

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLEMAN-TOLL LIMITED
PARTNERSHIP, A NEVADA LIMITED
PARTNERSHIP, A/K/A TOLL BROTHERS,
INC., A DELAWARE CORPORATION,
Appellant,

vs.

PAUL J. BRENNER AND YOLANDA A.
BRENNER, INDIVIDUALS,
Respondents.

COLEMAN-TOLL LIMITED
PARTNERSHIP, A/K/A TOLL BROTHERS,
INC., A DELAWARE CORPORATION,
Appellant,

vs.

PAUL J. BRENNER AND YOLANDA A.
BRENNER, INDIVIDUALS,
Respondents.

No. 52063

FILED

JUN 28 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 52435

ORDER DISMISSING APPEALS

These are consolidated appeals from district court orders denying appellant's motion to dismiss respondents' complaint and denying reconsideration of that order. Eighth Judicial District Court, Clark County; David B. Barker, Judge, and Charles J. Thompson, Senior Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why these appeals should not be dismissed for lack of jurisdiction. Specifically, it appeared that the orders designated in the notices of appeal were not substantively appealable, in that respondents' claims against appellant remained pending in the district court and orders denying reconsideration are generally not

appealable. NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

Appellant timely responded to our show cause order, explaining that its motion to dismiss respondents' complaint also sought confirmation of an arbitration award, which the district court implicitly necessarily denied by allowing respondents to proceed with their claims against appellant. Included with appellant's response is a copy of the motion to dismiss, in which appellant also asked the district court to confirm the arbitration award. Appellant also provided a copy of respondents' opposition to the motion to dismiss, in which respondents asserted that the arbitration award should be vacated. Appellant points out that in its motion for reconsideration, it expressly asked the district court to reconsider its decision to deny the motion to dismiss and to deny "confirmation of the private, binding arbitration award."

Respondents reply that the district court's order is not appealable, since the district court has not yet decided whether the matter will be referred to arbitration for a rehearing. Appellant responds¹ to the reply by asserting that the challenged orders are appealable under NRS

¹Appellant has filed a motion for leave to file a reply to address respondents' reply. Attached to appellant's motion is its proposed reply. We grant the motion and direct the clerk of this court to detach and file appellant's proposed reply, provisionally received in this court on June 3, 2009.

38.247(1)(c) and (e), since they effectively denied confirmation of an arbitration award and vacated the award without directing a rehearing.

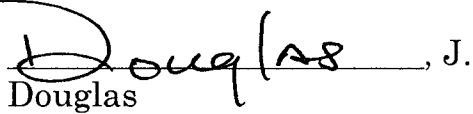
Although appellant's motion to dismiss also requested confirmation of the arbitration award, the district court's order did not expressly address that request. Instead, the district court denied appellant's motion to dismiss, based on its finding that respondents had presented sufficient evidence to support their complaint.² In so doing, however, it neither confirmed nor vacated the arbitration award, and whether the award will be confirmed or vacated appears to remain at issue through respondents' pending complaint. Thus, since the propriety of the arbitration award is directly related to respondents' pending claims against appellant and the district court has yet to enter a written order resolving appellant's motion to confirm the award, this matter is not proper for appellate review at this time. See NRS 38.247; Karcher Firestopping v. Meadow Valley Contr., 125 Nev. ___, ___, 204 P.3d 1262, 1266 (2009) (explaining that NRS 38.247, which allows for appeals from certain arbitration-related decisions, permits appellate review only when the order brings a sufficient degree of finality to the arbitration proceedings); cf. Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987) (providing that an appeal may be taken once a final, written

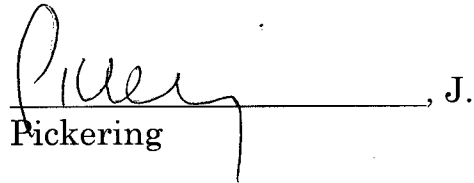
²In their complaint, respondents seek damages based on claims for fraudulent misrepresentation, asserting that appellant misrepresented to the arbitrator that it had begun construction on respondents' home, breach of the contract that was the subject of the arbitration proceeding, unjust enrichment, and rescission.

judgment is entered). The order denying reconsideration likewise is not substantively appealable. See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983). Accordingly, we

ORDER these appeals DISMISSED.


Parraguirre


Douglas


Pickering

cc: Chief Judge, Eighth Judicial District
Hon. David B. Barker, District Judge
Hon. J. Charles Thompson, Senior Judge
Robert F. Saint-Aubin, Settlement Judge
McDonald Carano Wilson LLP/Las Vegas
Huggins & Associates, LLP
Eighth District Court Clerk