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IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS A. HUERTA, AN
INDIVIDUAL; AND GO GLOBAL,
INC., A NEVADA CORPORATION,

Appellants,

vs.

SIG ROGICH, A/K/A SIGMUND
ROGICH, AS TRUSTEE OF THE
ROGICH FAMILY IRREVOCABLE
TRUST; ELDORADO HILLS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Respondents.

Case No.: 70492 Electronically Filed
Jan 05 2017 11:03 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, The Honorable Nancy
Alff Presiding.

APPELLANTS' OPENING BRIEF

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1. Appellant Carlos Huerta is an individual, residing in the State of Nevada. Go Global, Inc. is an Idaho Corporation that is not publicly traded and has no parent corporation that owns 10% or more of the corporation's stock. The president and direct owner of Go Global is Carlos Huerta.

Dated this 4th day of January, 2017.

By: /s/ Samuel A. Schwartz
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1 **I. JURISDICTIONAL STATEMENT**

2 This appeal results from the district court’s order denying the motion of
3 Appellants Carlos A. Huerta (“**Huerta**”) and Go Global, Inc. (“Go Global” and
4 collectively with Huerta, the “**Appellants**”) for reconsideration for relief from
5 an order granting partial summary judgment and all judgments and orders in the
6 case (the “**Request for Relief**”). The Request for Relief was based, in part, on
7 NRCP 60(b). An order denying a motion for relief pursuant to NRCP 60(b) is
8 independently appealable. See NRAP 3A(b)(8); Holiday Inn v. Barnet, 103
9 Nev. 60, 63, 732 P.2d 1376, 1378-79 (1987) (order denying motion to set aside
10 under NRCP 60(b) is appealable as special order after final judgment).

11 Importantly, the jurisdictional issues in this appeal were already
12 challenged by appellees Sig Rogich, a/k/a Sigmund Rogich, as Trustee of the
13 Rogich Family Irrevocable Trust (collectively, “**Rogich**”) and Eldorado Hills,
14 LLC (“**Eldorado**” and collectively with Rogich, the “**Appellees**”) and briefed
15 by the parties. On October 6, 2016, this Court issued an order: (i) denying
16 Appellees’ motion to dismiss the appeal; and (ii) reinstating briefing.

17 **II. ROUTING STATEMENT**

18 NRAP 17(a)(13) provides that the Supreme Court shall hear and decide
19 matters raising a question of first impression involving the United States or
20 Nevada Constitutions or common law as a principal issue. In this matter, the
21 issues on appeal involve judicial estoppel, federal bankruptcy law, state court
22 jurisdiction applicable to federal bankruptcy law, and issues regarding the
23

1 Nevada District Court's lack of giving full faith and credit to bankruptcy court
2 orders.

3 Accordingly, given the constitutional issues regarding full faith and
4 credit, and complex issues regarding the interplay between federal bankruptcy
5 courts and state courts, Appellants suggest the Supreme Court should retain this
6 appeal.

7 **III. ISSUES ON APPEAL**

8 1. Did the District Court have jurisdiction to determine that
9 Appellants' Disclosure Statement in their Chapter 11 bankruptcy case lacked
10 adequate information when the Bankruptcy Court previously entered an order
11 approving the adequacy of the Disclosure Statement?

12 2. Did the District Court fail to give full faith and credit to the
13 Bankruptcy Court's order approving the adequacy of the Appellants' Disclosure
14 Statement in their Chapter 11 bankruptcy case?

15 3. Was Appellants' failure to disclose claims against Rogich in their
16 Disclosure Statement filed in connection with the Chapter 11 Plan irrelevant
17 because Rogich was not a creditor in the underlying bankruptcy case to whom
18 disclosure was necessary, thus allowing for the Court to set aside the Partial
19 Summary Judgment Order under NRCPP 60(b)?

20 4. Was the failure to disclose Appellants' claims against Rogich in
21 their Disclosure Statement filed in connection with their Chapter 11 plan
22 irrelevant because the Chapter 11 plan required payment in full of all unsecured
23 creditors' claims, and the Appellants satisfied this requirement, thus allowing

1 for the District Court to set aside the Partial Summary Judgment Order under
2 NRCP 60(b)?

3 5. Should Partial Summary Judgment Order be set aside based on
4 new evidence and to prevent manifest injustice pursuant to NRCP 60(b)?

5 6. Was the District Court's Partial Summary Judgment order a partial
6 adjudication only, and thus, was interlocutory allowing reconsideration
7 pursuant to NRCP 54(b)?

8 **IV. STATEMENT OF THE CASE**

9 This is an action to collect \$2,747,729.50 from the Appellees pursuant to
10 that certain agreement entered into by and between Huerta and Rogich,
11 whereby Rogich agreed to buy Huerta's ownership interest in property located
12 in Clark County, Nevada, otherwise identified as APN 189-11-401-001.
13 Despite the District Court case being initiated in 2013, this case has not
14 proceeded on the merits due to procedural issues.

15 Specifically, on November 5, 2014, the Honorable District Court Judge
16 Nancy Alff granted the Appellees' Motion for Partial Summary Judgment (the
17 "**Partial Summary Judgment Order**") on judicial estoppel grounds because
18 the Appellants did not indicate in their Disclosure Statement that they intended
19 to use the proceeds from their claims against Rogich to pay their creditors.
20 Importantly, however, the Appellants already had a judgment against Hugo
21 Paulson and his related entities (collectively, the "**Paulson Parties**") for nearly
22 \$5 million, and proposed to pay the creditors in Appellants bankruptcy case
23

1 100% of their allowed claims from the proceeds recovered from the Paulson
2 Parties.

3 Subsequent to the entry of the Partial Summary Judgment Order, the
4 Appellants collected on their judgment against the Paulson Parties and paid
5 their creditors in full pursuant to the Order Confirming their Third Amended
6 Joint Plan of Reorganization (the “**Chapter 11 Plan**”) in their Chapter 11
7 bankruptcy case (the “**Bankruptcy Case**”) before the United States Bankruptcy
8 Court for the District of Nevada (the “**Bankruptcy Court**”). As such, in
9 February 2016, the Appellants filed their Motion to Close Case and its related
10 Notice of Consummation of the Plan and Payment of Unsecured Creditors in
11 Full (the “**Motion to Close and Notice of Payment in Full**”).

12 Based upon the Motion to Close and Notice of Payment in Full, the
13 Appellants filed their Request for Relief before the District Court. The legal
14 bases for the Request for Relief were:

15 1 – the District Court did not have jurisdiction to determine that the
16 Plaintiffs’ Disclosure Statement lacked adequate information as the Bankruptcy
17 Court previously entered an order approving the adequacy of the Disclosure
18 Statement;

19 2 – the District Court failed to give full faith and credit to the Bankruptcy
20 Court’s order approving the adequacy of the Appellants’ Disclosure Statement
21 in their Chapter 11 bankruptcy case;

22 3 – the failure to disclose Appellants’ claims against Rogich in their
23 Disclosure Statement was irrelevant because: (i) Rogich was not a creditor in

1 Appellants' bankruptcy case to whom disclosure was necessary; (ii) Appellants'
2 plan proposed to pay creditors 100% of their allowed claims from the judgment
3 against the Paulson Parties; and (iii) Appellants satisfied the requirements of
4 their Chapter 11 Plan and paid creditors 100% of their allowed claims, making
5 further disclosure to creditors meaningless. Based on the above, the Court
6 could have set aside the Partial Summary Judgment Order under NRCP 60(b);

7 4 – the Partial Summary Judgment Order should be set aside based on
8 new evidence and to prevent manifest injustice pursuant to NRCP 60(b); and

9 5 – the District Court's Partial Summary Judgment order was a partial
10 adjudication only, and thus, was interlocutory allowing reconsideration
11 pursuant to NRCP 54(b).

12 **V. STANDARDS OF REVIEW**

13 When a party seeks to set aside judgment pursuant to NRCP 60(b), the
14 standard of review denying motion to set aside said judgment is whether the
15 district court abused its discretion. Cook v. Cook, 112 Nev. 179, 912 P.2d 264
16 (1996); Kahn v. Orme, 108 Nev. 510, 835 P.2d 790 (1992). Moreover, the
17 question of the interpretation of a contract¹ when the facts are not in dispute is a
18 question of law, and thus, a court reviews a lower court's findings de novo as a
19 question of law. Importantly, this Court has a strong policy of deciding cases

20

21

22 ¹ This case involves the interpretation of a disclosure statement in
23 bankruptcy and whether judicial estoppel may apply to Appellants.
Accordingly, Appellants believe the same standard that applies to contracts
should be applied to the disclosure statement at issue here.

1 on the merits. Harper v. Mallory, 4 Nev. 447 (1868); Hotel Last Frontier v.
2 Frontier Properties, 79 Nev. 150, 380 P.2d 293 (1963).

3 **VI. FACTUAL BACKGROUND**

4 **1. The Parties' Purchase Agreement.**

5 Appellants seeks to recover moneys owed on their purchase agreement
6 (the "**Purchase Agreement**") executed in 2008, whereby Rogich purchased Go
7 Global's interest in Eldorado Hills, as well as the interest of Go Global's sole
8 shareholder, Huerta. See Appellant's Appendix ("**App.**") at 599-609.

9 Eldorado Hills' primary asset is the real property located in Clark
10 County, Nevada, and is made up of 161.93 acres, which includes several
11 buildings, a functioning gun club and shooting range, identified by Assessor's
12 Parcel Number: 189-11-401-001 (the "**Property**").

14 On or about October 30, 2008, Huerta, Go Global and Rogich entered
15 into the Purchase Agreement whereby the interests of Huerta and Go Global
16 would be purchased with terms/seller financing, by Rogich, for \$2,747,729.50.
17 App. at 599-609. Pursuant to the Purchase Agreement, the \$2,747,729.50
18 would, at least, be paid from "future distributions or proceeds" received by
19 Rogich from Eldorado. Id. at Section 2(a) of the Purchase Agreement, App. at
20 600.

22 Subsequent to the time that the parties entered into the Agreement,
23 Rogich, on multiple occasions continued to represent that he and the trust would

1 repay the debt owed to Go Global. App. at 3050. Go Global reasonably relied
2 on these representations, as the Property was free of any outstanding debt and
3 there was no reason that the property was at risk of any real financial
4 difficulties. Id. Additionally, Go Global continued to assist Rogich in
5 attempting to sell the Property, even after the October 30, 2008, Purchase
6 Agreement had been consummated. Id. For several years after, Huerta
7 introduced several interested parties for the Property or parts thereof, to Rogich,
8 but the Eldorado group seemed content with holding onto the Property until a
9 later date and/or until the Nevada Department of Transportation constructed the
10 new freeway adjacent to the property. Id.

12 **2. The Appellants’ Chapter 11 Bankruptcy Cases.**

13 On or about March 3, 2010, Go Global filed a voluntary petition for relief
14 under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy
15 Court for the District of Nevada, Case No. 10-14804, App. at 532. On or about
16 June 4, 2010, Go Global filed its Bankruptcy Schedules and List of Creditors.
17 See Case No. 10-14804-LED, Docket No. 73, App. at 420-457. In Schedule B,
18 Go Global properly listed its claim against Rogich in the amount of
19 \$2,747,729.50. Id. at 427.

21 On or about April 8, 2013, Go Global filed its Third Amended Joint
22 Disclosure Statement (the “**Disclosure Statement**”). See Case No. 10-14804-
23 LED, Docket No. 473, App. at 1014. In Section (A)(3), the Disclosure

1 Statement states that all future “Causes of Action” shall vest in Go Global, free
2 and clear of all liens, claims, charges, or other encumbrances. Id. In Section
3 (F)(2)(a), “Maintenance of Causes of Action,” the Disclosure Statement states
4 the following: “after the Effective Date, the Reorganized Debtors [Go Global]
5 shall retain all rights to commence, pursue, litigate or settle, as appropriate, any
6 and all Causes of Action, whether existing as of the Petition Date or thereafter
7 arising, in any court or other tribunal including, without limitation, any
8 adversary proceeding Filed in the Chapter 11 Cases.” Id.

9
10 In Section (F)(2)(b), “Preservation of All Causes of Action Not Expressly
11 Settled or Released,” the Disclosure Statement states the following:

12 Unless a claim or Cause of Action against a Holder of a Claim or an
13 Equity Interest or other Entity is expressly waived, relinquished, released,
14 compromised or settled in the Plan or any Final Order (including, without
15 limitation, the Confirmation Order), the Debtors expressly reserve such
16 claim or Cause of Action for later adjudication by the Debtors or the
17 Reorganized Debtors (including, without limitation, claims and Causes of
18 Action not specifically identified or of which the Debtors may presently
19 be unaware or which may arise or exist by reason of additional facts or
20 circumstances unknown to the Debtors at this time or facts or
21 circumstances that may change or be different from those the Debtors
22 now believe to exist) and, therefore, no preclusion doctrine, including,
without limitation, the doctrines of *res judicata*, collateral estoppel, issue
preclusion, claim preclusion, waiver, estoppel (judicial, equitable or
otherwise) or laches shall apply to such claims or Causes of Action upon
or after the Confirmation or Consummation of the Plan based on the
Disclosure Statement, the Plan or the Confirmation Order, except where
such claims or Causes of Action have been expressly released in the Plan
or any other Final Order (including, without limitation, the Confirmation
Order).

23 Id.

1 On July 22, 2013, the Bankruptcy Court entered an Order confirming Go
2 Global's Third Amended Joint Chapter 11 Plan of Reorganization (the "**Plan**").
3 App. at 147. The Plan defined "Causes of Action" as the following:
4

5 . . . all action, causes of action (including Avoidance Actions), Claims,
6 liabilities, obligations, rights, suits, debts, damages, judgments, remedies,
7 demands, setoffs, defenses, recoupments, crossclaims, counterclaims,
8 third-party claims, indemnity claims, contribution claims or any other
9 claims disputed or undisputed, suspected or unsuspected, foreseen or
10 unforeseen, direct or indirect, choate or inchoate, existing or hereafter
arising, in law, equity or otherwise, based in whole or in part upon any
act or omission or other event occurring prior to the Commencement
Date or during the course of the Chapter 11 Cases, including through the
Effective Date.

11 App. at 152.

12 Like the Disclosure Statement, Article V, Section E of the Plan, "Vesting
13 of Assets in the Reorganized Debtors," states that "all property of the Estates
14 (including, without limitation, Causes of Action) and any property acquired
15 including by any of the Debtors pursuant hereto shall vest in the Reorganized
16 Debtors [Go Global] free and clear of all liens, Claims, charges or other
17 encumbrances. App. at 166.
18

19 In Article X, Section (B)(1), "Maintenance of Causes of Action," the
20 Plan states:

21 after the Effective Date, the Reorganized Debtors [Go Global] shall retain
22 all rights to commence, pursue, litigate or settle, as appropriate, any and
23 all Causes of Action, including any litigation relating to the Paulson
Group, whether existing as of the Commencement Date or thereafter
arising, in any court or other tribunal including, without limitation, in an

adversary proceeding Filed in the Chapter 11 Cases.

App. at 176.

In Article X, Section (B)(2), “Preservation of All Causes of Action Not Expressly Settled or Released,” the Plan states:

Unless a claim or Cause of Action against a Holder of the Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtors expressly reserve such claim or Cause of Action for later adjudication by the Debtors or the Reorganized Debtors (including, without limitation, claims and Causes of Action not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist, including any litigation relating to the Paulson Group or the related State Court litigation involving Serl Keefer and/or the arbitration with Nevada State Bank, etc.) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors and the Reorganized Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, any parties in such lawsuits.

App. at 176-77.

As such, by simply listing the loan to Rogich in its bankruptcy schedules, Go Global properly preserved its claims against Rogich for the \$2,747,729.50 throughout the Bankruptcy.

1 **3. Rogich’s Fraudulent and Tortious Actions.**

2 On or about June 2012, Rogich (or his agents) had discussions with the
3 agents/attorney(s) for two other entities, Imitations, LLC (“**Imitations**”) and
4 TELD, LLC (“**TELD**”), along with Eldorado concerning the forfeiture of the
5 interest held by the Rogich trust in Eldorado. App. at 3052. During these
6 discussions, the parties conspired to create a plan in which Rogich would
7 receive some sort of payments for his interest in Eldorado,² while attempting to
8 structure the transaction so no “profits or distributions” would be received. Id.
9 Thus, their belief was that the transaction would not trigger a repayment
10 obligation under the terms of the Agreement with Go Global. Id.

12 In late 2012, via telephone, Rogich informed Huerta that Rogich had
13 conveyed the membership interest maintained by the trust in Eldorado, to
14 TELD. App. at 3053. Rogich and TELD had already finalized the transaction
15 in June 2012 and had backdated the documents to January 2012. Id. During the
16 phone call to Huerta, Rogich stated that he relinquished his shares in Eldorado
17 for no remuneration at all. Id.

18 In August 2012, Rogich discussed how to avoid paying Go Global by
19 way of email correspondence with his advisors following the transfer to TELD.
20

21 _____
22 ² The evidence shows that the Rogich Trust’s capital account at the times
23 at issue here exceeded \$2.7 million, greatly due to the fact that Rogich had
taken possession of Go Global’s interests within Eldorado, under the
Agreement.

1 App. at 3053. Rogich failed to inform Huerta and Go Global of his intentions
2 to transfer all his trust's membership interest in Eldorado to TELD prior to the
3 transfer, and only informed Huerta months after the transfer occurred. Id. We
4 now know that Rogich simultaneously transferred his trust's interests in
5 Eldorado to TELD, in exchange for 100% ownership interest in Imitations. Id.
6 Rogich also received approximately \$680,000 in cash from the principal of
7 TELD.
8

9 Imitations is the holder of real property that Rogich claims was only
10 worth approximately \$400,000, as of 2012. App. at 3053. This value is alleged
11 despite the fact the property was purchased in 2010 for approximately \$2.14
12 million. Id. The \$680,000 and the \$2.14 million equal approximately the
13 \$2,747,729.50, or the former amount of Go Global's capital account, which was
14 transferred to Rogich in exchange for his promise of repayment. Id.
15

16 By conveying the membership interest to TELD, Rogich breached the
17 Agreement and also made it impossible for Huerta and Go Global to receive
18 their rightful return of their debt, and this was Rogich's intent. App. at 3054.
19 To date, despite the Rogich trust's Agreement to repay Go Global
20 \$2,747,729.50, Rogich represents he no longer has any responsibility to repay
21 this debt as he has relinquished all of this Eldorado interests. Id.

22 **4. The District Court Lawsuit Before Judge Nancy Alff.**

23 Due to Rogich's actions, on July 31, 2013, Huerta and the Alexander

1 Christopher Trust (the “**Trust**”), as assignee of Go Global, sued Rogich and
2 Eldorado Hills in the Eighth Judicial District Court for Clark County, Nevada
3 and commenced the underlying action to recover moneys owed under the
4 purchase agreement. App. at 588. Nanyah Vegas, LLC, was also added as a
5 plaintiff. Id.

6 Huerta and the Alexander Christopher Trust asserted three causes of
7 action: (i) breach of express contract; (ii) breach of covenant of good faith and
8 fair dealing; and (iii) negligent misrepresentation. App. at 592-94. A fourth
9 cause of action for unjust enrichment was added by Nanyah Vegas against
10 Eldorado Hills. Id. at 594.

12 Rogich sought partial summary judgment in the underlying action, and
13 Huerta and the Trust cross-moved for partial summary judgment. App. at 711,
14 and 1146. The Nevada State Court Judge, the Honorable Nancy Allf, granted
15 Rogich’s motion for partial summary judgment. App. at 1514.

16 On November 5, 2014, Judge Allf entered her Partial Summary Judgment
17 Order. In it, the Court made three legal determinations:

- 19 1. On November 7, 2012, Huerta and Go Global were aware that they
20 held a claim against the Rogich Trust;
- 21 2. The said claim was not disclosed in Huerta’s and Go Global’s first
22 amended, second amended or third amended disclosure statements;
23 and
3. The said claim was not disclosed on Huerta’s and Go Global’s plan
or their first, second or third amendments to the plan.

1 App. at 1514-17.

2
3 As a result, Judge Alff granted summary judgment and dismissed the first
4 three claims for relief. See Order Granting Motion for Partial Summary
5 Judgment, App. at 1514-17. The fourth claim of Nanyah Vegas for unjust
6 enrichment against Eldorado Hills was also resolved in favor of Eldorado Hills,
7 but has since been reversed and remanded by this Court. App. at 1577-80.

8 **5. Appellants' Adversary Proceeding in Bankruptcy Court.**

9 On November 26, 2014, Go Global, as assignee of the claims of Huerta
10 and the Trust, commenced an adversary proceeding (the "**Adversary**
11 **Proceeding**") against Rogich, Eldorado Hills, TELD and Imitations in the
12 United States Bankruptcy Court for the District of Nevada, Adversary Case No.
13 14-01173. App. at 3046. In its adversary complaint, Go Global asserted six
14 claims for relief, as follows: (i) civil conspiracy; (ii) breach of fiduciary duty;
15 (iii) aiding and abetting in breach of fiduciary duty; (iv) breach of contract; (v)
16 breach of covenant of good faith and fair dealing; and (vi) fraud and/or
17 negligent misrepresentation. Id.

18
19 On February 23, 2015, Rogich filed his motion for summary judgment
20 arguing Go Global's current adversary complaint is barred by the doctrine of
21 claim preclusion based on the Partial Summary Judgment Order from the State
22 Court Action. App. at 2902-2993.
23

1 On April 21, 2015, defendants TELD and Eldorado Hills filed their
2 motions to dismiss Go Global's adversary complaint based, in part, by the
3 doctrine of claim preclusion. App. at 2807-45.

4 On June 5, 2015, Go Global filed its motion to amend its adversary
5 complaint, requesting that it be permitted to add two new causes of action, one
6 for fraudulent transfer and another for setoff of attorneys' fees awarded to
7 Rogich in the State Court Action. App. at 2736-99.

8
9 On June 25, 2015, the Bankruptcy Court held a hearing on all pending
10 motions and on November 16, 2015, the Bankruptcy Court issued its
11 preliminary oral ruling, concluding that Go Global's claims against the
12 Defendants are barred by the doctrine of claim preclusion, provided that the
13 parties would be entitled to additional briefing for Go Global to show why it did
14 not include defendants TELD and Eldorado Hills in the State Court Action.
15 App. at 2530-85.

16 After additional briefing by the parties, on March 10, 2016, the
17 Bankruptcy Court entered its Order on Pending Motions After Supplemental
18 Briefing, and granted Rogich's motion for summary judgment and the TELD
19 and Eldorado Hills' motion to dismiss, holding that Go Global's claims were
20 barred by the doctrine of claim preclusion. App. at 2447-2450. Go Global
21 subsequently appealed the Bankruptcy Court's decision, which decision was
22 affirmed by the Bankruptcy Appellate Panel for the Ninth Circuit Court of
23 Appeals ("**BAP**"). App. at 2117-47. Importantly, however, the BAP indicated

1 the Bankruptcy Court did not have post-confirmation jurisdiction over the
2 parties' dispute. Id.

3 **6. Appellants' Payment of their Creditors in Full.**

4 On February 10, 2016, the Appellants had successfully collected on their
5 judgment against the Paulson Parties and liquidated their collections to pay their
6 creditors in full. Accordingly, on February 22, 2016, the Appellants filed their
7 Motion to Close and Notice of Payment in Full before the Bankruptcy Court.
8 App. at 12-28. The Motion to Close and Notice of Payment in Full contained
9 supporting declarations of Carlos Huerta and Samuel Schwartz that all allowed
10 claims of the Appellants in their Bankruptcy Case had been paid in full. Id.

11 As a result, on March 29, 2016, the Bankruptcy Court held a hearing to
12 consider the Motion to Close and Notice of Payment in Full, and on March 30,
13 2016, entered an order closing the Appellants' Bankruptcy Case (the "**Closing**
14 **Order**"). See Bankruptcy Case No. 10-14804-LED, Docket No. 571, App. at
15 1-3. Importantly, the Closing Order specifically indicated that the Court had
16 found that "the Debtors made all payments in accordance with their Chapter 11
17 Plan and paid their creditors in full." Id. at 2.

18 **7. Appellants Request for Relief and Denial Thereof.**

19 After having paid their creditors in full, the Appellants filed their Request
20 for Relief in the underlying action before Judge Alff on February 22, 2016.
21 App. at 2059-2116. The Appellees then filed an opposition (App. at 1939-
22 2058) and the Appellants filed a reply. App. at 1849-1930.

1 As set forth in the Statement of the Case above, in the Request for Relief
2 briefing, the Appellants argued several things, including issues relating to: (i)
3 the District Court's lack of jurisdiction to determine the adequacy of
4 information contained in a bankruptcy disclosure statement; (ii) the District
5 Court's failure to give full faith and credit to the Bankruptcy Court's order
6 approving the Disclosure Statement; (iii) relief from the Partial Summary
7 Judgment Order was required under NRCP 60(b) because the judgment was
8 void and should be set aside to prevent manifest injustice as Rogich was not a
9 creditor and all creditors had been paid in full.

10 The District Court held a hearing on the Request for Relief on April 20,
11 2016. See Transcript of Hearing Held on April 20, 2016, App. at 548-72. After
12 hearing arguments of counsel, the District Court denied the Request for Relief,
13 and Judge Alff simply stated the following in her ruling:

14 This is the plaintiffs Huerta and Go Global, Inc. motion to
15 reconsider or relief from the order granting the motion for partial
16 summary judgment. The motion will be denied for the following
17 reasons. I do have concerns with the timeliness of the motion, but I
18 don't believe that you meet the standards of 54 and 60. The issue
19 with regard to full payment was brought up at least orally at the
20 original argument, and unfortunately for you, Mr. Huerta, the
21 payment of creditors in this case is inconsequential to my decision.
My decision was based solely on the Hamilton v. State Farm case.
And the purpose of judicial estoppel is to protect the integrity of the
bankruptcy process that was the sole basis for my ruling previously.
And nothing that's been presented to me changes the way that the
law should be applied in this case. So for those reasons the motion
will be denied.

22 App. at 571-72.
23

1 On April 28, 2016, the District Court entered an order denying the
2 Request for Relief. App. at 1836-37.

3 On May 25, 2016, the Appellants timely appealed the District Court's
4 denial of the Request for Relief. App. at 1828-30. After reviewing the
5 Appellants' docketing statement, this Court then issued an order to show cause
6 why the instant appeal should not be dismissed for lack of jurisdiction. The
7 Appellants also brought a motion to dismiss the appeal for lack of jurisdiction.
8 After briefing of the parties, this Court, on October 6, 2016, entered an order
9 denying the motion to dismiss and reinstating the briefing schedule, as the
10 Request for Relief was based, at least in part, on NRCP 60(b), an appealable
11 order. See Holiday Inn v. Barnett, 103 Nev. 60, 63, 732 P.2d 1376, 1378-79
12 (1987).

13 **VII. LEGAL ARGUMENT**

14 **A. SUMMARY OF ARGUMENT**

15 After nearly 3 years of litigation, this case has never been tried on the
16 merits. Rather, the parties have been litigating procedural issues in the interim,
17 due to the District Court's Partial Summary Judgment Order dismissing the
18 Appellants' claims on judicial estoppel grounds.

19 Importantly, however, the District Court's denial of the Request for
20 Relief should be overturned in the instant appeal. Judge Alff abused her
21 discretion by denying the Request for Relief and stating that "nothing that's
22 been presented to me changes the way that the law should be applied in this
23 case." This statement is an abuse of discretion for numerous reasons: (i) the

1 District Court lacked jurisdiction to determine whether the Appellants’
2 Disclosure Statement contained “adequate information” as required by 11
3 U.S.C. § 1125; (ii) the Partial Summary Judgment Order is void and should be
4 set aside under NRCP 60(b)(4) because Judge Alff failed to give full faith and
5 credit to the Bankruptcy Court order approving the Disclosure Statement as
6 having adequate information; and (iii) new evidence establishes that all of
7 Appellants’ creditors were paid in full, and the Partial Summary Judgment
8 Order should be set aside to prevent manifest injustice pursuant to NRCP
9 60(b)(5).

10 Accordingly, the District Court’s order denying the Request for Relief
11 should be reversed by this Court.

12 **B. The District Court Lacked Jurisdiction to Determine the**
13 **Appellants’ Disclosure Statement Did Not Contain Adequate**
14 **Information.**

15 Whether a disclosure statement in a Chapter 11 case contains adequate
16 information is governed by 11 U.S.C. § 1125. Bankruptcy courts are the
17 appropriate jurisdiction to determine whether a disclosure statement contains
18 adequate information. 28 U.S.C. §§ 157, 1409. The District Court’s ruling that
19 the Disclosure Statement did not contain adequate information regarding the
20 Appellants’ claims against Rogich must be set aside, as the District Court did
21 not have jurisdiction to make such a determination.

22 In her ruling on the Request for Relief, Judge Alff stated the decision in
23 her Partial Summary Judgment Order “was based solely on the Hamilton v.
State Farm case.” App. at 571. While the Hamilton case from the Ninth Circuit

1 does stand for the proposition that one may be judicially estopped from later
2 suing on claims which were not disclosed on one's bankruptcy schedules, the
3 Hamilton case is easily distinguished from the instant appeal.

4 Importantly, the Hamilton case involved Hamilton, an individual Chapter
5 7 debtor, who did not disclose an insurance claim on his bankruptcy schedules.
6 Hamilton v. State Farm, 270 F.3d 778, 784 (9th Cir. 2001). When Hamilton
7 later tried to sue on the insurance claim 1 year after his bankruptcy case, his
8 claim was barred under the theory of judicial estoppel. Id.

9 Here, unlike Hamilton, the Appellants did disclose their claim against
10 Rogich on their bankruptcy schedules. Moreover, the Appellants' Bankruptcy
11 Case was a case under Chapter 11 of the Bankruptcy Code, involving a
12 disclosure statement and Chapter 11 plan, which proposed to pay creditors
13 100% of their allowed claims. Simply put, applying Hamilton to the facts of
14 this case would be comparing apples to oranges.

15 Rather, the Glazier case from the New York Superior Court in 2013 is
16 directly on point and instructive. Specifically, the Glazier case teaches us that
17 once a bankruptcy court has already approved a disclosure statement as having
18 "adequate information," another party cannot collaterally attack that order in
19 another court as lacking adequate information. Simply put, only a bankruptcy
20 court can determine whether a disclosure statement contains adequate
21 information pursuant to 11 U.S.C. § 1125. The Glazier Group v. Premium
22 Supply Co., Inc., 2013 WL 1727155, *1-2 (N.Y. Sup. 2013).

1 The Glazier Group v. Premium Supply Co., Inc., 2013 WL 1727155, *1-
2 2 (N.Y. Sup. 2013) case is nearly identical to the facts in this matter, and show
3 that the District Court’s Partial Summary Judgment Order must be set aside
4 because the District Court did not have jurisdiction to collaterally attack the
5 Bankruptcy Court’s order approving the Appellants’ Disclosure Statement.

6 In Glazier, the defendant, Premium, sought to dismiss the complaint of
7 the debtor, The Glazier Group (“**Glazier**” or “**GGI**”), based on a theory of
8 judicial estoppel because the claim against Premium was not disclosed in the
9 debtor’s: (i) schedules;³ and (ii) disclosure statement. Glazier Group, 2013 WL
10 1727155, *1-2 (N.Y. Sup. 2013). The claim against Premium was known to the
11 debtor and not disclosed in the disclosure statement. Id. at *1-2. Premium was
12 not a creditor of the debtor, as its claim against the debtor was expunged. Id. at
13 *1. The debtor’s confirmation order in Glazier vested all assets in the debtor
14 post-confirmation. Id. at *3-4. The Glazier court found disclosure of the claim
15 against Premium would not have materially affected the way creditors voted on
16 the debtor’s plan because any recoveries against Premium would have been
17 paid to secured creditors, not unsecured creditors. Id. at *4. All unsecured
18 creditors who voted on the debtor’s plan accepted the plan. Id. Based on these
19 facts, the Glazier court found disclosure of the claim against Premium was not
20 required in the disclosure statement. Specifically, the Glazier court stated:

21 “[T]he disclosure of the causes of action against Premium in the

22 ³ The claim in Glazier was not disclosed on the Debtor’s schedules
23 because it arose post-petition. In this appeal, the Appellants’ claim arose pre-
petition and was disclosed on Appellants’ bankruptcy schedules.

1 disclosure statement would not have been material, because it was
2 unlikely to have affected the unsecured creditors' vote on the
plan."

3 Id. at *5.

4 In this matter, all five facts outlined above apply in this matter. First, the
5 claim against Rogich was not disclosed in the disclosure statement. Second,
6 Rogich is not a creditor of the Appellants. Third, the Appellants' Chapter 11
7 Plan vests all assets in the Appellants, including causes of action. See
8 Confirmation Order, Bankruptcy Case No. 10-14804-LED, Docket No. 507,
9 Plan, Section E, App. at 125. Fourth, the disclosure of the Rogich Claim in the
10 Disclosure Statement would not have affected the vote of Appellants' creditors,
11 as all voting creditors already accepted Appellants' plan.⁴ Fifth, all creditors to
12 vote on the Appellants' plan voted in favor of the Plan. See Voting Declaration
13 in Bankruptcy Case, App. at 145-46.

14 Accordingly, the Glazier court, (a) while finding the lack of disclosure of
15 a claim against a non-creditor in a disclosure statement is immaterial when it
16 would not have affected the votes of creditors voting on the plan, (b) also
17 addressed the jurisdiction issues of a state court reviewing a Chapter 11
18 disclosure statement, by stating the following:

19 In any event, the Bankruptcy Court approved GGI's disclosure
20

21 ⁴ Even if all voting creditors had not voted in favor of the Plan, disclosure
22 of the Rogich Claim would not have made a difference, as the Plaintiffs
23 proposed to pay creditors from the recoveries to be collected from a judgment
(the Paulson Judgment). Adding recoveries from a claim (the Rogich Claim) is
immaterial, as it is far quicker and easier to recover from a judgment than a
claim.

1 statement by entering the Disclosure Statement Order, and such
2 order is res judicata as to whether GGI's disclosure statement
3 contained "adequate information" within the meaning of section
4 1125 of the Bankruptcy Code. Because Premium participated in
5 GGI's Chapter 11 case, and failed to challenge the Disclosure
6 Statement Order, Premium is precluded from collaterally attacking
7 the Disclosure Statement Order in this Court.

8 The Glazier Group v. Premium Supply Co., Inc., 2013 WL 1727155, *4 (N.Y.
9 Sup. 2013).

10 Like the plaintiffs in Glazier, here, the adequacy of information contained
11 in the Appellants' Disclosure Statement was already determined by the
12 Bankruptcy Court as "adequate" pursuant to section 1125 of the Bankruptcy
13 Code. See Disclosure Statement Order, p. 2, App. at 187. Accordingly, res
14 judicata applies to Rogich as well because Rogich knew about the Appellants'
15 bankruptcy case and was mailed a copy of the Disclosure Statement and a
16 notice of the hearing on the Disclosure Statement. See Certificate of Service in
17 Bankruptcy Case, Case No. 10-14804-BAM, Docket No. 436, p. 9-11, App. at
18 201-03. In fact, Melissa Olivas, chief financial officer of Rogich
19 Communications, previously testified in this case as follows:

20 Q. Were you aware that Carlos filed Chapter 11 bankruptcy?

21 A. Yes.

22 Q. How did you find out about that?

23 A. They noticed us. I mean, we received a notice in the mail.

24 See Deposition Transcript of Melissa Olivas, pp. 116-17, ll. 23-3, App. at 1925-
25 26. In fact, Rogich did receive notice of the Plaintiffs' bankruptcy filing, and

1 was listed on the mailing matrix of the bankruptcy case. App. at 1929.

2 Accordingly, Rogich could have objected to the Disclosure Statement
3 and chose not to do so. Pursuant to this Court's rulings in Five Star Capital
4 Corporation v. Ruby, 124 Nev. 1048, 1057, 194 P.3d 709, 715 (2008) and
5 Weddell v. Sharp, 350 P.3d 80 (Nev. 2015), res judicata applies and the District
6 Court's prior Partial Summary Judgment Order should be vacated as the District
7 Court did not have jurisdiction to determine whether Appellants' Disclosure
8 Statement contained adequate information.

9 **C. The Partial Summary Judgment Order is Void as the District**
10 **Court Did Not Give Full Faith and Credit to the Bankruptcy**
11 **Court's Order Approving the Disclosure Statement as Having**
12 **Adequate Information.**

13 The Glazier case is also particularly instructive given the facts of this
14 case, because not only did the District Court lack jurisdiction to determine
15 whether Appellants' Disclosure Statement contained "adequate information," it
16 did not give full faith and credit to the Bankruptcy Court's Disclosure
17 Statement Order.⁵ Accordingly, relief from the Partial Summary Judgment
18 Order is necessary under NRCP 60(b)(5), as the judgment is void.

19 ⁵ The Disclosure Statement Order became a final order upon plan
20 confirmation. Specifically, the confirmation order in Appellants' Bankruptcy
21 Case incorporates and takes judicial notice of the Disclosure Statement Order.
22 See Case No. 10-14804-LED, Docket No. 507, pp. 2-3, App. at _____. See also
23 Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1692, 191 L. Ed. 2d 621 (2015)
("Confirmation has preclusive effect, foreclosing relitigation of "any issue
actually litigated by the parties and any issue necessarily determined by the
confirmation order."); see also In re XO Commc'ns, Inc., 330 B.R. 394, 451-52
(Bankr. S.D.N.Y. 2005) (deeming bankruptcy court orders final upon plan
confirmation), citing In re Am. Preferred Prescription, Inc., 186 B.R. 350

1 Indeed, the District Court was required to give full faith and credit to the
2 Disclosure Statement Order, as the Bankruptcy Court is the proper jurisdiction
3 to hear and determine all issues relating to the adequacy of information
4 contained in the disclosure statement. 28 U.S.C. §§ 157, 1409; see also The
5 Glazier Group v. Premium Supply Co., Inc., 2013 WL 1727155, *4-5 (N.Y.
6 Sup. 2013) (finding the New York state court is required to give full faith and
7 credit to the disclosure statement order of the bankruptcy court when
8 determining all issues relating to the adequacy of information contained in the
9 disclosure statement).

10 Accordingly, the District Court did not give full faith and credit to the
11 Disclosure Statement Order as required by federal law, and this Court lacked
12 jurisdiction to even make a finding that the Disclosure Statement contained
13 insufficient information in accordance with 11 U.S.C. § 1125. Because this
14 Court violated federal law by failing to give full faith and credit to the
15 Disclosure Statement Order and lacked jurisdiction to enter a judgment contrary
16 to the Disclosure Statement Order, this Court's prior Partial Summary Judgment
17 Order is void, and should be set aside pursuant to NRCP 60(b)(4).

18 **D. The Partial Summary Judgment Order Should Be Set Aside**
19 **Because It Is No Longer Equitable to Enforce It.**
20

21
22 (Bankr. E.D.N.Y. 1995) ("It is well-settled that a bankruptcy court's order
23 confirming a reorganization plan constitutes a final judgment on the merits and
is to be given preclusive effect under res judicata.").

1 Finally, in addition to NRCP 60(b)(4), the Partial Summary Judgment
2 Order may also be set aside pursuant to NRCP 60(b)(5) to prevent manifest
3 injustice as it is no longer equitable to enforce it. Importantly, the time restraint
4 on a motion to reconsider does not apply to NRCP 60(b)(5). Stoecklein v.
5 Johnson Elec., Inc., 109 Nev. 268, 271-272, 849 P.2d 305, 308 (1993).
6 Reconsideration under this provision must only be made within a reasonable
7 time, which “can only be determined when considering the facts of each case.”
8 United States v. Holtzman, 762 F.2d 720, 725 (9th Cir. 1985).

9 The provision is applicable where the matter involves the same parties
10 and concerns of claim or issue preclusion may arise. Ford v. Branch Banking
11 and Trust Co., 131 Nev. Adv. Op. 53, 353 P.3d 1200, 1202 (2015). Regardless
12 of its label, the court categorizes a judgment based on how it functions. Bally’s
13 Grand Hotel & Casino v. Reeves, 112 Nev. 1487, 1488, 929 P.2d 936, 937
14 (1996).

15 Here, the Partial Summary Judgment Order functions like an injunction
16 because it prevents the Appellants from pursuing their claims against Rogich.
17 Because the Partial Summary Judgment Order functions like an injunction, it is
18 properly classified as such.

19 In denying the Request for Relief, Judge Alff stated her Partial Summary
20 Judgment Order was based on judicial estoppel, and “the purpose of judicial
21 estoppel is to protect the integrity of the bankruptcy process that was the sole
22 basis for my ruling previously.” App. at 571. Ironically, the District Court’s
23 Partial Summary Judgment Order flies in the face of “protecting the integrity of

1 the bankruptcy process,” as such order operated as a collateral attack on the
2 Bankruptcy Court’s Disclosure Statement Order and Appellants’ summary of
3 schedules filed on June 4, 2010 in the Bankruptcy Case. Consequently, the
4 District Court lacked jurisdiction to make such an attack.

5 Notwithstanding the above, if the District Court’s Partial Summary
6 Judgment Order is to “protect the integrity of the bankruptcy process,” it is no
7 longer equitable to enforce the order and it must be set aside to prevent manifest
8 injustice. Specifically, as set forth above, the Appellants creditors have now
9 been paid in full. See Closing Order, App. at 2 (finding that Appellants’ paid
10 their creditors in full).

11 Importantly, the Hamilton v. State Farm court set forth three elements for
12 judicial estoppel to apply, as follows: (i) a party’s later position must be
13 “clearly inconsistent” with its earlier position; (ii) whether a party succeeded in
14 persuading a court to accept that party’s earlier position; and (iii) whether the
15 party seeking to assert an inconsistent position would derive an unfair
16 advantage or impose an unfair detriment on the opposing party if not estopped.”
17 Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782-83 (9th Cir. 2001),
18 citing New Hampshire v. Maine, 532 U.S. 742 (2001).

19 Here, notwithstanding the first two factors for judicial estoppel to apply,
20 it is absolutely clear that Appellants obtained no unfair advantage by not
21 disclosing the Rogich claims in their Disclosure Statement for numerous
22 reasons. First, Rogich is not a creditor of the Appellants and suffered no
23 detriment whatsoever by Appellants’ failure to disclose their claims against

1 Rogich in their Disclosure Statement. Second, the Plan proposed to pay
2 creditors 100% of their allowed claims. App. at 164. Third, all creditors voting
3 on the Appellants' Plan voted in favor of the Plan. App. at 145-56. Fourth,
4 Appellants' complied with their Plan and paid all creditors. App. at 1-3.

5 Simply put, with Appellants' paying all of their creditors in full, the third
6 element of judicial estoppel is not met, and the Partial Summary Judgment
7 Order must be set aside to prevent manifest injustice. Indeed, it is irrelevant
8 whether the Disclosure Statement indicated creditors would be paid from
9 Appellants' nearly \$5 million judgment against the Paulson Parties, or whether
10 creditors would be paid from the judgment against the Paulson Parties and from
11 a contingent, non-liquidated claim against Rogich. Allowing a non-creditor,
12 Rogich, to dictate whether a disclosure statement contains adequate information
13 when all creditors accepted the Appellants' Chapter 11 plan, flies in the face of
14 "protecting the integrity of the bankruptcy process."

15 Accordingly, the Partial Summary Judgment Order must be set aside to
16 prevent manifest injustice, as it is no longer equitable to enforce it.

17 **VIII. CONCLUSION**

18 For the foregoing reasons, the Appellants respectfully request that this
19 Court reverse the District Court's denial of the Request for Relief.

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Dated this 4th day of January, 2017.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this 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:

☐ proportionally spaced, has a typeface of 14 points or more and contains _____ words; or

☒ does not exceed 30 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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