

IN THE SUPREME COURT OF NEVADA

NANYAH VEGAS, LLC, a Nevada limited liability company,

Electronically Filed
Jan 07 2022 11:47 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

vs.

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

Respondents.

SIG ROGICH, a/k/a SIGMUND ROGICH, individually and as Trustee of the Rogich 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.

District Court Case Nos. A-13-686303-C, Department XXVII, consolidated with
A-16-746239-C

**RESPONDENTS TELD, LLC, PETER ELIADES, INDIVIDUALLY AND
AS TRUSTEE OF THE ELIADES SURVIVOR TRUST OF 10/30/08,
AND ELDORADO HILLS, LLC'S ANSWERING BRIEF TO ROGICH
PARTIES' OPENING BRIEF ON CROSS-APPEAL**

DENNIS L. KENNEDY
Nevada Bar No. 1462
JOSEPH A. LIEBMAN
Nevada Bar No. 10125
BAILEY❖KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com
JLiebman@BaileyKennedy.com

*Attorneys for Respondents Teld, LLC, Peter Eliades, Individually and as Trustee of
The Eliades Survivor Trust of 10/30/08, and Eldorado Hills, LLC*

NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 26.1, Respondents Teld, LLC, Peter Eliades, individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Eldorado Hills, LLC submit this Disclosure Statement:

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. None of these persons or entities has a parent corporation or a publicly held corporation owning 10% or more of their stock.

2. These parties have been represented by the law firms of Bailey❖Kennedy, Fennemore Craig, and Lionel Sawyer & Collins in the underlying actions. Bailey❖Kennedy continues to represent them for the purposes of this appeal.

///

///

///

///

3. No parties are using a pseudonym for the purposes of this appeal.

DATED this 7th day of January, 2021.

BAILEY ❖ KENNEDY

By: /s/ Joseph A. Liebman

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

*Attorneys for Respondents Teld, LLC,
Peter Eliades, Individually and as
Trustee of The Eliades Survivor Trust of
10/30/08, and Eldorado Hills, LLC*

TABLE OF CONTENTS

I.	JURISDICTIONAL STATEMENT.....	1
II.	SUMMARY OF THE ARGUMENT	1
III.	ARGUMENT.....	2
	NRAP 32(a)(9) CERTIFICATE OF COMPLIANCE.....	6
	CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

Cases

<i>Pentax Corp. v. Boyd</i> , 111 Nev. 1296, 904 P.2d 1024 (1995).....	4
---	---

I. JURISDICTIONAL STATEMENT

Teld, LLC (“Teld”), Peter Eliades, individually (“Eliades”) and as Trustee of The Eliades Survivor Trust of 10/30/08 (the “Eliades Trust”) (Teld, Eliades, and the Eliades Trust are collectively referred to as the “Eliades Respondents”), and Eldorado Hills, LLC (“Eldorado”) do not dispute the Rogich Respondents’ Jurisdictional Statement.¹

II. SUMMARY OF THE ARGUMENT

Certain portions of the Rogich Respondents’ Opening Brief on Cross-Appeal claim that a few contractual provisions in the 2008 Agreements are vague and ambiguous.² (Op. Brief on Cross-Appeal, 65:4-8.) The limited purpose of this Answering Brief on Cross-Appeal is to clarify that even

¹ The “Rogich Respondents” has the definition ascribed to them in Eldorado and the Eliades Respondents’ Answering Brief, filed with this Court on December 2, 2021. (Ans. Brief, 14:2-3.)

This Court’s July 27, 2021 Order—which sets forth the briefing schedule—only mentions Eldorado when discussing the right to file an Answering Brief to the Rogich Respondents’ Opening Brief on Cross-Appeal. However, considering that the subject of the Rogich Respondents’ Opening Brief is an October 15, 2018 Summary Judgment Order entered in favor of the Eliades Respondents (the “Eliades Respondents Summary Judgment Order”), they have been included in this Answering Brief as well. (14 Joint Appendix (“JA”) 003403-12.)

² As set forth in Eldorado and the Eliades Respondents’ Answering Brief, the “2008 Agreements” include the Purchase Agreement, the Membership Interest Purchase Agreement, and the Amended and Restated Operating Agreement, all of which were executed by various parties in October of 2008. (Ans. Brief, 7:4-10:12.)

assuming, *arguendo*, those provisions could be deemed ambiguous, they are separate and apart from those provisions at issue in Eldorado and the Eliades Respondents' Answering Brief (filed December 2, 2021).³ Therefore, the Rogich Respondents' argument and request to slightly modify the content of the Eliades Respondents Summary Judgment Order should have no effect on the District Court's ultimate decision to grant summary judgment in favor of the Eliades Respondents (or any other aspect of Eldorado and the Eliades Respondents' Answering Brief).

III. ARGUMENT

Generally speaking, Eldorado and the Eliades Respondents do not take issue with most of the content of the Rogich Respondents' Opening Brief on Cross-Appeal. However, in various aspects of their Opening Brief, the Rogich Respondents argue that certain provisions contained within the 2008 Agreements are vague and ambiguous. (Op. Brief on Cross-Appeal, 65:4-8.) Eldorado and the Eliades Respondents, on the other hand, have argued that the 2008 Agreements are clear and unambiguous and were correctly interpreted pursuant to their plain meaning without the introduction of parol evidence.

³ The Eliades Respondents and Eldorado do not agree with the Rogich Respondents that any provisions in the 2008 Agreements are vague or ambiguous.

(Ans. Brief, 42:9-43:4.)

On first blush, the Rogich Respondents' position may appear contrary to Eldorado and the Eliades Respondents' position. But it is not, as the Rogich Respondents are analyzing different provisions in the 2008 Agreements. The Rogich Respondents are claiming that the 2008 Agreements are unclear as to whether Nanyah actually had a valid claim for the recovery of its alleged \$1,500,000.00 investment. Eldorado and the Eliades Respondents do not necessarily disagree, and repeatedly set forth in their Answering Brief that Nanyah's so-called claim was described as a "potential claim." (Ans. Brief, 37:11-13.)

That being said, the 2008 Agreements do clearly and unambiguously confirm that **if—and only if**—Nanyah does have a claim based on its alleged investment, the Rogich Trust is "solely responsible." (*See id.*, 29:10-12.) In other words, although the 2008 Agreements do not state to a certainty that Nanyah has a valid claim for the recovery of its investment, they do state that **if** there is such a claim, the one and only obligor is the Rogich Trust—**not** Eldorado, and **not** the Eliades Respondents. And because *those particular provisions* clearly and unambiguously confirm that the Rogich Trust is the only

potential obligor as it pertains to Nanyah, parol evidence may not be introduced to contradict them.⁴ *See Pentax Corp. v. Boyd*, 111 Nev. 1296, 1300-01, 904 P.2d 1024, 1027 (1995) (“Although parol evidence is admissible to clarify ambiguities in a contract, the existence of an ambiguous provision only allows the admission of evidence to clarify the intent of the parties with respect to such provision. Thus, in the present case, the ambiguous blank space would allow admission of parol evidence which serves to explain what information should have been entered therein, but would disallow parol evidence relating to the remainder of the guarantee.”) (citing Colorado law).

Accordingly, the Rogich Respondents’ request to slightly modify the Eliades Respondents Summary Judgment Order is not inconsistent with Eldorado and the Eliades Respondents’ Answering Brief, and does not change

///

///

///

⁴ *See, e.g.*, 8 JA_001926-27, § 8(c)(i) (“It is the current intention of [the Rogich Trust] that such amounts be confirmed or converted to debt, with no obligation to participate in capital calls or monthly payments, a pro-rata distribution at such time as [Eldorado’s] real property is sold or otherwise disposed of. ***Regardless of whether this intention is realized, [the Rogich Trust] shall remain solely responsible for any claims by the above referenced entities set forth in this section above.***”) (emphasis added).

the fact that the District Court's entry of summary judgment in favor of the Eliades Respondents was entirely correct.

DATED this 7th day of January, 2021.

BAILEY ❖ KENNEDY

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

*Attorneys for Respondents Teld, LLC,
Peter Eliades, Individually and as
Trustee of The Eliades Survivor Trust of
10/30/08, and Eldorado Hills, LLC*

NRAP 32(a)(9) CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Answering Brief on Cross-Appeal complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because:

[x] This Brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman font 14.

2. I further certify that this Brief does comply with the page- or type-volume limitations of NRAP 32(a)(7) because, as contemplated by NRAP 32(a)(7)(C), it contains 726 words.

3. I further hereby certify that I have read this Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. I further certify that this Response Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Brief regarding matters in the record to be supported by a reference to the page and volume

number, if any, of the appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying Response Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of January, 2021.

BAILEY ❖ KENNEDY

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

*Attorneys for Respondents Teld, LLC,
Peter Eliades, Individually and as
Trustee of The Eliades Survivor Trust of
10/30/08, and Eldorado Hills, LLC*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 7th day of January, 2022, service of the foregoing was made by electronic service through 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 address:

MARK G. SIMONS, ESQ.
SIMONS HALL JOHNSTON PC
690 Sierra Rose Drive
Reno, NV 89511

Email: msimons@shjnevada.com

*Attorneys for Appellant/
Cross-Respondent*
NANYAH VEGAS, LLC

BRENOCH WIRTHLIN, ESQ.
**HUTCHISON & STEFFEN,
PLLC**
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Email: bwirthlin@hutchlegal.com

*Attorneys for Respondents/
Cross-Appellants*
SIG ROGICH aka SIGMUND
ROGICH, Individually and as
Trustee of THE ROGICH
FAMILY IRREVOCABLE
TRUST, and IMITATIONS, LLC

/s/ Sharon L. Murnane

Employee of Bailey ♦ Kennedy