

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRETT MATERIALS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; JAMES D. GARRETT, AN
INDIVIDUAL; AND MARK CASH, AN
INDIVIDUAL,

Appellants,

vs.

BMI CONSTRUCTION, A NEVADA
CORPORATION; STEVEN M. MILLER,
AN INDIVIDUAL; AND SANDRA
BENNETT-MILLER, AN INDIVIDUAL,

Respondents.

No. 51097

FILED

DEC 18 2008

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

ORDER DISMISSING APPEAL

On October 15, 2008, this court entered an order directing appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, our order noted that this appeal appears to be premature because a tolling motion remains pending in the district court.¹ Accordingly, we directed appellants to show cause, by October 30, 2008, why this appeal should not be dismissed for lack of jurisdiction.

To date, appellants have not filed a response to our order or otherwise communicated with this court. We elect to treat appellant's failure to respond to our order to show cause as an admission that this

¹See NRAP 4(a)(6) (indicating that a notice of appeal is premature if it is filed before entry of a written order resolving a tolling motion).

court lacks jurisdiction over this appeal.² Accordingly, this appeal is hereby dismissed for lack of jurisdiction.

It is so ORDERED.

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

cc: Hon. Michael Villani, District Judge
Lansford W. Levitt, Settlement Judge
Gibbs, Giden, Locher & Turner, LLP
Hansen Rasmussen, LLC
Eighth District Court Clerk

²Cf. King v. Cartlidge, 121 Nev. 926, 124 P.3d 1161 (2005) (stating that the district court has discretion to consider the failure to oppose a motion as an admission of merit and consent to grant the motion).