

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAPRIATI CONSTRUCTION CORP.,)	Supreme Court No.: 81911
INC., a Nevada Corporation)	District Court Case No.: A718689
)	Electronically Filed
Appellant,)	Dec 30 2020 02:09 p.m.
)	Elizabeth A. Brown
v.)	RESPONSE TO ORDER TO
)	SHOW CAUSE
BAHRAM YAHYAVI, an individual,)	
)	
Respondent.)	
)	

Docket No. 80107 is an appeal from a final judgment on a jury verdict, entered on October 22, 2019, and from a post judgment order regarding sanctions. It is consolidated with Docket No. 80821, which is an appeal from the same judgment, and from several post-judgment orders, including two orders dated March 3, 2020, separately awarding attorney's fees and costs. The opening brief in the consolidated appeals was filed August 12, 2020.

On September 21, 2020, after the opening brief was filed, the district court signed and entered an amended judgment that had been presented to the Court by plaintiff's counsel, but had not first been shown to or approved by Capriati's counsel. The judgment amounts and the amounts of attorney's fees and costs are the same. The amended judgment adds post-judgment interest, and adds all of the sums together due under the judgment. Capriati was afforded no opportunity to

see or confirm the post-judgment interest amounts before the *ex parte* amended judgment was entered.

On September 25, 2020, Capriati filed a second amended notice of appeal. This Court docketed this as a new appeal under Docket No. 81911. In the second amended notice of appeal, Capriati noted:

It is appellant's belief that this amended judgment is void because (1) it was submitted *ex parte* to the district court in violation of appellant's due process rights; (2) the district court lacked jurisdiction to amend the judgment because of the filing of the original notice of appeal, *see Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court"); and (3) the amended judgment is superfluous because it was entered after an appealable judgment and appealable orders regarding attorney's fees and costs were entered. *See Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014) ("When district courts, after entering an appealable order, go on to enter a judgment on the same issue, the judgment is superfluous.").

Out of an abundance of caution, Capriati filed its notice of appeal because the amended judgment is void as a matter of law, and because it was entered after final judgment and affects the rights of a party arising from the judgment. NRAP 3A(b)(8). Therefore, assuming a later dispute as to the amount of post-judgment interest, Capriati should not be bound by this void judgment.

This Court has now raised the same issue raised by Capriati in its notice of appeal. The judgment appears to be void and superfluous. Assuming the original

judgment and the award of attorney's fees withstands appellate review, proceedings in district court may address any issue as to the amount of post-judgment interest due, but such must follow, not precede this Court's remittitur. At this time, the district court lacks jurisdiction to enter an amended judgment, and that judgment is both superfluous, as recognized in this Court's order to show cause, and void.

CONCLUSION

If this Court dismisses this appeal as not authorized by NRAP 3A(b)(8), it should include language stating that the amended judgment is superfluous and void.

Respectfully submitted this 30 day of December, 2020.

HUTCHISON & STEFFEN, PLLC

A handwritten signature in black ink, appearing to read "Michael K. Wall", is written over a horizontal line.

Michael K. Wall (2098)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
mwall@hutchlegal.com
Attorney for Appellant

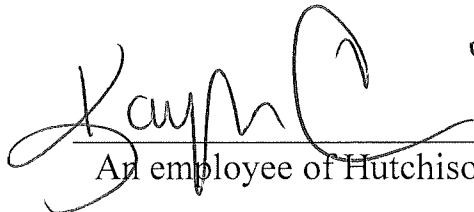
CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **RESPONSE TO ORDER TO SHOW CAUSE** 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:

Dennis M. Prince, Esq.
PRINCE LAW GROUP
10801 West Charleston Blvd. Ste. 560
Las Vegas, NV 89135
Tel: (702) 534-7600
Fax: (702) 534-7601

Attorney for Respondent Bahram Yahyavi

DATED this 30th day of December, 2020.


An employee of Hutchison & Steffen, PLLC