

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE VENETIAN LIEN LITIGATION

No. 43904

LEHRER MCGOVERN BOVIS, INC.  
AND TRAVELERS' CASUALTY &  
SURETY COMPANY,

Appellants,

vs.

SCOTT COMPANY OF CALIFORNIA,  
Respondent.

**FILED**

AUG 16 2005

JANE F. HULLON  
CLERK OF THE SUPREME COURT  
BY *J. Richards*  
CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order, certified as final under former NRCP 54(b), determining that respondent did not waive its lien rights. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed that the district court's order might not be subject to certification and was not otherwise appealable under NRAP 3A(b), we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, we noted that certification under former NRCP 54(b) is not available unless the order or judgment resolves at least one claim for relief in a multiple claim action or

resolves the rights and liabilities of at least one party<sup>1</sup> and that, here, the challenged district court order seemed to resolve only one component of a claim for relief. Consequently, NRCP 54(b) certification appeared to have been erroneously granted.<sup>2</sup>

Appellants timely filed a response to the show cause order, apparently conceding that the NRCP 54(b) certification was improper. Nevertheless, appellants urge this court to construe the district court's order as effectively denying injunctive relief, and therefore appealable under NRAP 3A(b)(2). In the alternative, appellants request us to "hold this appeal in abeyance" pending the district court's ruling on an anticipated motion expressly requesting injunctive relief.

We decline appellants' requests. NRAP 3A(b)(2) authorizes appeals from orders refusing to grant an injunction. In this case, appellants assert that when they asked the district court to make the "legal conclusion" that respondent waived certain lien rights and therefore can, without appellants' consent, "pursue in this pending mechanics lien action only the Reserved claims," they effectively requested the court to enjoin respondent from pursuing litigation as to the waived claims. But as pointed out by the Ninth Circuit Court of Appeals, injunctions are (1) directed to a particular party, (2) enforceable by contempt, and (3)

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<sup>1</sup>Former NRCP 54(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

<sup>2</sup>See Liberty Mutual Ins. Co. v. Wetzel, 424 U.S. 737, 742-44 (1976) (concluding that a decision establishing liability on a claim for relief but leaving damages for later resolution is not certifiable under FRCP 54(b)); accord Mid-Century Ins. Co. v. Cherubini, 95 Nev. 293, 593 P.2d 1068 (1979).

designed to accord or protect substantive relief.<sup>3</sup> In this case, the district court's order does not suggest that the above characteristics were at play in its resolution of this issue. Moreover, it does not appear that the "legal conclusion" requested by appellants could have resulted in an order having those characteristics; in particular, any such "legal conclusion" would be neither "directed" at respondent nor directly enforceable by contempt. Consequently, appellants did not effectively request injunctive relief.<sup>4</sup>

Further, when the district court is asked to grant injunctive relief in an interlocutory motion, it considers certain factors specifically designed to determine the appropriateness of such relief.<sup>5</sup> As the district court was not asked to issue an injunction here, those factors were not considered. As a result, the challenged order did not deny a request for injunctive relief and is not appealable as an order refusing to grant an injunction. Nor will this court "hold this appeal in abeyance" pending a possible future order resolving an anticipated motion for injunctive relief

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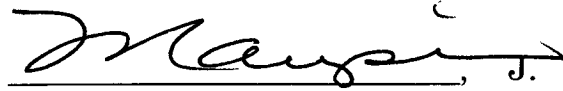
<sup>3</sup>Orange Co. v. Hongkong & Shanghai Banking Corp., 52 F.3d 821, 825-26 (9th Cir. 1995); see also NRCP 65 (delineating the requirements that must be met before injunctions are issued).

<sup>4</sup>Although appellants also requested, in their statement of defenses, an injunction prohibiting respondent from pursuing certain claims, apparently based on the terms of a liquidating agreement, it is not clear at this point that the challenged order effectively denies this request. The district court's August 26, 2003 order bifurcating trial appears to reserve certain arguments based on the liquidating agreement for the second phase of trial.

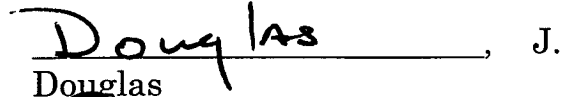
<sup>5</sup>See, e.g., Clark Co. School Dist. v. Buchanan, 112 Nev. 1146, 924 P.2d 716 (1996).

based on the same underlying issues resolved in the challenged order.<sup>6</sup>  
Accordingly, as we lack jurisdiction, we

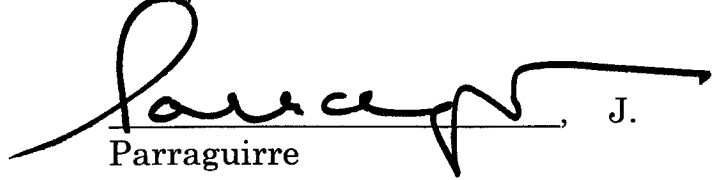
ORDER this appeal DISMISSED.<sup>7</sup>



Maupin



Douglas



Parraguirre

cc: Hon. Mark R. Denton, District Judge  
Griffin Cochrane & Marshall  
Harrison Kemp & Jones, LLP  
Beckley Singleton, Chtd./Las Vegas  
Dann & Meachum  
Peel Brimley LLP  
Clark County Clerk

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<sup>6</sup>See Booher v. Northern Kentucky University, 163 F.3d 395, 397 (6th Cir. 1999) (noting that, under federal law, the dismissal of an appeal from an order having the practical effect of granting or denying an injunction is especially appropriate where claims remain pending and the challenged issues can be fully raised on appeal from a final judgment). We make no comment on respondent's concerns regarding the propriety of any proposed motion for injunctive relief on behalf of the lien debtors.

<sup>7</sup>In light of this order, appellants' request to amend the docketing statement is denied as moot.