

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 84345

and

Case No. 84640

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Elizabeth A. Brown
Clerk of Supreme Court

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Appellant

v.

180 LAND CO, LLC, a Nevada limited-liability company, FORE STARS LTD.,
a Nevada limited liability company,

Respondents

District Court Case No.: A-17-758528-J
Eighth Judicial District Court of Nevada

**CITY OF LAS VEGAS' REPLY IN SUPPORT OF
MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF ON
APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL**

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POINTS AND AUTHORITIES

The City's requested extension of time to file its Reply Brief is reasonable and warranted under the circumstances. In contrast, the Developers' untimely Opposition to the City's extension request flouts the Nevada Rules of Appellate Procedure and perpetuates the same misconduct that required the City to file its Motion to Strike in the first instance. Although to spare the Court needless motion practice the City has not filed a separate opposition to the Developer's Motion for Leave to File Late Opposition, the City does note that the reasons cited by the Developer for its untimely filing do not constitute good cause, as required by NRAP 26(b)(1)(A).

On its face, the purpose of the City's Motion to Strike and associated Motion for Extension of Time are clear: to give the Court time to address the Developer's unauthorized reference to extra-record materials. By violating NRAP 30(g)(1) to the City's prejudice, the Developer invited the delay of which it now complains. The Developer itself also sought and obtained two extensions of time for a total of 60 days, only to file a non-conforming Answering Brief and "Landowners' Appendix." A motion to strike is the precise procedure the Court's precedents instruct parties to use under these circumstances, and an extension of time for the City's Reply Brief is entirely appropriate while the City's Motion to Strike is under consideration. *See In re Nevada State Eng'r Ruling No. 5823*, 128 Nev. 232, 238 n.4, 277 P.3d 449, 453

n.4 (2012) (granting motion to strike excerpts from administrative record not filed below).

Moreover, in its Opposition to the City’s Motion for Extension of Time, the Developer perpetuates the same misconduct that gave rise to the Motion to Strike by yet again citing extra-record materials. Opp. at 2. Specifically, the Developer continues to disrespect the Court and violate the NRAP by again citing a district court order in a separate case that was entered after the City filed its March 9, 2022 appeal. *See id.* As the City emphasized in its Motion to Strike, an appellate court “cannot consider matters not properly appearing in the record on appeal.” *Tabish v. State*, 119 Nev. 293, 312, 72 P.3d 584, 596 (2003). “The trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.” NRAP 10(a). Yet the Developer persists in submitting and relying upon extra-record materials in contravention of the Rules. Opp. at 2.

As in its Opposition to the Motion to Strike, the Developer reasserts that the extra-record material is “necessary to rebut” the arguments in the City’s opening brief. Opp. at 2. This contention simply emphasizes that the district court’s Judgment cannot stand on the record. The arguments in the City’s brief are the same ones it made below (55(9879-9883, 9950-9954); 92(16541-16542)), and as the Court can see from the 131-volume Joint Appendix, the Developer had ample opportunity to

present evidence below to rebut them. The Developer's misconduct in this Court highlights that no such evidence exists.

Just as with the extra-record materials the Developer referenced in its Answering Brief, the Court should likewise disregard this additional unauthorized document, and the City should not be forced to respond. By continuing to cite extra-record materials, the Developer underscores precisely why the City's Motion to Strike and Motion for Extension of Time to file the Reply brief were needed.

Contrary the Developer's contention, the City is not "stand[ing] still" while awaiting a decision. Opp. at 1. Although the City certainly is working and will continue to work on its Reply Brief while its Motion to Strike is under consideration, the best use of the parties' and the Court's resources is to allow for a reasonable extension of time for the City to file its Reply Brief after the Court rules on the Motion to Strike. *See generally* NRAP 1(c) (requiring that "[t]hese Rules shall be liberally construed to secure the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts."). Had the Developer followed the Rules and relied solely on the district court record – as the rules require – the City would not have been forced to seek the extension it sought. Without the Court's decision on the scope and content of the Developer's brief, the City cannot parse through the Developer's improper arguments and references and attempt to respond.

In sum, nothing asserted in the Developer's Opposition identifies any grounds to deny the City's requested extension of time. Accordingly, the City requests an extension of the deadline to file its Reply Brief on appeal and Answering Brief on cross-appeal until 30 days after the Court decides the Motion to Strike and the Developer files a conforming brief.

DATED this 28th day of February, 2023 BY: /s/ Debbie Leonard

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on this date a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court on today's date by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the E-Flex system. All others will be served by U.S. mail.

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Dated: February 28, 2023

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