

IN THE SUPREME COURT OF THE STATE OF NEVADA

VEGAS 2000, LLC,

Appellant,

vs.

MALIBU DEVELOPMENT CORPORATION,
A NEVADA CORPORATION, MARKET
TWIN, INC., A NEVADA
CORPORATION, AND GARY LEE, AN
INDIVIDUAL,

Respondents.

No. 34774

FILED

MAY 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying summary judgment, which was certified as final pursuant to NRCP 54(b). On February 11, 2000, respondent Market Twain, Inc. (Market Twain) filed a motion to dismiss appellant's appeal, asserting that the district court's NRCP 54(b) certification was improper because Market Twain's three counterclaims against appellant remain pending. Market Twain also argues that its third party counterclaim remains pending. Appellant, Vegas 2000, LLC (Vegas 2000) opposed the motion to dismiss, contending that the district court's NRCP 54(b) certification was proper and that Market Twain failed to raise the issue of improper certification in a cross-appeal. We conclude that NRCP 54(b) certification was improper and dismiss the appeal.

This case concerns a lease of commercial property in a shopping center located in Clark County. Vegas 2000's predecessor-in-interest, Kuveg Enterprises, N.V., entered into a lease agreement with lessee Malibu Development Corporation (Malibu Development). Kuveg Enterprises subsequently sold the shopping center to Vegas 2000. Malibu Development then subleased the property to Market Twain. According to Vegas

2000's submissions, Market Twain had previously leased the property, and Kuveg Enterprises brought an eviction action against Market Twain. Pursuant to the settlement of this eviction action, Malibu Development and Gary Lee (president of Malibu Development) executed a promissory note in the amount of \$35,000.00 to Kuveg Enterprises. Kuveg Enterprises assigned the promissory note to Vegas 2000 when it purchased the property. In addition, Mr. Lee personally guaranteed Malibu Development's obligations under the lease.

On January 5, 1999, Vegas 2000 filed a complaint alleging that respondents Malibu Development, Market Twain and Mr. Lee had defaulted on their obligations under the lease and the promissory note. Vegas 2000 sought both termination of the lease and accelerated payment of the promissory note. Vegas 2000 also sought judgment against Mr. Lee for the full balance owed under the lease.

Market Twain asserted three counterclaims against Vegas 2000. First, Market Twain alleged that Vegas 2000 leased space to a competing business, in violation of the lease terms. Second, Market Twain alleged that this breach was "knowing, willful and spiteful." Lastly, Market Twain asserted that Vegas 2000 acted fraudulently in its dealings with Market Twain concerning its sublease with Malibu Development.

Vegas 2000 moved for summary judgment, which the district court denied. However, the district court ordered Market Twain to pay Vegas 2000 rent for the period of January through March 1999, in the sum of \$41,735.00. The district court also ordered Malibu Development to make an accelerated payment to Vegas 2000 for the unpaid principal and interest (\$23,343.07) on the aforementioned promissory note. The

district court further ordered that the lease would remain in "full force and effect." On July 23, 1999, the district court entered an order granting Vegas 2000's motion for NCRP 54(b) certification.

The district court's order from which Vegas 2000 appeals specifically states that it is denying Vegas 2000's motion for summary judgment. It is well established that no appeal may be taken from a denial of summary judgment. See County of Clark v. Bonanza No. 1, 96 Nev. 643, 615 P.2d 939 (1980); Sorenson v. Pavlikowski, 94 Nev. 440, 581 P.2d 851 (1978). Additionally, this court has specifically stated that orders denying summary judgment are not amenable to NCRP 54(b) certification. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). Nonetheless, looking at the functionality of the order, it seems to resolve Vegas 2000's claims concerning accelerated payment of the promissory note and termination of the lease. See Lee v. GNLV Corp., 116 Nev. ___, 996 P.2d 416 (2000) (stating that labels are inconclusive when determining finality; instead, the finality of an order or judgment is determined by what it substantively accomplished).

Although the district court's order obligates Malibu Development to pay a sum certain on the promissory note, it does not address Mr. Lee's liability, if any. Therefore, Vegas 2000's claim against Mr. Lee remains pending. In addition, as Market Twain pointed out in its motion to dismiss, all of its counterclaims remain pending. These claims appear to be closely related to the issue on appeal, arising out of the same factual underpinnings. Also, Market Twain's third party claim against Hae Myong Shin concerning alleged misconduct Mr. Shin committed in managing Market Twain's business affairs remains

unresolved. Reviewing the matter at this stage of the proceedings would result in piecemeal litigation, defeating the purpose of NRCP 54(b). See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Hallicrafters Co. Moore, 102 Nev. 526, 728 P.2d 441 (1986). Consequently, NRCP 54(b) certification was improper in this case.

Accordingly, as we lack jurisdiction over this appeal, we

ORDER this appeal dismissed.

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.

cc: Hon. Gene T. Porter, District Judge
Woods & Erickson LLP
Michael E. Kulwin
Peter I. Alpert
Clark County Clerk