

1 **IN THE SUPREME COURT OF THE**
2 **STATE OF NEVADA**

3 CARLOS A. HUERTA, AN
4 INDIVIDUAL; AND GO GLOBAL, A
5 NEVADA CORPORATION,

6 Appellants,

7 v.

8 SIGMUND ROGICH aka SIG
9 ROGICH, AS TRUSTEE OF THE
10 ROGICH FAMILY IRREVOCABLE
11 TRUST; ELDORADO HILLS, LLC, a
12 Nevada limited liability company.

13 Respondents

Case No.: 70497

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14 **REPLY TO APPELLANTS' RESPONSE TO SHOW CAUSE AND**
15 **OPPOSITION TO MOTION TO DISMISS APPEAL¹**

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25 ¹ This brief is a Reply to Appellants' Response to Order to Show Cause and
26 Opposition to Motion to Dismiss Appeal. Citations to the briefs will be
27 shown as Response or Opposition with paragraph numbers.

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1 **I. THE ORDER DENYING APPELLANTS' MOTION FOR**
2 **RECONSIDERATION IS NOT APPEALABLE**

3 NRAP 3A(b)(8) permits an appeal of a special order entered after final
4 judgment. The fact that an order is entered after final judgment does not
5 render it appealable. To be appealable as a special order after final judgment,
6 it must be "an order affecting the rights of some party to the action, growing
7 out of the judgment previously entered. It must be an order affecting rights
8 incorporated in the judgment." Gumm v. Mainor, 118 Nev. 912, 914, 59 P.
9 3d 1120, 1225 (2002); Peck v. Crouser, 129 Nev. Adv. Op. 12*3, 295 P.3d
10 566, 588(2013); Alvis v.. State Gaming Control Board, 99 Nev.184, 186, 660
11 P.2d 980(1983).

12 Alvis was an appeal from a district court order dismissing a petition
13 for review and from an order denying rehearing of that decision. Alvis
14 argued that the order denying rehearing is a special order after final judgment
15 and is therefore, independently appealable under former NRAP 3A(b)(2),
16 now 3A(b)(8). This Court held that because the order denying rehearing did
17 not affect the rights of the parties as determined by the order dismissing the
18 motion for review, the order was not a special order after final judgment and
19 was not an appealable order.

1 In its Motion to Dismiss Appeal, respondent cited and quoted from
2 Gumm and Peck, but appellants ignored such reference and in the Response
3 and Opposition repeatedly argue that a denial of a 60(b) motion is an
4 appealable special order.

5 “Because the District Court denied the Motion for Relief that was
6 based on NRCP 60(b), the denial is a special order, upon which this Court
7 has jurisdiction.” Opposition at paragraph 13.

8 “Denial of the Motion for Relief is appealable: (1) as a 60(b) ruling
9 that constitutes a special order, and (2) as an injunction that the court has
10 refused to dissolve” citing NRCP 3A(b)(8).” Opposition at paragraph 20.

11 Similar argument appears in the Response at paragraphs 21, 22.

12 Appellants have made no showing, directly or indirectly, that rights
13 afforded to them by the Summary Judgment were affected by the Order
14 Denying Reconsideration. Here, the Summary Judgment did not grant any
15 rights to Appellants. It held that their claims were meritless and dismissed
16 them. The Order Denying Reconsideration did not in any respect impact the
17 Summary Judgment. Appellants’ argument that the Order “actively prevents
18 the plaintiffs from pursuing a claim they would otherwise be entitled to assert
19 against the Defendants” and such preventative effect makes it an injunction is

1 meritless. Response at paragraph 12. The Summary Judgment dismissed
2 Appellants' claims and thus they had no claims to assert. The subsequent
3 Order denying reconsideration had no effect on anything in the Summary
4 Judgment.

5 Appellants argue that "this Court has explicitly determined that
6 District Court orders denying an NRCP 60(b) motion for relief...are special
7 orders from which appeal may be taken" citing Marcuse v. Del Webb
8 Communities, Inc., 123 Nev.278, 283 n.3, 163 P.3d 462,466 n.3(2007);
9 Holiday Inn v. Burnett, 103 Nev.60, 63, 732 P.2d 1376,1378-79(1987) and
10 Smilanich v. Bonanza Air Lines, 72 Nev.10, 291 P.2d 1053(1956).

11 Opposition at paragraph 12.

12 Those decisions do not support Appellants. In each, appellant had an
13 interest in the judgment which was affected by a post judgment ruling. In
14 Marcuse, an order denying plaintiffs' 60(b) motion was held to be a special
15 order after final judgment. Their motion opposed a construction defect class
16 action settlement dismissing the action with prejudice and challenged its
17 effect on their damage claim resulting from the construction defect.

18 In Holiday Inn Downtown the respondent had been raped and had a
19 worker's compensation claim. She filed a 60(b)(3) motion to vacate an order

1 which affirmed a decision of an appeals officer closing her claim without
2 sending her a required notice of closing.

3 Smilanich is a short decision which states that an order denying relief
4 from a judgment is an appealable order. The decision does not state why.

5 These decisions do not aid Appellants. The requisites for a special
6 order after final judgment set forth in Gumm and repeated by this Court in
7 Peck, in 2013 en banc, is the law with respect to such orders.

8 Appellants' contention that the preclusive effect of the Order acts as an
9 injunction that is no longer equitable to prospectively apply is frivolous. All
10 the Order does is deny reconsideration with respect to the Summary
11 Judgment which dismissed Appellants' claim. There is nothing preclusive
12 about the Order. It does not act as an injunction. In Peck v. Crouser, the
13 Court ruled that a post-judgment vexatious litigant order is not appealable
14 under NRAP 3A(b)(8) as a special order entered after judgment . The Court
15 also ruled that although the order restricted the litigant's conduct, it was not
16 an injunction. "An injunction is "[A] court order commanding or preventing
17 an action..." In Nevada" injunctions are governed by NRCP 65, which sets
18 forth the procedure for seeking an injunction and the form that an order
19 granting an injunction must take." Peck, 120 Nev. Adv. Op. 12.

1 Thus, the Order Denying Reconsideration is not a special order entered
2 after final judgment and therefore, this Court does not have jurisdiction over
3 Appellants' appeal.

4 **II. APPELLANTS' ALLEGED CREDITOR PAYMENTS ARE NOT**
5 **RELEVANT TO THE JURISDICTIONAL ISSUES**

6 The purpose of Appellants' Motion for Reconsideration was to have
7 the Summary Judgment vacated because 12 days before the motion was filed²
8 they allegedly paid their bankruptcy unsecured creditors in full as provided in
9 their bankruptcy plan and such payments made their earlier omission in their
10 disclosure statements of their claim against the Rogich Trust irrelevant.
11 Response at paragraph 8. Aside from the effective defenses of the finality of
12 the Summary Judgment and claim preclusion, the facts with respect to
13 Appellants alleged unsecured payments fully support the denial of
14 reconsideration. Appellants argue that Summary Judgment "was based solely
15 on the failure to disclose Plaintiffs' claim against Rogich in their Disclosure
16 Statement. Response at paragraph 8. While that failure alone supports the
17 judicial estoppel granted, Zakula v. McHugh, 176 F.3d 399 (9th Cir. 2014);

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19 ² The payments are claimed to have been made on February 10, 2016.
Response, Exhibit E at ¶8. The Motion for Reconsideration was filed on
February 22, 2016. Exhibit J.

1 Hamilton v. State Farm & Cas. Co., 270 F. 3d 778 (9th Cir. 1991), as the
2 Undisputed Material Facts of the Order Granting Summary Judgment show,
3 Appellants' conduct was a relevant factor in the award of Summary Judgment.
4 The Undisputed Material Facts included Huerta's attempt to recover the claim
5 outside his bankruptcy, his false Declaration that everything in his plan and
6 disclosure was true and accurate, which caused the District Judge to
7 personally insert in the 8th Undisputed Material Fact "This Declaration
8 allowed Huerta and Go Global to confirm a Chapter 11 Plan." Appellants
9 also assigned to Huerta's Trust its alleged claim against the Rogich Trust 8
10 days after plan confirmation and the next day the Huerta Trust and Huerta
11 sued the Rogich Trust . Response Exhibit 4-A. The Summary Judgment
12 dismissing Appellants' claims was warranted.

13 Other arguments by the Appellants are meritless and are not relevant to
14 this Court's jurisdiction with respect to the Order Denying Reconsideration.


15 Appellants argue that only the bankruptcy court had jurisdiction to
16 determine all issues relating to the adequacy of information contained in the
17 disclosure statement citing 28 U.S.C. 157,1409. Opposition at paragraph 18.
18 Clearly the District Court had jurisdiction to determine if Huerta was playing
19 fast and loose with the court with respect to his alleged claim against the

1 Rogich Trust. The claim of exclusive jurisdiction in the bankruptcy court is
2 not supported by 28 U.S.C. 157,1409. Section 157 is entitled Procedures and
3 provides in paragraph (b)(1) that Bankruptcy Judges may hear and determine
4 all cases under title 11. 28 U.S.C. 1409 concerns venue of proceedings arising
5 under title 11. Nothing in the cited section of title 28 support Appellants
6 claim of bankruptcy court exclusive jurisdiction of adequacy of disclosure
7 statements. The purported issue with respect to the claimed belated payments
8 to unsecured credits does not impact the fact that the denial of Appellants'
9 Motion for Reconsideration is not a special order entered after final judgment.

10 **III. CONCLUSION**

11 The Order Denying Appellants' Motion for Reconsideration is not a
12 special order entered after a final judgment. This Court does not have
13 jurisdiction of this appeal and it should be dismissed.

14 Dated this 22 day of August, 2016.

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