

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

2 NANYAH VEGAS, LLC, A Nevada
3 limited liability company,

4 Petitioner,

5 v.

6 CLARK COUNTY DISTRICT COURT,
7 THE HONORABLE NANCY ALLF,
8 DEPARTMENT 27,

9 Respondent,

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

21 Real Parties in Interest.

SUPREME COURT
CASE NO: 79072

CASE NO.: A-13-686303-C

DEPT. NO.: Electronically Filed

Sep 23 2019 11:45 a.m.

CONSOLIDATED WITH
CASE NO.: A-16-746238-C
Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF
DEFENDANTS' EMERGENCY
MOTION FOR EXTENSION OF
TIME TO FILE
ANSWERING BRIEF
(Second Request)**

22 Real Parties in Interest Sig Rogich aka Sigmund Rogich, as Trustee of The
23 Rogich Family Irrevocable Trust ("Rogich") and Imitations, LLC ("Imitations" and
24 collectively with Rogich referred to as the "Rogich Defendants"), defendants in the
25 underlying action ("Underlying Action"), hereby submit their Reply in support of
26 their Emergency Motion Under NRAP 27(e) for Extension of Time to File Real
27 Parties' In Interest Answering Brief [Second Request] ("Second Emergency
28 Motion") as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

**I. PETITIONER'S REPLY CONTAINS MULTIPLE FALSE
STATEMENTS**

 The Rogich Defendants file the instant reply in support of the Second

1 Emergency Motion to correct several false statements made by petitioner Nanyah
2 Vegas, LLC (“Petitioner” or “Nanyah”) in its opposition (“Opposition”) to the
3 Second Emergency Motion, which Opposition was filed on September 20, 2019.
4 The below is not an exhaustive list of the false or inaccurate statements made in the
5 Opposition:

6 **Petitioner’s false statement number one:** Petitioner asserts in
7 its Opposition that “Nanyah’s Writ is an emergency action.” See
8 Opposition at p. 2. This assertion is false.

9 **The truth:** Nanyah’s writ petition (“Writ”) was **not** filed as an
10 emergency action. The title page of the Writ is attached hereto as
11 **Exhibit I** and plainly shows it was not filed on an emergency basis,
12 and the word “emergency” appears nowhere in the caption or title.
13 Further, trial in this matter commenced April 22, 2019. See
14 Stipulation and Order Suspending Jury Trial, attached again for the
15 Court’s convenience as **Exhibit J** hereto, at pp. 2-3. At the
16 commencement of the trial, the Trial Court dismissed defendant
17 Rogich Family Irrevocable Trust (“Rogich Trust”). *Id.* All parties
18 stipulated on the record that the trial had commenced, and that the trial
19 would be “suspended” – not continued – at Petitioner’s request to
20 permit the Petitioner to “file an emergency motion with the Supreme
21 Court to take this up on [a] writ.” See Transcript of April 22, 2019
22 proceedings, attached again for the Court’s convenience as **Exhibit K**
23 hereto, at p. 13. Petitioner’s counsel himself requested that the trial be
24 “suspended” for this purpose. *Id.* **Petitioner then waited over 60
25 days, until June 27, 2019, to file its Writ Petition.**

26 **Petitioner’s false statement number two:** Petitioner asserts
27 that Sig Rogich, as trustee of the Rogich Trust “did not seek an
28 extension to file an answer” to the Petition. See Opposition at p. 2.
This assertion false.

The truth: Petitioner only named one “Sig Rogich” in its
Petition: “Sig Rogich aka Sigmund Rogich *as Trustee of The Rogich
Family Irrevocable Trust*”. See Exhibit I hereto, and the caption in
Petitioner’s own filings. Thus, there is only one “Sig Rogich” that is

1 participating in the Writ proceedings, and therefore the first emergency
2 motion filed by the Rogich Defendants (attached without exhibits as
3 **Exhibit L** hereto for the Court's convenience) was filed on behalf of
4 the only "Sig Rogich" named in the Petition – trustee of the Rogich
5 Trust. Sig Rogich was not named individually in the Petition. Thus,
6 Petitioner's assertion that real party in interest Sig Rogich, as trustee of
7 the Rogich Trust did not seek an extension to file an answer to the
8 Petition is false. It bears noting that Petitioner did name Peter Eliades
9 "individually and as trustee" in the Petition, but failed to name Sig
10 Rogich individually. Thus, the only "Sig Rogich" that could have
11 submitted a request for extension to respond to the Petition was the
12 only one named in the Petition.

13 **Petitioner's false statement number three:** Petitioner asserts
14 that "the district court ruled as a matter of law that Nanyah was an
15 intended third-party beneficiary of numerous contracts entered into by
16 the Rogich Trust." See Opposition at p. 4. This assertion is false.

17 **The truth:** In fact, the District Court *specifically and*
18 *unequivocally* recognized that it **has not found Petitioner Nanyah to**
19 **be an intended third-party beneficiary of any contract.** At a
20 hearing on March 20, 2019, in which the trial Court denied Nanyah's
21 motion in limine, the trial Court expressly stated that:

22 **"I haven't made an express finding at this point**
23 **that Nanyah was a third-party beneficiary.** That
24 matter is deferred to be determined at the time of trial, and
25 – and the case for that would be *Canfora versus Coast*
26 *Hotels*. So the motion will be denied in all respects.

27 See Transcript of March 20, 2019, hearing, attached hereto as
28 **Exhibit M**, at pp. 17-18. Accordingly, Petitioner's assertion that the
district court has ruled that Petitioner was an intended third-party
beneficiary is false.

Accordingly, as Petitioner's Opposition to the Second Emergency Motion is based
on Petitioner's false statements, the Rogich Defendants respectfully request that the
Second Emergency Motion be granted.

1 **II. IF THE PENDING SUMMARY JUDGMENT MOTION IS GRANTED**
2 **THE PETITION WILL BE MOOT.**

3 In its Opposition, Petitioner mistakenly asserts that “[f]urther activities in the
4 district court do not impact the merits of the Writ” See Opposition at p. 7. This
5 assertion is inaccurate. As this Court has recognized multiple times, if a party has a
6 plain remedy such as an immediate appeal, this Court will not entertain a writ
7 petition. *Columbia/HCA Healthcare Corp. v. Eighth Judicial Dist. Court In & For*
8 *Cty. of Clark*, 113 Nev. 521, 525, 936 P.2d 844, 846 (1997). As noted in the
9 Second Emergency Motion, The Trial Court is expected to make a decision on the
10 Rogich MSJ¹, the Eldorado MSJ, and Eldorado’s Dismissal Motion on September
11 27, 2019. Accordingly, the entire Underlying Action may potentially be disposed of
12 at that time. In that event, the Rogich Defendants submit that the Responsive Brief
13 would be unnecessary since the Petitioner’s Writ Petition would be moot, as the
14 Petitioner could therefore appeal from the Trial Court’s decision. The requested
15 extension will not cause any prejudice to the Petitioner, will conserve resources for
16 all parties, and Petitioner will not need to undertake drafting a reply brief, unless
17 and until it becomes necessary.

18 **III. CONCLUSION**

19 For all these reasons, the Rogich Defendants respectfully request that this
20 Court grant their request for one additional thirty day extension of the deadline to
21 file their Responsive Brief, making the Responsive Brief due on October 31, 2019,

22 ///

23 ///

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25 ///

27 ¹ Unless otherwise noted, all capitalized terms have the meaning given to them in
28 the Second Emergency Motion.

1 and grant such other and further relief as the Court deems appropriate.

2 DATED this 23th day of September, 2019.

3
4 FENNEMORE CRAIG, P.C.

5 By: /s/ Brenoch R. Wirthlin

6 Samuel S. Lionel, Esq. (Bar No. 1766)

7 Thomas Fell, Esq. (Bar No. 3717)

8 Brenoch Wirthlin, Esq. (Bar No. 10282)

9 *Attorneys for Real Parties in Interest the*
10 *Rogich Defendants*
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of
3 FENNEMORE CRAIG, P.C., and that on this date I caused to be served a true copy
4 of the **REPLY IN SUPPORT OF DEFENDANTS' EMERGENCY MOTION**
5 **FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF (Second**
6 **Request)** with the Nevada Supreme Court and served a copy of the same by the
7 means designated below to the following:

8 **VIA E-SERVICE & EMAIL:**

9
10 **BAILEY KENNEDY**

11 Joseph Liebman

12 Dennis Kennedy

13 **SIMONS HALL JOHNSTON PC**

14 Mark Simons

15 **VIA US MAIL:**

16 Honorable Nancy L. Allf
17 Eighth Judicial District Court, Dept. 27
18 200 Lewis Avenue
19 Las Vegas, NV 89101

20 DATED: September 23, 2019

21 /s/ Morganne Westover

22 An employee of **Fennemore Craig, P.C.**
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EXHIBIT I

EXHIBIT I

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

2 NANYAH VEGAS, LLC, A Nevada limited
3 liability company,

4 Petitioner,

5 v.

6 CLARK COUNTY DISTRICT COURT,
7 THE HONORABLE NANCY ALLF,
8 DEPARTMENT 27,

9 Respondent,

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

20 Real Parties in Interest.

Electronically Filed
Jun 27 2019 11:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE

NO: _____

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

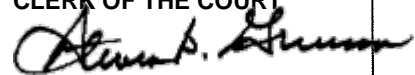
CONSOLIDATED WITH:
CASE NO.: A-16-746239-C

PETITION FOR WRIT OF
MANDAMUS, OR IN THE
ALTERNATIVE,
PROHIBITION

21 MARK G. SIMONS, ESQ.
22 Nevada Bar No. 5132
23 MSimons@SHJNevada.com
24 SIMONS HALL JOHNSTON PC
25 6490 S. McCarran Blvd., Ste. F-46
26 Reno, Nevada 89509
 Telephone: (775) 785-0088
 Facsimile (775) 785-0087
 Attorneys for Nanyah Vegas, LLC

EXHIBIT J

EXHIBIT J



ORDR

Samuel S. Lionel, Esq. (Bar No. 1766)

Thomas H. Fell (Bar No. 3717)

Brenoch Wirthlin, Esq. (Bar No. 10282)

FENNEMORE CRAIG, P.C.

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Las Vegas, Nevada 89101

Tel.: (702) 692-8000; Fax: (702) 692-8099

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

DISTRICT COURT
CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual;
CARLOS A. HUERTA as Trustee of THE
ALEXANDER CHRISTOPHER TRUST, a
Trust established in Nevada as assignee of
interests of GO GLOBAL, INC., a Nevada
corporation; NANYAH VEGAS, LLC, A
Nevada limited liability company,

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**STIPULATION AND ORDER
SUSPENDING JURY TRIAL**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

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1 to address Plaintiff's remaining claims.

2 Dated: May 9, 2019.

Dated: May _____, 2019.

3 **FENNEMORE CRAIG, P.C.**

4 By: 
5 SAMUEL S. LIONEL, ESQ.
6 THOMAS FELL, ESQ.
7 BRENOCH WIRTHLIN, ESQ.
8 300 South Fourth Street, Suite 1400
9 Las Vegas, Nevada 89101

10 *Attorneys for SIGMUND ROGICH,*
11 *individually and as Trustee of The Rogich*
12 *Family Irrevocable Trust and IMITATIONS,*
13 *LLC*

By: _____
MARK G. SIMONS, ESQ.
SIMONS HALL JOHNSTON PC
6490 South McCarran Blvd., #20
Reno, Nevada 89509

Attorneys for Nanyah Vegas, LLC

14 Dated: May _____, 2019.

15 **BAILEY KENNEDY**

16 By: _____
17 DENNIS KENNEDY, ESQ.
18 JOSEPH LIEBMAN, ESQ.
19 8984 Spanish Ridge Avenue
20 Las Vegas, Nevada 89148
21 *Attorneys for Eldorado Hills, LLC*

22 **ORDER**

23 Given the above Stipulation of the parties,

24 IT IS SO ORDERED this 14 day of May, 2019.

25 
26 DISTRICT COURT JUDGE

1 to address Plaintiff's remaining claims.

2 Dated: May ____, 2019.

Dated: May ____, 2019.

3 **FENNEMORE CRAIG, P.C.**

4
5 By: _____
6 SAMUEL S. LIONEL, ESQ.
7 THOMAS FELL, ESQ.
8 BRENOCH WIRTHLIN, ESQ.
9 300 South Fourth Street, Suite 1400
10 Las Vegas, Nevada 89101


11 *Attorneys for SIGMUND ROGICH,*
12 *individually and as Trustee of The Rogich*
13 *Family Irrevocable Trust and IMITATIONS,*
14 *LLC*

By: _____
MARK G. SIMONS, ESQ.
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6490 South McCarran Blvd., #20
Reno, Nevada 89509

Attorneys for Nanyah Vegas, LLC

15 Dated: May 9, 2019.

16 **BAILEY KENNEDY**

17
18 By:  _____
19 DENNIS KENNEDY, ESQ.
20 JOSEPH LIEBMAN, ESQ.
21 8984 Spanish Ridge Avenue
22 Las Vegas, Nevada 89148

23 *Attorneys for Eldorado Hills, LLC*

24 **ORDER**

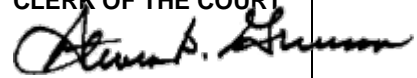
25 Given the above Stipulation of the parties,

26 IT IS SO ORDERED this ____ day of May, 2019.

27
28 _____
DISTRICT COURT JUDGE

EXHIBIT K

EXHIBIT K



1 RTRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 CARLOS A. HUERTA, an individual;
5 CARLOS A. HUERTA as Trustee of
6 THE ALEXANDER CHRISTOPHER
7 TRUST, a Trust established in
8 Nevada as assignee of interests of
GO GLOBAL, INC, a Nevada
corporation; NANYAH VEGAS,
LLC, A Nevada limited liability
company,

9 Plaintiffs,

10 v.

11 SIG RIGOICH, aka SIGMUND
12 ROGICH as Trustee of The Rogich
Family Irrevocable Trust;
13 ELDORADO HILLS, LLC, a Nevada
14 limited liability company; DOES I-X;
and/or ROE CORPORATIONS I-X,
inclusive,

15 Defendants.

16 NANYAH VEGAS, LLC, a Nevada
17 limited liability company,

18 Plaintiff,

19 v.

20 TELD, LLC, a Nevada limited liability
21 company; PETER ELIADAS,
individually and as Trustee of The
22 Eliades Survivor Trust of 10/30/08;
SIGMUND ROGICH, individually and
23 as Trustee of the Rogich Family
Irrevocable Trust; IMITATIONS, LLC,
24 a Nevada limited liability company;
DOES I-X: and/or ROE
CORPORATIONS I-X, inclusive,

25 Defendants.

CASE NO.: A-13-686303-C

DEPT. XXVII

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

1 BEFORE THE HONORABLE NANCY L. ALLF
2 DISTRICT COURT JUDGE
3 MONDAY, APRIL 22, 2019

4 **RECORDER'S TRANSCRIPT OF MOTION HEARING**

5 APPEARANCES:

6 For the Plaintiff: MARK SIMONS, ESQ.

7 For Defendant Rogich: BRENOCH WIRTHLIN, ESQ.
8 THOMAS FELL, ESQ.
9 SAMUEL S. LIONEL, ESQ.

10 For Defendant El Dorado Hills: JOSEPH LIEBMAN, ESQ.
11 DENNIS KENNEDY, ESQ.

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13 RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER
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INDEX

Court's Orders11

WITNESSES FOR THE PLAINTIFF

None

WITNESSES FOR THE DEFENDANT

None

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Las Vegas, Nevada, Monday, April 22, 2019

[Case called at 10:12 a.m.]

THE BAILIFF: Department XXVII is now in session, the
Honorable Judge Alf presiding.

THE COURT: Thank you. Please be seated.
Okay. Calling the case of Huerta v. El Dorado Hills.
Appearances, please, from your right to left.

MR. SIMONS: Mark Simons on behalf of Nanyah Vegas,
Your Honor, and in the courtroom with me is Yoav Harlap, the principal
of Nanyah Vegas, and also my assistant, Jodi Alhasan is in the audience.

THE COURT: Very good. Thank you and welcome.

MR. WIRTHLIN: Good morning, Your Honor. Brenoch
Wirthlin on behalf of Rogich Defendants. Mr. Sigmund Rogich is here
with us as well as Ms. Olivas, Melissa Olivas.

MR. FELL: Thomas Fell, also on behalf of the Rogich
Defendants.

MR. LIONEL: Sam Lionel representing the Rogich
Defendants.

MR. LIEBMAN: Joseph Liebman on behalf of El Dorado Hills.

MR. KENNEDY: And Dennis Kennedy on behalf of El Dorado
Hills, the Defendant in Case A-13-686303,

THE COURT: Thank you.

All right. I have the agenda, Mr. Simons. The -- with regard
to the NCRP 15, that order shortening time came in after we closed the

1 office Friday, but I am granting it and will argue the motion.

2 MR. SIMONS: Okay. The motion is premised on the concept
3 that the Court had entered in judgment in favor of the Eliadas
4 Defendants and there is no mechanism under the rule that says it has to
5 be done after the conclusion of the entire case, so there's a procedural
6 aspect of whether it's timely or if it needs to be addressed subsequent to
7 the trial. I think you're fully brief on the issue. We've talked about it a
8 few times. I don't have much more to add.

9 THE COURT: And I've read the briefs, so --

10 MR. SIMONS: Is there any questions you have of me?

11 THE COURT: No.

12 MR. SIMONS: Okay.

13 MR. LIEBMAN: Good morning, Your Honor. I think one of
14 the key points that's been missed here is the fact that an implied contract
15 claim was pled in this case at the inception of the case, when this was
16 filed back in 2013 and when Nanyah sued El Dorado Hills back in 2013,
17 its initial complaint contained the claim they are trying to add now.

18 In the first amended complaint after El Dorado Hills had filed
19 a motion to dismiss on that particular claim, they purposefully omitted it
20 from that particular pleading and we've cited this Court several cases
21 that says in that instance, when a plaintiff, in order to avoid a motion to
22 dismiss or when they're amending the complaint, decides to omit a
23 claim, it waives and abandons that particular claim. And that's precisely
24 what happened in this case. And we've gone five years, Your Honor,
25 since that occurred and there's never been a Rule 15(a) motion brought

1 to you to say we want to add this claim back.

2 So Mr. Simon's briefs a lot of times talk about well, this
3 claim wasn't technically pled for some reason or another, but it was and
4 they've decided to abandon it and they never decided to revive it the
5 way you're supposed to do under Rule 15(a). The procedural aspect that
6 Mr. Simons touched on is problematic for him as well. 15(b) applies to
7 instances where something's tried by implied or expressed consent at
8 trial. The actual title under the new rules of that subsection deals with
9 amendments during and after trial. And we have expressly made the
10 point.

11 We actually filed a notice of non-consent with this Court back
12 on April 9th that said we do not expressly or impliedly consent to this
13 claim being tried, so we're making that clear for the record as well. So if
14 Mr. Simons wanted to bring this motion at a later point in time, that's on
15 the record, that we do not expressly or impliedly consent to this
16 particular claim being added at the 11th hour.

17 And then the last issue I wanted to bring up is prejudice,
18 Your Honor. We were under the impression for five years that they
19 abandoned this claim and we never got to do any discovery on this
20 claim. We never got to depose Mr. Harlap on this claim. We never got
21 to depose Mr. Huerta on this claim. And these are the two people who
22 allegedly made up this so-called implied in fact contract. So to cause us
23 to have to defend against that claim at the 11th hour would cause
24 significant prejudice to the El Dorado Hills Defendants, Your Honor.

25 So unless the Court has any other questions, that's the

1 argument.

2 THE COURT: Okay. Thank you.

3 MR. LIEBMAN: Thank you.

4 MR. SIMONS: First off, we've got to put this in context.

5 What has been addressed by this Court is the obligation that's owed by
6 El Dorado to Nanyah. And that obligation occurred in 2007. It's been
7 established that Nanyah money went into El Dorado. A year after the
8 fact, you found that the Rogich Trust specifically assumed that
9 obligation. So when we have a situation where the Court makes rulings
10 and makes findings that there is an obligation, based upon receipt and
11 retention of funds and then at -- during the testimony of Mr. Huerta
12 that -- counsel just stood up and said we didn't get to depose anybody.

13 Well, this counsel is in after the fact. Mr. Lionel represented
14 El Dorado for years. Mr. Lionel deposed Mr. Huerta. Mr. Huerta said
15 yes, we actually owe them money. This Court was briefed in affidavits
16 from Carlos Huerta. When this Court originally granted summary
17 judgment on the timing, remember what the Court said. The Court said
18 the date of when Nanyah -- it's -- Nanyah's money went into El Dorado
19 was the date the statute of limitation applied and that was based upon
20 Carlos Huerta in affidavit saying El Dorado received our funds. What
21 then happens is it goes up to Supreme Court, comes back down, says
22 no, it's not on the date of the investment when El Dorado received
23 Nanyah's money.

24 So the fact that this recent counsel is contending that they
25 didn't have the opportunity to depose Mr. Huerta, El Dorado did, in fact,

1 depose Mr. Huerta, did in fact question Mr. Huerta extensively about the
2 obligation. The documents that were examined with Mr. Huerta are all
3 the written documents, which are business records of El Dorado saying
4 yes, we owe Nanyah its money back for its investment in El Dorado. So
5 then Mr. Harlap was deposed by Mr. Lionel, again went through the
6 extensive analysis of this situation. It arose -- the October 5th order
7 triggers this consideration, because the Court has rendered rulings that
8 then trigger some events.

9 And whether -- you know, after the fact, filing in the eve of
10 trial a notice of we don't consent to an issue that this Court has already
11 addressed, that's been throughout these pleadings even before the
12 appeal. El Dorado's obligation to Nanyah has been the heart of the case,
13 the contractual obligation. So that's where we have it. We have this
14 case loaded with an obligation from El Dorado to Nanyah. And what
15 does that trigger and what are the ramifications of that?

16 If you perceive that NCRP 15 relief is premature, given that
17 we haven't had the trial, that's one thing. But to say that this issue has
18 not been -- fully saturated this case from Day 1, even before recent
19 counsel, that's a misstatement of the case. Thank you.

20 THE COURT: Thank you. This is the Plaintiff's rule under
21 NRCP 15 to amend the complaint. The motion will be denied for the
22 reason that it's untimely and the claims previously abandoned. It's not
23 fair to require a defense under those circumstances.

24 MR. SIMONS: I'm sorry. You said it's denied, because it's
25 untimely?

1 THE COURT: It's untimely.

2 MR. SIMONS: Okay. Thank you.

3 THE COURT: All right. So the next matter is with regard to
4 N.R.S. 163. Mr. Simons.

5 MR. SIMONS: Again, this one deals with a possible
6 timeliness issue, because it may be that this is continued and revisited
7 after the trial, given that we need to see or should see whether there is a
8 judgment or not a judgment, or excuse me, jury verdict or not a jury
9 verdict entered to determine what steps, if any, the Court should take at
10 that time. I understand that. We -- when this type of notice issue is
11 brought to the Court's attention, steps must be taken. We notified the
12 Court of the various activities. You asked for additional briefing on the
13 discretionary aspect.

14 We've shown you that there is a discretionary aspect. It's not
15 just a black and white 30 days. That hands are -- the Court used the
16 phrase, hands are tied. I don't believe that applies or is in existence on
17 this one. So even though we brought the motion, in the alternative
18 relief, it may be necessary again that we deal with it after the trial.
19 Otherwise, then we're asking preliminarily now that you grant,
20 depending on the outcome of the case, the jury's verdict, that we then
21 take the 163 steps and the Court suspends entry of judgment until 163 is
22 able to be complied with.

23 THE COURT: Okay. And the argument for the discretion if
24 have to do that? Because the Texas case was a contingent beneficiary.

25 MR. SIMONS: Well, it -- that doesn't matter. The benefic --

1 whether it's a contingent beneficiary or not, is entirely irrelevant. What
2 the court looked at -- and it's a uniform trust act, okay? So they look at
3 and say what do we do in this situation? The courts don't automatically
4 say don't give beneficiaries an opportunity and don't prejudice the
5 Plaintiff. Don't harm the Plaintiff. We want to deal with things on the
6 merits. And in fact, the California case, when dealing with discretion
7 says apply discretion, not to be arbitrary or prejudicial to parties.

8 So the Texas case actually said judgment was entered. What
9 we're going to do is -- trial court vacated the judgment. Go do the
10 notice. Let's take steps to comply with given notice to the beneficiaries.
11 And in this case, the lead trustee is the lead beneficiary. So the Court in
12 this situation needs to exercise its discretion or at least postpone it to see
13 what happens at the end of the day. To come in and say before trial, Mr.
14 Simons, you asked for a continuance, so we can comply and now I'm
15 going to deny that.

16 And then I'm even going to deny that before trial, that you
17 don't get to move forward with N.R.S. 163 relief. It is not supported by
18 the case law. It's not supported by the language of discretionary
19 application. It's not supported by the policy of Nevada to deal with
20 matters on their merits and it's not appropriate to deal with the let's
21 penalize a party on the technical component when the Court is vested
22 with discretion to achieve fairness and justice.

23 THE COURT: Thank you.

24 MR. WIRTHLIN: Thank you. Good morning. I'll be brief. The
25 Court hit directly on the point that we're going to make and which we

1 made in our supplemental briefing, which is under this statute and in the
2 situation that has arisen, because of the Plaintiff's failure to give notice to
3 the beneficiaries of the Rogich Trust as required under the statute, there
4 is no discretion for the Court at this point to do anything other than find
5 in favor of the Trust against all Plaintiff's claims and dismiss the Trust.
6 As the Court noted, the Trans American case is distinguishable in that it
7 involved contingent beneficiaries and importantly, does not involve
8 N.R.S. 12.130, which requires intervention before trial.

9 And the beneficiaries cannot now do that. There is discretion
10 in certain instances. That's the BB&T case, where this issue is brought
11 up long before. I think in that case it was two years before there was
12 ever a judgment entered. And in that case, the demand was made for
13 the names of the trust beneficiaries and not provided by the trustee. And
14 the Court therefore in that case affixed a different time. This is an
15 entirely different situation, Your Honor.

16 We're talking about trustees. And I think as was mentioned
17 in the opening argument, that the Court should not be prejudicial to the
18 parties. But I think the consideration that needs to be made and is made
19 embodied in Chapter 163 is the prejudice to the trust beneficiaries, six of
20 whom we know in Mr. Rogich' declaration are minors, one of whom has
21 special needs. They may require appointment of other representatives
22 or guardian ad litem. That is why the statute provides and requires that
23 the beneficiaries be given notice, Your Honor, pursuant to the statute.

24 And again, I don't think it's -- I don't think can forget that the
25 statute contemplates giving that even 30 days after the JCCR is entered.

1 So unless the Court has any questions, we'll rest on our pleadings.

2 THE COURT: Does anyone else wish to weigh in? Then your
3 reply, please.

4 MR. SIMONS: Again, the Court is to look to not be unfair, to
5 not be prejudicial. The Court is to seek mechanisms to effectuate justice
6 and to try cases on the merits. We just heard now that the Rogich Trust
7 wants to be dismissed from the case right before the jury is empaneled.
8 That demonstrates the gamesmanship. After over five years, after this
9 Court rendering verdict -- judgments in favor of the Rogich Trust to come
10 in and say no, we're out of the case now. That's unfair. That's
11 prejudicial to the Plaintiff. There's a mechanism that's embodied in the
12 statute that deals with this situation.

13 Case law demonstrates the Judge is supposed to exercise
14 discretion and to deal with the notice to give opportunities to see if it
15 even matters, to determine whether those beneficiaries are
16 indispensable parties or not indispensable. In fact, the Texas case said
17 you know what, you beneficiaries aren't indispensable. Your interests
18 were adequately represented, just as in this case, just as in five years
19 and two sets of lawyers. So as we've requested, the Court either
20 suspend to see what the outcome of the trial is and/or grant the motion,
21 so that we can the appropriate steps in the event the verdict is in our
22 favor against the Rogich Trust.

23 THE COURT: Thank you. The Court has taken judicial notice
24 of N.R.S. 163.120, which has very definite timelines with regard to the
25 rights of beneficiaries of a trust that has been sued. Here I find that the

1 fact that the notice was so late with regard to the request for information
2 about who the beneficiaries are. The time hasn't even passed for the
3 trust to have to notify you who the beneficiaries are. The whole point of
4 that statute is to allow intervention. N.R.S. 12.130 requires intervention
5 to occur before trial. There's no way those beneficiaries can seek to
6 intervene at this point. So I am going to dismiss the Trust.

7 MR. SIMONS: I'm sorry. You said you're dismissing the
8 Rogich Trust?

9 THE COURT: I am.

10 MR. SIMONS: And you're going to deny discretionary relief
11 under 163?

12 THE COURT: That's correct.

13 MR. SIMONS: Okay. Are you going to allow us to continue
14 and prove to the jury the claims against the Rogich Trust?

15 THE COURT: No. Now, if that affects how you're going to
16 put your case on, do you want a half an hour?

17 MR. SIMONS: Here's what I'd like to do. I'd like to file an
18 emergency motion with the Supreme Court to take this on up on writ.
19 Can we suspend the case, continue the case while I'm allowed to do that,
20 because --

21 THE COURT: Is there --

22 MR. SIMONS: -- this is a significant issue of law --

23 THE COURT: I understand.

24 MR. SIMONS: -- and as you recognize, we have the
25 opportunity to take these things up on writs.

1 THE COURT: Of course. Is there -- do you guys want to
2 recess to -- or are you prepared to respond?

3 MR. WIRTHLIN: Your Honor, I'm not prepared to respond.
4 Can we have a brief recess?

5 THE COURT: Yes.

6 MR. WIRTHLIN: Thank you.

7 THE COURT: Take the time you need, 10, 15 minutes and let
8 me know when everyone's ready. I'll come right back.

9 [Recess at 10:29 a.m.]

10 THE BAILIFF: Court is back in session. Remain seated,
11 please.

12 THE COURT: Please remain seated. Thank you.

13 Defense, are you ready to respond?

14 MR. WIRTHLIN: Yes, Your Honor, we are. And we have
15 spoken amongst ourselves and with Plaintiff's counsel and we would be
16 in agreement to suspend the trial with a few qualifications, which we're
17 all in agreement on, if the Court approves them. The trial has started, so
18 there would be a suspension of the trial, not a continuation. The Trust
19 has been dismissed as a party, so the Trust would not be required to
20 provide any names or other information regarding the beneficiaries of
21 the Rogich Trust and that the parties remaining have the opportunity to
22 file a dispositive motion during the suspension to tee-up the remaining
23 issues concerning the remaining parties, if the Court approves.

24 THE COURT: Are you in agreement to those three
25 conditions?

1 MR. SIMONS: I think we are, except for number 2 and the
2 reason -- number 2 is the no response and it's because I'm not -- I
3 requested I have the opportunity to brief it and their response is we
4 wanted to submit it to the Court and see. And so that's the only one I'm
5 not in agreement with, because I don't know and I didn't have the
6 opportunity clearly to see what effect the statute says, if it has to be a
7 party or not. I'm not really sure.

8 THE COURT: Okay.

9 MR. SIMONS: In order to respond to a 163 notice.

10 MR. LIEBMAN: We're in agreement with all those conditions,
11 Your Honor.

12 THE COURT: So, if there's not an agreement to all terms --

13 [Pause]

14 THE COURT: Mr. Simons, if there's not an agreement to all
15 terms, then do we go forward today? What --

16 MR. SIMONS: I'm grabbing 163.

17 THE COURT: I have it up.

18 MR. WIRTHLIN: Mark, I don't know if you want me to point
19 to it, but just that first line of Subsection 2. A judgment may not be
20 entered in favor of the Plaintiff in the action --

21 MR. SIMONS: Yeah.

22 MR. WIRTHLIN: -- contemplates the loss.

23 MR. SIMONS: I think what you're saying is correct. So given
24 the language, I think what we need to do is also take that issue up on the
25 writ.

1 THE COURT: So does that mean there's consent to
2 suspension, the Trust is not required to respond and the remaining
3 parties can still file dispositive motions? Is that --

4 MR. WIRTHLIN: As far as we're concerned Your Honor.

5 MR. LIEBMAN: Yes, Your Honor.

6 UNIDENTIFIED SPEAKER: Yes.

7 UNIDENTIFIED SPEAKER: Yes.

8 THE COURT: All right. Now, I don't know if for -- this is --
9 may or may not matter whether or not your five-year rule -- there hasn't
10 been a witness -- we haven't had any witnesses, so it's just something to
11 think about.

12 MR. SIMONS: It's actually been satisfied, since we've
13 commenced the trial.

14 THE COURT: Okay. Good enough. So I guess we're in
15 recess until another matter is brought to my attention at this point.

16 MR. WIRTHLIN: Thank you, Your Honor.

17 MR. LIEBMAN: Yes, Your Honor.

18 THE COURT: Thank you, all.

19 MR. LIEBMAN: Thank you.

20 [Proceedings concluded at 10:52 a.m.]

21 * * * * *

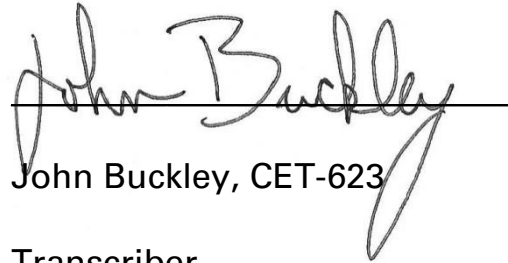
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case to the
3 best of my ability.

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5 
6
7 John Buckley, CET-623
8 Transcriber

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11 Date: April 22, 2019
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EXHIBIT L

EXHIBIT L

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

2 NANYAH VEGAS, LLC, A Nevada
3 limited liability company,

4 Petitioner,

5 v.

6 CLARK COUNTY DISTRICT COURT,
7 THE HONORABLE NANCY ALLF,
8 DEPARTMENT 27,

9 Respondent,

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

21 Real Parties in Interest.

SUPREME COURT
CASE NO: 79072

CASE NO.: A-13-686303-C
DEPT. NO.: Electronically Filed
Aug 07 2019 03:45 p.m.
CONSOLIDATED WITH: A. Brown
CASE NO.: A-16-746239-6
Clerk of Supreme Court

**DEFENDANTS' EMERGENCY
MOTION FOR EXTENSION OF
TIME TO FILE
ANSWERING BRIEF
(First Request)**

22 **EMERGENCY MOTION UNDER NRAP 27(e)**

23 **FOR EXTENSION OF TIME TO FILE REAL PARTIES' IN INTEREST**

24 **ANSWERING BRIEF**

25 **(First Request)**

26 *Relief is Necessary on or before August 21, 2019*

27 Real Parties in Interest Sig Rogich aka Sigmund Rogich and Imitations, LLC,
28 (collectively referred to as the "Rogich Defendants"), defendants in the underlying
29 action ("Underlying Action"), hereby move the Court on an emergency basis for an
30 order extending the time for the Rogich Defendants to submit a responsive brief
31 ("Responsive Brief"). There have been no prior extensions in this matter.

1 **NRAP 27(e) CERTIFICATE**

2 (A) The telephone numbers and the office addresses of counsel for the
3 Rogich Defendants appear below counsel's signature on this Motion. Those of
4 Petitioner/Plaintiff's lead counsel are as follows: Mark Simons, Esq., 6490 South
5 McCarran Blvd., #C-20, Reno, Nevada 89509; Tel: (775) 785-0088. Counsel for
6 Eldorado Hills, LLC is Bailey Kennedy, Joseph Liebman, Esq., 8984 Spanish
7 Ridge Avenue, Las Vegas, NV 89148; Tel: (702) 562-8820.

8 (B) In the interest of judicial economy and to avoid irreparable harm, relief
9 is needed in less than 14 days. Facts showing the existence and nature of the
10 emergency are as follows:

11 1. The Rogich Defendants' Responsive Brief to the Petition for
12 Writ of Mandamus, or in the Alternative, Prohibition ("Writ Petition") filed
13 herein by petitioner Nanyah Vegas, LLC ("Petitioner" or "Plaintiff") is
14 currently due August 22, 2019, or 28 days from this Court's Order Directing
15 Answer entered July 25, 2019, making the Responsive Brief due August 22,
16 2019. If a request for the 14-day extension provided for in NV ST RAP Rule
17 31(b)(1) is made and granted, the Responsive Brief will be due September 5,
18 2019. The Rogich Defendants have filed a motion for summary judgment
19 ("Rogich MSJ") on all remaining claims pending against them. The hearing
20 on the Rogich MSJ is also set for September 5, 2019 ("September Hearing"),
21 the same day the Responsive Brief will likely be due. In addition, the only
22 remaining defendant in the case, Eldorado Hills, LLC ("Eldorado"), has also
23 filed both a motion for summary judgment ("Eldorado MSJ" and collectively
24 with the Rogich MSJ referred to as the "MSJs") and a motion for dismissal
25 with prejudice under Rule 41(e) (the "Dismissal Motion").

26 2. The Dismissal Motion – the gist of which is that Plaintiff failed
27 to comply with the "three year rule" regarding its claim against Eldorado in
28

1 the Underlying Action – along with Eldorado’s MSJ, is also set to be heard
2 September 5, 2019. Accordingly, the entire Underlying Action may
3 potentially be disposed of at the September Hearing.

4 3. In that event, the Rogich Defendants submit that the Responsive
5 Brief would be unnecessary since the Plaintiff’s Writ Petition would be moot,
6 as the Plaintiff could therefore appeal from the Trial Court’s decision. For
7 this reason the Rogich Defendants respectfully request that this Court grant
8 their request for one additional forty (40) day extension of the deadline to file
9 their Responsive Brief, making the Responsive Brief due on October 1, 2019.

10 (C) Counsel for the Rogich Defendants notified other parties’ counsel on
11 this emergency motion as follows: (1) I requested Plaintiff’s counsel consent to
12 stipulate to extend the time for the Rogich Defendants to respond to the Writ
13 Petition on August 5, 2019, which Plaintiff’s counsel refused to do (*see* Email
14 correspondence attached as **Exhibit A**; (2) I left a telephone message with the
15 office of Plaintiff’s counsel, Mark Simons, detailing the intended filing of this
16 Emergency Motion today, August 7, 2019; (3) I had a telephone conversation with
17 Mr. Joseph Liebman, counsel for Eldorado Hills today, August 7, 2019, at which
18 time Mr. Liebman informed me he has no objection to the relief requested in this
19 Emergency Motion; and (4) my office electronically served the Emergency Motion
20 on all counsel of record before 4:00 pm today.

21 This Emergency Motion is made and based on the attached memorandum of

22 ///

23 ///

24 ///

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1 points and authorities, the exhibits attached hereto, and the papers and pleadings on
2 file herein.

3 So certified this 7th day of August, 2019.

4
5 FENNEMORE CRAIG, P.C.

6 By: /s/ Brenoch R. Wirthlin

7 Samuel S. Lionel, Esq. (Bar No. 1766)

8 Thomas Fell, Esq. (Bar No. 3717)

9 Brenoch Wirthlin, Esq. (Bar No. 10282)

10 *Attorneys for Real Parties in Interest the*
11 *Rogich Defendants*

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 The Rogich Defendants, defendants in the Underlying Action, hereby move
15 the Court on an emergency basis for an order extending the time for the Rogich
16 Defendants to submit their Responsive Brief by for 40 days. The basis for the
17 extension is that the Writ may be rendered moot by the pending motions for
18 summary judgment before the trial court scheduled for hearing on September 5,
19 2019. If these final dispositive motions are granted, the entire case would be
20 appealable eliminating the necessity for the Writ and further briefing. There have
21 been no prior extensions in this matter.

22 The Rogich Defendants' Answering Brief is currently due August 22, 2019.
23 The Rogich Defendants filed their MSJ on all remaining claims pending against
24 them. The hearing on the Rogich MSJ is set for September 5, 2019. In addition,
25 the only remaining defendant in the case, Eldorado, has also filed both a motion for
26 summary judgment and a motion for dismissal with prejudice under Rule 41(e), *i.e.*
27 the Dismissal Motion. Both Eldorado motions are also set for hearing on September
28

1 5, 2019. If the moving parties are successful, the entry of the orders will result in a
2 final appealable judgment, which would eliminate the need for the Writ Proceeding.

3 For this reason the Rogich Defendants respectfully request that this Court
4 grant their request for an additional 40 days to file their Responsive Brief, making
5 the Responsive Brief due on October 1, 2019.

6 **II. STATEMENT OF FACTS**

7 1. Trial in this matter commenced April 22, 2019. *See* Stipulation and
8 Order Suspending Jury Trial, **Exhibit B** hereto, at pp. 2-3.

9 2. At the commencement of the trial, the Trial Court dismissed defendant
10 Rogich Family Irrevocable Trust (“Rogich Trust”). *Id.*

11 3. All parties stipulated on the record that the trial had commenced, and
12 that the trial would be “suspended” – not continued – at Plaintiff’s request to permit
13 the Plaintiff to “file an emergency motion with the Supreme Court to take this up
14 on [a] writ.” *See* Transcript of April 22, 2019 proceedings, **Exhibit C** hereto, at p.
15 13.

16 4. Plaintiff’s counsel himself requested that the trial be “suspended” for
17 this purpose. *Id.*

18 5. The parties also stipulated, as part of the suspension of the trial, that
19 the Rogich Defendants and Eldorado could file dispositive motions. *Id.* at p. 14.

20 6. Plaintiff then waited over 60 days, until June 27, 2019, to file its Writ
21 Petition.

22 7. In the meantime, the Rogich Defendants filed their MSJ on May 10,
23 2019. *See* state court docket, **Exhibit D** hereto.

24 8. The hearing on the Rogich MSJ was originally set for June 13, 2019,
25 even before the Plaintiff filed its Writ Petition. *Id.*

26 9. The hearing on the Rogich MSJ was then continued to July 31, 2019.
27 *Id.*

28

1 10. Eldorado filed its MSJ on May 22, 2019. *Id.*

2 11. Eldorado then filed its Dismissal Motion on July 22, 2019. *Id.*

3 12. At Eldorado's request, the Rogich Defendants agreed that it could
4 move the hearing on the Eldorado MSJ and Eldorado's Dismissal Motion to
5 September 5, 2019, but that the Rogich MSJ would remain on calendar to be heard
6 on July 31, 2019. *See* Stipulation and Order, **Exhibit E** hereto.

7 13. This Court entered its Order Directing Answer on July 25, 2019,
8 making the Rogich Defendants' Responsive Brief due 28 days later, or August 22,
9 2019.

10 14. Subsequently, on July 30, 2019, the Trial Court sua sponte continued
11 the hearing on the Rogich MSJ to September 5, 2019. *See* Exhibit D hereto.

12 **III. LEGAL ARGUMENT**

13 NRAP 31(b)(3) provides for the extension of time to file a brief upon a
14 showing that the requesting party has a need for such extension. At the September
15 5 hearing, the Trial Court will hear the Rogich MSJ, the Eldorado MSJ, and
16 Eldorado's Dismissal Motion. Accordingly, the entire Underlying Action may
17 potentially be disposed of at the September Hearing.

18 In that event, the Rogich Defendants submit that the Responsive Brief would
19 be unnecessary since the Plaintiff's Writ Petition would be moot, as the Plaintiff
20 could therefore appeal from the Trial Court's decision. For this reason the Rogich
21 Defendants respectfully request that this Court grant their request for a forty (40)
22 day extension of the deadline to file their Responsive Brief, making the Responsive
23 Brief due on October 1, 2019. In addition, it bears noting that the requested
24 extension will not cause any prejudice to the Plaintiff since it is unlikely there
25 would be a decision by this Court on the Writ Petition by the September Hearing
26 even if the Rogich Defendants filed their brief on August 22, 2019. Granting the
27 instant motion will conserve resources for all parties, as well as this Court as it will
28

1 not have to begin reviewing the Responsive Brief, and Plaintiff will not need to
2 undertake drafting a reply brief, unless and until it becomes necessary.

3 **IV. CONCLUSION**

4 For all these reasons, the Rogich Defendants respectfully request that this
5 Court grant their request for one additional forty day extension of the deadline to
6 file their Responsive Brief, making the Responsive Brief due on October 1, 2019,
7 and grant such other and further relief as the Court deems appropriate.

8
9 DATED this 7th day of August, 2019.

10
11 FENNEMORE CRAIG, P.C.

12 By: /s/ Brenoch R. Wirthlin
13 Samuel S. Lionel, Esq. (Bar No. 1766)
14 Thomas Fell, Esq. (Bar No. 3717)
15 Brenoch Wirthlin, Esq. (Bar No. 10282)
16 *Attorneys for Real Parties in Interest the*
17 *Rogich Defendants*
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date I caused to be served a true copy of the **DEFENDANTS’ EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF** with the Nevada Supreme Court and served a copy of the same by the means designated below to the following:

VIA E-SERVICE & EMAIL:

BAILEY KENNEDY
Joseph Liebman
Dennis Kennedy

SIMONS HALL JOHNSTON PC
Mark Simons

VIA US MAIL:

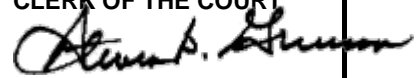
Honorable Nancy L. Allf
Eighth Judicial District Court, Dept. 27
200 Lewis Avenue
Las Vegas, NV 89101

DATED: August 7, 2019August 7, 2019

/s/ Morganne Westover
An employee of **Fennemore Craig, P.C.**

EXHIBIT M

EXHIBIT M



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CARLOS HUERTA,)
)
Plaintiffs,)
)
vs.)
)
ELDORADO HILLS LLC,)
)
Defendant.)
)
AND RELATED PARTIES)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, MARCH, 20, 2019

RE: MOTIONS

APPEARANCES:

FOR THE PLAINTIFF: MARK G. SIMONS, ESQ.

FOR ELDORADO HILLS: JOSEPH A. LIEBMAN, ESQ.

FOR ROGICH TRUST: SAMUEL S. LIONEL, ESQ.

FOR ROGICH DEFENDANTS: BRENOCH WIRTHLIN, ESQ.

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 20, 2019, 9:07 A.M.**

2 * * * * *

3 THE COURT: Huerta versus Eldorado Hills.

4 MR. SIMONS: Good morning, Your Honor.

5 THE COURT: Appearances, please.

6 MR. SIMONS: Mark Simons on behalf of Nanyah.

7 THE COURT: Thank you.

8 MR. LIEBMAN: Good morning, Your Honor. Joseph
9 Liebman on behalf of Eldorado Hills.

10 THE COURT: Let's kind of go in order. I know who
11 everybody is, but I'd like to be polite and refer to all of you
12 by your names.

13 MR. LIONEL: Good morning, Your Honor. Sam Lionel
14 representing the Rogich trust.

15 THE COURT: Thank you.

16 MR. WIRTHLIN: Good morning, Your Honor. Brenoch
17 Wirthlin with Mr. Lionel on behalf of the Rogich defendants.

18 THE COURT: Thank you all. We've got three matters
19 on for today.

20 Is there anyone else who wishes to make an
21 appearance?

22 No. Okay. Good enough.

23 So we have the Nanyah's Motion in Limine 5, Nanyah's
24 Motion in Limine Number 6, and then the Rogich defendants
25 motion to compel. I'd like to take them in that order.

1 Mr. Simons.

2 MR. SIMONS: Yes, Your Honor. May I use the podium,
3 please?

4 THE COURT: Wherever you're more comfortable. And
5 apparently people are having a hard time hearing me today.

6 MR. SIMONS: It is.

7 THE COURT: Is it this beautiful courtroom and the
8 ceiling. It bounces the sound around. I'll do my best to
9 speak up.

10 MR. SIMONS: Okay. Let me know when you're ready --

11 THE COURT: I am.

12 MR. SIMONS: Okay. These motions, the two motions
13 I'm presenting today are the consequence of the April -- excuse
14 me, October 5th order. As the Court's already addressed in
15 the last hearing, there's some consequences and effects coming
16 out of that order that will impact the issues [unintelligible]
17 jury issues as well as the trial, and I believe from the
18 perspective of our motions it's going to streamline the trial
19 quite significantly.

20 So why we have to bring this motion is that there is
21 the perception by the defendants that they get to revisit facts
22 that are undisputed; and they get to attempt to bring in
23 evidence that contradicts or varies the terms of the contracts
24 that the Court has said are clear and unambiguous, hence the
25 need to prevent that evidence from being brought to bear at

1 trial and to address it early on so that we can prep properly
2 for trial.

3 So the October 5th order says at paragraph 2 that
4 Nanyah did invest the 1.5 million into Eldorado.

5 Paragraph 4 also says that the agreements
6 specifically identify that the Rogich trust assumed the
7 obligation to repay Nanyah.

8 Then you have the analysis of the contracts in the
9 paragraph 7 and paragraph 14, and paragraph 14 is kind of the
10 foundational premise of my parol evidence rule motion.

11 Paragraph 14 states that the contracts are unambiguous; under
12 the parol evidence rule, nobody can bring in evidence to
13 contradict. And then at that point in time you may recall that
14 I was -- the motions addressed some statements made by Pete
15 Eliades with regards to what he believes his obligations were
16 under the contract. The Court says, No, Mr. Simons, I'm not
17 going to consider that because the contracts are clear and
18 unambiguous. So your attempt to modify or vary the terms of
19 the contract is barred, and that's contained in your order
20 barring Nanyah, my client, from attempting to use any parol
21 evidence.

22 So bringing that to the attention of the Court in
23 this motion, I'm going to address both the Rogich's oppositions
24 and the Eldorado's oppositions because they are very similar in
25 some respects.

1 There was the issue of 2.47, the requirement to meet
2 and confer. They bring that up. I believe that the Court's
3 order, scheduling order didn't contain that component. This
4 Court's scheduling order --

5 THE COURT: Well, I think it's implicit in every
6 motion that an effort should be made. I'm going to hear the
7 motions today --

8 MR. SIMONS: Okay.

9 THE COURT: -- but let me caution you that I
10 regularly enforce that rule.

11 MR. SIMONS: And not a problem.

12 And but what we can see is even if we would've
13 complied with that there was still -- there's the opposition,
14 that there was --

15 THE COURT: Well, no. Compliance is important.
16 So --

17 MR. SIMONS: I have no problem with that, and I'll do
18 that to the extent ever it pops up again.

19 Now going to the substantive aspects, the argument is
20 made that Nanyah was not -- is a stranger to the contract.
21 Then we heavily briefed that, and there was a reliance by the
22 Rogich defendants on an 1879 case, the *Bank of California v.*
23 *White*, but that case didn't deal with third-party beneficiary
24 status. It dealt with actually a party that was complete
25 stranger to a relationship. This -- that case has no

1 applicability to this case, and is contrary to the law that in
2 the State of Nevada third-party beneficiaries are subject to
3 the terms and defenses contained in the contract. Therefore,
4 the parol evidence rule does apply even in third-party
5 beneficiary statuses.

6 The Court has called out at paragraph 4 that Nanyah
7 was called out as a recipient of the obligations contained in
8 the various contracts, and that was the recipient of receiving
9 our either membership interest or our \$1.5 million back.

10 So that brings us to the arguments that Eldorado
11 asserts that there is no callout for an obligation on Eldorado,
12 which is not necessarily applicable to the parol evidence rule.
13 They're arguing and saying, look, we don't believe that the
14 October 5th order contains an obligation that is capable of
15 being imposed on Eldorado.

16 I disagree with that because the way the order lays
17 it out, Eldorado invested in October -- excuse me,
18 December 2007. The agreements where the Rogich trust assumed
19 the obligation on behalf of Eldorado didn't take place until
20 October 31st, 2008. So for a 9, 10 month period of time,
21 there existed an obligation that was solely held by Eldorado,
22 and in order to assume an obligation, there has to be a
23 preexisting obligation, which we point out, and that is that
24 there was the receipt by Eldorado and an obligation to either
25 return the money by Eldorado or to issue a membership interest.

1 Neither of those happened at the time. So therefore
2 the Rogich trust enters into an agreement and says, look, I'll
3 assume, and this brings in the surety argument, I'll assume on
4 behalf of Eldorado this obligation to Nanyah to replace that
5 money. So that in a brief [unintelligible] the callouts of the
6 obligation, which is the foundational premise is the 1.5. So
7 to the extent Eldorado argues that there is no obligation upon
8 Eldorado with regards to the 1.5, I think the order is clear
9 that it identifies it and also expressly states that in order
10 to assume there had to be a preexisting obligation.

11 Eldorado makes the follow-up argument that they're
12 not bound by any agreement. Therefore the parol evidence rule
13 doesn't apply, but what we point out is the operating
14 agreement, the amended operating agreement by Eldorado at
15 Recital A incorporates in total the October 31, 2008,
16 agreements which obligate the repayment to Nanyah.

17 And, in fact, at paragraph 5C, Subsection 3 of your
18 order, and this is on page 6, your order specifically addresses
19 this, and it says,

20 The terms and conditions of the October
21 30th, 2008, membership interest purchase
22 agreement were incorporated by reference into
23 the October 30th, 2008, amended and
24 restated operating agreement. See Recital A.
25 So your order specifically addresses the wholesale

1 incorporation and adoption of the obligations contained in the
2 contracts that you found were clear and unambiguous to repay my
3 client the 1.5 million. Operating agreements, as we brief, are
4 contracts binding the company and the members.

5 So now we have the parol evidence directly applicable
6 to Eldorado. We have the parol evidence directly applicable to
7 the Rogich trust under the clear and unambiguous agreements.
8 We have the Court specifically calling out the parol evidence
9 rule is applicable in this case because the contracts are clear
10 and unambiguous.

11 So the effect of this order, this motion in limine
12 would obviate all the attempts by the defendants to come up
13 with excuses or reasons that Nanyah did not invest or that
14 there was not an obligation to repay Nanyah, which will
15 significantly streamline the case. That takes about three days
16 out of the case. So and we don't need that evidence because we
17 have an order that says it's undisputed findings of fact and
18 that the terms of the contracts are clear and unambiguous.

19 THE COURT: Thank you.

20 And the oppositions.

21 (Pause in the proceedings)

22 MR. LIEBMAN: Good morning, Your Honor. Let's back
23 up a little bit. Nanyah has one claim against Eldorado Hills,
24 unjust enrichment. That's the only claim they've pled at this
25 particular point in time. They've never pled a contract claim

1 against Eldorado Hills. If there was a contract going back to
2 2007 that we agreed to pay them back \$1.5 million, you'd think
3 they would've brought a breach of contract claim. They didn't.
4 How are they going to prove an unjust enrichment claim by
5 keeping out parol evidence? If parol evidence doesn't come in,
6 they can't prove an unjust enrichment claim. They can't prove
7 their claim, and it has to be dismissed because they don't have
8 a breach of contract claim.

9 Now, even if this Court allowed them to go forward on
10 some sort of implied in fact contract claim that they've
11 alluded to in the past, and we certainly object to that, and we
12 don't believe they should be able to add that claim at this
13 late hour, again, an implied contract claim is not a written
14 contract. The parol evidence rule only applies to written
15 contracts.

16 Now, they're trying to come back six years after the
17 case was filed and specifically say at this point, well, you
18 guys are parties to the operating agreement which incorporates
19 other agreements, and those agreements don't say anything about
20 Eldorado Hills owing money. They say that Rogich is solely
21 responsible for the potential claim, and trying to bootstrap
22 those agreements. They don't say anything about Eldorado Hills
23 owing money and say you're a party to this agreement over here,
24 and therefore we can use the parol evidence rule.

25 But the same order that they're relying on to try to

1 make that argument specifically includes the parties to the
2 operating agreement, and this is on page 5 of the order. It
3 says, the October 30th, 2008, amended and restating operating
4 agreement between the Rogich trust, the Flangas trust and Teld.
5 It does not include Eldorado Hills. Eldorado Hills did not
6 sign it. There is a no-third-party-beneficiary-provision in
7 there that says only the parties to this contract are bound by
8 this particular contract.

9 So to be honest with Your Honor, I mean, this
10 argument that he's making it just doesn't make any legal sense.
11 There's no basis to try to keep out parol evidence against
12 Eldorado Hills when Eldorado Hills is not parties to any of
13 these contracts, and there's no contract claim asserted against
14 Eldorado Hills.

15 So unless you have any other questions, I thank you.

16 THE COURT: Mr. Wirthlin.

17 MR. WIRTHLIN: Yes, Your Honor. Thank you.

18 I don't want to belabor the points. I know the
19 Court's read their pleadings, but I'd just like to hit some of
20 the highlights, but please interrupt me with any questions, of
21 course, at any time.

22 2.47 issue, I won't go into it -- the Court's
23 recognized it -- other than to say it happened last time the
24 Court gave them a pass. We would submit that that should end
25 the inquiry there.

1 But as far as the merits on the parol evidence rule
2 we strongly dispute. In fact, there's no case law that
3 plaintiff's counsel has come up with that suggests in any way
4 the *White* case is not good law, and the -- it's true that
5 the -- that's why we cited that *Pittman* [phonetic] case to show
6 very clearly the third party -- a purported third-party
7 beneficiary is not a party to the contract.

8 In fact, if we want to go back to that October 2018
9 order, this Court explicitly found that Nanyah was, in fact,
10 not a party to the contract. I mean, I don't think that's
11 really in dispute. At paragraph 13, quote, Nanyah was not a
12 party to this agreement, end quote. I think that's where the
13 inquiry ends there. The parol evidence rule cannot apply.

14 The other part of it is two things I guess I want to
15 talk about. Nanyah says, well, they just want to have the
16 parol evidence rule not apply because they want to address
17 these issues that are -- have already been decided. Well, we
18 disagree with that in several respects.

19 First of all, we interpret that October 2018 order
20 differently than Nanyah does. They -- in fact, counsel just
21 got up and said paragraph 2 says not con -- concludes Nanyah
22 invested in Eldorado. Well, that's not what paragraph 2 says.
23 What paragraph 2 says that in -- is, quote, In December
24 of 2007, Nanyah wired \$1.5 million which eventually was
25 deposited into Eldorado's bank account, end quote.

1 Your Honor, that is clearly one of the issues that we
2 feel is absolutely disputed that the jury needs to decide.
3 Yes, the money was funneled through Eldorado. Nobody disputes
4 that Mr. Huerta was very clever in how he took the money from
5 Nanyah, funneled it through Eldorado, and it ends up in his
6 pocket of his entity Go Global. He got that money. Yes, he
7 funneled it through Eldorado so that he could later say, oh, it
8 was an investment, but he took it out as a consulting fee. So
9 there is no question from our position this is absolutely a
10 disputed issue of fact.

11 And again I think what is going on here is that
12 Nanyah is trying to spin that October 2018 order into summary
13 judgment. Obviously they filed a summary judgment motion on
14 it. I don't think there's any dispute there.

15 But they even go so far as to say, if you look at
16 some of the other paragraphs, at paragraph 14, which they also
17 rely on, I think -- I don't mean -- I don't think I'm
18 misstating what Nanyah's counsel said when he said that that's
19 the basis for this motion and for a lot of their motions, and
20 if we look at paragraph 14, Your Honor, what it says is the
21 Court is precluded from, quote, the Court -- well, the Court
22 is, quote, Precluded from considering any testimony to
23 determine the Eliades defendants' so-called contractual
24 liability, end quote.

25 And that's the *Krieger* cite, and that's true. And

1 Nanyah tries to spin that. In fact, says, well, the Court
2 cites *Krieger*, and so therefore the parol evidence rule
3 applies, and the Rogich defendants can't even present their
4 case is what effectively he's saying, and that's just not true.
5 The *Krieger* analysis, the citation and that paragraph 14
6 relates to the Court's determination as to the Eliades
7 defendants' summary judgment. We don't want to overturn that.
8 We've never tried to overturn that.

9 But the order itself says in multiple places, and
10 we've cited paragraph -- I think it's paragraph page 8 -- yeah,
11 paragraph 15. Nanyah is, quote, An alleged third-party
12 beneficiary. Then page 9, paragraph 20, quote, Return of
13 Nanyah's alleged investment in Eldorado. That's been an issue
14 from Day 1.

15 Yeah, the money was funneled through Eldorado, but
16 did Eldorado get any benefit, and, yes, Mr. -- those -- those
17 agreements say what they say, and the Court has interpreted
18 them to the extent they apply to the Eliades defendants' motion
19 for summary judgment, but the Rogich defendants had a different
20 defense. And so even if the Court was just looking strictly at
21 that order, and that's all we wanted that evidence for, any
22 parol evidence, the Court, it's our position, could not grant
23 the plaintiff's motion in limine.

24 But in addition to that, and we point this out a
25 little bit in our reply that gets into some of the other issues

1 on the motion to compel that I'll leave for that argument, but
2 these -- you know, the parole evidence and the parties' intent
3 and what happened goes directly to our affirmative defenses as
4 well. It's not simply addressing the issue of the Eliades
5 defendants' summary judgment, which we're not addressing now,
6 and some of those other issues that haven't even been addressed
7 at this point, like, for example, the K-1's. What is the
8 effect of those K-1's? The November email, and again that's in
9 our reply in our motion to compel, but it shows clearly that,
10 Number 1, Nanyah was not a part of this contract. So under the
11 *White* case binding Supreme Court precedent, the parole evidence
12 rule cannot apply.

13 Number 2, the story that we're getting now is not the
14 actual story. We're looking at emails and correspondence where
15 Mr. Harlap is saying even as late as November 2016, he doesn't
16 even know how his money supposedly made it into Eldorado. This
17 is -- this is clearly, and it's our theory, and I don't think
18 there's any secret about it, this was Mr. Huerta's doing from
19 the beginning, and yes, he funneled that money through Eldorado
20 at some point but took it out for his own benefit where it
21 ended up, and we need to be able to present that to the jury,
22 Your Honor.

23 So we would submit that those issues are issues of
24 fact for the jury with respect to the Rogich defendants and
25 that the parole evidence motion by plaintiff should be denied.

1 Thank you.

2 THE COURT: Thank you.

3 And the reply, please.

4 MR. SIMONS: Yes. Thank you.

5 First off, let's kind of get back to the reality of
6 the situation. Eldorado took our money, undisputed. What did
7 we get in exchange for it? We were supposed to get either a
8 membership interest or the return of our money. Eldorado
9 stands up here and says we don't have any liability. There's
10 nothing that says we have any liability. Oh, and by the way,
11 Judge, forget and ignore that the contracts say, and Rogich
12 trust, and Mr. Rogich unequivocally state and confirm that
13 Eldorado received our \$1.5 million investment, paragraph 5B1.

14 Exhibit D to that agreement, Nanyah invests -- has
15 1.5 million investment into Eldorado.

16 Paragraph Subsection 4, That there was a repayment
17 obligation to pay Nanyah for its, quote, Investment into
18 Eldorado.

19 Paragraph 5A, sub 2, The Exhibit A claimants include
20 Nanyah, and its 1.5 million investment into Eldorado.

21 Paragraph 4, The Rogich trust specifically agreed to
22 assume the obligation to pay Nanyah its percentage interest in
23 Eldorado or to pay Nanyah its 1.5 million invested into
24 Eldorado.

25 Our money went in to Eldorado. Now, you're hearing

1 we want a defense that somebody else, Mr. Huerta, is a bad guy.
2 Okay. That's totally irrelevant. Bring that up later.
3 Eldorado and Rogich trust, you have an obligation. That's what
4 this case is about, and that's what the parol evidence rule
5 means.

6 We hear that Eldorado doesn't have any contractual
7 obligations even though Eldorado has acknowledged by adoption
8 and incorporation of these contracts into its operating
9 agreement saying Eldorado received 1.5 million from Nanyah.
10 That's a contract that binds Eldorado as well as the Rogich
11 trust.

12 I'm going to hit the case law and their reliance upon
13 the Bank of America versus White, Bank of California versus
14 White. Inapplicable. It doesn't even apply. Two, case law in
15 Nevada is clear the third-party beneficiaries are bound -- are
16 treated as a party to the contract, and I'm not going to rehash
17 the briefing that we provided in our reply.

18 There's the also the interesting argument that the
19 parol evidence rule applies to Nanyah and the Eliades
20 defendants, but not the rest of us defendants. We want to come
21 in and say whatever we want that contradicts that there is an
22 obligation to repay you. That's not how the parol evidence
23 rule works. That's not how the Court has ruled already. Parol
24 evidence rule is applicable in this case.

25 The last item was the alleged third-party

1 beneficiary. The Court actually addressed this with regards to
2 the Eliades, and this is at paragraph 18. This is the Eliades
3 defendants, and the Court said, No, the Eliades defendants
4 under the agreements do not have any obligation for Nanyah's
5 benefit. So that is different than the Rogich trust and
6 Eldorado who have specifically stated the obligation because
7 the Court has called out four other times in the order there is
8 an obligation, actually uses the term obligation.

9 So I think this -- I don't see how there could be any
10 way to avoid the application of the parole evidence rule in this
11 case given the rulings, given the clear and unambiguous terms
12 of the contracts.

13 THE COURT: Thank you all.

14 This is Nanyah's Motion in Limine Number 5. It's now
15 submitted with regard to parole evidence. The motion will be
16 denied for the following reasons.

17 First, a written contract is needed to invoke the
18 parole evidence rule under the case of Ringle versus Bruton, and
19 here Nanyah's claim against Eldorado is for unjust enrichment
20 because there's no written contract that exists. So parole
21 evidence can't be applied as to that.

22 With regard to the Rogich defendants, I haven't made
23 an express finding at this point that Nanyah was a third-party
24 beneficiary. That matter is deferred to be determined at the
25 time of trial, and -- and the case for that would be Canfora

1 versus Coast Hotels.

2 So the motion will be denied in all respects.

3 Defendants to prepare one or two orders.

4 Can you work together to present one order?

5 MR. WIRTHLIN: We will. Yes, Your Honor.

6 MR. LIEBMAN: Yes, Your Honor.

7 THE COURT: And who will take the laboring oar?

8 MR. LIEBMAN: I'm sorry?

9 THE COURT: Who will take the laboring oar?

10 MR. LIEBMAN: I can take the lead.

11 MR. WIRTHLIN: Thank you.

12 THE COURT: All right. Mr. Liebman will prepare the
13 order. All parties will be given the opportunity to approve
14 the form of the order.

15 The second motion is Nanyah's Motion in Limine
16 Number 6 with regard to date of discovery.

17 Mr. Simons.

18 MR. SIMONS: This order -- this motion is premised on
19 the Motion in Limine 3, which the Court granted. It talked
20 about the date of discovery. Now, there's two components to
21 the date of discovery. One component is the actual date.
22 Okay. It appears that everybody has conceded the actual date
23 my client became aware of improper activity was December
24 of 2012, the actual notice, and the Court said, look,
25 Mr. Simons, even though the Rogich defendants admitted it, I'm

1 going to give them some opportunity to come in with some
2 evidence. There's been no evidence presented or brought either
3 under 16 1 or under Rule 37.

4 So the actual -- I should have a ruling from this
5 Court -- actual date of discovery of the transfers of the
6 membership interests by the Rogich trust was December of 2012.
7 Now, the arguments that have been presented are, Judge, we
8 think that Mr. Simons's motion is trying to prevent us from
9 saying when Nanyah should have discovered, and that wasn't the
10 premise of the motion. The premise of the motion was the
11 actual date of discovery. Okay.

12 So what defendants are going to want to do is say
13 hypothetically we think Nanyah should have discovered some type
14 of breach earlier than December of 2012, but the problem with
15 that is what -- where was the component, the temporal component
16 imposed upon the defendants to act? Under the agreements in
17 2008, there was no temporal component, meaning did Rogich Trust
18 and Eldorado did not have to perform by a date certain. It
19 says they will do this activity in the future. So then the
20 triggering event is when there's an act, an event that
21 transpires where it's going to -- an indicator of a repudiation
22 or breach of the contract. That did not actually take place
23 until December of 2012.

24 So to the extent that our motion was limited to the
25 actual date of discovery, I think that's unopposed. To the

1 extent of this hypothetical, hey, we want to argue at trial you
2 should have done something else because there's this activity,
3 the scope of the motion didn't want to go that far. So I hope
4 that clarifies my position on that.

5 THE COURT: I understand your position.

6 MR. SIMONS: Okay. But later on we'll be dealing
7 with that issue. That's why I brought that up.

8 THE COURT: Thank you.

9 Oppositions.

10 MR. LIEBMAN: Your Honor, I think the other confusing
11 aspect of Mr. Simons's motion or Nanyah's motion is that it's
12 premised on the belief or the idea that Nanyah learning that
13 the Rogich Trust transferred its interest to the Eliades Trust
14 would be what starts the statute of limitations. That's not
15 true at least from Eldorado's perspective. Our position is,
16 and Mr. Simons said it with respect to the last motion, in
17 2007, his client is claiming I gave \$1.5 million. I should've
18 got a membership interest in Eldorado Hills.

19 Now, there's confusion about that, whether it's
20 Canamex, Eldorado Hills. That's beside the point. But if
21 that's the position he's going to take and 2008 goes by and he
22 doesn't have a membership interest and he's getting K-1's from
23 Canamex instead of Eldorado Hills, we're going to argue to the
24 jury that that started the clock on the statute of limitations
25 because he knew at that particular point in time he didn't get

1 what he claims he allegedly bargained for.

2 And that was our dispute with the motion was we want
3 to argue, back in 2007, 2008, when he claims he didn't get what
4 he bargained for, he knew or should have known -- we're going
5 to prove, try to prove both -- that he didn't get what he
6 bargained for. Therefore, the four years on the unjust
7 enrichment statute of limitations begins. He didn't file until
8 2013. The claim is barred by the statute of limitations. So
9 that's why we oppose the motion, Your Honor.

10 THE COURT: Mr. Wirthlin.

11 MR. WIRTHLIN: Thank you, Your Honor.

12 Our points are similar to Eldorado's. There's no --
13 we've never conceded anything as far as when Mr. Harlap knew or
14 didn't know anything, but just to be clear on that point. It's
15 only in the complaint that Harlap asserts, well, I didn't know
16 about this 2012 agreement until late in 2012. Well, we're
17 entitled to cross-examine him on that issue. We're entitled to
18 cross-examine Mr. Huerta because obviously the link between
19 what Mr. Harlap knew or didn't know and when he did or didn't
20 know it and what Mr. Huerta told him is very clearly a part of
21 that analysis, and we think at this point there's been nothing
22 that would allow the finding that no other evidence can come
23 in, including Mr. Harlap's and Mr. Huerta's own testimony at
24 trial.

25 We do also dispute it still seems like Nanyah is

1 trying to conflate when Harlap supposedly found out about the
2 2012 agreement and the accrual date, and I don't want to rehash
3 everything that Mr. Liebman said, but we absolutely agree that
4 2008, you know, Harlap is getting K-1's from Canamex, not from
5 Eldorado. So we don't concede anything as far as a temporal
6 component, you know, having been decided or that somehow the
7 suggestion in the complaint.

8 And again I don't think there's a declaration that
9 I've seen or anything like that. It's simply Mr. Harlap's
10 complaint that I think the plaintiff is relying on. So we
11 would submit the motion should be denied.

12 THE COURT: Thank you.

13 MR. WIRTHLIN: Thank you, Your Honor.

14 THE COURT: And the reply, please, Mr. Simons.

15 MR. SIMONS: Yes. Counsel is unaware that his own
16 client has testified and submitted an affidavit to this Court
17 that he had no discussions, Mr. Rogich had no discussions with
18 my client whatsoever. Their answer acknowledges that. The
19 date we discovered that there was this transfer was in December
20 of 2012. Not a single shred of evidence has come in this case
21 contesting that fact. So that's why we want the motion in
22 limine on that point.

23 The arguments you heard is they want to come in and
24 say my client should have known. That's the distinction.
25 We're not seeking to say that they're prohibited from coming in

1 and saying you should have known because of this circumstantial
2 event and trying to generate some type of traction with that,
3 and so that's the distinction I'm making with the motion.

4 THE COURT: Thank you.

5 This is the Nanyah's Motion in Limine Number 6 with
6 regard to date of discovery. It will also be denied for the
7 following reasons.

8 The Rogich defendants have denied paragraph 83 of the
9 answer. They should be able to -- they should be permitted to
10 present evidence in support of their defense.

11 Also with regard to the date of discovery, that again
12 is a factual determination for the jury. The defendants have
13 claimed that the plaintiff should have known in 2007 or 2008,
14 and I don't want to preclude them from raising that defense.
15 Questions of fact exist with regard to the statute of
16 limitations defense.

17 So the motion will be denied.

18 Mr. Wirthlin to prepare the order.

19 MR. WIRTHLIN: Yes, Your Honor.

20 THE COURT: And everyone has the ability to sign off.

21 Then we have the third motion this morning would be
22 the Rogich defendants' motion to compel production of the
23 plaintiff's tax returns.

24 And, Mr. Wirthlin.

25 MR. WIRTHLIN: Thank you, Your Honor. I'll make it

1 brief.

2 We think that those tax returns, excuse me, are
3 critical to --

4 THE COURT: Hang on. I just need to find my notes.

5 MR. WIRTHLIN: Oh, sure.

6 THE COURT: I've got pages of notes up here. Sorry.

7 MR. WIRTHLIN: Understood, Your Honor. I can wait
8 now or whatever --

9 THE COURT: Go ahead.

10 MR. WIRTHLIN: Really, it just comes down to that
11 Schedule L because the issue again in this case is -- well, let
12 me back up. The main defense as I understand it from the
13 plaintiff is well, they just want to use that issue, use those
14 tax returns to violate the parol evidence rule. Well, I think
15 that the Court's earlier ruling today on the parol evidence
16 rule motion in limine takes away that argument.

17 But in addition to that, not only do we want to show,
18 use that to show that the story now is not what was actually
19 taking place at the time because we believe that Nanyah
20 scheduled -- the schedule L will show they believe they had an
21 investment in Canamex, not Eldorado, and we think that email
22 from Mr. Harlap to Mr. Huerta in November shortly -- it was,
23 like, three days or something before that 2016 complaint was
24 filed where he says, I don't even know where my money is right
25 now. He doesn't even know what's going on. So we think that

1 that is clearly a disputed issue of fact for the jury.

2 But also it goes to the statute of limitations
3 because if Nanyah is back in 2007, 2008 scheduling, you know,
4 filling out their Schedule L and their tax return saying, hey,
5 we've got this \$1.5 million investment in Canamex, they know
6 exactly where their money is, that it's not in Eldorado and
7 that their story now about, well, we were supposed to get this
8 interest in Eldorado, they knew or should have known at that
9 time. They were on notice, and not just constructive but
10 actual notice that the purported obligation to provide an
11 interest in Eldorado had not been complied with, and therefore
12 statute of limitations are proved there.

13 It goes to our other affirmative defenses, but unless
14 the Court has any questions, I'll leave it at that for now.

15 THE COURT: No.

16 Mr. Liebman, do you have anything before I hear the
17 opposition?

18 MR. LIEBMAN: I would agree with everything he just
19 said, but other than that no.

20 THE COURT: The opposition, please.

21 MR. SIMONS: So the request for tax returns is for
22 the concept that Nanyah did not invest 1.5 million into
23 Eldorado. You've already said the contracts are clear and
24 unambiguous, that Nanyah did invest the 1.5 million. So why
25 are we talking about whether there was an investment

1 [unintelligible] 1.5 million? You said, the contract's clear
2 and unambiguous that the Rogich Trust confirmed that the
3 1.5 million was invested into Eldorado. So why are we going to
4 revisit whether Nanyah invested 1.5 million?

5 We have an admission by a party that the Court says
6 is clear and unambiguous in the terms of the contract. We've
7 got you holding that there's clear and unambiguous that we
8 invested, but we want to ignore that. We want to be able to
9 challenge what the Court has said in its order about my
10 client's investment.

11 I don't think you can. There's no way to say what my
12 client -- what transpired outside the scenes is irrelevant --
13 and it's an irrelevancy issue -- irrelevant to Nanyah's
14 investment because Nanyah's investment is deemed to have
15 occurred as an undisputed fact and as a conclusion of law based
16 upon your interpretations of the contracts.

17 So this motion should be denied.

18 THE COURT: Thank you.

19 And the reply, please.

20 MR. WIRTHLIN: Yes, Your Honor, just very briefly.
21 Hits on -- we disagree again with Nanyah's interpretation of
22 the October order. We think there are absolutely issues of
23 fact on this that need to be decided by the jury, and it again
24 goes to notice, statute of limitations. When did Nanyah know
25 that its investment was in Canamex? If it had an investment,

1 that it was in Canamex instead of Eldorado, and again I don't
2 want to belabor that point, but we believe that the tax return
3 should be produced for that reason as well. Thank you.

4 THE COURT: Thank you. This is the Rogich
5 defendants' motion to compel production of the plaintiff's tax
6 returns and for attorney's fees on an order shortening time.

7 The motion will be granted in part and denied in part
8 as follows: The motion to compel will be granted. The request
9 for attorney's fees will be denied.

10 And I'm going to grant the motion to compel because
11 there are parts of that tax return that may be relevant to
12 issues of fact. The defendant has asserted as a defense the
13 character of the plaintiff's investment, and so that part of
14 the tax return showing the treatment will be discoverable.

15 What I'm going to suggest is the front page of
16 Schedule L should be provided. Certainly the plaintiff has the
17 ability to redact nonrelevant parts of that return. I didn't
18 see where a protective order is in place in this case. If
19 there is one, I didn't see it in the document.

20 ATTORNEYS: We don't have one. I don't believe so.

21 THE COURT: So if the parties can agree to a
22 protective order, it can be produced pursuant to a protective
23 order, and I would suggest that given -- you're set for trial
24 in a month. So I'm going to say that within 10 days after
25 entry of the order that tax return should be provided.

1 And I encourage the parties to work on a protective
2 order in the meantime. If you can't come to terms on that,
3 request a telephonic, and I'll resolve it for you without the
4 necessity of filing an additional motion. If you request a
5 telephonic, send me letters outlining your positions so I will
6 be prepared for that telephonic.

7 MR. WIRTHLIN: Will do. Thank you.

8 THE COURT: And Mr. Wirthlin will be directed to
9 prepare that order forthwith.

10 MR. WIRTHLIN: Thank you, Your Honor.

11 MR. SIMONS: Clarification. I want to make sure I
12 heard you.

13 THE COURT: Yes.

14 MR. SIMONS: Schedule L, the first page.

15 THE COURT: Schedule L and the front page of the
16 return. Redact as necessary --

17 MR. SIMONS: Because I'm going to be trying to get on
18 it while we're working out the order.

19 THE COURT: Thank you.

20 All right, guys. Now, this case is set for trial.
21 You've got a firm date on April 22nd. I am entering an order
22 today striking the motions for summary judgment. They will not
23 be heard. They are past the dispositive deadline. No motions
24 for summary judgment will be heard.

25 On April 4th we have motions in limine. That will

1 go forward.

2 You've got a pretrial on April 18th.

3 And you are on the tip of a speeding bullet for
4 April 22nd to go to trial. Expect to go.

5 Yes, Mr. Simons.

6 MR. SIMONS: Just a couple clarification issues.

7 THE COURT: Okay.

8 MR. SIMONS: We also have our --

9 THE COURT: And I have the order here. So it hasn't
10 been entered yet, but I wanted to provide copies for you.

11 Yes. In the meantime?

12 MR. SIMONS: On the motions in limine, on the 4th we
13 also have our motion for settling certain jury instructions.

14 THE COURT: Yeah. And I'm not sure whether or not I
15 can settle jury instructions before I hear evidence. I really
16 don't do it that way. So --

17 MR. SIMONS: Well, it's premised not on evidence.
18 It's premised on the Court's order, and the case law is pretty
19 clear.

20 THE COURT: So for now that's on calendar on April
21 4th.

22 MR. SIMONS: We'll address it then.

23 THE COURT: I'm not prepared on that issue today. I
24 was prepared on the three other things. Plus, I wanted to
25 provide some case management for you for your trial.

1 If you guys would approach with a copy of the order
2 striking. So it will be on calendar on April 4th.

3 MR. SIMONS: Also we tried to work out the order
4 denying the Rule 60B motion.

5 THE COURT: Right.

6 MR. SIMONS: And we didn't work out an agreement on
7 that. So I prepared ours. The only objection was that there
8 was a reference to the Court undisputed findings of fact and
9 conclusions of law, otherwise that's the only issue with the
10 order.

11 THE COURT: Good enough.

12 MR. WIRTHLIN: We'll submit ours today.

13 THE COURT: You submit yours today, and we'll hold it
14 until we've seen both.

15 MR. WIRTHLIN: Okay. Thank you, Your Honor.

16 THE COURT: Good enough, guys. All right. So I will
17 see you April 4th.

18 (Proceedings concluded at 9:47 a.m.)

19 -oOo-

20 ATTEST: I do hereby certify that I have truly and correctly
21 transcribed the audio/video proceedings in the above-entitled
22 case.

23 
24 _____

25 Dana L. Williams
Transcriber