

IN THE SUPREME COURT OF THE STATE OF NEVADA

TKNR, INC., a California Corporation,

Appellant,

v.

W L A B INVESTMENT GROUP, LLC,

Respondent.

SC Case No. 82835 / 83051

DC Case No.: A-18-785917-C

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**From the Eighth Judicial District Court
The Honorable Linda Marie Bell, District Judge
District Court Case No. A-18-785917-C**

APPELLANT'S REPLY BRIEF

Michael B. Lee, Esq. (NSB 10122)

Michael Matthis, Esq. (NSB 14582)

MICHAEL B. LEE, P.C.

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed.

Appellant: TKNR, INC., a California Corporation

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There are no parent corporations and/or publicly held companies owning 10 percent or more of the party's stock to be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 28th day of August, 2023.

MICHAEL B. LEE, P.C.

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I. LEGAL ARGUMENTS

A. Answering Brief fails to Include full citation to Rule 11

Respondent's Answering Brief does not address the arguments made by Appellant regarding Rule 11 sanctions because Respondent fails to include relevant portion of Rule 11 that permits the district court to order a party to show cause why it has not violated the mandates of Rule 11. See Rule 11 Rule 11(c)(3) ("On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)."). In the Opening Brief, Appellant argues that TKNR did not create this procedural deficiency, nor did they have a reasonable avenue to correct the mistake as it [AA IX, 001589-1593]; rather, the district court created the error by unilaterally amending the order to remove "order to show cause" language [AA III, 000577-620; AA IV, 000734-776]. However, the Answering brief is completely devoid of any argument or analysis addressing those points.

B. Respondent's Time Calculation is Over-Exaggerated & Specious.

Respondent's attempt to argue that Appellant's Motion for Attorneys' Fees was untimely brought must fail. Respondent's calculation of time is overexaggerated, specious and nothing more than thinly veiled attempt to distract this Honorable Court from the fact that the Motion for Attorneys' fees was timely brought within 21 days after the remittitur.

Here, “[t]he trial and appellate stages are naturally related, and if an appeal is taken, the final outcome may change depending on the outcome on appeal.” See In re Est. & Living Tr. of Miller, 125 Nev. 550, 553, 216 P.3d 239, 242 (2009). As such, “the reversal and remittitur comprise the judgment by which the parties and the district court are thereafter bound.” *Id.*; see also NRS 17.160; and NRAP 36(a). In that light, when determining whether the Motion for Fees was timely brought, this Honorable Court must look to the date of the Remittitur, i.e., July 26, 2022. The Motion for Attorneys’ fees was filed on August 10, 2022, only 15 days after the date of the Remittitur, and thus was timely.

C. The Answering Brief Fails to Address all the Arguments Included in the Opening Brief, illustrating that those Arguments are Meritorious and should be Granted in Appellant’s favor.

Respondent fails to address each argument included in the Opening Brief, indicating that the unopposed arguments are meritorious and should be granted. See E. Jud. Dist. Ct. R. § 2.20(e) (“Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.”); see also *Brown v. State ex rel. Nevada Dep’t of Corr.*, 131 Nev. 1258 (Nev. App. 2015) (“although appellant technically filed a written opposition, the district court properly found that appellant had failed to make any arguments in support of that opposition.”); and *Benjamin v. Frias Transportation Mgt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019)

(unpublished disposition) (Simply filing an opposition does not relieve a party of its duty to actually oppose the issues raised in the motion.)

Here, the arguments in the Answering Brief all center around Respondent's specious calculation of time to argue that the Motion for Fees was properly denied as untimely. As such, Respondent fails to address the following arguments made in Appellant's Opening Brief:

1. *Motion for Attorneys' Fees was timely filed after the Remittitur.*

Respondent failed to address Appellant's argument that the Motion for Attorneys' Fees was timely filed after the Remittitur. Here, the Opening Brief includes specific arguments that Motion was filed 15 days after the Remittitur was filed following the first appeal. The Opening Brief also included case law providing the legal basis to support the filing of the Motion for Attorneys' Fees after a remittitur has been entered following appeal. See *In re Est. & Living Tr. of Miller*, 125 Nev. 550, 553, 216 P.3d 239, 242 (2009). However, the Answering brief is bereft of any opposition or analysis related to this argument.

2. *Error Caused by District Court not Appellant.*

Respondent also fails to address the arguments that Rule 11(c)(3) allows the district court to impose sanctions *sua sponte* and that the error in this matter was caused by the district court's own actions in unilaterally amending the Order to remove the order to show cause language satisfying the procedural requirements of

Rule 11(c)(3). The Opening brief sets forth the procedural facts establishing that the district court caused the error, which unfairly prejudices Appellant by making it bear the consequences of the district court's error.

3. Harmless Error

Respondent failed to address the harmless error argument included in the Opening Brief. Respondent admits that summary judgment was granted in favor of Appellant, completely disposing of all of Respondent's claims in this matter. See Respondent's Answering Brief at p. 16. Respondent also admitted that the district court caused the error and directed Appellant to file an application in support of attorneys' fees. *Id.* at p. 9. It is undisputed that Respondent did not file any opposition, or otherwise challenge, the fees and costs sought by Appellant, which were ultimately awarded by the district court. (AA V, 001052-1059). For these reasons, the decision to grant fees under Rule 11 instead of NRs 18.010 was harmless error.

4. The Application in Support of Attorneys' Fees was timely filed within 21-days of the Order Granting Summary Judgment

Respondent fails to address the Opening Brief's argument that the Decision & Order denying TKNR's request for Attorneys' Fees pursuant to NRS 18.010(2)(b) is based on the flawed premise that the request was not timely made following the Amended Order. The Opening Brief articulates that the motion for summary judgment not only included a motion for attorneys' fees, but that

Appellant filed an application in support of attorneys' fees within 21-days of the notice of entry of order granting summary judgment. Instead, Respondent only argues based on its own specious and self-serving calculation of time, avoiding Appellant's arguments.

In light of the lack of opposition presented to the aforementioned arguments, this Honorable Court should deem those arguments as valid and meritorious, which would lead to a ruling in favor of awarding Appellant's fees and costs sought.

CONCLUSION

Based on the foregoing, Appellant respectfully requests the that the Decision & Order be reversed and remanded back to the district court awarding attorneys' fees to Appellant pursuant to either NRS 18.010(2)(b), NRS 17.117 / NRCP 68, and/or the terms of the Residential Purchase Agreement.

Dated this 28th day of August, 2023.

MICHAEL B. LEE, P.C.

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VERIFICATION

Under penalty of perjury, of the laws of Nevada, the undersigned declares that he is the attorney for the Respondents named in the foregoing Respondents' Brief and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true. This verification is made by the undersigned attorney, pursuant to NRS § 15.010, on the ground that the matters stated, and relied upon, in the foregoing Respondent's Brief are all contained in the prior pleadings and other records of this Court and/or the District Court.

Dated this 28th day of August, 2023.

/s/ Michael Matthis
MICHAEL MATTHIS, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Respondents' Answering Brief complies with the formatting, type-face, and type-style requirements of NRAP 32(a)(4-6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

I further certify that this Respondents' Answering Brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ [X] Proportionately spaced, has a typeface of 14 points or more, and contains 2,265 words; or

☐ [] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☐ [] Does not exceed _____ pages.

DATED this 28th day of August, 2023.

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CERTIFICATE OF MAILING

I hereby certify, under penalty of perjury, that I am an employee of Michael B. Lee, P.C., and that I caused to be electronically filed on this date, a true and correct copy of the foregoing document with the Clerk of the Court using the ECF system, which will automatically e-serve the same on the attorneys of record set forth below.

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Dated this 28th day of August, 2023.

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An employee of MICHAEL B. LEE, P.C.