

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR J. PORRECA,
Appellant,
vs.
THOMAS "TOM" PITCH, AN
INDIVIDUAL; AND SANDRA PITCH,
AN INDIVIDUAL,
Respondents.

No. 44394

FILED

MAR 29 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order that granted respondents partial summary judgment in a real estate case. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

When our preliminary review of this matter uncovered a potential jurisdictional defect, we ordered appellant, on December 16, 2004, to show cause why this appeal should not be dismissed. We were concerned that the district court's summary judgment order left respondents' claim for breach of the good-faith-and-fair-dealing covenant unresolved. We noted two points. First, a summary judgment is not appealable unless it resolves all issues in the case, except for post-judgment issues like costs and attorney fees.¹ Second, although the district court's summary judgment order purported to be a "final

¹NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

appealable order,” that designation did not satisfy NRCP 54(b).² We also commented that the summary judgment order did not appear amenable to NRCP 54(b) certification.³

In response to our show cause order, appellant contends that this court’s jurisdiction was perfected on January 13, 2005, when the district court entered an order certifying the partial summary judgment as final under NRCP 54(b) and declaring that “there are no further issues to be resolved by trial.” The January 13 order has not, however, perfected this court’s jurisdiction. NRCP 54(b) no longer supplies finality to an order that fails to resolve all claims, unless a party has been completely removed from the case.⁴ Here, respondents’ claim for breach of the good-faith-and-fair-dealing covenant remains pending below against appellant. No party has been completely removed from the case below so as to implicate NRCP 54(b). And although the district court declared that “there are no further issues to be resolved by trial,” no order has been entered either dismissing respondent’s claim for breach of the good-faith-and-fair-dealing covenant or awarding respondents damages for the alleged breach. It further appears that respondents’ breach of contract claim may present a pending damages issue.

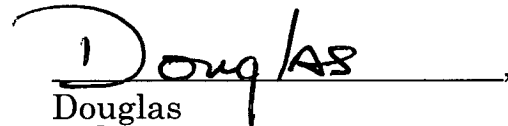
²Aldabe v. Evans, 83 Nev. 135, 425 P.2d 598 (1967) (stating that an order that lacks an express determination that there is no just reason for delay is not interlocutorily appealable under NRCP 54(b)).

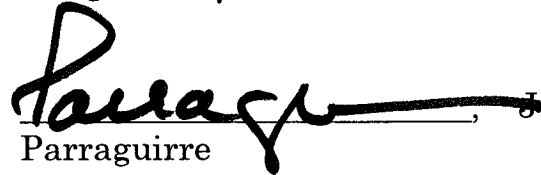
³See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

⁴NRCP 54(b) Drafter’s Note (2004).

Consequently, as this court lacks jurisdiction over this appeal,
we
ORDER this appeal DISMISSED.⁵

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge
Rawlings Olson Cannon Gormley & Desruisseaux
Rosenfeld & Hansen LLP
Clark County Clerk

⁵Nothing in this order prevents appellant from timely filing a new notice of appeal when the district court enters a final appealable order in this matter.