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7 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
8

9 NANYAH VEGAS, LLC, A Nevada limited
liability company,

10
11 Appellant,

12 v.

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

18
19 Respondents.
20

21 ELDORADO HILLS, LLC, a Nevada limited
liability company,

22
23 Cross-Appellant,

24 v.

25 NANYAH VEGAS, LLC, a Nevada limited
liability company,

26 Cross-Respondent.

Supreme Court No.: 79917
(District Court Case No.
A686303)

**APPELLANT NANYAH
VEGAS, LLC'S RESPONSE
TO APRIL 7, 2021 ORDER
TO SHOW CAUSE**

1 SIG ROGICH, A/K/A SIGMUND ROGICH,
2 individually and as Trustee of the Rogich Family
3 Irrevocable Trust; and Imitations, LLC, a Nevada
4 limited liability company,

5 Cross-Appellants,

6 v.

7 NANYAH VEGAS, LLC, a Nevada limited
8 liability company,

9 Cross-Respondent,

10 Nanyah Vegas, LLC (“Nanyah”), by and through its counsel Mark G.
11 Simons of the firm SIMONS HALL JOHNSTON PC, hereby responds to this
12 Court’s Order to Show Cause dated April 7, 2021 (the “Order”).
13

14 **I. THE AUTOMATIC STAY IS NOT APPLICABLE HERE.**
15

16 In a recent unpublished opinion, this Court recognized that in the context of
17 11 U.S.C. §362, “[a]n appeal, for purposes of the automatic stay, is considered a
18 continuation of the action in the trial court. Consequently, an appeal is
19 automatically stayed if the **debtor was the defendant** in the underlying trial
20 court action.” *Sweitzer v. Teacher's Health Tr.*, No. 78739, 2020 WL 1623998,
21 *1 (Nev. Apr. 1, 2020).
22

23 “The primary purposes of § 362 do not apply, however, to offensive
24 actions by a debtor or bankruptcy trustee, as the same policy considerations do
25 not exist where the debtor has initiated a prepetition lawsuit against a creditor.”
26

1 *In re Way*, 229 B.R. 11, 13 (B.A.P. 9th Cir. 1998) (citing *In re White*, 186 B.R.
2 700, 704 (9th Cir. BAP 1995)).

3
4 A federal court has explained the justification for this distinction:

5 The automatic stay is a means of preserving the status quo
6 for the trustee or the debtor. However, this primary objective is
7 inapplicable to the trustee's offensive action, which need not be
8 attended by a stay. This distinction is the basis for language in
9 the various subsections of § 362(a), where the statute uses the
10 language “against the debtor,” § 362(a)(1); “against property of
the estate,” § 362(a)(2); or “to exercise control over property of
the estate,” § 362(a)(3).

11 *In re Merrick*, 175 B.R. 333, 336 (B.A.P. 9th Cir. 1994). *See also McDonough*
12 *Assocs., Inc. v. Grunloh*, 722 F.3d 1043, 1048 (7th Cir. 2013) (observing “[t]he
13 automatic stay under 11 U.S.C. § 362(a)(1) for judicial proceedings against the
14 debtor does not apply to suits brought by the debtor . . . Whether a suit is “against
15 the debtor” depends on the party's status at the time the initial action was filed.”).
16 “Thus, whether a case is subject to the automatic stay must be determined at its
17 inception.” *Ingersoll-Rand Fin. Corp. v. Miller Min. Co.*, 817 F.2d 1424, 1426
18 (9th Cir. 1987) (citations omitted).

19
20
21 In this case, Nanyah filed Complaint on November 4, 2016. *See App. at*
22 *JA_000777–95*. The Complaint makes it abundantly clear that Nanyah is the
23 Plaintiff in the trial court action. This presents a unique circumstance, unlike
24 cases where the debtor or trustee is a defendant, in this case the debtor is a
25 Plaintiff. As such, the automatic stay provision of 11 U.S.C. §362(a) does not
26

1 apply. *Cf. World Buddhism Ass'n Headquarters v. Las Vegas Monorail Co.*, No.
2 80858, 2020 WL 6042316, *1 (Nev. Oct. 9, 2020) (dismissing appeal where
3 debtor was a defendant below); *Oxner v. Utts*, No. 76694, 2018 WL 6721368, *1
4 (Nev. Dec. 18, 2018) (holding the same). There are no claims asserted against
5 Nanyah in the underlying litigation such that Nanyah could even potentially be
6 seen as a defendant in the case below.
7
8

9 **II. CONCLUSION.**

10 Accordingly, the automatic stay provisions contained within 11 U.S.C.
11 §362(a)(1) are inapplicable to this appeal and this appeal should continue.
12

13 Dated this 26th day of April, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **APPELLANT NANYAH VEGAS, LLC'S RESPONSE TO APRIL 7, 2021 ORDER TO SHOW CAUSE** on all parties to this action by the method(s) indicated below:

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DATED: This 26 day of April, 2021.



JODI ALHASAN