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Tracie K. Lindeman
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**IN THE SUPREME COURT OF THE**

**STATE OF NEVADA**

NANYAH VEGAS, LLC, a Nevada limited liability company,

Appellant,

v.

SIGMUND ROGICH aka SIG ROGICH, as Trustee of the Rogich Family Irrevocable Trust; ELDORADO HILLS, LLC, a Nevada limited liability company, DOES 1-X; and/or ROE CORPORATIONS I-X, inclusive,

Respondents

Case No.: 66823

District Court Case No: A-13-686303-C

Dept. No.: XXVII

**REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL**

## THE COURT DOES NOT HAVE JURISDICTION

The Court has often held that an appeal from a judgment or order in a civil claim may be taken only if authorized by statute or court rules. Bates v. Nevada Savings and Loan Ass'n, 85 Nev. 441, 456 P. 2d 450 (1969); Jarstad v. National Farmers Union, 92 Nev. 380, 552 P. 2d 49 (1976); Lucas v. Page, 89 Nev. 248, 510 P. 2d 868; Nevada Gaming Commission v. Byrens, 76 Nev. 374; 355 P. 2d 176 (1960).

In Rust v. Clark County School District, 103 Nev. 686, 688, 747 P. 2d 1380, 1382 (1987), the Court held that: "the proper and timely filing of a notice of appeal is jurisdictional. [Citing cases]. Jurisdictional rules go the very power of this court



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to act. They must, accordingly, be clear and absolute in order to give all fair notice of what is required to bring a matter properly before this court. Indeed, a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court."

Nevada's appellate jurisdictional rules, as provided in the Nevada Rules of Appellate Procedure, are clear and absolute. Applicable here are NRAP 3(a)(1) and NRAP 4(a)(1).

NRAP 3(a)(1) provides that "an appeal permitted by law from a district court to the Supreme Court may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4" (emphasis supplied).

NRAP 4(a)(1) provides that "Except as provided in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." (emphasis supplied).

For this Court to be vested with jurisdiction in this appeal from the district court, there must be compliance with those provisions. There is no compliance and this court does not have jurisdiction with respect to Appellant's appeal. The appeal was not timely filed as specifically mandated by NRAP 4(a)(1).

The Notice of Appeal, filed electronically March 13, 2015, states that it appeals from the Order entered on November 5, 2014 and noticed on November 6, 2014, "which granted partial summary [judgment] against Plaintiffs; the Order dated February 10, 2015 and noticed on February 11, 2015 which awarded attorney's fees and costs to the Defendants, and; the Final Judgment filed on February 23, 2015 and noticed on February 24, 2015."

As shown by the Motion to Dismiss, the final judgment for appeal purposes was the Order of November 5, 2014, which was not appealed until March 13, 2015. Rule 4 (a)(1) required notice of appeal to be filed "no later than 30 days after the date that written notice of entry of the judgment or order appealed from is

served." Notice of Entry was November 6, 2014. The Notice of Appeal was filed on March 13, 2015, more than 90 days after the notice of entry. It was not timely. The court has no jurisdiction with respect to Appellant's Appeal.

The Order of February 11, 2015 awarding attorney's fees was not an appealable final order. Lee v. GNLV Corp.. 116 Nev. 424, 427, 428, 976 P. 2d 416 (2000). That Order awarded fees only, it did not award costs. The Final Judgment of February 23, 2015 did award costs. It is not an appealable final judgment. Id.

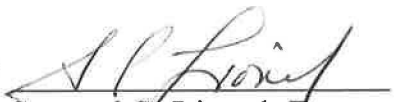
Appellant argues that its appeal from the Order dated October 1, 2014 granting Summary Judgment is a "final appealable judgment" and its notice of such appeal on October 30, 2014, was timely, citing Lee. Opp. At 7:4-12. Of course, Lee does not aid Appellant. It warns that such orders are not appealable absent a Rule 54(b) certification. (See Id. at 116 Nev. 428, fn.4). There is no 54(b) certification. That Order is a non appealable uncertified order.

None of the other cases cited by Appellant concern the timing of notices of appeal as mandated by NRAP 3 or 4.

## CONCLUSION

Appellant's appeal of the final judgment was not timely. This Court has no jurisdiction. The Motion to Dismiss Appeal should be granted.

**FENNEMORE CRAIG**

By 

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## CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Appellate Procedure 25 (c)(1),I hereby certify that I am an employee of FENNEMORE CRAIG and that on this 5th day of May , 2015, I caused the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL** to be served by submission to the electronic filing service for the Nevada Supreme Court upon the following to the email addresses on file and by depositing same for mailing in the United States Mail, in a sealed envelope addressed to:

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