

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRWIN MARCUSE AND EDITH
MARCUSE, INDIVIDUALS,
Appellants,
vs.
DEL WEBB COMMUNITIES, INC., AN
ARIZONA CORPORATION,
Respondent.

No. 44508

FILED

DEC 12 2005

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

IRWIN MARCUSE AND EDITH
MARCUSE,
Appellants,
vs.
DEL WEBB COMMUNITIES, INC., AN
ARIZONA CORPORATION,
Respondent.

No. 44753

IRWIN MARCUSE AND EDITH
MARCUSE,
Appellants,
vs.
DEL WEBB COMMUNITIES, INC., AN
ARIZONA CORPORATION,
Respondent.

No. 45875

ORDER CONSOLIDATING APPEALS AND
SETTING BRIEFING SCHEDULE (DOCKET NOS. 44508 & 44753),
AND DISMISSING APPEAL (DOCKET NO. 45875)

These are appeals from district court orders, 1) granting a motion to dismiss appellants' complaint with prejudice (Docket No. 44508); 2) approving a stipulation for dismissal with prejudice of a class action lawsuit in a construction defect case (Docket No. 44753); and 3) denying a motion for NRCP 60(b) relief (Docket No. 45875).

On June 15, 2005, appellants and respondent filed a stipulation to consolidate the appeals and establish a new briefing schedule in Docket Nos. 44508 and 44753, because both cases arise out of

the same alleged construction defects to a residential house owned by appellants and involve related and overlapping issues. We agree that consolidation would be in the interests of sound judicial administration. Accordingly, we consolidate Docket No. 44508 with Docket No. 44753.¹

In Docket No. 44753, we previously issued a show cause order because we were unable to discern whether a final judgment had been entered in the underlying action. Appellants have responded, conceding that there was no final judgment until October 11, 2005, when the last of the claims and parties were dismissed in the action.² Consequently, because the NRCP 60(b) order being appealed in Docket No. 45875 was entered before the final judgment was filed, it is merely an interlocutory order, which may be challenged in the context of the appeal from the final judgment in Docket No. 44763.³ Accordingly, we dismiss the appeal in Docket No. 45875.

Our show cause order in Docket No. 44753 also questioned whether appellants are aggrieved parties with standing to bring the appeal because they were not named as parties in the class-action lawsuit

¹NRAP 3(b).

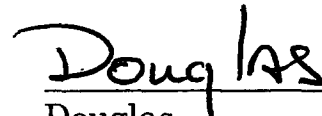
²Appellants also filed a supplement to their notice of appeal, to appeal from the district court's orders of September 30 and October 11, 2005, which respectively dismissed a fourth-party complaint against Familian Pipe & Supply, and a third-party complaint against Cox & Sons (including a counterclaim). Accordingly, we conclude that the appeal in Docket No. 44753 was timely filed from a final judgment. See NRAP 4(a)(6).

³See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998); but see Barry v. Lindner, 119 Nev. 661, 669, 81 P.3d 537, 542 (2003) (stating that "NRCP 60(b) only applies to final judgments").

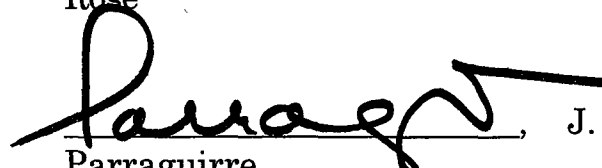
brought in the underlying case.⁴ It appears from appellants' response and respondent's reply that this issue may be intertwined with the merits of the appeal, so we defer ruling on this issue until the conclusion of briefing, and we direct the parties to address this jurisdictional issue in their appellate briefs.⁵

Accordingly, appellants shall have one hundred days from the date of this order to file and serve the opening brief and appendix in the consolidated appeal. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Beckett & Yott, Ltd./Las Vegas
Lemons Grundy & Eisenberg
Nik V. Walters
Doyle Berman Gallenstein, P.C.
Clark County Clerk

⁴NRAP 3A(a).

⁵In light of this order, we deny as moot respondent's request to strike portions of appellants' response to our show cause order in Docket No. 44753.