

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASDI, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY; SCOTT DOCKTER, AN INDIVIDUAL; FIRSTGOLD CORP., A DELAWARE CORPORATION F/K/A NEWGOLD, INC.; AND CRESCENT RED CAPS, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Appellants,

vs.

THOMAS L. BELAUSTEGUI, AS TRUSTEE OF THE LEON BELAUSTEGUI TRUST; VELMA BELAUSTEGUI; SAM BIDA; GILES ALTENBURG; AND GAIL A. TROUNDAY,

Respondents.

No. 49615

FILED

FEB 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from the district court's "Order Denying Defendants' motion for Partial Summary Judgment and Granting Plaintiffs' Motion for Preliminary Injunction." Sixth Judicial District Court, Lander County; Richard Wagner, Judge.

Appellants have filed a motion to associate California attorneys Matthew R. G. Jacobs and Alexander Miles Medina of the law firm of DLA Piper US LLP, in this matter pursuant to SCR 42. Attached to the motion to associate are verified applications, certificates of good standing from the State Bar of California and a Supreme Court Rule 42 statement. See SCR 42(5).

Cause appearing, we grant the motion. Mr. Jacobs and Mr. Medina shall be permitted to appear on behalf of appellants in this appeal.

Accordingly, the clerk shall add Mr. Jacobs and Mr. Medina to the docket of this appeal.

Appellants have also filed a “Notice of Withdrawal of Appeal.” We elect to treat that notice as a motion for voluntary dismissal of this appeal pursuant to NRAP 42(b). Respondents have filed a response to the motion. Respondents request that they be “reimbursed their fees and costs incurred” in defending against this appeal. Respondents cite to NRAP 38(a) and (b) as authority for such an award of fees and costs. Respondents aver that this appeal is at least partially jurisdictionally defective as it relates to the portion of the district court order granting partially summary judgment.¹

Appellants have filed a motion for leave to file a reply to respondents’ response to the motion for voluntary dismissal so that they may address the request for attorney fees and costs. Cause appearing, we grant that motion. Accordingly, the clerk shall file the proposed reply that was submitted with the motion.²

We note that under NRAP 38, this court may award attorney fees and costs as sanctions against an appellant if this court finds that an appeal was taken frivolously or that the appellate processes of this court have been misused. Filing an appeal from an order that may be partially unappealable, does not seem to rise to the level of filing a frivolous appeal

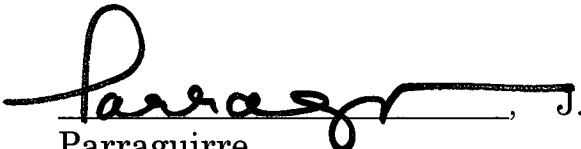
¹ We note that this court previously denied respondents’ motion to dismiss this appeal as to that portion of the district court order without prejudice to refiling such a motion upon completion of settlement proceedings if appropriate.

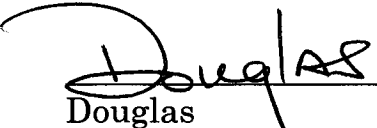
² We have considered the reply in our resolution of this matter.

or abusing the appellate process.³ Accordingly, we deny respondents' request for attorney fees and costs under NRAP 38. Finally, cause appearing, we grant appellants' motion and dismiss this appeal.

It is so ORDERED.⁴


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Richard Wagner, District Judge
William E. Nork, Settlement Judge
Wilson Barrows & Salyer, Ltd.
Robison Belaustegui Sharp & Low
Lander County Clerk

³ An order granting an injunction is appealable. See NRAP 3A(b)(2). Further, an appeal may be taken from the whole or any specific part of a judgment. See Cunningham v. Cunningham, 60 Nev. 191, 102 P.2d 94 (1940).

⁴ Counsel for respondents filed a "Suggestion of Death Upon the Record," informing this court of the death of respondent Sam Bida. In that notice, counsel states that "a motion for substitution of parties will be made, seeking to substitute Mr. Bida's personal representatives or other parties in interest as soon as practicable." As of the date of this order, no such motion has been filed. In light of the dismissal of this appeal, however, no further action will be taken on this matter.