

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’
MOTION TO STRIKE IMPROPER PORTIONS OF
REPLY BRIEF ON CROSS APPEAL**

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Attorneys for City of Las Vegas

Appellant City of Las Vegas moves to strike portions of the Reply Brief on Cross Appeal filed on May 16, 2023, by Respondents/Cross-Appellants 180 Land Co, LLC and Fore Stars Ltd. (collectively, “the Developer”) because they violate NRAP 28.1(c) and the parties’ stipulation regarding the briefing schedule.¹

POINTS AND AUTHORITIES

LEGAL ARGUMENT

A. Portions Of The Developer’s Reply Brief On Cross Appeal Violate NRAP 28.1 And The Parties’ Stipulation To Modify The Briefing Schedule

The Developer’s Reply Brief on Cross Appeal contains arguments that exceed the scope of the cross appeal and amount to an improper sur-reply in the City’s appeal of the Judgment, in violation of NRAP 28.1(c)(4) and the parties’ Stipulation to Modify Briefing Schedule filed on August 12, 2022 (“the Stipulation”). NRAP 28.1(c) creates a four-brief appeal and cross-appeal schedule in which the Appellant files an Opening Brief on Appeal, the Respondent files an Answering Brief on Appeal and Opening Brief on Cross Appeal, and the Appellant files a Reply Brief

¹ This is the third instance of the Developer’s violations of the NRAP in this appeal and cross-appeal. The Developer’s Answering Brief on Appeal included argument based on extra-record materials. The Court provisionally denied the City’s Motion to Strike that improper argument and evidence. The Developer also recently moved for leave to file a Sur-Reply Brief on Appeal based on further matters outside the record on appeal. Concurrently with this Motion to Strike, the City has opposed that motion.

on Appeal and Answering Brief on Cross-Appeal. *Id.* “The respondent may file a brief in reply to the response in the cross-appeal ... [that] **must be limited to the issues presented by the cross-appeal.**” NRAP 28.1(c)(4) (emphasis added).

In the Stipulation (at ¶4), the Developer agreed to comply with this language: “Landowners will file their reply brief in Case No. 84640, **which will be limited to the issue of pre-judgment interest.**” (Emphasis added). Parties are generally bound by their stipulations. *See Cohen v. State*, 113 Nev. 180, 184, 930 P.2d 125, 127 (1997); *Conrad v. Sadur*, 83 Nev. 39, 41, 422 P.2d 236, 237 (1967). “Because stipulations serve both judicial economy and the convenience of the parties, courts will enforce them absent indications of involuntary or uninformed consent.” *CDN Inc. v. Kapes*, 197 F.3d 1256, 1258 (9th Cir. 1999).

Here, the Developer’s Reply Brief on Cross Appeal (at 1, 3-5) violates NRAP 28.1 and the parties’ stipulation by revisiting the standard of review in the appeal. Specifically, the Developer argues that the “substantial evidence” standard should be applied to review the findings of fact in the Judgment. *Id.* This has nothing to do with the cross-appeal. The Developer’s effort to bootstrap it into the cross-appeal by referencing the standard of review for a prejudgment interest determination is simply a pretextual excuse for its improper conduct. As a result, the first paragraph of page 1, and part I.B (pages 3-5) should be stricken and disregarded.

B. The Developer Waived The Standard Of Review Argument Presented In Its Reply Brief On Cross Appeal

The Developer cannot include in its Reply Brief on Cross-Appeal arguments it failed to make in its Answering Brief on Appeal. An answering brief must rebut each argument made in the opening brief or be deemed a waiver. NRAP 31(d)(2); *see Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating party's failure to respond to an argument as a concession that the argument is meritorious); *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating failure to respond to an argument as a confession of error). "[A respondent] who fails to include and properly argue a contention in the [respondent's] brief takes the risk that the court will view the contention as forfeited." *Polk v. State*, 126 Nev. 180, 183, 233 P.3d 357, 359 (2010) (quoting 16AA C. Wright, A. Miller, E. Cooper & C. Struve, *Federal Practice and Procedure* § 3974.2, at 274 (4th ed. 2008)).

Here, the City's Opening Brief (at 40-41) contained various standards of review as to the legal issues presented. The Developer's Answering Brief contained its own standards of review but did not dispute those presented by the City or contend that the City incorrectly stated or failed to address any standard. *See* AB at 62-63. The Developer stated the standard that "the district court's findings of fact will not be disturbed on appeal if they are supported by substantial evidence." AB 62, *quoting City of Las Vegas v. Bustos*, 119 Nev. 360, 365, 75 P.3d 351, 354 (2003).

Had the Developer wished to expand on this argument, the time to do so was in its Answering Brief on Appeal, not in its Reply Brief on Cross Appeal. *See* NRAP 28.1(c)(4).

Nothing about the City’s subsequent briefing justifies the Developer’s violation of NRAP 28.1(c)(4). The City’s Reply Brief on Appeal did not say anything about the standard of review, and its Answering Brief on Cross Appeal simply stated (at 85), “This Court reviews the district court decision on prejudgment interest for an abuse of discretion.” *Citing McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 675, 37 P.3d 1110, 1130 (2006). The Developer does not dispute that this is a correct statement of the standard of review.

The Developer cannot in the Reply Brief on Cross-Appeal raise arguments it failed to raise in its Answering Brief on Appeal. As a result, the improper portions of its Reply Brief on Cross-Appeal should be stricken.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 24th day of May, 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: May 24, 2023

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