

IN THE SUPREME COURT OF THE STATE OF NEVADA

JP MORGAN CHASE BANK, N.A.,
Appellant,
vs.
Q & D CONSTRUCTION, INC., A
NEVADA CORPORATION; REYNEN &
BARDIS CONSTRUCTION (NEVADA)
INC., A NEVADA CORPORATION;
REYNEN & BARDIS COMMUNITIES
(NEVADA), INC., A NEVADA
CORPORATION; AND UNR OWNER,
LLC, A DELAWARE LIMITED
LIABILITY COMPANY,
Respondents.

No. 54773

FILED

MAY 11 2011

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

ORDER DISMISSING APPEAL

This is an appeal from a September 11, 2009, summary judgment in a mechanic's lien matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

In June 2008, respondent Q & D Construction filed a complaint against respondent Reynen & Bardis (R&B) entities, seeking to enforce its mechanic's lien. The R&B entities agreed that monies were owed, and on December 16, 2008, a stipulated judgment and order was filed. The district court also entered a separate judgment that allowed Q & D Construction to proceed with the subject properties' foreclosure, but it did not order the properties' sale. Thereafter, on December 29, 2008, Q & D Construction filed an amended complaint in the same district court case, adding the properties' deed of trust holder, appellant JP Morgan Chase Bank, N.A., as a party to the action and requesting adjudication of their respective lien priorities. A few weeks later, the district court consolidated the Q & D Construction case with another pending

mechanic's lien matter involving the R&B entities and a different plaintiff, RC Electric, LLC. Then, on September 11, 2009, the district court granted summary judgment to Q & D Construction, concluding that its lien took priority over JP Morgan's lien, since, according to the stipulated judgment between the R&B entities and Q & D Construction, construction had begun on the property before JP Morgan's deed was recorded. Although the September 11, 2009, order likewise did not order the properties' sale, and the case that was consolidated with the Q & D Construction case remained pending, JP Morgan nevertheless filed a notice of appeal on October 16, 2009, contending that the September 11 summary judgment was a final judgment.

Because the unusual procedural posture of this case raised several jurisdictional concerns, only some of which the parties addressed in their moving papers, this court denied Q & D Construction's motion to dismiss the appeal and allowed briefing to proceed, specifically directing the parties to address the perceived jurisdictional issues in their briefs. See JP Morgan Chase Bank v. Q and D Construction, No. 54773 (Order Denying Motion to Dismiss, Reinstating Briefing, and to Show Cause, February 5, 2010).

As noted in our February 5, 2010, order, the jurisdictional concerns were that the September 11 summary judgment did not finally resolve the matters before the district court, as it did not order the properties' sale or otherwise rule on the foreclosure requests, and the claims and issues arising in the consolidated RC Electric case remained pending. Id. We allowed briefing to proceed, however, because at that time, it appeared that the December 16, 2008, judgment resolved all of the claims and issues before the court at that time, making it the final

judgment below, and because there can be but one final judgment in a case, it was unclear whether the amended complaint and subsequent summary judgment were proper. Id. (citing Greene v. Dist. Ct., 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) (holding that a final judgment can be reopened only by the filing of a proper motion in conformity with the Nevada Rules of Civil Procedure). Thus, whether the September 11 summary judgment could be construed as a special order after final judgment, affecting the rights of a party growing out of the final judgment, remained unclear, especially since it appeared that the amended complaint was improperly filed in the already resolved Q & D case below. We therefore directed the parties to address the propriety of filing the amended complaint and whether the September 11 summary judgment is appealable as a special order after final judgment, in addition to any other issues on appeal.

In the meantime, on Q & D Construction's motion, the district court entered a "final judgment" on March 10, 2010, in favor of Q & D Construction and against JP Morgan, ordering the properties' sale. That judgment, however, did not resolve RC Electric's claims in the consolidated matter. Also in the meantime, this court published two opinions that implicate issues in this appeal. See Simmons Self-Storage Partners v. Rib Roof, 127 Nev. ___, 247 P.3d 1107 (2011); J.E. Dunn Nw. v. Corus Constr. Venture, 127 Nev. ___, ___ P.3d ___ (Adv. Op. No. 5, March 3, 2011).¹

¹Because J.E. Dunn Nw. pertains to substantive issues in this appeal, and we are dismissing this appeal for lack of jurisdiction, we do not address it further here.


Simmons addresses the procedural concerns noted in our order denying the motion to dismiss and reinstating briefing. It provides that “the final judgment in a mechanic’s lien enforcement action cannot only enter judgment on the lienable amount, but must also determine whether the property’s sale is to proceed.” Simmons, 127 Nev. at ___, 247 P.3d at 1110. Thus, because the December 16, 2008, order did not order the properties’ sale, it was not the final judgment. Id. And although Q & D Construction did not obtain the district court’s permission to file its amended complaint under NRCP 15(a), JP Morgan did not move to strike the amended complaint but instead sought to dismiss it on other grounds. After the motion to dismiss was denied, JP Morgan filed an answer to the amended complaint and a counterclaim against Q & D Construction. Polk v. Tully, 97 Nev. 27, 623 P.2d 972 (1981), superseded by statute as stated in Leven v. Frey, 123 Nev. 399, 168 P.3d 712 (2007) (stating that if a plaintiff fails to obtain the court’s leave to file a new pleading, as required by NRCP 15(a), the defendant waives any objection to that failure by not raising it in its answer).

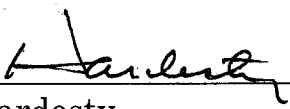
Although the post-appeal March 10, 2010, district court judgment purports to be final and it orders the properties’ sale, it did not, as JP Morgan points out in its reply brief, address the unresolved claims brought by RC Electric in the consolidated matter. Therefore, since claims remain pending below, this appeal is premature and we lack jurisdiction over it. Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 609, 797 P.2d 978, 980 (1990) (explaining that “when cases are consolidated by the district court, they become one case for all appellate purposes,” and “[t]hus, an order which resolves less than all of the claims in a

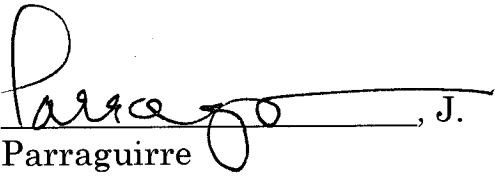
consolidated action is not appealable as a final judgment absent NRCP 54(b) certification from the district court”).

Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Paul F. Hamilton, Settlement Judge
Maupin, Cox & LeGoy
Paul J. Georgeson
Holland & Hart LLP/Reno
Laxalt & Nomura, Ltd./Reno
McDonald Carano Wilson LLP/Reno
Washoe District Court Clerk