo --

14 THE COURT: Pay the money to the Clerk of the Court.

15 MS. DOVE: -- regarding depositing the funds, etcetera, so that we have
16 that in writing --

17 THE COURT: Yeah.

18 MS. DOVE: -- and not dependent on a transcript, if possible.

19 THE COURT: Okay.

20 MR. GREENBERG: Given the issue Your Honor has just raised, I realize
21 that perhaps some sort of more than summary order might helpful --

22 THE COURT: All right.

23 MR. GREENBERG: -- to the process here, Your Honor. So I will consider
24 all that. I will try to cooperate with the defendants, of course, and get something to

1 the Court that hopefully is not overly burdensome for anybody's review, but not
2 necessarily completely summary, either.

3 THE COURT: All right. Oh, we have the defendant's motion for
4 reconsideration presently set on the 18th of October. Do you want to move that
5 to the 22nd as well?

6 MR. GREENBERG: That was your chambers calendar, I believe, Your
7 Honor.

8 MS. RODRIGUEZ: Yes, if we could, please.

9 THE COURT: Oh, is that chambers calendar? Okay.

10 THE CLERK: The motion to amend is also -- they're both chambers.

11 THE COURT: Yeah. But we're changing the motion to amend to an oral
12 hearing date.

13 THE CLERK: Do you want that one changed too?

14 THE COURT: What's your pleasure? Do you want to leave that as a
15 chambers calendar for the 18th?

16 MS. RODRIGUEZ: No, Your Honor. That's our motion. We would like oral
17 argument on it as well. I don't know what time. Did you give us a time?

18 THE CLERK: I didn't. I was going to go ten o'clock. Do you want it at ten?

19 THE COURT: Yeah, ten o'clock. Yeah. So that will be ten o'clock on
20 October 22nd. That will be both motions --

21 MS. RODRIGUEZ: Thank you.

22 THE COURT: -- on that day.

23 MR. GREENBERG: Thank you, Your Honor. A minute order, I take it, will
24 issue so that the record is clear as to the disposition as of today. I understand we

1 need to submit a formal order to the Court, correct?

2 THE COURT: Yes. The minute order will issue, but if we need -- I think
3 we need an order, something for the supreme court to deal with.

4 MR. GREENBERG: I will work on getting that to the Court promptly, Your
5 Honor.

6 THE COURT: All right. Thank you.

7 MR. GREENBERG: Thank you, Your Honor.

8 THE COURT: Anything else that we need to address at this point?

9 MR. SHAFER: Just one clarification. You're ordering the money that is
10 currently held by Wells Fargo to be submitted to the Clerk?

11 THE COURT: The Clerk of the Court.

12 MR. SHAFER: But future garnishments will go through the normal process
13 that whatever --

14 THE COURT: Yes. I'm really -- you know, I'm entering no order in relation
15 to future garnishments.

16 MR. SHAFER: Okay.

17 THE COURT: So I assume it would fall to the plaintiff to take some action
18 again, would it not?

19 MR. SHAFER: Sometimes.

20 THE COURT: Execution?

21 MR. SHAFER: Yeah. And then there's the ordinary -- you know, there's --
22 you're not ruling on the exemptions and all the other procedural things that happen,
23 it was just our motion to quash?

24 THE COURT: Yeah, that's correct.

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MR. SHAFER: Okay.

THE COURT: That's all I really had before me. I necessarily had to look at all these things in order to know whether to grant the motion to quash. But it really is -- it's only intended to be to deny the motion to quash the execution.

MR. SHAFER: Thank you, Your Honor.

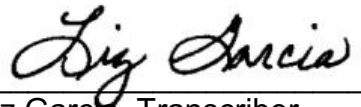
MR. GREENBERG: Thank you, Your Honor.

THE COURT: Okay. Thank you all.

(PROCEEDINGS CONCLUDED AT 12:45 P.M.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service

**DISTRICT COURT
CLARK COUNTY, NEVADA****Other Civil Filing****COURT MINUTES****May 23, 2018**

A-12-669926-C Michael Murray, Plaintiff(s)
vs.
A Cab Taxi Service LLC, Defendant(s)

May 23, 2018 01:30 PM Plaintiff's Motion for Miscellaneous Relief

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Christian Gabroy	Attorney for Plaintiff
Esther C. Rodriguez	Attorney for Defendant
Leon Greenberg	Attorney for Plaintiff
Trent L. Richards	Attorney for Other

JOURNAL ENTRIES

Counsel gave summary of case and the case in front of Judge Delaney.

COURT ORDERED, Plaintiff's Motion for Miscellaneous Relief DENIED. The Court is not ruling on the suggested renewed motion for preliminary injunction. This case needs to go forward and the Court is disinclined to hold up the matter for non-payment to the special master. COURT FURTHER ORDERED, \$41,000.00 MUST be posted with the Clerk of the Court and the defendant is to be present at the next hearing to show proof of the posting.

6/1/18 10:00 AM PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT, STRIKE THEIR ANSWER

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing

COURT MINUTES

June 01, 2018

A-12-669926-C Michael Murray, Plaintiff(s)
vs.
A Cab Taxi Service LLC, Defendant(s)

June 01, 2018 10:00 AM PLAINTIFF'S MOTION TO HOLD DEFENDANTS IN
CONTEMPT, STRIKE THEIR ANSWER

HEARD BY: Cory, Kenneth COURTROOM: RJC Courtroom 16A

COURT CLERK: Kearney, Madalyn

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Christian Gabroy	Attorney for Plaintiff
Creighton J Nady	Defendant
Esther C. Rodriguez	Attorney for Defendant
Kaine Messer	Attorney for Plaintiff
Leon Greenberg	Attorney for Plaintiff
Michael K. Wall	Attorney for Defendant

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Greenberg confirmed the basis to find Defendants in contempt of court is the nonpayment of funds to the Special Master. Arguments by Mr. Greenberg and Ms. Rodriguez regarding whether or not Defendants have the money to pay the Special Master and the effects of litigation in another matter. Court noted it is hesitant to hold Defendants in contempt for failure to pay due to the Affidavit and Financial documents put forward by the Defendants. Court directed counsel to provide case authority, not necessarily in Nevada, where a court has proceeded to hold Defendant in contempt for failure to make payments but the Defendant claims it does not and will not have the money. Court advised it will revisit the issue at the upcoming court date; it will not hear further argument, but will announce if it will grant the Motion and what sort of sanction it may impose. If the issues are not resolved at that time, the Court will hear the Motion for Partial Summary Judgment. Colloquy regarding the next court date. Court directed counsel to submit case authorities by noon on Monday, June 4th. COURT ORDERED, matter SET for Motion for Partial Summary Judgment.

6/5/18 3:00 PM MOTION FOR PARTIAL SUMMARY JUDGMENT