

IN THE SUPREME COURT OF THE STATE OF NEVADA

NANYAH VEGAS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Appellant,

vs.

SIG ROGICH, A/K/A SIGMUND  
ROGICH, INDIVIDUALLY, AND 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 ELIADES SURVIVOR TRUST OF  
10/30/08; AND IMITATIONS, LLC; A  
NEVADA LIMITED LIABILITY  
COMPANY,

Respondents.

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EL DORADO HILLS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Cross-Appellant,

vs.

NANYA VEGAS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Cross-Respondent

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

Cross-Appellant,

vs.

NANYA VEGAS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Cross-Respondent,

No. 79917

**FILED**

MAR 16 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

and  
ELDORADO HILLS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY;  
TELD, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; AND PETER  
ELIADES, INDIVIDUALLY AND AS  
TRUSTEE OF THE ELIADES  
SURVIVOR TRUST OF 10/30/08,  
Respondents,

### ORDER TO SHOW CAUSE

This court previously entered an order directing Nanyah Vegas, LLC, (Nanyah) and Sig Rogich, individually and as trustee of the Rogich Family Irrevocable Trust, and Imitations, LLC, (Rogich parties) to show cause why their appeals, which arise from consolidated district court actions, should not be dismissed for lack of jurisdiction. It appeared that the district court had not yet entered a final judgment in district court case A-16-746239 because Nanyah's claims for declaratory relief and specific performance remained pending in the district court. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). Although the parties represented that these claims were resolved in a pretrial memorandum, no written, file-stamped district court order formally resolved these claims. *See KDI Sylvan Pools, Inc. v. Workman*, 107 Nev. 340, 342, 810 P.2d 1217, 1219 (1991).

In response, Nanyah and the Rogich parties point to a January 30, 2020, stipulation and order stating that the district court's October 4, 2019, order was "a full and final decision on all remaining claims asserted by Nanyah" as the 8th and 9th claims for relief (declaratory relief and specific performance) were previously abandoned. However, abandonment of the claims is not a formal resolution of the claims, and the January 30,

2020, order does not otherwise formally resolve the claims. *See id.* (the fact that a party is not inclined to pursue a claim does not function as a formal dismissal of the claim or render the claim moot). Moreover, it appears the district court could go on to enter an order formally dismissing the claims, creating the potential for two final judgments in this matter. *Cf. Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 874 P.2d 729 (1994) (declining to construe a pre-dismissal order approving a proposed settlement agreement as a final judgment where it would create the potential for two final judgments). Thus, the January 30, 2020, stipulation and order does not appear to be a final judgment.

The Rogich parties additionally assert that the specific performance and declaratory relief claims were actually remedies improperly asserted as causes of action. Thus, they are not outstanding claims that defeat jurisdiction. While it appears that the specific performance claim was in the nature of a remedy rather than a separate cause of action, it is not clear that the declaratory relief claim—which sought a declaration regarding Nanyah’s membership interest in Eldorado and/or monies owed to it in the event no membership was sought or obtained—was simply a remedy. *See generally* NRS 30.030-.040 (governing declaratory relief actions).

This court also directed Eldorado Hills, LLC, to show cause why its cross-appeal of a May 22, 2018, order entered in district court case A-16-746239-C should not be dismissed for lack of jurisdiction. It appeared that Eldorado was not a party to that case and thus lacked standing to appeal an order entered in that case. *See* NRAP 3A(a) (allowing an appeal by an aggrieved party); *Albert D. Massi, Ltd. v. Bellmyre*, 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995) (“To qualify as a party, an entity must have been

named and served.”); *Matter of Estate of Sarge*, 134 Nev. 766, 432 P.3d 718 (2018) (cases consolidated in the district court retain their separate identities for appellate purposes). Eldorado explains in response that the underlying case involved two consolidated cases, A-16-746239-C, in which Eldorado is not a party, and A-13-686303-C, in which Eldorado is a party. Rogich filed a motion for summary judgment bearing both case numbers and Eldorado filed a joinder to that motion, also bearing both case numbers. The district court then entered the May 22, 2018, order, ruling on issues in each of the cases. Because the order was entered in both cases, Eldorado has standing to appeal the portion of the order denying its request for summary judgment.

Despite Eldorado’s assertion to the contrary, the May 22, 2018, order does not appear to address Eldorado’s contention regarding the unjust enrichment claim in case A-13-686303-C. The order solely appears to address claims raised in case A-16-746239-C. Because consolidated cases retain their separate identities for appellate purposes, it appears that Eldorado may not appeal from an order that solely relates to the issues in case A-16-746239-C where Eldorado was not a party to that case, even if the order bears the case numbers of both consolidated cases.

Finally, this court ordered Eldorado to show cause regarding this court’s jurisdiction over its cross-appeal of the district court’s October 4, 2019, order, entered in case A-13-686303-C. It was not clear whether Eldorado was aggrieved by the October 4, 2019, order where that order both denied Eldorado’s motion for summary judgment regarding the unjust enrichment claim and granted Eldorado’s motion to dismiss that same claim under NRCP 41(e). *See Valley Bank*, 110 Nev. at 446, 874 P.2d at 734 (“A party is ‘aggrieved’ within the meaning of NRAP 3A(a) when either a



personal right or right of property is adversely and substantially affected by a district court's ruling.") (internal quotation marks omitted); *Ford v. Showboat Operating Co.*, 110 Nev. 752, 877 P.2d 546 (explaining that "[a] party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not aggrieved by the judgment." "[N]o court rule or statute provides for an appeal from a finding of fact or from a conclusion of law"). Eldorado asserts in response that it filed the cross-appeal from the October 4, 2019, order in an abundance of caution so that it would not be precluded from arguing that the district court erred by denying its motion for summary judgment. It contends that entry of summary judgment based on the merits of the motion could alter the rights of the parties as compared to the procedural dismissal under NRCP 41(e), because dismissal under NRCP 41(e) may not be an adjudication on the merits. Eldorado suggests that if the summary judgment motion was granted, it would be entitled to attorney fees and costs as the prevailing party but there is a possibility that it would be not be deemed a prevailing party after a NRCP 41(e) dismissal and thus unable to obtain an award of attorney fees and costs. Eldorado, however, does not provide any cogent argument in support of this contention.

Accordingly, the parties shall each have 30 days from the date of this order to show cause why their appeals should not be dismissed for lack of jurisdiction. It appears that Nanyah and the Rogich parties may be able to resolve the jurisdictional defect in their appeals by obtaining a written, file-stamped stipulation or order formally resolving (by dismissal or on the merits) Nanyah's claims for declaratory relief and specific performance. Thus, when responding to this order, in addition to points and authorities, Nanyah and the Rogich parties should provide a file-stamped

copy of any order or stipulation formally resolving Nanyah's claims for declaratory relief and specific performance. With respect to Eldorado's response, Eldorado should explain how the district court's May 22, 2018, order resolves Eldorado's joinder in the request for summary judgment regarding the unjust enrichment claim in case A-13-686303-C. Eldorado should also provide points and authorities in support of its assertion that it is aggrieved by the October 4, 2019, order. Eldorado should provide specific argument and citation to authority in support of its suggestion that an order ruling on the summary judgment motion on the merits would alter its rights as compared to the procedural dismissal under NRCP 41(e). This court reminds Eldorado that it bears the burden to demonstrate that this court has jurisdiction over its cross-appeal. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001).

Any party may file a reply to the response filed by another party within 14 days of service of the response. Failure to demonstrate that this court has jurisdiction, or failure to timely file a response to this order, may result in the dismissal of the parties' appeals and cross-appeals, in whole or in part.

Briefing of this matter remains suspended pending further order of this court.

It is so ORDERED.

Pickering, C.J.

cc: Bailey Kennedy  
Simons Hall Johnston PC/Reno  
Kolesar & Leatham, Chtd.