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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO** | DATE FILED: June 25, 2017 7:13 PM  FILING ID: C8EA2DA221D54 CASE NUMBER: 2015CV31709 |
| **Denver County District Court Denver City & County Bldg.**  **1437 Bannock Street, Room 256**  **Denver, Colorado 80202** | **▲COURT USE ONLY**▲ |
| **Defendants: ROBERT ABRAMS and ABRAMS &**  **ASSOCIATES, LLC, a Colorado limited liability**  **company** | **Case Number: 2015CV31709** |
|  | Ctrm.: 275 |
| **v.** |  |
| **Defendant: SHAWN BEESON** |  |
| Wadi Muhaisen, 34470 Amanda K. Becker, 45084 **Muhaisen & Muhaisen, LLC**  Address: 1435 Larimer Street Ste 203  Denver, Colorado 80202  Phone Number: 303-872-0084  Fax Number: 303-309-3995 [wadi@muhaisenlaw.com](mailto:wadi@muhaisenlaw.com) [amanda@muhaisenlaw.com](mailto:amanda@muhaisenlaw.com) |  |
| **DEFENDANT’S REPLY TO PLAINTIFFS’ RESPONSE TO DEFENDANT’S MOTION TO RECONSIDER ORDER RE: DEFENDANT’S BILL OF COSTS; AND, DEFENDANT’S REVISED BILL OF COSTS** | |

COMES NOW, Defendant Shawn Beeson (“Beeson”), by and through counsel, Muhaisen & Muhaisen, LLC, and replies to Plaintiffs’ (“Abrams”) Response to his

Motion to Reconsider Order RE: Defendant’s Bill of Costs; and, Defendant’s Revised Bill of Costs (“Abrams Response”). The Court should GRANT Mr. Beeson his costs as requested, and in support Defendant states as follows:

1. **INTRODUCTION**
2. As the prevailing party on his claim for Breach of Contract, a significant issue in the litigation, Defendant is eligible for an award of costs under C.R.S. § 13-16- 104, which is exactly why this Court correctly found Shawn Beeson to be the prevailing party, when it issued its Trial Minutes and Judgment dated May 5, 2017. The Court has rejected Abrams’ argument that Mr. Beeson was not the prevailing party, and should also reject his argument that the Court should not grant Mr. Beeson his costs, which he

has now proven.

1. **REPLY AND LEGAL ANALYSIS**
2. **THE COURT CORRECTLY FOUND DEFENDANT TO BE PREVAILING PARTY IN THIS CASE**
3. Mr. Beeson incorporates any relevant fact and law cited in his Motion for Reconsideration and Amended Bill of Costs; and the Court’s previous Orders relating to the prevailing party issue.

# NOTHING IN THE RULES PROHIBITS THE COURT FROM RECONSIDERATION

1. In his Motion to Reconsider, Mr. Beeson stated: “[n]othing in C.R.C.P.

54(d), C.R.C.P. 121, or C.R.S. § 13-16-101 et seq. prohibits the Court from considering an amended Bill of Costs, especially in this case where a party timely filed it.”

Abrams either completely failed to rebut this simple proposition in his Response, or as usual, misapplied and misrepresented the law to suit his own purposes.

# C.R.C.P. 60 PROVIDES THREE DIFFERENT GROUNDS FOR THE COURT TO RECONSIDER

1. In contrast to what Abrams claimed in his/their Response, there are three independent grounds, upon which the Court can reconsider its Order regarding the Bill of Costs. 1) Excusable Neglect, 2) Equity, and 3) Residual grounds.

Mr. Beeson has demonstrated excusable neglect

1. Abrams selectively analyzes C.R.C.P. 60. The rule states that “[o]n motion and upon such terms as are just*,* the court may relieve a party or his legal representative from an. . . order . . for . . . excusable neglect. 60(b)(1). Relief must be sought not more than six months after the judgment by section (b) of this rule. B*urson v. Burson*, 149 Colo. 566, 369 P.2d 979 (1962). Mr. Beeson sought relief hours, not months, after the Court’s Order, therefore his motion is timely.
2. Undersigned counsel and Mr. Beeson made efforts to gather all the items to substantiate the Bill of Costs by contacting previous counsel, and by searching Mr. Beeson’s records. This took a great deal of time, including for reasons stated in Mr. Beeson’s Motion to Reconsider. Robert Abrams, of all people, calling into question the integrity and claims of another party or attorney requires no comment, since the Court and previous Judge, are familiar with Mr. Abrams’s conduct in this matter. It was not in the interests of judicial economy or the Court/ staff’s time, for Mr. Beeson to file exhibits as they were received piecemeal, but rather, it was more efficient to file all exhibits at once. Mr. Beeson’s counsel began working on the Motion to Reconsider and Amended

Bill of Costs weeks before it was filed, and planned to file it when it was filed. The fact that it was filed the day the Court issued its Order is not relevant to the main issue and is just more obfuscation by Abrams and his underlings. Mr. Beeson’s difficulty in obtaining records and information from multiple counsel who have different book- keeping and records systems, in the totality, is excusable neglect per Rule 60.

Denying Mr. Beeson’s Costs is no Longer Equitable

1. The propriety of an independent equitable action to afford relief from a prior judgment (or order) is expressly permitted under the provisions of section (b) of Rule
2. *Dudley v. Keller*, 33 Colo. App. 320, 521 P.2d 175 (1974). Rule 60 states that a court can reverse a ruling when “it is no longer equitable that the judgment should have prospective application,” 60(b)(4). The Court already found Mr. Beeson to be the prevailing party, he filed his Bill of Costs on time, and he has now provided proof of his costs. It is no longer equitable that the Order denying the Bill of Costs have prospective application. *Id.* Nor would not be equitable for Mr. Abrams who wrongfully withheld his own client’s money, who file a lawsuit against his client, and who forced that client to incur costs and attorney fees pursuing his money for five years; to now force that victimized client to absorb the costs of vindicating his rights. It is equitable for the Court to ratify his costs that he incurred due to Robert Abrams and Abrams and Associates, LLC illegally withholding his settlement funds.[1](#_bookmark0)

1 In a related motion, Robert Abrams took exception to the characterization of his withholding client funds as “illegal.” Mr. Beeson refers Mr. Abrams to Blacks Law Dictionary:

ILLEGAL - Not authorized by law; Illicit ; unlawful; contrary to law. Sometimes this term means merely that which lacks authority of or support from law; but more frequently it imports a violation.

The Court may consider any other reason justifying relief

* 1. Even if C.R.C.P. 60(B)(1) and (4) didn’t apply, Section (b)(5) is a residuary clause for application for situations not covered by other sections in the rule. *McElvaney*

*v. Batley*, 824 P.2d 73 (Colo. App. 1991); *Domenico v. Sw. Props. Venture*, 914 P.2d 390 (Colo. App. 1995). C.R.C.P. 60 provides clear grounds (*see supra)* for the Court to reconsider the Bill of Costs issue, but even if not, the Rule “does not limit the power of a court . . . [t]o entertain an independent action to relieve a party from a judgment, order, or proceeding.” 60(b)(5). C.R.C.P. 60 permits thus Court to reconsider its Order for *“any other reason justifying relief* from the operation of the judgment. [Order]” *Burson*, 149 Colo. 566, 369 P.2d 979; D*ept. of Welfare v. Schneider*, 156 Colo. 189, 397 P.2d 752 (1964); *Domenico v. Sw. Props. Venture*, 914 P.2d 390 (Colo. App. 1995). Rule 60 does not limit the power of this Court to entertain an independent action to relieve a party from an order. *Terry v. Terr*y, 154 Colo. 41, 387 P.2d 902 (1963).

* 1. Mr. Abrams, who fails to even address C.R.C.P. 60(b)(5), attempts to narrow the court’s power and ability by nitpicking the rules, however the plain language of Rule 60 clearly provides wide latitude of the court when it states it “does not limit the power” of the court to relieve a party from an order.
  2. In Abrams’ Response, his/their counsel states “[t]o undersigned counsel’s knowledge and research, none of Defendant’s case law supports his position that a reservation of amendment permits correcting a timely-filed, deficient bill of costs.” Response ¶ 25. Simply refusing to refute the other party’s citations do not amount to argument.

# MR. BEESON ALSO HAS GROUNDS FOR RECONSIDERATION UNDER C.R.C.P. 121 § 1-15(11)

* 1. Pursuant to C.R.C.P. 121 § 1-15(11), a party moving to reconsider must show more than just a disagreement with the court’s decision. Such motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.
  2. Mr. Beeson does not allege that the Court made a manifest error in law when it denied his Bill of Costs. Rather, the Court did not have adequate facts upon which to base its decision, for the reasons established by the Defendant and his counsels. The Exhibits filed with the Reconsideration Motion provides the facts and evidence upon which the Court can now grant Mr. Beeson his costs. The Motion to Reconsider should be granted to avoid manifest injustice in this case, since otherwise the prevailing party and victim, Mr. Beeson, would see a significant portion of his judgment reduced because he didn’t initially have all the invoices, receipts, and date from both law firms that represented him in his matter.

# ABRAMS HAS CONFESSED THAT MR. BEESON’S COSTS ARE REASONABLE

* 1. The law is well settled in Colorado that the standard for whether an expense is recoverable is whether the expense was “reasonably necessary for the development of the case in light of the facts known to counsel at the time” the expense was incurred. *Cherry Creek School Dist. v. Voelker*, 859 P.2d 805, 813-14 (Colo. 1993). All the costs Mr. Beeson submitted in his Amended Bill of Costs meet this standard.
  2. In Abrams’ Response, they do not make a single argument that any item in

the Amended Bill of Costs is not reasonably necessary or appropriate under Colorado law, therefore they have confessed this issue, and the Court should find that all requested costs are awardable.

* 1. The awarding of costs lies within the sound discretion of the court. *Archer v. Farmer Bros. Co*., 90 P.3d 228, 230 (Colo. 2004).

# CONCLUSION

WHEREFORE, Defendant respectfully request the Court GRANT his Motion to Reconsider and AWARD Mr. Beeson his Costs as reflected in his Amended Bill of Costs. The Court has properly found Mr. Beeson to be the prevailing party. Mr. Beeson filed his Bill of Costs in a timely fashion, he has demonstrated excusable neglect for the late filing of his exhibits, awarding him costs is equitable, and he has demonstrated grounds justifying relief. Finally, his costs are reasonable.

**DATED** this 25th day of June, 2016.

Respectfully Submitted, Muhaisen & Muhaisen, LLC

[\*](#_bookmark1)S/ Wadi Muhaisen Wadi Muhaisen, #34470

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\* *The "S/" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a copy of the foregoing pleading entitled “DEFENDANT’S REPLY TO PLAINTIFFS’ RESPONSE TO DEFENDANT’S MOTION TO RECONSIDER ORDER RE: DEFENDANT’S BILL OF COSTS; AND, DEFENDANT’S

REVISED BILL OF COSTS” was [ ] hand delivered, or [X] E-Served by the Court- authorized E-System provider, or [ ] served by facsimile to [insert fax number of opposing party or their counsel], or [ ] sent by United States mail postage prepaid, to the following on this 26th day of May 2017:

Neil S. Sullenberger, Esq. Robert Abrams

Abrams & Associates, LLC 700 17th Street, Suite 650

Denver, CO 80202

Nathan Silver, Esq. Silver Law Firm, LLC 700 17thSt., Ste 650

Denver, CO 80202

/S Yvette Garcia Yvette Garcia, Legal Assistant

*otherwise signed form of the E-Filed or E-Served document pursuant to C.R.C.P. 121 lr 1-26(1)(f). A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures is maintained by the filing party and is available for inspection by other parties or the court upon request pursuant to C.R.C.P. 121 lr 1-26(7).*