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of the Eliades Survivor Trust of 10/30/08;
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

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Supreme Court No. 79917

District Court No. A-13-686303-C

District Court No. A-16-746239-C

MOTION TO SUBSTITUTE
TELD, LLC, PETER ELIADES,
INDIVIDUALLY AND AS
TRUSTEE FOR THE ELIADES
SURVIVOR TRUST OF 10/30/08,
AND ELDORADO HILLS, LLC
AS APPELLANTS AND TO
DISMISS THE ENTIRE APPEAL

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

5 Respondents.

6 SIG ROGICH, A/K/A SIGMUND
7 ROGICH, INDIVIDUALLY AND
8 AS TRUSTEE OF THE ROGICH
9 FAMILY IRREVOCABLE TRUST,

10 Cross-Appellant,

11 vs.

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

15 Cross-Respondent,

16 and

17 ELDORADO HILLS, LLC, A
18 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.

Teld, LLC, Peter Eliades, Individually and as Trustee of the Eliades
Survivor Trust of 10/30/08, and Eldorado Hills, LLC (collectively, the

1 “Eliades Respondents”), by and through their counsel of record, hereby move
2 this Court pursuant to NRAP 43 to substitute the Eliades Respondents in the
3 place of Appellant Nanyah Vegas, LLC (“Nanyah”) with respect to any and all
4 claims for relief and/or appellate interests currently pending in this appeal. In
5 conjunction with the substitution of parties under NRAP 43, the Eliades
6 Respondents move to dismiss this appeal. The Eliades Respondents also move
7 to dismiss the cross-appeal filed by Rogich, as it will become moot upon the
8 dismissal of the appeal.¹

9 I. INTRODUCTION

10 On April 13, 2022, the Eliades Respondents’ Writ of Execution was the
11 subject of a Sheriff’s sale. At the Sheriff’s sale, the Eliades Respondents
12 purchased the following property:

13 all rights of action, things in action, choses in action, causes of
14 action, claims for relief, and/or appellate claims and interests
15 belonging to NANYAH VEGAS, LLC in the action styled *Carlos*
16 *A. Huerta, et al. v. Sig Rogich, et. al.*, Case No. A-13-686303-C,
currently pending in the Eighth Judicial District Court, Clark
County, Nevada, and currently pending in the Nevada Supreme
Court as Case No. 79917.

17
18 ¹ The “Rogich Respondents” include Sig Rogich, individually and as
Trustee of the Rogich Family Irrevocable Trust (“Rogich”), and Imitations,
LLC.

1 all rights of action, things in action, choses in action, causes of
2 action, claims for relief, and/or appellate claims and interests
3 belonging to NANYAH VEGAS, LLC in the action styled *Nanyah*
4 *Vegas, LLC v. Teld, LLC, et. al.*, Case No. A-16-746239-C,
currently pending in the Eighth Judicial District Court, Clark
County, Nevada, and currently pending in the Nevada Supreme
Court as Case No. 79917.

5 Accordingly, the Eliades Respondents are now the real parties in interest as it
6 pertains to any pending claims for relief and/or appellate interests which are
7 the subject of this appeal.

8 Consequently, pursuant to NRAP 43, the Eliades Respondents must be
9 substituted in the place of Nanyah with respect to the appeal. Additionally, as
10 the true owners of these claims and/or appellate interests, the Eliades
11 Respondents seek to dismiss the appeal with prejudice, including the cross-
12 appeal, which will become moot.

13 II. STATEMENT OF FACTS

14 A. The Judgment.

15 Through a series of various rulings and summary judgment orders, the
16 Eliades Respondents were dismissed from the underlying consolidated action
17 with prejudice. Following their dismissal, two of the Eliades Respondents
18 (Teld and Eliades) prevailed on a Motion for Attorney's Fees, thereby

1 obtaining a monetary judgment against Nanyah in the amount of \$216,236.25.

2 All four Eliades Respondents obtained a judgment for reimbursement of their
3 costs in the amount of \$31,010.98.²

4 **B. The Bad Faith Bankruptcy.**

5 On August 6, 2020, the District Court issued a writ of execution for
6 Nanyah’s claims for relief. Nanyah—a shell entity owning only dismissed
7 claims for relief—filed a Chapter 11 bankruptcy petition for reorganization.

8 On December 22, 2021, the Bankruptcy Court granted the Eliades
9 Respondents’ Motion to Dismiss, finding that the bankruptcy had been filed in
10 bad faith.³

11 **C. The Second Writ of Execution and Sheriff’s Sale.**

12 On January 5, 2022, the District Court issued another writ of execution
13 on behalf of the Eliades Respondents. Following the District Court’s and this
14 Court’s denials of Nanyah’s various motions for a stay, the Sheriff’s sale went
15 forward on April 13, 2022. The Eliades Respondents were the winning

16 ///

18 ² Judgment, attached as Exhibit 1.

³ Mem. Dec, 7:5-8:7, attached as Exhibit 2.

bidder, and thereby purchased the subject of this appeal for one thousand dollars.⁴

III. ARGUMENT

A. The Eliades Respondents Are Now the Owners of all of Nanyah’s Claims for Relief That are the Subject of This Appeal.

As set forth above, the Eliades Respondents—and not Nanyah—are now the true owners of all of Nanyah’s claims for relief that are the subject of this appeal. Under NRAP 43, “[i]f a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.”

Based on the Sheriff’s sale and the transfer of the claims for relief, the Eliades Respondents must be substituted for Nanyah as the Appellants.

B. As the True Owners of the Subject of This Appeal, the Eliades Respondents Seek to Dismiss the Entirety of the Appeal.

The Eliades Respondents now have the right to dismiss this appeal with prejudice. This Court recently addressed a similar situation and permitted the respondent in an appeal—after executing on some of the appellant’s claims for

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⁴ Certificate of Sale, attached as Exhibit 3.

1 relief—to dismiss them with prejudice. *See generally Reynolds v. Tufenkjian*,
2 136 Nev. 145, 461 P.3d 147 (2020).

3 In *Reynolds*, much like in this matter, the defendants obtained summary
4 judgment against the plaintiff, and likewise obtained a judgment for
5 reimbursement of their attorney’s fees. The plaintiff appealed the summary
6 judgment order, but did not post a supersedeas bond, claiming—just like
7 Nanyah—that they could not afford to do so. While the appeal was pending,
8 the defendants executed on the plaintiff’s pending claims for relief that were
9 the subject of the appeal, and ultimately moved to dismiss the appeal
10 following the Sheriff’s sale. *Id.* at 146-47, 461 P.3d at 149. With respect to
11 the claims that were assignable (*e.g.*, tort claims seeking pecuniary harm and
12 contract claims), this Court ultimately held that it was entirely proper for a
13 defendant/judgment creditor to execute on those claims during the pendency
14 of the appeal, and then move to dismiss that aspect of the appeal before the
15 Court rules on the merits. *Id.* at 154, 461 P.3d at 154 (“Having further
16 concluded that appellants’ claims for negligent misrepresentation and breach
17 of contract are assignable and subject to execution, we grant respondents’
18 motion to substitute themselves for appellants as to those claims and to

1 voluntarily dismiss this appeal as to those claims.”); *see also Applied Medical*
2 *Technologies, Inc. v. Eames*, 44 P.3d 699, 704 (Utah 2002) (“We hold that Dr.
3 Hill legally purchased claims pending against himself and then moved to
4 dismiss those claims.”).

5 The Eliades Respondents seek to do the same. And because all of the
6 claims for relief are assignable, any such dismissal should result in the
7 complete dismissal of this appeal.⁵

8 **C. The Cross-Appeal Will Become Moot Following the Dismissal of**
9 **Any Potential Liability Against Any of the Respondents.**

10 The cross-appeal relates to the following issue: “did the District Court
11 err in denying the Rogich Parties’ request for Rule 60(b) relief.”⁶ The subject
12 of the Rule 60(b) motion was the District Court’s October 5, 2018 entry of
13 summary judgment in favor of the Eliades Respondents. Rogich’s primary
14 contention on appeal was that the District Court’s Order “could be

15 ⁵ Nanyah has not argued that any of the claims for relief are unassignable.
16 *Reynolds* addressed the vast majority of the claims that Nanyah asserted against
17 the Respondents and confirmed they are assignable. Additionally, this Court
18 has recently confirmed that a fraudulent conveyance claim, unlike a fraud
claim, is also assignable. *Superpumper, Inc. v. Leonard, Trustee for*
Bankruptcy Estate, 137 Nev. Adv. Op. 43, 495 P.3d 101, n. 1 (2021).

⁶ Respondent/Cross Appellant Rogich Parties’ Answering Brief on Appeal
and Opening Brief on Cross-Appeal, 2:17-19.

1 misconstrued to have made several affirmative findings and conclusions that
2 the Rogich Trust has an obligation or debt owed to Nanyah....”⁷ Rogich’s
3 primary concern was that if that language was allowed to remain in the District
4 Court’s Order, and Nanyah prevailed on its appeal against the Rogich
5 Respondents, Nanyah could ultimately use that language to help prove liability
6 against the Rogich Respondents.

7 Regardless of the merits of the cross-appeal, Rogich’s concern with the
8 content of the District Court’s October 5, 2018 Order will soon become
9 irrelevant. Assuming this Court dismisses the appeal in its entirety, there is no
10 avenue for any liability against the Rogich Respondents with respect to the
11 claims that are the subject of the appeal. Accordingly, once the appeal is
12 dismissed with prejudice, the cross-appeal becomes moot, and must be
13 dismissed as well. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d
14 572, 574 (2010) (holding that a case has to have an actual controversy during
15 “all stages of the proceeding” or it would be dismissed as moot).

16 ///

17 ///

18 ⁷ *Id.*, 56:21-26.

For the foregoing reasons, the Eliades Respondents should be substituted in the place of Nanyah as Appellants. Additionally, as the true owners of Nanyah's claims that are the subject of this appeal, the Eliades Respondents move to dismiss the appeal in its entirety, along with dismissal of the related cross-appeal, thereby bringing this matter to its conclusion.

DATED this 21st day of April, 2022.

By: /s/ Dennis L. Kennedy
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN

Attorneys for Eliades Respondents

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 21st day of April, 2022, service of the foregoing **MOTION TO SUBSTITUTE TELD, LLC, PETER ELIADES, INDIVIDUALLY AND AS TRUSTEE FOR THE ELIADES SURVIVOR TRUST OF 10/30/08, AND ELDORADO HILLS, LLC AS APPELLANTS AND TO DISMISS THE ENTIRE APPEAL** 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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TRUST, and IMITATIONS, LLC

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

Exhibit 1

Exhibit 1



JUDG (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

JUDGMENT

CONSOLIDATED WITH:

Case No. A-16-746239-C

Judgment is entered in favor of Peter Eliades and Teld, LLC and against Nanyah Vegas, LLC in the amount of two hundred and sixteen thousand, two hundred and thirty-six and 25/100 dollars (\$216,236.25). Interest shall continue to accrue from entry of Judgment until paid in full.

Judgment is also entered in favor of Peter Eliades, The Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC and against Nanyah Vegas, LLC in the amount of thirty-one thousand, ten and 98/100 dollars (\$31,010.98). Interest shall continue to accrue from entry of Judgment until paid in full.

DATED this 4th day of May, 2020.


DISTRICT COURT JUDGE

Submitted by:

BAILEY ♦ KENNEDY

By /s/ Joseph A. Liebman

Dennis L. Kennedy, Esq.
Joseph A. Liebman, Esq.
8984 Spanish Ridge Avenue
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Attorneys for Defendants PETE ELIADES,
THE ELIADES SURVIVOR TRUST OF 10/30/08,
TELD, LLC, and ELDORADO HILLS, LLC

Exhibit 2

Exhibit 2

Eldorado had two original members when formed in 2005: Go Global, Inc., owned by Carlos Huerta, and The Rogich Family Irrevocable Trust (“Rogich Trust”).⁶ In 2008, Teld, LLC acquired a 60% interest in Eldorado, resulting in Go Global, Inc. no longer holding an interest in Eldorado and the Rogich Trust owning 40% of Eldorado.⁷ Nanyah maintains that the documents memorializing these transactions included provisions pursuant to which the Rogich Trust agreed to assume Eldorado’s obligation to repay Nanyah’s \$1.5 million investment, or pay Nanyah its percentage interest in Eldorado.⁸ In 2012, the Rogich Trust purportedly assigned its membership interest in Eldorado to The Eliades Survivor Trust of 10/30/08 (“Eliades Trust”).⁹ Nanyah maintains this assignment was subject to its claims.

On July 31, 2013, having neither received distributions from Eldorado nor repayment of its investment, Huerta, Go Global, Inc. and Nanyah sued Eldorado and the Rogich Trust in state court.¹⁰ In 2016, Nanyah commenced a second lawsuit against Teld, Peter Eliades, the Eliades Trust (together, the Eliades Defendants) and Sigmund Rogich, the Rogich Trust and Imitations, LLC (together, the Rogich Defendants).¹¹ The two lawsuits were subsequently consolidated in 2017.¹² In May of 2018, the Rogich Defendants and the Eliades Defendants were awarded partial summary judgment as to two of Nanyah’s claim(s).¹³ On October 5, 2018, the state court granted summary judgment in favor of the Eliades Defendants.¹⁴ In September 2019, the state court granted summary judgment in favor of the Rogich Defendants, and granted Eldorado’s motion to dismiss.¹⁵ The defendants were awarded judgment in the amount of their attorneys’ fees and costs.¹⁶

⁶ *Id.* at Exhibit 3, p. 59:15-16.

⁷ *Id.* at p. 59:20-27.

⁸ *Id.* at pp. 59:28-60:3.

⁹ *Id.* at p. 63, ¶ d.

¹⁰ *Id.* at Exhibit 4.

¹¹ *Id.* at Exhibit 6, p. 102. Although based on the record presented it is unclear to the court what role defendant Imitations, LLC played in this dispute, that fact is not relevant to the court’s decision.

¹² *Id.* at Exhibit 6.

¹³ *Id.* at Exhibit 7.

¹⁴ *Id.* at Exhibit 3.

¹⁵ *Id.* at Exhibit 8.

¹⁶ *Id.* at Exhibit 9.

1 Nanyah appealed the judgment and the order granting summary judgment without
 2 posting a bond.¹⁷ With no bond having been posted, the defendants commenced the process of
 3 executing on Nanyah's litigation claims against Eldorado and the Eliades Defendants.¹⁸ Nanyah
 4 filed this bankruptcy proceeding approximately one month prior to the scheduled sale of those
 5 claims. At the debtor's § 341(a) meeting of creditors held on April 26, 2021, the debtor's
 6 representative, Andrew Heyman, testified that the Chapter 11 was filed to "protect and preserve
 7 the assets of the debtor, such as they are."¹⁹

8 Nanyah's bankruptcy schedules reflect that the company's only asset is its appeal.²⁰ This
 9 was confirmed by Yoav Harlap, Nanyah's sole member, during the continued § 341(a) meeting of
 10 creditors.²¹ When asked how Nanyah is paying its attorney fees with no assets and no income,
 11 Mr. Harlap confirmed that he personally is providing the funding.²² At the initial § 341(a)
 12 meeting of creditors, Mr. Harlap testified that if Nanyah did not prevail on its appeal the only
 13 source of funding for a chapter 11 plan would be a loan from him.²³

14 Nanyah's schedules list liabilities of approximately \$1.5 million.²⁴ Scheduled creditors
 15 are the prevailing defendants in the state court litigation, Mr. Harlap for personal loans to the
 16 debtor, and the Internal Revenue Service with a priority unsecured claim scheduled in an
 17 unknown amount.²⁵ Though initially filed as a standard chapter 11, Nanyah later amended its
 18 petition to reflect that it qualifies as a small business debtor under 11 U.S.C. § 101(51D).²⁶

19 The deadline for filing proofs of claim in Nanyah's case expired on July 26, 2021.
 20 Although nine proofs of claim were filed, all but one were filed by prevailing defendants in the
 21 state court litigation. That claim was filed by the Internal Revenue Service, asserting a
 22

23
 24 ¹⁷ *Id.* at Exhibit 12.

25 ¹⁸ *Id.* at Exhibit 10.

26 ¹⁹ *Id.* at Exhibit 1, p. 17, Transcript p. 12:10-13.

27 ²⁰ ECF No. 1, pp. 10-13.

28 ²¹ ECF No. 35, Exhibit 2, p. 47, Transcript p. 9:3-5.

²² *Id.*, Transcript p. 9:11-17.

²³ *Id.* at pp. 26-27, Transcript pp. 21:22-22:7.

²⁴ ECF No. 1, pp. 15-17.

²⁵ *Id.*

²⁶ ECF No. 17, p. 2.

1 \$7,000.00 claim for estimated taxes owing for 2018-2020 (\$3,000.00 priority) and 2014-2017
2 (\$4,000.00 general unsecured).²⁷

3 Analysis

4 Under 11 U.S.C. § 1112(b), a bankruptcy court may dismiss a Chapter 11 case “for
5 cause.” “Although section 1112(b) does not explicitly require that cases be filed in ‘good faith,’
6 courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition
7 establishes cause for dismissal.”²⁸ Courts measure a debtor’s good faith by examining “‘an
8 amalgam of factors and not...a specific fact.’”²⁹ Those factors may include “any factors which
9 evidence ‘an intent to abuse the judicial process and the purposes of the reorganization
10 provisions.’”³⁰ The ultimate question is whether a debtor filed its chapter 11 petition to “effect a
11 speedy, efficient reorganization” or “to unreasonably deter and harass creditors.”³¹ Towards this
12 end, “if it appears at the outset there is no reasonable expectation that the financial situation of
13 the debtor can be successfully repaired through the reorganization process, it is clear that such
14 case is ripe for dismissal for ‘cause,’”³²

15 Movants maintain that Nanyah filed this case merely to avoid posting a bond during its
16 appeal of the state court judgment. They argue that this constitutes bad faith warranting
17 dismissal. But as the Ninth Circuit Bankruptcy Appellate Panel has noted, “neither the Ninth
18 Circuit Court of Appeals nor [the Ninth Circuit Bankruptcy Appellate Panel] has held that filing
19 a bankruptcy petition in lieu of posting an appeal bond is ipso facto bad faith for purposes of
20 dismissal under § 1112(b).”³³ “Indeed, to make such a finding would be at odds with the
21
22

23 ²⁷ Additionally, the court notes that, based on its review of the case docket, it appears Nanyah is
24 several months behind in its monthly operating reports, the most recent having been filed for July
25 2021.

26 ²⁸ *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [citing cases].

27 ²⁹ *Id.* (quoting *In re Arnold*, 806 F.2d 937, 939 (9th Cir.1986)).

28 ³⁰ *In re Marshall*, 721 F.3d 1032, 1048 (9th Cir. 2013) (quoting *Phoenix Piccadilly, Ltd. v. Life*
29 *Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.)*, 849 F.2d 1393, 1394 (11th Cir.1988)).

30 ³¹ *Marsch*, 36 F.3d at 828.

31 ³² *In re Mense*, 509 B.R. 269, 284 n.35 (Bankr. C.D. Cal. 2014) (quoting *Matter of Bock*, 58 B.R.
32 374, 378–79 (Bankr.M.D.Fla.1986)).

33 ³³ *In re Hanna*, 2018 WL 1770960, at *5 (B.A.P. 9th Cir. Apr. 13, 2018).

directive that courts look at the totality of circumstances in determining bad faith.”³⁴ Instead, the Ninth Circuit has observed that “[s]everal bankruptcy courts have held that a debtor may use a Chapter 11 petition to avoid posting an appeal bond if satisfaction of the judgment would severely disrupt the debtor’s business.”³⁵

However, the Ninth Circuit has also recognized that a petition filed to avoid posting an appeal bond is improper if the judgment against the debtor can be paid with nonbusiness assets.³⁶ At least one court in the Ninth Circuit has reviewed the following factors “[w]hen a debtor files chapter 11 to dodge the requirement for an appeal bond”:

- (1) Whether the debtor is a viable business which would suffer severe disruption if enforcement of the judgment was not stayed; and the chapter 11 petition was filed to preserve its status as an ongoing concern and to protect its employees and creditors;
- (2) Whether the debtor had financial problems on the petition date, other than the adverse judgment;
- (3) Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment;
- (4) Whether the debtor has sufficient assets to post a bond to stay the judgment pending appeal;
- (5) Whether the debtor acted in good faith to exhaust all efforts to obtain a bond to stay the judgment pending appeal;
- (6) Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the litigation; and
- (7) Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and prosecution of the appeal.³⁷

³⁴ *In re Bowers Inv. Co., LLC*, 553 B.R. 762, 770 (Bankr. D. Alaska 2016).

³⁵ *Marsch*, 36 F.3d at 828; *see also Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (B.A.P. 9th Cir. Apr. 3, 2017); *Rocco v. King (In re King)*, 2008 WL 8444814 (B.A.P. 9th Cir. Mar. 12, 2008); *In re Zaruba*, 2007 WL 4589746 (Bankr. D. Alaska Dec. 28, 2007).

³⁶ *Marsch*, 36 F.3d at 828-29 [citing cases].

³⁷ *Mense*, 509 B.R. at 279–81 [citations omitted].

1 In this case, the court need not examine these factors in detail. “At its core,
 2 reorganization through Chapter 11 is intended by Congress to permit a debtor to pay its creditors,
 3 retain its employees, and preserve the equity of its investors.”³⁸ Nanyah has no employees. It
 4 has no day-to-day operations and no income. By its sole member’s own admission, Nanyah is
 5 simply an investment vehicle.³⁹ The only other non-insider creditor is the IRS for an estimated
 6 \$7,000 in taxes. Nanyah’s only asset is the appeal of the Movants’ judgment and it has no
 7 money of its own to fund either the appeal or this bankruptcy.

8 This is simply a dispute between two groups of parties stuck in litigation. Nanyah wants
 9 to continue the litigation despite entry of an adverse judgment. Again, the mere fact that this is
 10 really a two-party dispute does not condemn the filing as bad faith.⁴⁰ “Courts that find bad faith
 11 based on two-party disputes do so where ‘it is an apparent two-party dispute that can be resolved
 12 outside of the Bankruptcy Court’s jurisdiction.’”⁴¹

13 The court is aware of the decision in *In re Sullivan*, in which the BAP reversed dismissal
 14 of an individual’s bankruptcy as a bad faith filing early in the case. The bankruptcy court
 15 concluded in *Sullivan* that there was no possibility of a confirmable plan based on the judgment
 16 creditor’s statement that it would never vote for confirmation. The BAP held that the limited
 17 record before the bankruptcy court at that stage did not support a finding of bad faith despite the
 18 judgment creditor’s argument that it was a two-party dispute.⁴² In sharp contrast to Nanyah, Mr.
 19 Sullivan had considerable assets, had been using exempt assets to fund a litigation that was
 20 continuing, and had an annual salary of \$200,000. The BAP recognized the debtor’s valid
 21 bankruptcy interest in protecting his assets and providing for an orderly liquidation.⁴³ Moreover,
 22 the debtor stated an intent to file a plan within the exclusivity period but was met with the motion
 23 to dismiss before he could file his plan. The BAP was not persuaded by the creditor’s
 24

25 ³⁸ *In re Mohave Agrarian Grp., LLC*, 588 B.R. 903, 915 (Bankr. D. Nev. 2018) (citing *United*
 26 *States v. Whiting Pools, Inc. (In re Whiting Pools, Inc.)*, 462 U.S. 198, 203 (1983)).

27 ³⁹ ECF No. 35, Exhibit 2, p. 46, Transcript p. 8:22-23.

28 ⁴⁰ *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 616 (B.A.P. 9th Cir. 2014).

⁴¹ *Id.* (quoting *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102 at *10 (9th Cir. BAP Aug. 26, 2011)).

⁴² *Id.* at 615.

⁴³ *Id.* at 616.

1 declaration that it would never support a plan, particularly when faced with the possibility of
2 conversion to chapter 7.⁴⁴ Finally, the BAP also noted that Mr. Sullivan had a number of other
3 creditors, including family members, whose debts were not challenged at that time, negating the
4 argument that there was only a two-party dispute.⁴⁵

5 In this instance, there is no business to reorganize, no other assets to protect or
6 administer, and nothing shall take place in this bankruptcy apart from the appeal. Unlike the
7 situation in *Sullivan* where the record suggested the possibility of some reorganization based on
8 the debtor's assets and income, Nanyah has nothing of its own with which to effectuate a
9 resolution in bankruptcy. If Nanyah wins the appeal, the judgment creditors disappear and there
10 is no reason to proceed in chapter 11 given the limited (and estimated) amount owed to the IRS.
11 If the appeal is unsuccessful, the likely outcome is dismissal or conversion, not confirmation of a
12 plan as there will be no asset and there is no income or ongoing business. In short, Nanyah is not
13 using the bankruptcy to reorganize, only to stay collection.

14 Preserving an asset such as Nanyah's litigation claims by filing bankruptcy is not per se
15 bad faith. But it must be part of an actual attempt to reorganize (or liquidate). In this instance,
16 the bankruptcy filing is merely a litigation tactic. The sole reason for filing this case was to
17 continue Nanyah's appeal at the expense of its judgment creditors without posting a bond.
18 Nanyah's lack of funds or assets would ordinarily weigh heavily in favor of a good faith filing to
19 permit it to proceed with its appeal. But the total absence of any business or other assets only
20 confirms that this is simply a discrete litigation dispute rather than a reorganization. Nanyah
21 continues its existence solely on Mr. Harlap's discretion. He is willing to fund Nanyah's appeal
22 and chapter 11 fees. This is some evidence of the availability of nonbusiness assets to post a
23 bond pending the appeal. This is what should be done to continue the appeal, not invoke the
24 automatic stay by filing a chapter 11 bankruptcy.
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⁴⁴ *Id.* at 617-18.

⁴⁵ *Id.*

1 The court concludes that Nanyah did not file this bankruptcy to “effect a speedy, efficient
2 reorganization,” but rather to unreasonably deter its judgment creditors.⁴⁶ Accordingly, the court
3 finds that the bankruptcy was filed in bad faith and that cause exists under § 1112(b). The court
4 has considered whether conversion or dismissal is in the best interests as required under
5 § 1112(b). As the matter is truly a two-party dispute, there is no benefit to conversion to chapter
6 7. The court will, therefore, dismiss the case. An order granting the Motion and dismissing this
7 case will be entered separately.

8 * * * *

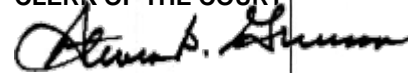
9 **Copies sent to all registered parties via CM/ECF ELECTRONIC NOTICE.**

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26 ⁴⁶ Courts have held that dismissal for bad faith is appropriate where the bankruptcy case was
27 filed solely as a litigation tactic. *See Prometheus Health Imaging, Inc. v. United States Trustee*
28 *(In re Prometheus Health Imaging, Inc.)*, 705 Fed.Appx. 626 (9th Cir. 2017); *Greenberg v.*
United States Trustee (In re Greenberg), 2017 WL 3816042 (B.A.P. 9th Cir. Aug. 31, 2017); *St.*
Paul Self Storage Ltd. Partnership v. The Port Authority of the City of St. Paul (In re St. Paul
Self Storage Ltd. Partnership), 185 B.R. 580, 582–83 (B.A.P. 9th Cir. 1995); *In re Silberkraus*,
253 B.R. 890, 902–03 (Bankr. C.D. Cal. 2000).

Exhibit 3

Exhibit 3



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*Attorneys for Defendants
Peter Eliades, Individually and as Trustee
of 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

**CERTIFICATE OF SALE OF
PERSONAL PROPERTY**

CONSOLIDATED WITH:

Case No. A-16-746239-C

1 Name of Judgment Creditors: PETER ELIADES, individually and as Trustee of the Eliades
2 Survivor Trust of 10/30/08, TELD, LLC, and ELDORADO
3 HILLS, LLC

4 Name of Judgment Debtor: NANYAH VEGAS, LLC

5 **CERTIFICATE OF SALE OF PERSONAL PROPERTY**

6 Under, and by virtue of a January 5, 2022 writ of execution issued on a judgment entered out
7 of the above-entitled Court on May 4, 2020, in favor of Peter Eliades, individually and as Trustee of
8 the Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC, as Judgment Creditors
9 and against Nanyah Vegas, LLC as Judgment Debtor, the undersigned was commanded to satisfy
10 such judgment, together with interest and costs, out of the personal property belonging to Judgment
11 Debtor, all of which more fully appears from such writ of execution.

12 I, the undersigned Deputy Sheriff of Clark County, State of Nevada, do hereby certify that I
13 have levied on, and on April 13, 2022, at 9:00 a.m., caused to be sold at public auction according to
14 the statutes of the State of Nevada, and after due and legal notice, all the rights, title and interest of
15 Judgment Debtor in and to the following:

16 all rights of action, things in action, choses in action, causes of action, claims for relief,
17 and/or appellate claims and interests belonging to NANYAH VEGAS, LLC in the
18 action styled *Carlos A. Huerta, et al. v. Sig Rogich, et. al.*, Case No. A-13-686303-C,
19 currently pending in the Eighth Judicial District Court, Clark County, Nevada, and
20 currently pending in the Nevada Supreme Court as Case No. 79917.

21 all rights of action, things in action, choses in action, causes of action, claims for relief,
22 and/or appellate claims and interests belonging to NANYAH VEGAS, LLC in the
23 action styled *Nanyah Vegas, LLC v. Teld, LLC, et. al.*, Case No. A-16-746239-C,
24 currently pending in the Eighth Judicial District Court, Clark County, Nevada, and
25 currently pending in the Nevada Supreme Court as Case No. 79917.

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1 That these interests of Judgment Debtor were purchased for the sum of one thousand dollars
2 and zero cents (\$1,000.00), by Mark H. Goldstein, Esq., as agent for Bailey Kennedy LLP on behalf
3 of Judgment Creditors, which were the highest bidder.

4
5 DATED this 13th day of April, 2022.

6
7 SHERIFF OF THE COUNTY OF CLARK,
8 STATE OF NEVADA

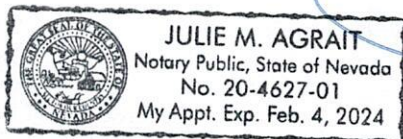
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10 By: [Signature]
Deputy Sheriff

11 J. Lombardo
12 Sr. Deputy Sheriff
13 Sheriff Civil Bureau

14 ACKNOWLEDGEMENT

15 STATE OF NEVADA)
16) ss:
17 COUNTY OF CLARK)

18 On this 20th day of April, 2022, JOSEPH LOMBARDO personally
19 appeared before me, a Notary Public in and for said County and State, known to me to be the person
20 described herein and who executed the foregoing Certificate of Sale and who acknowledged to me
21 that the same was executed freely and voluntarily and for the uses and purposes therein mentioned.



[Signature]
Notary Public in and for
said County and State