

Mark G. Simons, Esq., NSB No. 5132
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., #F-46
Reno, Nevada, 89509
Telephone: (775) 785-0088
Facsimile: (775) 785-0087
Email: MSimons@SHJNevada.com

Electronically Filed
Sep 20 2019 11:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Attorneys for Nanyah Vegas, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

NANYAH VEGAS, LLC, A Nevada
limited liability company,

**SUPREME COURT CASE NO:
79072**

Petitioner,

v.

CLARK COUNTY DISTRICT
COURT, THE HONORABLE NANCY
ALLF, DEPARTMENT 27,

**CASE NO. A-13-686303-C
DEPT. NO.: XXVII**

**CONSOLIDATED WITH:
CASE NO.: A-16-746239-C**

Respondent,

SIG ROGICH aka SIGMUND
ROGICH as Trustee of The Rogich
Family Irrevocable Trust; ELDORADO
HILLS, LLC, a Nevada limited liability
company; TELD, LLC, a Nevada
limited liability company; PETER
ELIADES, individually and as Trustee
of the The Eliades Survivor Trust of
10/30/08; IMITATIONS, LLC, a
Nevada limited liability company
DOES I-X; and/or ROE
CORPORATIONS I-X, inclusive,

**NANYAH VEGAS, LLC'S
OPPOSITION TO DEFENDANTS'
EMERGENCY MOTION FOR
EXTENSION OF TIME TO FILE
ANSWERING BRIEF
(Second Request)**

Real Parties in Interest.

1 Petitioner Nanyah Vegas, LLC (“Nanyah”) by and through its attorney Mark
2 G. Simons of SIMONS HALL JOHNSTON PC, hereby submits its opposition to the
3 Defendants’ Emergency Motion for Extension of Time To File Answering Brief
4 (“Motion”) filed by Sigmund Rogich, in his individual capacity, and Imitations LLC
5 (the “Rogich Defendants”).
6

7
8 **I. PROCEDURAL ASPECT OF WRIT.**

9 Nanyah’s Writ is an emergency action. On July 25, 2019, this Court entered
10 its Order Directing Answer as to each named real party in interest within 28 days of
11 the date of the Order. All real parties in interests’ Answers were therefor due on or
12 before August 22, 2019.
13

14 Of import, real party in interest the Rogich Family Irrevocable Trust (“Rogich
15 Trust”) did not file an answer to the Writ and did not seek an extension to file an
16 answer. Accordingly, the Rogich Trust has waived any right to respond to the Writ.
17

18 On August 7, 2019, Sigmund Rogich, in his individual capacity and the entity
19 Imitations, LLC (“Rogich Defendants”) sought an extension to respond to the Writ
20 since they remained subject to other claims in the underlying action.
21

22 On August 12, 2019, in response to the Rogich Trust’s motion, real party in
23 interest Eldorado Hills, LLC (“Eldorado Hills”) submitted what it labeled a counter-
24 request to the Rogich Trust’s motion seeking authority from this Court to allow it to
25 file an answer to the Writ 10 days from the date Rogich Defendants’ answer was
26 due.
27
28

1 In its Order of August 13, 2019, this Court granted the Rogich Defendants'
2 requested extension and gave only the Rogich Defendants until October 1, 2019, to
3 file an Answer to the Writ. The Court's Order did not extend the time period for
4 Eldorado Hills to file its Answer. Accordingly, Eldorado Hill's Answer to the Writ
5 was due on or before August 22, 2019. Eldorado Hills did not file its Answer to the
6 Writ on or before August 22, 2019. Eldorado Hills has therefore failed to comply
7 with this Court's July 25, 2019, Order directing its Answer to be filed on or before
8 August 22, 2019, and accordingly, Eldorado Hill's is precluded from filing an
9 Answer to the Writ.

12 **II. THE EXTENSION REQUEST SHOULD BE DENIED.**

13 **A. THE ROGICH TRUST AND ELDORADO HILLS HAVE NOT**
14 **TIMELY FILED AN ANSWER TO THE WRIT MANDATING**
15 **GRANTING OF THE WRIT AS REQUESTED.**

16 The Rogich Defendants' second extension is merely a delay tactic intended to
17 circumvent this Court's review of the merits of the Writ. The Rogich Defendants'
18 argument is that the Writ may be rendered moot the subsequent activity in the
19 district court. However, this argument is without merit for the following reasons.

20 The Writ is not moot since it addresses and resolves an issue of primary
21 importance in the case addressing the claims asserted against the Rogich Trust and
22 against Eldorado. The trial court has previously ruled as a matter of undisputed fact
23 that Nanyah invested \$1.5 million into Eldorado Hills. PA, 73, ¶2. Further, the
24 district court ruled as a matter of law that Nanyah was an intended third-party

1 beneficiary of numerous contracts entered into by the Rogich Trust whereby the
2 Rogich Trust specifically agreed to repay Nanyah its \$1.5 million investment into
3 Eldorado Hills on behalf of Eldorado Hills. PA, 73-74.¹ The trial court also held
4 that the Rogich Trust assumed Eldorado Hill's \$1.5 million repayment obligation to
5 Nanyah as Eldorado Hill's surety. PA, 78, ¶7 ("The October 30, 2008, Purchase
6 Agreement states that The Rogich Trust specifically agreed to assume the obligation
7 to pay Nanyah its . . . debt."); *see also Westinghouse Credit Corp. v. Wolfer*, 10
8 Cal. App. 3d 63, 67, 88 Cal. Rptr. 654, 656 (Cal. Ct. App. 1970) ("A surety is . . .
9 one who promises to answer for the debt of another. . . .").

10
11
12
13 The Rogich Trust and Eldorado Hills have not opposed the Writ and both
14 failed to file their Answers in compliance with this Court's July 25, 2019, Order
15 Directing Answers. This Court has made is abundantly clear that unopposed matters
16 are deemed meritorious and a consent to the granting of the relief requested. *See*
17 *e.g., Walls v. Brewster*, 112 Nev. 175, 178, 912 P.2d 261, 263 (1996) ("We conclude
18 that it was proper for the district court to construe Walls' failure to respond to
19 Brewster's motion to dismiss as an admission that the motion was meritorious and as
20 a consent to grant the motion.").

21
22
23
24
25
26
27 ¹ *See also* PA 74, ¶ 5.a.ii (it is "the Buyer's [The Rogich Trust's] obligation" "to pay"
28 Nanyah its "\$1,500,000.00 investment" into Eldorado Hills).

1 Because the primary claims at issue in the underlying action are based upon
2 the Rogich Trust's obligation to repay Nanyah its \$1.5 million investment into
3 Eldorado Hills, and Eldorado Hill's underlying joint and several liability for that
4 debt, the Writ is not moot in any respect. The Writ is premised on the district
5 court's dismissal of the Rogich Trust on the morning of trial based upon a distorted
6 and facially improper interpretation of NRS 163.120(2). The district court employed
7 its disjointed logic and ignored on-point precedence to relieve the Rogich Trust of
8 liability even though the district court has previously ruled that the Rogich Trust's
9 liability for \$1.5 million was established by undisputed fact and as a matter of law.
10

11
12
13 The Rogich Defendants' liability are secondary to the primary issue and
14 claims raised in the Writ. Accordingly, further delay addressing the merits of the
15 Writ is unwarranted and improper and this second request should be denied in its
16 entirety.
17

18
19 **B. THE ROGICH DEFENDANTS DO NOT HAVE STANDING TO**
20 **CHALLENGE THE MERITS OF THE WRIT.**

21 Of note, the issue raised in the Writ is the application of NRS 163.120 as to
22 the Rogich Trust. The Rogich Defendants do not have standing to argue and/or
23 defend claims by and between Nanyah and the Rogich Trust. *See e.g., Warth v.*
24 *Seldin*, 422 U.S. 490, 498 (1975) ("standing imports justiciability: whether the
25 plaintiff has made out a 'case or controversy' between himself and the defendant
26 within the meaning of Art. III."). Stated another way, there is no claim or
27
28

1 controversy between Nanyah and the Rogich Defendants relating to the application
2 of NRS 163.120. NRS 163.120 was invoked solely by the Rogich Trust to evade
3 liability for a judgment against it in the underlying action.
4

5 This Court granted consideration of Nanyah's Writ to address the merits of a
6 prior decision by Judge Allf dismissing the claims against the Rogich Trust. Not
7 any claims asserted against the Rogich Defendants. Given that this Court's decision
8 could potentially reverse Judge Allf's decision, it is suggested delaying these
9 proceedings to allow the district court to render additional erroneous decisions is not
10 a sufficient basis to grant the extension and deprive Nanyah of its ability to obtain
11 Writ relief.
12

13
14 **C. FURTHER DELAYS IN THE TRIAL COURT DO NOT**
15 **WARRANT ANY EXTENSIONS AND/OR DELAY IN**
16 **ADDRESSING THE MERITS OF THE WRIT.**

17 In addition, even assuming the district court may render further decisions in
18 favor of the remaining defendants in the pending district court action is not a basis to
19 delay consideration of Nanyah's Writ. In the event the district court proceeded with
20 the obvious objective of dismissing all claims asserted by Nanyah (despite
21 undisputed findings of fact and conclusions of law that Nanyah invested \$1.5 million
22 into Eldorado Hills, that the Rogich Trust and Eldorado Hills both affirmed the \$1.5
23 million investment, that Eldorado Hill's owed an obligation to repay the \$1.5 million
24 investment, and the Rogich Trust assumed Eldorado Hill's payment obligation as
25 Eldorado Hill's surety), Nanyah is still entitled to pursue its Writ petition.
26
27
28

Further activities in the district court do not impact the merits of the Writ, which merits are unopposed by both the Rogich Trust and Eldorado. It is likely that additional proceedings will nonetheless take place in the district court such as the filing of tolling motions and/or other related activity. The spector of a subsequent appeal is insufficient to delay Writ proceedings as the very nature of a writ proceeding is to address issue of import prior to and independent of any subsequent appeal practice. Given the foregoing, any further delay in addressing and proceeding with Nanyah's Writ is harmful and prejudicial to Nanyah.²

III. CONCLUSION.

Based upon the foregoing, the Rogich Defendants' request for another extension in responding to Nanyah's Writ should be denied.

DATED this 20th day of September, 2019.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

By: 

MARK G. SIMONS NV State Bar No. 5132
Attorneys for Petitioner

² Dougan v. Gustaveson, 108 Nev. 517, 835 P.2d 795, 799 (1992) ("[The timeliness] provisions recognize judicial commitment to the proposition that `justice delayed is justice denied.'").

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **NANYAH VEGAS, LLC'S OPPOSITION TO DEFENDANTS' EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF** (Second Request) on all parties to this action by the method(s) indicated below:

X by using the Supreme Court Electronic Filing System:

Brenoch Wirthlin

Thomas Fell

Samuel S. Lionel

Attorneys for Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC

Joseph Liebman

Dennis Kennedy

Attorneys for Eldorado Hills, LLC, Teld, LLC, a Nevada limited liability company; Peter Eliades, individually and as Trustee of the The Eliades Survivor Trust of 10/30/08

X by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Honorable Nancy L. Allf

Eighth Judicial District Court, Dept. 27

200 Lewis Avenue

Las Vegas, NV 89101

DATED: This 20 day of September, 2019.


An employee of Simons Hall Johnston PC