

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK A. FERGUSON,
Appellant,

vs.

WESLEY ADAMS, JAMES LUDWIG,
A/K/A JAMES LEWIS, AND WESTERN
STATES MANAGEMENT SERVICES,
LTD.,

Respondents.

No. 34004

JACK FERGUSON, AND PETER B.,
INC., A NEVADA CORPORATION,
Appellants,

vs.

MARY ANN FERGUSON, JAMES
GINELLA, THELMA A. FERGUSON,
JACK ANTHONY FERGUSON,
WESLEY ADAMS, JAMES LUDWIG,
A/K/A JAMES LEWIS, WESTERN
STATES MANAGEMENT SERVICES,
LTD., AND PROMAX, INC.,

Respondents.

No. 36386

FILED

OCT 09 2002

JANET FLEMING BLOOM
CLERK OF SUPREME COURT
BY *J. Ribaud*
DEPUTY CLERK

ORDER DISMISSING APPEAL IN DOCKET NO. 34004
AND DENYING MOTION TO CONSOLIDATE

Docket No. 34004 is an appeal from an NRCP 54(b) certified judgment dismissing appellant's claims against respondents in a real property case. When our preliminary review of the documents submitted to this court revealed a potential jurisdictional defect, we ordered appellant to show cause why the appeal should not be dismissed. Specifically, we noted that appellate jurisdiction was unclear because the last-filed versions of the complaint and all counterclaims were not attached to the docketing statement. Further, the docketing statement indicated that respondents' counterclaim for abuse of process remained pending along with appellant's claims against five other defendants.

NRCF 54(b) provides that when more than one claim for relief is presented in an action or when multiple parties are involved, the district court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties. An order is not amenable to certification, however, unless it either resolves a claim for relief in its entirety or completely removes a party from the action below.¹ Here, respondents remained in the action below on their abuse of process counterclaim, and not one of appellant's claims has been completely removed by the district court's certified judgment of dismissal.


Appellant argues that even if certification was improper, this court has jurisdiction because, after the case concluded by jury trial as to the remaining defendants, appellant filed another notice of appeal (Docket No. 36386), challenging the certified judgment of dismissal and the judgment on the jury verdict. But this court's jurisdiction in one appeal cannot be construed as a source of jurisdiction in a separately docketed appeal. In any event, the issue is mostly academic because the propriety of the judgment of dismissal will be reviewable on appeal from the

¹See Beets v. State, 110 Nev. 339, 342, 871 P.2d 357, 358 (1994); see also Steve's Homemade Ice Cream, Inc. v. Stewart, 907 F.2d 364, 366 (2d Cir. 1990) (holding that the dismissal of a claim against one of two defendants does not resolve the claim for purposes of FRCP 54(b)); 10 Fern M. Smith, Moore's Federal Practice § 54.22[2][c], at 54-60 (3d ed. 2002) ("A Rule 54(b) judgment as to one of multiple parties must dispose of the entire interest of that party. If claims by or against that party remain pending in the district court, the Rule 54(b) judgment would generally be improper.").

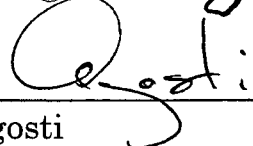
judgment on the jury verdict in Docket No. 36386² – assuming, of course, that this court has jurisdiction over that appeal.³

We conclude that the judgment of dismissal was not amenable to NRCP 54(b) certification, and therefore, this court lacks jurisdiction over the appeal in Docket No. 34004. Accordingly, we

ORDER the appeal in Docket No. 34004 DISMISSED and DENY as moot the motion to consolidate.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Peter I. Breen, District Judge
Noel E. Manoukian, Settlement Judge
Robert E. Dickey Jr.
Mirch & Mirch
Simon & Berman
Newsom, Giffen & Marne
Prezant & Mollath
Robison Belaustegui Sharp & Low
Washoe District Court Clerk

²See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (stating that non-appealable interlocutory orders may be reviewed on appeal from a final judgment).

³Whether the appeal in Docket No. 36386 is jurisdictionally sound is not presently before us.