

IN THE SUPREME COURT OF THE STATE OF NEVADA

~~NO. 34760~~

EXECUTIVE MANAGEMENT, LTD., A
CALIFORNIA CORPORATION,

Appellant,

vs.

TICOR TITLE INSURANCE COMPANY, A
FOREIGN CORPORATION; BARBARA
MARKS, AN INDIVIDUAL; THE MANLEY
MARKS AND BARBARA MARKS 1988
TRUST, BARBARA MARKS, TRUSTEE;
AND MARKS PLAZA, A NEVADA
CORPORATION,

Respondents.

FILED

JUL 26 2000

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

No. 35122

EXECUTIVE MANAGEMENT, LTD., A
CALIFORNIA CORPORATION,

Appellant,

vs.

PALMALL PROPERTIES, INC., A NEVADA
CORPORATION; AND ARTHUR H.
SHIPKEY, AN INDIVIDUAL,
Respondents.

No. 35698

EXECUTIVE MANAGEMENT, LTD., A
CALIFORNIA CORPORATION,

Appellant,

vs.

TICOR TITLE INSURANCE COMPANY, A
FOREIGN CORPORATION; BARBARA
MARKS, AN INDIVIDUAL; THE MANLEY
MARKS AND BARBARA MARKS 1988
TRUST, BARBARA MARKS, TRUSTEE;
AND MARKS PLAZA, A NEVADA
CORPORATION,

Respondents.

ORDER DISMISSING APPEALS IN DOCKET NOS. 34760 AND 35698 AND
REINSTATING BRIEFING IN DOCKET NO. 35122

These are consolidated appeals from summary judgments entered in favor of respondents. Our review of respondents' motion to dismiss filed in Docket No. 34760, the

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docketing statements and the documents submitted to this court pursuant to NRAP 3(e) reveals jurisdictional defects in Docket Nos. 34760 and 35698.

On July 29, 1999, the district court entered partial summary judgment in favor of respondents Ticor Title Insurance Co., Barbara Marks, the Manley Marks and Barbara Marks 1988 Trust, and Marks Plaza. The written notice of entry of the judgment was served by delivery on July 30, 1999. Appellant filed a notice of appeal challenging the district court's order on August 27, 1999 (Docket No. 34760). On February 9, 2000, respondent Ticor filed a motion to dismiss the appeal for lack of jurisdiction. On February 28, 2000, respondents Barbara Marks, the Manley Marks and Barbara Marks 1988 Trust, and Marks Plaza filed a motion joining in Ticor's motion to dismiss the appeal. Respondents assert that the notice of appeal in Docket No. 34760 was prematurely filed under NRAP 4(a)(1) because the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties, and the district court did not certify its judgment as final pursuant to NRCP 54(b). See Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979). In particular, appellant's claims against respondents Pallmall Properties, Inc. and Arthur Shipkey remained pending.

As the district court's July 29, 1999, order was not a final written judgment adjudicating all the rights and liabilities of all the parties, we agree that appellant's August 27, 1999, notice of appeal in Docket No. 34760 was prematurely filed. We therefore grant the motion to dismiss the appeal in Docket No. 34760 and we dismiss that appeal.

On October 7, 1999, an order of the district court granting summary judgment in favor of the remaining parties, respondents Pallmall Properties, Inc. and Arthur Shipkey, was

entered. The written notice of entry of the judgment was served by mail on October 8, 1999. On November 5, 1999, appellant filed a timely notice of appeal challenging the district court's October 7, 1999, order (Docket No. 35122). On February 18, 2000, appellant filed an amended notice of appeal (Docket No. 35698), purporting to appeal from the district court's July 29, 1999, and October 7, 1999, orders. However, the amended notice of appeal was untimely filed, as it was filed more than thirty days after service of written notice of entry of the October 7, 1999, final order. See NRAP 4(a)(1). Consequently, we lack jurisdiction over the appeal in Docket No. 35698 and order it dismissed.¹


We conclude that appellant's November 5, 1999, notice of appeal preserved its challenge of the district court's July 29, 1999, order. See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (stating that interlocutory orders entered prior to the final judgment may be heard on appeal from final judgment). Consequently, respondents Ticor Title Insurance Co., Barbara Marks, the Manley Marks and Barbara Marks 1988 Trust, and Marks Plaza are respondents in the appeal in Docket No. 35122.² These respondents were on notice that an appeal had been taken and that appellant was challenging the July 29, 1999, order.

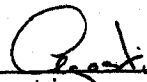
The appeal in Docket No. 35122 shall proceed as an appeal challenging the July 29, 1999, and October 7, 1999, orders. Appellant shall have fifteen (15) days from the date of this order to comply with the provisions of NRAP 9(a).

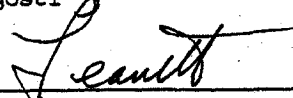
¹On February 28, 2000, the clerk of this court issued a notice to appellant to pay the filing fee for the appeal in Docket No. 35698. To date, the filing fee has not been paid. Appellant shall have ten (10) days from the date of this order to pay the filing fee.

of this order to comply with the provisions of NRAP 9(a). Appellant shall have one hundred and twenty (120) days from the date of this order within which to file and serve the opening brief and appendix in Docket No. 35122. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.


_____, C.J.
Rose


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Nancy M. Saitta, District Judge
George R. Carter
Lionel Sawyer & Collins
Ralph J. Rohay
Cohen, Johnson, Day, Jones & Royal
Clark County Clerk