IN THE SUPREME COURT OF THE STATE OF NEVADA

RAZIA ISANI AND GUNAY SARIHAN, Appellants, vs. METRO DEVELOPMENT, INC., A NEVADA CORPORATION; METRO MARKETING & SALES, INC., A NEVADA CORPORATION; AND ROBERT P. BERTGES, AN INDIVIDUAL, Respondents.	No. 48282
RAZIA ISANI AND GUNAY SARIHAN, Appellants, vs. LAND TITLE OF NEVADA, INC., A NEVADA CORPORATION; AND DEBRA NOVOTNY, AN INDIVIDUAL, Respondents.	No. 48791
RAZIA ISANI AND GUNAY SARIHAN, Appellants, vs. DAN ZARLING AND ZARLING REALTY, INC., A NEVADA CORPORATION, Respondents.	No. 49385

FILED

APR 10 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEALS

These are consolidated appeals from district court partial summary judgments, certified as final under NRCP 54(b), in a real property contract action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellants are the defendants in the proceedings below. When answering the plaintiffs' district court complaint, appellants filed a third-party complaint against respondents. The district court ultimately

08-08899

granted summary judgments to the respondents; because the plaintiffs' claims against appellants remained pending, the district court certified respondents' summary judgments as final under NRCP 54(b). These appeals followed.

When our review of the docketing statements and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect, we directed appellants to show cause why these appeals should not be dismissed. In particular, we noted that the district court's NRCP 54(b) certifications of the challenged orders appeared improper, since in resolving the appeals, we would necessarily decide important issues that remained pending below in the plaintiffs' action against appellants.[1] Appellants timely responded to our order to show cause, and respondents Metro Development, Inc., Metro Marketing & Sales, Inc., and Robert P. Berteges filed a reply in support of appellants' response.

This court generally adheres to the proposition that no right to appeal exists unless authorized by statute or court rule.[2] NRAP 3A(b)(1) authorizes an appeal from a district court's final written judgment

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[1]Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990) (noting that, even when a district court order completely removes a party from the action, the order may not be amenable to NRCP 54(b) certification if the issues that it resolves are so interwoven with the issues pending below that in resolving an appeal from the order, this court would necessarily resolve the issues pending in the district court (citing Hallicrafters Co. v. Moore, 102 Nev. 526, 528, 728 P.2d 441, 442-43 (1986))).

[2]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

adjudicating all the rights and liabilities of all the parties.[3] In addition, an appeal may be taken from a written judgment that completely removes a party from the action, if the court finds that there is no just reason for delay and properly certifies the order as final under NRCP 54(b).[4]

With respect to determining whether there is any reason for delay under NRCP 54(b), we noted in Mallin v. Farmers Insurance Exchange that the district court should consider whether the prejudice resulting to the appellants and eliminated parties from being forced to wait to appeal is greater than any prejudice to the parties remaining below.[5] In deciding whether the parties remaining below would suffer prejudice, it must be considered whether, in resolving the appeal, this court would be setting the law of the case for any issues pending below.[6] That is, when our resolution of issues raised on appeal from an NRCP 54(b) certified order would necessarily resolve issues pending in the district court, so that the parties remaining below have no opportunity to fully litigate those issues, the prejudice to the parties below may outweigh any delay to the appellants and eliminated parties.[7]

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[3]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

[4]See Mallin, 106 Nev. at 610, 797 P.2d at 981.

[5]Id. at 611, 797 P.2d at 981.

[6]See id.; Hallicrafters Co. v. Moore, 102 Nev. 526, 528, 728 P.2d 441, 442-43 (1986).

[7]See Mallin, 106 Nev. at 611, 797 P.2d at 981.

Here, according to appellants, the prejudice to them and respondents from being forced to wait for a final judgment before bringing an appeal outweighs any affect that this court's resolution of this appeal will have on the case below and outweighs the prejudice to the parties remaining in the district court. That conclusory argument is unpersuasive.

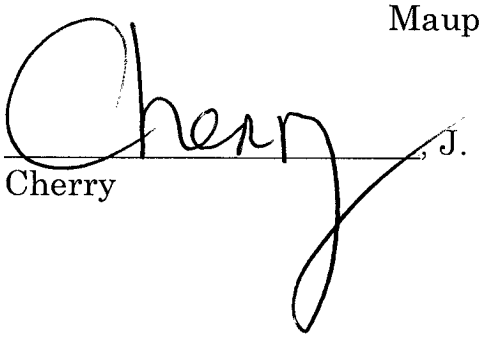
Based on the documents currently before us, it appears that we must necessarily decide important issues pending below to decide the issues appealed. Specifically, the district court's summary judgments include findings of fact and conclusions of law directly related to the plaintiffs' allegations and the pending claims raised in their complaint against appellants. Indeed, in response to our show cause order, appellants acknowledge that the district court's partial summary judgments effectively adjudicated a large portion of the plaintiffs' pending claims against them, stating that the summary judgments adjudicate the validity of the parties' real property purchase contract and appellants' breach and pointing out that a jury trial on any liability issues consequently is unnecessary. Therefore, our disposition of these appeals could, as appellants' acknowledgments indicate, in essence finally resolve, not merely "affect," the liability determinations in the case pending below, without the plaintiffs having an opportunity to fully litigate those issues.

Because our consideration of these appeals could finally resolve a portion of the plaintiffs' claims without any opportunity for them to be heard, the prejudice to them from certifying the summary judgments as final must outweigh any prejudice to appellants or respondents from

having to wait to appeal.[8] Accordingly, we conclude that the district court inappropriately determined that no just reason for delay existed and improperly certified as final its summary judgments. Accordingly, as no final order has been entered, we lack jurisdiction, and we

ORDER these appeals DISMISSED.

_____, J.
Maupin



_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Jackie Glass, District Judge
Eugene Osko, Settlement Judge
David K. Rosequist
Ellsworth Moody & Bennion Chtd.
Lee A. Drizin, Chtd.
Marquis & Aurbach
Eighth District Court Clerk

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[8]If, as appellants assert, the district court's summary judgments to respondents effectively adjudicated the plaintiffs' claims against appellants, it appears that little time will be needed to litigate the damages owed. Thus, it appears that appellants will be able to appeal without undue delay. See id.