

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC, and A CAB SERIES LLC,	)	Electronically Filed
	)	Jan 18 2022 02:38 p.m.
Appellants	)	SUPREME COURT
	)	Elizabeth A. Brown
vs	)	CASE # 77050
	)	Clerk of Supreme Court
)	
	)	District Court
MICHAEL MURRAY, and MICHAEL	)	Case No.: A-12-669926-C
RENO, Individually and on behalf of others)	
similarly situated,)	
)	
Respondents.)	
)	
)	
)	
)	

**RESPONDENTS' REPLY TO APPELLANTS'
RESPONSE TO RESPONDENTS' MOTION FOR
AN AWARD OF ATTORNEY'S FEES AND INTEREST**

LEON GREENBERG
PROFESSIONAL CORPORATION
Leon Greenberg, Esq.
2965 South Jones Blvd., #E3
Las Vegas, NV 89146
Bar # 8094
(702) 383-6085
Attorney for Respondents

IN REPLY ON THE REQUEST FOR ATTORNEY'S FEES

I. Respondents are not requesting fees pursuant to NRAP 38 or costs on this appeal pursuant to NRAP 39.

Respondents have not alleged this appeal was frivolous or sought an award of attorney's fees under NRAP 38 or costs under NRAP 39. They only seek attorney's fees commensurate with their success on this appeal pursuant to the MWA. Accordingly, their attorney time expenditures on unsuccessful issues (11.39% of their counsel's hours devoted to this appeal) are not compensable and no attorney's fees for those efforts are requested.

II. Appellants' argument that the requested attorney's fees are unreasonable misrepresents this Court's decision modifying the district court's judgment.

Appellants argue this Court's modification of the district court's judgment will result in a complete recalculation on remand of an erroneous judgment based on a "random guess." Response p. 4. They further argue that result constitutes a success by them on this appeal warranting a denial of any attorney's fees to respondents. *Id.* These assertions are untrue.

This Court affirmed the district court's grant of summary judgment and its method of calculating damages for three distinct time periods, rejecting appellants' claim such damages were an improper "random guess." It reversed the damages awarded for one of the three time periods at issue, the

period pre-dating October 8, 2010, based on an erroneous statute of limitations ruling. There will be no recalculation of damages for the other two time periods at issue. Their calculation was affirmed by this Court as correct, are law of the case and cannot be modified on remand, and are in the record. *See, Hsu v. County of Clark*, 173 P.3d, 724 728 (Nev. Sup. Ct. 2007) and Respondents' Appendix at 1015-1033 and Appellant's Appendix at 8178-8189. On remand the district court's final judgment will be reduced by the already calculated amount of damages pre-dating October 8, 2010, a simple modification based on the calculations already performed in the district court and upheld by this Court as proper.¹

Appellants' limited success on this appeal is appropriately accounted for in respondents' attorney's fee request. Respondents prevailed on almost all of the appeal issues and will have sustained 69% of their damages. If Appellants had limited this appeal to the statute of limitations issue they would owe no attorney's fees to respondents. They did not.

¹ Appellants improperly assert undocumented issues not in the record, or contrary to the record since they were resolved by the district court's judgment and affirmed by this Court, remain to be resolved on remand. For example, they argue \$139,988.80 from a Department of Labor settlement needs to be considered on remand — this was already considered in the district court's judgment and incorporated into the damages awards affirmed by this Court as proper. *See*, Appellants' Appendix 8696-8699, 8712.

IN REPLY ON THE REQUEST FOR INTEREST

I. The strong majority of the damages judgment on remand will not be disturbed; appellants offer no reason for denying interest from its original entry.

Appellants' claim the damages judgment for the period after October 8, 2010, will be recalculated and reduced on remand is untrue and ignores this Court's decision. The district court will enter that judgment exactly as previously calculated for that time period and entered on August 18, 2018, as this Court affirmed was correctly done. Appellants offer no explanation as to why respondents should be denied over three years of post-judgment interest on such original properly awarded damages amount.

Appellants' argument that respondents seek to "profit" from this appeal by claiming such post-judgment interest is specious. Their assertion respondents prolonged this appeal by pursuing a later dismissed involuntary bankruptcy is not explained and is without merit — appellants could have had the bankruptcy court promptly lift that stay for this appeal but did not and caused far longer delays of this appeal.²

² The bankruptcy case was filed on April 12, 2019 and dismissed on September 26, 2019. Appellants waited until November 13, 2019, to file a motion in this Court to reinstate the appeal; their notice of appeal's inclusion of improper requests to appeal post-judgment orders then stayed briefing until the Court's Order of March 6, 2020; they also secured three extensions of time, a total of 90

For the portion of the judgment reversed, appellants owe no interest. And as to the portion sustained, appellants assumed the risk of paying such interest for however long this appeal took. They could have avoided that interest by immediately paying that portion of the judgment instead of appealing it. They declined to do so.

II. This Court affirmed the award of attorney’s fees and only directed reconsidered of the small amount of fees awarded for the reversed statute of limitations ruling; over 95% of the fees have been found proper and should bear interest from their original award.

Appellants misrepresent this Court’s decision. Respondents will not be required on remand “to demonstrate they are entitled to an award of attorney’s fees.” This Court found the district court’s award of attorney’s fees was proper and rejected appellants’ claim it was excessive. It directed further proceedings consistent with its decision with the fee only “reconsidered for reasonableness” in light of the “district court’s improper tolling of the statute of limitation,” *e.g.*, that it may be reduced based on the fees awarded in connection with the reversed statute of limitations issue. 137 Nev. Advance Opinion 84, at p. 24.

Pursuant to this Court’s decision the vast majority (over 95%) of the

days, to file their opening brief.

district court's award of attorney's fees must be sustained as the reversed statute of limitations tolling issue was a very minor litigation issue consuming less than 50 hours of a 1,190 attorney hours fee award made by the district court. Ex. "A" declaration. Appellants offer no justification for denying post-judgment interest on the over 95% of the attorney's fees properly awarded on February 6, 2019.

CONCLUSION

Wherefore, the Court should grant the motion for an award of attorney's fees to respondents' counsel for this appeal or alternatively direct the district court after remittitur to make such an award. The Court should also grant the motion to have the mandate (remittitur) instructions pursuant to NRAP 37(b) require the district court's determinations of damages and attorney's fees and costs upon remand to accrue post-judgment interest from August 21, 2018, and February 6, 2019, respectively.

Dated: January 18, 2022

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Respondents

CERTIFICATE OF SERVICE

I certify that on January 18, 2022, I had served a copy of the foregoing MOTION upon all counsel of record by EFLEX system which served all parties electronically.

Dated this 18th day of January, 2022

/s/ LEON GREENBERG

Leon Greenberg

EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC, and A CAB SERIES LLC,)	
	)	SUPREME COURT
Appellants	)	CASE # 77050
vs)	
)	
	)	District Court
MICHAEL MURRAY, and MICHAEL	)	Case No.: A-12-669926-C
RENO, Individually and on behalf of others)	
similarly situated,)	
)	
Respondents.)	
)	
)	
)	
)	

DECLARATION

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under penalty of perjury, that:

1. I am the attorney for the respondents. The statements made in this declaration are based upon my personal knowledge and personal observations.

2. I am presenting this declaration in connection with respondents' reply to appellants' response to respondents' motion for an award of attorney's fees in connection with this appeal. I have reviewed the contemporaneous time records I personally maintained of the work I

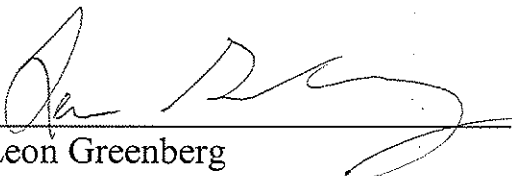
performed in the district court prosecution of this case prior to final judgment. Those same time records were used as the basis for the award of attorney's fees granted by the district court and indicated I had expended at least 1,190 hours of time during the period for which attorney's fees were awarded. I further reviewed those records to determine what amount of that time was expended securing from the district court an award of damages that pre-dated October 8, 2010, as that award of those damages was reversed by this Court. No other attorneys worked on that issue or expended time on that issue for which attorney fees were sought and that review indicates the following:

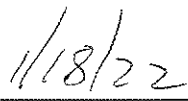
- (A) I commenced work on that issue on December 7, 2016, after this case had been pending for over four years and after already expending over 456 of those 1,190 attorney fee hours on this case;
- (B) I spent less than 20 of those 1,190 hours engaged in activities exclusively related to that issue;
- (C) I spent less than 47 of those 1,190 hours engaged in activities that partially, or may have partially, concerned that issue. Not even 50% of those 47 hours, which concerned work on the damages calculations in this case,

concerned work on the damages calculations in this case,
are properly attributable to that issue.

3. It is apparent from my review of my attorney time records that less than 50 of the 1,190 hours that I spent working on this case in the district court, and that formed the basis for the fee award made by the district court, were expended litigating this issue. As a result, over 95% of those 1,190 hours forming the basis of the district court's fee award were *not* expended dealing with that issue.

I affirm the foregoing is true under the penalty of perjury.


Leon Greenberg


Date