

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAPITAL GROWTH, LLC, A NEVIS  
LIMITED LIABILITY COMPANY; KERRY  
ROGERS, AN INDIVIDUAL; AND  
CAPITAL GROWTH C.A., AN  
INTERNATIONAL BUSINESS  
CORPORATION,

Appellants,

vs.

JOSEPH A. BRAVO; DAVID Z.  
CHESNOFF; ECKLEY M. KEACH;  
CAPITAL GROWTH LIMITED, INC., A  
NEVADA CORPORATION; PUNTA  
ARENA DE LA VENTANA, S.A. DE C.V., A  
MEXICAN CORPORATION; AND BOCA  
DE LA SALINA, S.A. DE C.V., A MEXICAN  
CORPORATION,

Respondents.

No. 53323

**FILED**

**MAR 30 2010**

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

ORDER DISMISSING APPEAL

This is an appeal from a district court judgment in a real property action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Respondents have filed a motion to dismiss this appeal under the fugitive disentitlement doctrine.<sup>1</sup> Appellants have submitted an opposition and countermotion for a limited stay of the district court's

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<sup>1</sup>The district court found that appellants Capital Growth, LLC and Capital Growth, C.A. are corporate alter egos of appellant Kerry Rogers.

judgment pending appeal, and respondents have submitted an opposition to appellants' stay motion.<sup>2</sup>

Having reviewed the parties' filings and the attached exhibits, we conclude that this appeal should be dismissed. See Guerin v. Guerin, 116 Nev. 210, 993 P.2d 1256 (2000). In Guerin, this court granted a motion to dismiss a civil appeal, explaining that this court has discretion to dismiss an appeal filed by a party who has refused to comply with district court orders and is evading arrest for contempt. 116 Nev. at 213, 993 P.2d at 1258; see also U.S. v. Barnette, 129 F.3d 1179, 1183 (11th Cir. 1997) (cited with approval in Guerin and explaining that the rationale behind such dismissals is to avoid the inequity of allowing one who refuses to subject himself to the court's authority to then use the resources of the court only if the outcome of a particular decision is favorable); Sarlund v. Anderson, 205 F.3d 973, 975 (7th Cir. 2000) (dismissing a civil appeal and explaining that "[i]f the appellate court decides the appeal in [the fugitive's] favor, he'll return, but if it decides against him, he won't, and the decision will have been a futility").

Here, among other things, the district court entered a judgment of contempt against Rogers and sentenced him to 25 days in the Clark County Detention Center. Appellants then filed a petition for a writ of prohibition with this court challenging the contempt order. The request for extraordinary relief was denied. Rogers, however, did not then report

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<sup>2</sup>We grant appellants' June 15, 2009, motion, opposed by respondents, for an extension of time to file an opposition to the motion to dismiss, and we direct the clerk of this court to file appellants' opposition and stay motion, provisionally received by this court on July 23, 2009, and respondents' opposition thereto, provisionally received on July 31, 2009.


for his contempt sentence, but instead chose to relocate to a different country. The district court has issued bench warrants for Rogers' arrest.

We conclude that the dismissal of this appeal is warranted here under the fugitive disentitlement doctrine, see Guerin, 116 Nev. 210, 993 P.2d 1256; Degen v. United States, 517 U.S. 820, 823-24 (1996) (noting that the inherent powers of courts should be used with care), and therefore we grant the motion and

ORDER this appeal DISMISSED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Ara H. Shirinian, Settlement Judge  
Hutchison & Steffen, LLC  
Lionel Sawyer & Collins/Las Vegas  
Eighth District Court Clerk

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<sup>3</sup>In light of this order, we do not reach the separate jurisdictional issue raised in our November 25, 2009, show cause order. We also deny appellants' stay motion and respondents' motion for an expedited decision as moot.