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Teld, LLC; and Respondent/Cross-Appellant
Eldorado Hills, LLC

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

Supreme Court No. 79917

District Court No. A686303

**RESPONDENT/CROSS-
APPELLANT ELDORADO
HILLS, LLC'S RESPONSE TO
MARCH 16, 2020 ORDER TO
SHOW CAUSE**

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1 SURVIVOR TRUST OF 10/30/08;
2 AND IMITATIONS, LLC, A
3 NEVADA LIMITED LIABILITY
4 COMPANY,

5 Respondents.

6 ELDORADO HILLS, LLC, A
7 NEVADA LIMITED LIABILITY
8 COMPANY,

9 Cross-Appellant,

10 vs.

11 NANYAH VEGAS, LLC, A
12 NEVADA LIMITED LIABILITY
13 COMPANY,

14 Cross-Respondent.

15 SIG ROGICH, A/K/A SIGMUND
16 ROGICH, INDIVIDUALLY AND
17 AS TRUSTEE OF THE ROGICH
18 FAMILY IRREVOCABLE TRUST,

Cross-Appellant,

vs.

NANYAH VEGAS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Cross-Respondent,

and

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.

**RESPONDENT/CROSS-APPELLANT ELDORADO HILLS, LLC'S
RESPONSE TO MARCH 16, 2020 ORDER TO SHOW CAUSE**

Respondent/Cross-Appellant Eldorado Hills, LLC (“Eldorado Hills”),
by and through its counsel, responds to this Court’s March 16, 2020 Order to
Show Cause (the “Show Cause Order”).¹

The May 22, 2018 Order Partially Granting Summary Judgment

As set forth in its prior Response, on March 5, 2018, Eldorado Hills
(amongst other parties) filed a Joinder to the Rogich Defendants’ Motion for
Summary Judgment, as permitted under EDCR 2.20(d).² The Joinder explicitly

¹ The Show Cause Order continues to allege jurisdictional defects with respect to Nanyah Vegas, LLC’s (“Nanyah”) declaratory judgment and specific performance claims against Sigmund Rogich, individually and as Trustee of the Rogich Family Irrevocable Trust (collectively, the “Rogich Defendants”). Eldorado Hills does not address those alleged defects in its Response and those defects should not affect Nanyah’s appeal against Eldorado Hills or Eldorado Hills’ cross-appeal against Nanyah because consolidated cases retain their separate identity for the purposes of appeal. *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018).

² Defs. Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, Eldorado Hills, LLC, and Teld, LLC’s Joinder to Mot. for

1 requested, *inter alia*, summary judgment on Nanyah’s unjust enrichment claim,
2 which was asserted against Eldorado Hills in Case No. A-13-686303-C.³ In
3 fact, because Nanyah’s unjust enrichment claim in Case No. A-13-686303-C
4 was not also asserted against the Rogich Defendants, Eldorado Hills’ Joinder
5 included substantial substantive argument in support of summary judgment on
6 that particular claim.⁴

7 Although the May 22, 2018 Order Partially Granting Summary
8 Judgment did not explicitly reference Nanyah’s unjust enrichment claim, that
9 particular claim and Case No. A-13-686303-C were clearly part and parcel of
10 Eldorado Hills’ Joinder. With the exception of Nanyah’s fraudulent transfer
11 and constructive trust claims, the May 22, 2018 Order Partially Granting
12 Summary Judgment explicitly denied Eldorado Hills’ Joinder.⁵ Again,
13 although the Court’s denial did not explicitly reference Nanyah’s unjust
14 enrichment claim, there was no specific requirement that the Order identify
15 each and every claim at issue in the Joinder. Because Case No. A-13-686303-C

16 _____
Summary Judgment, attached as Exhibit 1.

17 ³ See, e.g., *id.*, 3:9-18.

18 ⁴ *Id.*, 6:1-8:18.

⁵ May 22, 2018 Order Partially Granting Summary Judgment, attached as Exhibit 2, 3:2-4.

1 and Nanyah’s unjust enrichment claim were at issue in the Joinder, and
2 because the Court explicitly denied the Joinder in its May 22, 2018 Order
3 Partially Granting Summary Judgment, Eldorado Hills has standing to address
4 it via this appeal.

5 *The October 4, 2019 Order*

6 As stated in its prior Response, Eldorado Hills filed a Cross-Appeal
7 with respect to this Court’s October 4, 2019 Order in an abundance of caution
8 to ensure that it would not be precluded from arguing that the District Court
9 erred by denying Eldorado Hills’ May 22, 2019 Motion for Summary
10 Judgment. While this Court has held that “a party who prevails in the district
11 court and who does not wish to alter any rights of the parties arising from the
12 judgment is not aggrieved by the judgment,” this Court has also recognized
13 that “a respondent who seeks to alter the rights of the parties under a judgment
14 must file a notice of cross-appeal.” *Ford v. Showboat Operating Co.*, 110
15 Nev. 752, 755-56, 877 P.2d 546, 548-49 (1994). Although this Court has not
16 yet addressed whether a cross-appeal is necessary when distinguishing
17 between a procedural motion to dismiss and a substantive motion for summary
18 judgment, there is federal authority which indicates that a cross-appeal may be

1 necessary in such an instance. *Id.*, 110 Nev. at 756, 877 P.2d at 549 (“Nevada
2 law is in accordance with the federal approach to cross-appeals.”).

3 For example, the Third Circuit Court of Appeals has held that “[a] grant
4 of summary judgment and a dismissal for lack of personal jurisdiction...are
5 wholly different forms of relief.” *EF Operating Corp. v. American Bldgs.*,
6 993 F.2d 1046, 1049-50 (3d. Cir. 1993). Accordingly, a cross-appeal is
7 necessary to challenge the denial of a motion for dismissal for lack of personal
8 jurisdiction on appeal from an order granting a motion for summary judgment.
9 *Id.* at 1050; *see also Lamberson v. Pennsylvania*, 561 Fed. Appx. 201, 205 n. 9
10 (3d Cir. 2014) (requiring a cross-appeal to challenge the denial of a motion for
11 dismissal due to abstention in response to an appeal granting a motion for
12 summary judgment).

13 Likewise, the Seventh Circuit Court of Appeals has recognized the need
14 for a cross-appeal to obtain a judgment on the merits as opposed to a
15 procedural dismissal without prejudice. *Greenwell v. Aztar Ind. Gaming*
16 *Corp.*, 268 F.3d 486. 494 (7th Cir. 2001) (“The remaining significance of the
17 cross-appeal is that without it Aztar could not ask us to modify the judgment
18 in its favor against Greenwell to make it a judgment on the merits dismissing

1 her malpractice claim with prejudice rather than a procedural order dismissing
2 it without prejudice.”).

3 Although Eldorado Hills has not located any legal authority addressing
4 the necessity of a cross-appeal of a summary judgment order following
5 dismissal for a failure to prosecute, the Supreme Court of Guam did address
6 the opposite scenario. In doing so, the court ruled that a motion for dismissal
7 for failure to prosecute was actually a “lessening” of the respondent’s rights,
8 and therefore, a cross-appeal was not necessary. *Guam Hous. & Urban*
9 *Renewal Auth. v. Dongbu Ins. Co.*, 2002 Guam 3, 12, 2002 WL 471983
10 (Guam March 22, 2002). It thus stands to reason that the inverse (summary
11 judgment on the merits instead of dismissal for failure to prosecute) should be
12 considered an enlargement of the respondent’s rights and therefore require a
13 cross-appeal.

14 While the District Court’s procedural dismissal under Rule 41(e) was
15 with prejudice thereby barring another action, based on the legal authority
16 above, this Court could certainly consider a substantive summary judgment
17 ruling to be an enlargement of rights over a procedural dismissal and therefore
18 bar Eldorado Hills from challenging it without the filing of a cross-appeal.

1 Thus, to be on the safe side and to ensure its ability to challenge the District
2 Court's denial of the Motion for Summary Judgment, Eldorado Hills filed its
3 Notice of Cross-Appeal. However, to the extent this Court determines that
4 Eldorado Hills can challenge the denial of its Motion for Summary Judgment
5 without the necessity of a cross-appeal, Eldorado Hills is willing to address it
6 in that manner.

7 DATED this 15th day of April, 2020.

8 BAILEY ♦ KENNEDY

9
10 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

11 *Attorneys for Respondents*
12 *Peter Eliades, Individually and as Trustee*
13 *of the Eliades Survivor Trust of 10/30/08;*
14 *Teld, LLC; and Respondent/Cross-Appellant*
15 *Eldorado Hills, LLC*
16
17
18

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 15th day of April, 2020, service of the foregoing **RESPONDENT/CROSS-APPELLANT ELDORADO HILLS, LLC'S RESPONSE TO MARCH 16, 2020 ORDER TO SHOW CAUSE** was made by electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known addresses:

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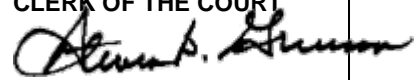
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Trustee of THE ROGICH
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TRUST, and IMITATIONS, LLC

/s/ Sharon L. Murnane
Employee of BAILEY❖KENNEDY

EXHIBIT 1

EXHIBIT 1



JMSJ (CIV)

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Attorneys for Defendants PETE ELIADES, THE
ELIADES SURVIVOR TRUST OF 10/30/08,
TELD, LLC and ELDORADO HILLS, 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,

vs.

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,

vs.

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

**DEFENDANTS PETER ELIADES,
INDIVIDUALLY AND AS TRUSTEE OF
THE ELIADES SURVIVOR TRUST OF
10/30/08, ELDORADO HILLS, LLC,
AND TELD, LLC'S JOINDER TO
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: 3-28-18
Hearing Time: 10:00 A.M.

CONSOLIDATED WITH:

Case No. A-16-746239-C

BAILEY ♦ KENNEDY
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**DEFENDANTS PETER ELIADES, INDIVIDUALLY AND AS TRUSTEE OF THE
ELIADES SURVIVOR TRUST OF 10/30/08, ELDORADO HILLS, LLC, AND TELD, LLC’S
JOINDER TO MOTION FOR SUMMARY JUDGMENT**

Pursuant to N.R.C.P. 56 and EDCR 2.20(d), Defendants Peter Eliades, individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Eldorado Hills, LLC (“Eldorado”), and Teld, LLC (collectively, the “Eliades Defendants”) hereby join in Sigmund Rogich, individually and as Trustee of The Rogich Family Irrevocable Trust, and Imitations, LLC’s (collectively, the “Rogich Defendants”) Motion for Summary Judgment (the “Motion for Summary Judgment”). This Joinder is based on the following Memorandum of Points and Authorities and any oral argument heard by the Court.

DATED this 5th day of March, 2018.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN

Attorneys for Defendants
PETE ELIADES, THE ELIADES
SURVIVOR TRUST OF 10/30/08, TELD,
LLC and ELDORADO HILLS, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The claims for relief in Nanyah Vegas, LLC's ("Nanyah") November 4, 2016 Complaint (the "Second Lawsuit") are levied against the Rogich Defendants and the Eliades Defendants, with little or no explanation distinguishing between the two. Thus, the arguments in the Motion for Summary Judgment demand dismissal of not just the Rogich Defendants, but the Eliades Defendants as well. Accordingly, the Eliades Defendants hereby join in any and all arguments asserted by the Rogich Defendants in their Motion for Summary Judgment.

However, there is one remaining claim that was asserted solely against one of the Eliades Defendants. Specifically, Nanyah asserted a claim for unjust enrichment against Eldorado in its July 31, 2013 lawsuit (the "First Lawsuit").¹ Nanyah's unjust enrichment claim was previously dismissed by this Court via summary judgment. The Nevada Supreme Court reversed and remanded, determining that there were questions of fact relating to accrual of the unjust enrichment claim. Since that time, Nanyah's allegations in the Second Lawsuit and additional discovery (*i.e.*, the deposition of Nanyah's principal) have indisputably confirmed that Nanyah's unjust enrichment claim accrued in December of 2007, or at the latest, October of 2008. Because Nanyah's First Lawsuit was not filed until July 31, 2013, the four year statute of limitations in NRS 11.190(2)(c) bars the claim.

II. STATEMENT OF FACTS/PROCEDURAL HISTORY

On July 31, 2013, Nanyah sued Eldorado in the First Lawsuit for unjust enrichment.² Nanyah alleged that "in the years 2006 and 2007, Plaintiffs, Ray and Nanyah respectively invested \$1,783,561.60, in Eldorado, and were entitled to their respective membership interests."³ Nanyah also alleged that it was entitled to reimbursement of those funds.⁴ On October 21, 2013, Nanyah filed a First Amended Complaint, omitting Ray as a Plaintiff. For all intents and purposes, Nanyah's

¹ Carlos Huerta, individually and as Trustee of The Alexander Christopher Trust, Go Global, Inc., and The Ray Family Trust were also Plaintiffs in the First Lawsuit. Their claims have since been dismissed for varying reasons.

² The remaining Eliades Defendants (Eliades, the Eliades Trust, and Teld) were not parties to the First Lawsuit.

³ Compl., ¶ 12, filed July 31, 2013.

⁴ *Id.*, ¶ 15.

1 allegations against Eldorado remained the same, although it clarified that Nanyah's contribution to
2 Eldorado was \$1,500,000.00.⁵

3 On July 25, 2014, Eldorado moved for summary judgment, arguing, *inter alia*, that the unjust
4 enrichment claim was time-barred.⁶ This Court agreed and entered summary judgment in favor of
5 Eldorado on Nanyah's unjust enrichment claim.⁷ The Nevada Supreme Court later reversed the SJ
6 Order.⁸ In sum, the basis for the Court's Reversal Order was as follows:

7 Appellant's claim for unjust enrichment did not accrue until Eldorado
8 Hills retained \$1.5 million under circumstances where it was inequitable
9 for Eldorado Hills to do so. As Eldorado Hills failed to demonstrate that
10 no genuine issues of material fact remain regarding whether the
11 limitations period on appellant's unjust enrichment claim commenced
12 when Eldorado Hills received the \$1.5 million *or at a later date when
Eldorado Hills allegedly failed to issue a membership interest to
appellant or repay the money as a loan*, the district court erred in
granting summary judgment based on the expiration of the statute of
limitation.⁹

13 Following remand, on November 4, 2016, Nanyah filed the Second Lawsuit.¹⁰ Nanyah made
14 numerous factual allegations in its Complaint, all of which focus on the theory that Eldorado and its
15 principals at the time (*i.e.*, Carlos Huerta and Sig Rogich) did not issue a membership interest *in*
16 *December of 2007* in exchange for Nanyah's \$1,500,000.00 investment. Specifically, Nanyah
17 alleged as follows:

- 18 ➤ "Although Eldorado received the foregoing investment[] from Nanyah..., *Eldorado failed to*
19 *properly issue membership interests reflective of such investment[] to Nanyah....*"¹¹
20 ➤ The defendants, and each of them, breached the terms of the foregoing agreements by,
21 among other things: *failing to provide Nanyah a membership interest in Eldorado.*"¹²

22 ⁵ First. Am. Compl., ¶ 15, filed Oct. 21, 2013.

23 ⁶ See generally Mot. for Part. Summ. J., filed July 25, 2014.

24 ⁷ Order Granting Partial S. Judg. (the "SJ Order"), filed Oct. 1, 2014.

25 ⁸ February 12, 2016 Order of Reversal and Remand (the "Reversal Order"), attached as Exhibit 1.

26 ⁹ Ex. 1, p. 2 (citations omitted) (emphasis added).

27 ¹⁰ The Second Lawsuit was ultimately consolidated with the First Lawsuit. (Notice of Consolidation, filed April
5, 2017.)

28 ¹¹ First. Am. Compl., ¶ 20, filed Oct. 21, 2013 (emphasis added).

¹² *Id.* ¶ 92(a) (emphasis added).

- 1 ➤ “The defendants’ acts intended to and did accomplish the wrongful objective in deceiving
2 and depriving Nanyah of its expectations and financial benefits in *investing in Eldorado’s*
3 *ownership....*”¹³
4 ➤ “Nanyah is entitled to specific performance...*vesting Nanyah with a membership interest in*
5 *Eldorado as detailed herein.*”¹⁴

6 Although it was unclear to the Nevada Supreme Court in early 2016 whether Nanyah’s claim was
7 based on Eldorado’s alleged failure to *concurrently* issue a membership interest in exchange for a
8 \$1,500,000.00 investment or Eldorado’s alleged failure to pay back a \$1,500,000.00 loan *at a later*
9 *time*, it became clear upon the filing of the Second Lawsuit that Eldorado’s alleged wrongful act was
10 based on the former—not the latter.

11 To the extent there remained any doubt, the deposition of Yoav Harlap, Nanyah’s sole
12 principal, confirmed that his unjust enrichment claim is solely based on Eldorado’s supposed failure
13 to *concurrently* issue a membership interest in exchange for its \$1,500,000.00 investment.

14 Specifically, Harlap provided the following testimony:

- 15 ➤ “In very simple terms, *I invested in Eldorado Hills. I am supposed to be part owner of*
16 *Eldorado Hills.*”¹⁵
17 ➤ “I was assuming that Carlos Huerta will register my rights properly with his partners, Sig
18 Rogich and whoever else....”¹⁶
19 ➤ “I sent the money at the time. As far as I recall, *it was supposed to be registered properly.*”¹⁷
20 ➤ “*Nanyah’s rights were 1.5 million of investment back to whenever it was invested that was*
21 *supposed to be converted into equity....*”¹⁸

24 ¹³ *Id.*, ¶ 106 (emphasis added).

25 ¹⁴ *Id.*, ¶ 140 (emphasis added).

26 ¹⁵ Ex. 3 to Mot. for Summ. J., 71:13-15 (emphasis added).

27 ¹⁶ *Id.*, 72:10-12.

28 ¹⁷ *Id.*, 125:21-22 (emphasis added).

¹⁸ *Id.*, 170:6-8 (emphasis added).

III. ARGUMENT

A. An Unjust Enrichment Claim Accrues at the Time it Becomes Inequitable to Retain the Alleged Benefit, Regardless of Plaintiff's Actual or Constructive Knowledge.

As recognized by the Nevada Supreme Court in its Reversal Order, NRS 11.190(2)(c) is the relevant statute of limitations for an unjust enrichment claim—“[a]n action upon a contract, obligation or liability not founded upon an instrument in writing.”¹⁹ Unlike numerous other claims for relief contained within the same chapter, the Nevada Legislature omitted any such discovery rule from that particular statute of limitations. *Compare with* NRS 11.190(2)(d) (“...but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice”); NRS 11.190(3)(d) (“...but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.”).²⁰

The Nevada Supreme Court has not explicitly determined in a published opinion how or when an unjust enrichment claim accrues for the purposes of NRS 11.190(2)(c). The only guidance this Court has received is the Reversal Order.²¹ “Appellant’s claim for unjust enrichment did not accrue until Eldorado Hills retained \$1.5 million *under circumstances where it was inequitable for Eldorado Hills to do so.*”²² *This rule does not reference actual or constructive knowledge of the claim.* While the Nevada Supreme Court determined there were questions of fact regarding accrual of Nanyah’s unjust enrichment claim, those questions of fact involved whether Nanyah’s unjust enrichment claim was based on an investment or a loan, as that particular issue would dictate when it became inequitable for Eldorado Hills to retain the \$1,500,000.00 (immediately or when the loan

¹⁹ Ex. 1, p. 2.

²⁰ See *Dreyer-Lefevre v. Morissette*, 127 Nev. 1131, 373 P.3d 910, at *2 (July 1, 2011) (“[W]e note that while the Legislature has seen fit to expressly apply the discovery rule to other of causes of action, it is notably absent from NRS 11.190(4)(e). Therefore, we conclude that the discovery rule does not apply to a cause of action that NRS 11.190(4)(e) controls.”) (internal citations omitted).

²¹ The Reversal Order did cite an opinion discussing the discovery rule (*Oak Grove Inv’rs v. Bell & Gossett Co.*, 99 Nev. 616, 668 P.2d 1075 (1983)); however, that opinion did not involve an unjust enrichment claim. Additionally, the Reversal Order does not cite *Oak Grove* for the purpose of attributing a discovery rule to an unjust enrichment claim. Instead, it cites *Oak Grove* for the proposition that it is the movant’s burden on summary judgment to show when a particular claim accrues.

²² Ex. 1, p. 2 (emphasis added).

1 should have been paid back).²³

2 Other jurisdictions have squarely addressed the issue of when an unjust enrichment claim
3 accrues. For good reason, they do not include actual or constructive knowledge in their analysis.
4 *See, e.g., East-West, LLC v. Rahman*, 873 F.Supp.2d 721, 730 (E.D. Va. 2012) (“The statute of
5 limitations for unjust enrichment begins to run at the time the unjust enrichment occurred not when a
6 party ‘knew or should have known’ of the unjust enrichment.”) (citation omitted); *Farmers*
7 *Elevator Co. of Oakville, Inc. v. Hamilton*, 926 N.E.2d 68, 78 (Ind. Ct. App. 2010) (“We likewise
8 conclude that where a plaintiff seeks recoupment of money had and received based on payments
9 made to the defendant, his cause of action accrues at the time the payments are made irrespective of
10 his knowledge or discovery of injury.”); *News World Comm, Inc. v. Thompsen*, 878 A.2d 1218, 1223
11 (D.D.C. 2005) (“A claim for unjust enrichment accrues, however, when the enrichment becomes
12 unjust....”). Thus, this Court need not include actual or constructive knowledge in its accrual
13 analysis here.

14 **B. The Second Lawsuit and Additional Discovery Have Confirmed That Nanyah’s Unjust**
15 **Enrichment Claim is Based on an Alleged Failure to Issue a Membership Interest.**

16 As explained above, the Nevada Supreme Court could not determine whether Nanyah’s
17 \$1,500,000.00 payment was an investment or a loan. Thus, it remanded the case to this Court in
18 order to make that determination. Nanyah’s Complaint in the Second Lawsuit shows that its
19 \$1,500,000.00 payment was *not* a loan. To be sure, there are no details regarding interest rate,
20 interest payments, maturity date, etc. On the contrary, Nanyah’s Complaint clearly maintains that
21 Nanyah should have received a membership interest in Eldorado *at the time* it invested
22 \$1,500,000.00. When Eldorado (*i.e.*, Huerta) allegedly failed to issue that membership interest to
23 Nanyah, it became inequitable to retain Nanyah’s \$1,500,000.00.²⁴ Thus, Nanyah’s claim accrued in
24 December of 2007.

25 ²³ *Id.* (“As Eldorado Hills failed to demonstrate that no genuine issues of material fact remain regarding whether
26 the limitations period on appellant’s unjust enrichment claim commenced when Eldorado Hills received the \$1.5 million
27 or at a later date when Eldorado Hills allegedly failed to issue a membership interest to appellant or repay the money as a
loan, the district court erred in granting summary judgment based on the expiration of the statute of limitation.”).

28 ²⁴ As explained in prior briefing, Eldorado did not retain the \$1,500,000.00. Huerta immediately paid it to himself
(*i.e.*, Go Global) as a “consulting fee.”

1 One particular jurisdiction (New York) has analyzed the accrual of an unjust enrichment
2 claim based upon very similar facts to those alleged here. Specifically, in *Elliott v. Quest Comm.*
3 *Corp.*, an investor wired \$50,000 for the purchase of preferred stock in 1995. *Id.*, 25 A.D.3d 897,
4 897 (N.Y. App. Div. 2006). The company never issued the stock certificate evidencing the
5 investment. *Id.* The investor did not inquire further until 2002, at which time he was told there was
6 no record of his investment. *Id.* He sued for unjust enrichment in 2003. *Id.*

7 Just like the Reversal Order, the court recognized that an unjust enrichment claim accrues
8 “upon the occurrence of the wrongful act giving rise to a duty of restitution.” *Id.* at 898 (citations
9 omitted). The Court reasoned that the accrual date was when the money was wired and the stock
10 certificate was not issued, *not* “**when the purported ownership interest was later repudiated.**” *Id.*
11 (emphasis added).

12 Similarly here, assuming Nanyah’s allegations are true, Eldorado’s retention of the
13 \$1,500,000.00 was wrongful when it (*i.e.*, Huerta) did not concurrently (or soon thereafter) issue a
14 membership interest to Nanyah in exchange for payment. In December of 2007 and early 2008,
15 Nanyah could have sued regarding Eldorado’s (*i.e.*, Huerta’s) alleged failure to issue its membership
16 interest. **At a minimum**, the claim accrued by the time Nanyah was listed as “potential claimant” in
17 October of 2008. If Nanyah did not have a claim at that time, why would it be listed as a “potential
18 claimant?”²⁵ Either way, the claim is barred by NRS 11.190(2)(c).²⁶

19 ///

20 ///

21 ///

22 ///

23 ///

24
25 ²⁵ Ex. 2 to Mot., Recital A; Exhibit A.

26 ²⁶ Even assuming that NRS 11.190(2)(c) requires actual or constructive knowledge, it strains credulity to believe
27 that Nanyah was not aware that it did not receive its membership interest in 2007 and 2008. It would have received K-
28 1’s each and every year if it were a member. It would have received other evidence of its ownership interest. Even if
Nanyah did not know it did not receive a membership interest, for the reasons set forth in the Motion for Summary
Judgment, it certainly **should have** known as a “sophisticated investor.” (*See* Mot. for Summ. J., 4:3, filed Feb. 23,
2018.)

1 IV. CONCLUSION

2 For the foregoing reasons, as well as the reasons contained within the Motion for Summary
3 Judgment, summary judgment should be entered against Nanyah and in favor of the Eliades
4 Defendants with respect to any and all claims against the Eliades Defendants.

5 DATED this 5th day of March, 2018.

6 BAILEY ♦ KENNEDY

7
8 By: /s/ Joseph A. Liebman
9 DENNIS L. KENNEDY
JOSEPH A. LIEBMAN

10 *Attorneys for Defendants*
11 PETE ELIADES, THE ELIADES
12 SURVIVOR TRUST OF 10/30/08, TELD,
13 LLC and ELDORADO HILLS, LLC
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 5th day of March, 2018, service of the foregoing **DEFENDANTS PETER ELIADES, INDIVIDUALLY AND AS TRUSTEE OF THE ELIADES SURVIVOR TRUST OF 10/30/08, ELDORADO HILLS, LLC, AND TELD, LLC'S JOINDER TO MOTION FOR SUMMARY JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Attorneys for Plaintiffs
CARLOS A. HUERTA,
individually and as Trustee of THE
ALEXANDER CHRISTOPHER
TRUST, and GO GLOBAL, INC.

/s/ Sharon L. Murnane
Employee of BAILEY❖KENNEDY

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

NANYAH VEGAS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,

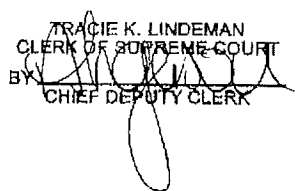
vs.

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

No. 66823

FILED

FEB 12 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court final judgment in a contract action. Eighth Judicial District Court, Clark County; Nancy L. Alf, Judge.

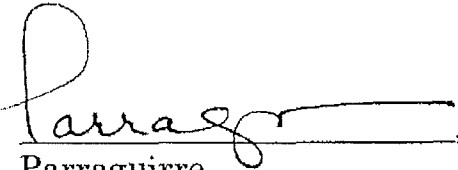
Appellant argues that the district court erred by granting summary judgment in favor of respondent Eldorado Hills, LLC, based on a finding that appellant's unjust enrichment claim was time-barred under the four-year statute of limitations. According to appellant, the statute of limitations did not begin to run until appellant became aware that it would not be repaid and that it owned no interest in Eldorado Hills. Having considered the parties' arguments and appendices, we conclude that the district court erred in granting summary judgment on statute-of-limitations grounds. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (holding that this court reviews summary judgments de novo and that summary judgment is only appropriate if the pleadings and

other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law); *Oak Grove Inv'rs v. Bell & Gossett Co.*, 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983) (placing the burden of demonstrating the absence of a genuine issue of material fact as to when a party discovered or should have discovered the facts underlying a claim on the party seeking summary judgment on statute-of-limitations grounds), *disapproved on other grounds by Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000).

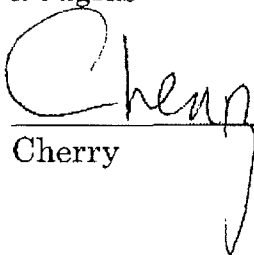
Appellant's claim for unjust enrichment did not accrue until Eldorado Hills retained \$1.5 million under circumstances where it was inequitable for Eldorado Hills to do so. *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev., Adv. Op. 35, 283 P.3d 250, 257 (2012) ("Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof"). As Eldorado Hills failed to demonstrate that no genuine issues of material fact remain regarding whether the limitations period on appellant's unjust enrichment claim commenced when Eldorado Hills received the \$1.5 million or at a later date when Eldorado Hills allegedly failed to issue a membership interest to appellant or to repay the money as a loan, the district court erred in granting summary judgment based on the expiration of the statute of limitation. *Oak Grove Inv'rs*, 99 Nev. at 623, 668 P.2d at 1079; *see* NRS 11.190(2)(c) (setting a four year

statute of limitation for "[a]n action upon a contract, obligation or liability not founded upon an instrument in writing"). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


Parraguirre, C.J.

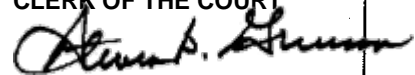

Douglas, J.


Cherry, J.

cc: Hon. Nancy L. Allf, District Judge
Ara H. Shirinian, Settlement Judge
McDonald Law Offices, PLLC
Fennemore Craig Jones Vargas/Las Vegas
Eighth District Court Clerk

EXHIBIT 2

EXHIBIT 2



ORDR

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Attorneys for Nanyah Vegas, 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

**ORDER PARTIALLY GRANTING
SUMMARY JUDGMENT**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

1 The Motion for Summary Judgment by Defendant Sigmund Rogich, individually and as
2 Trustee of the Rogich Family Irrevocable Trust, and Imitations, LLC ("Rogich Defendants"),
3 joined by Peter Eliades, individually and as Trustee of the Eliades Survivor Trust of 10/30/08,
4 Eldorado Hills, LLC, and Teld, LLC ("Eliades Defendants") having come on regularly to be
5 heard on April 18, 2018, Samuel S. Lionel of Fennemore Craig, P.C. representing The Rogich
6 Defendants and Joseph A. Liebman of Bailey Kennedy representing the Eliades Defendants and
7 the Court having hearing argument and good cause appearing, does hereby set forth the
8 undisputed material facts and the Court's legal determinations.

9
10 **RELEVANT FACTS**

11 1. Plaintiff's Complaint against the Rogich Defendants and the Eliades Defendants
12 was filed on November 4, 2016.

13 2. The alleged transfer of the Eldorado Membership interest from the Rogich Trust to
14 the Eliades Trust occurred no later than September 2012.

15 3. Plaintiff's Fifth and Seventh Claims for Fraudulent Transfer and Constructive
16 Trust against the Rogich Defendants and the Eliades Defendants accrued no later than September
17 2012.

18 4. Plaintiff's Fifth and Seventh Claims for Fraudulent Transfer and Constructive
19 Trust were filed more than four years after they accrued.

20 **LEGAL DETERMINATION**

21 1. Plaintiff's Fifth and Seventh Claims for Fraudulent Transfer and Constructive
22 Trust were filed more than 4 years after the alleged membership interest transfer.

23 2. NRS 112.230(1) provides that a claim for fraudulent transfer is extinguished if not
24 brought within four years after the date of the transfer.

25 ~~3. The membership interest transfer is not a transfer that is permitted to be perfected~~
26 ~~and therefore, NRS 112.200(1)(b)'s and NRS 112.200(2)'s provisions do not apply.~~ AK FOR
NLA

27 3. The Rogich Defendants and the Eliades Defendants are awarded Partial Summary
28 Judgment dismissing the Fifth and Seventh Claims, with prejudice.

4. Plaintiff's Fourth Claim for Intentional Interference with Contract has been

1 withdrawn by Plaintiff and should be dismissed.

2 5. The Motion of the Rogich Defendants' for Summary Judgment and the Joinder of
3 the Eliades Defendants in said Motion for Summary Judgment with respect to Plaintiffs' First,
4 Second, Third, Sixth, Eighth and Ninth Claims is denied.

5 Dated this 17 day of May, 2018.

6
7 Nancy L. AEF
8 DISTRICT COURT JUDGE
9 AE

9 Respectfully submitted by:

10 SIMONS LAW, PC

11 BY: 

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Attorney for Plaintiff Nanyah Vegas, LLC

15 Approved:

16 This ____ day of ____, 2018

17 FENNEMORE CRAIG, P.C.

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26 *The Rogich Family Irrevocable Trust and Imitations, LLC*

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12 *Teld, LLC and Eldorado Hills, LLC*

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