

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY CAVIC,
Appellant,

vs.

CONSOLIDATED MORTGAGE CORP.,
A NEVADA CORPORATION; TODD
PARRIOT, AN INDIVIDUAL; ALEX
HADIJSKI, AN INDIVIDUAL; ANN
AARON, AN INDIVIDUAL; AND
CAMERON STREET, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondents.

No. 43903

FILED

APR 04 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order, certified as final under NRCP 54(b), that granted respondents' NRCP 12(c) motion for a judgment on the pleadings and dismissed appellant's complaint in a dispute involving the membership transfer of a limited liability company. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why his appeal should not be dismissed for lack of jurisdiction. In particular, respondents' counterclaims remain pending below,¹ and although the district court certified its judgment as final under the former provision of NRCP 54(b) that allowed appeals from

¹See NRAP 3A(b)(1) (stating that an appeal may be taken from a final district court judgment); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (noting that a final judgment is one that disposes of all the issues in the case, except for post-judgment issues like costs and attorney fees).


partial judgments on claims, it appeared that certification may have been improper because respondents' counterclaims were so closely related to appellant's claims that this court would decide important issues pending below in order to decide the issues appealed, thereby resulting in piecemeal litigation.²

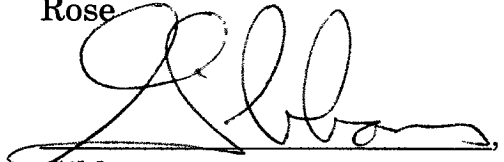
Upon review of appellant's timely response to our show cause order, we conclude that respondents' counterclaims are so interwoven with the claims brought by appellant that, in reviewing them, this court would necessarily decide important issues still pending in the district court. The district court entered an NRCP 54(b)-certified judgment on the pleadings against appellant on his alter ego, fraud, civil conspiracy, concert of action, breach of implied covenant, breach of contract, and declaratory relief claims, which arose from respondents' sale of company ownership to appellant through allegedly inaccurate representations regarding the company's sole asset. Respondents' counterclaims are based in part on actions taken by appellant in instigating the complaint and in part on the same contract and/or transaction involved in appellant's claims; they include causes of action for abuse of process, defamation, and breach of contract/breach of the implied covenant of good faith and fair dealing. Thus, as it appears that this court would necessarily decide issues pending below in considering the instant appeal, the NRCP 54(b) certification was improper and ineffective to vest jurisdiction in this court. Accordingly, we

²Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

dismiss this appeal; any aggrieved party may appeal from the district court's final judgment in this matter.³

It is so ORDERED.⁴


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Kathy A. Hardcastle, District Judge
William F. Buchanan, Settlement Judge
Stephens, Gourley & Bywater
Beckley Singleton, Chtd./Las Vegas
Morse & Mowbray
Clark County Clerk

³The automatic stay emanating from appellant's bankruptcy proceedings does not preclude this court from dismissing this appeal for lack of jurisdiction. See Royal Dynasty, Inc. v. Chin, 638 N.E.2d 921 (Mass. App. Ct. 1994).

⁴We deny as moot respondents' March 14, 2005 motion to extend the time in which to file a response.