

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOLCOMB CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.,
A NEVADA NON-PROFIT
CORPORATION,
Appellant,
vs.
STEWART VENTURE, LLC., A
NEVADA LIMITED LIABILITY
COMPANY; MARTHA ALLISON,
INDIVIDUALLY; AND Q & D
CONSTRUCTION, INC., A NEVADA
CORPORATION,
Respondents.

No. 55462

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Anderson
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting respondents' motions to dismiss in a contract action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Respondents have moved to dismiss this appeal for lack of jurisdiction, arguing that although the district court's January 14, 2010, order granted each of the respondents' motion to dismiss, the court has not entered a final, appealable judgment, because claims against defendant Paul McKinzie and defendant Luther David Bostrack remain pending below. Appellant has opposed the motion, asserting that the district court disposed of the entire case when it concluded the January 14 order with "the above captioned matter is dismissed with prejudice." Having reviewed respondents' motion to dismiss, appellant's response, the reply, and the NRAP 3(g) documents, we conclude that the district court has not entered a final, appealable judgment adjudicating all of the rights and liabilities of all the parties in the underlying case.

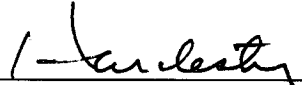
Final judgments are appealable under NRAP 3A(b)(1). This court has held that a final judgment is one that "disposes of all the issues

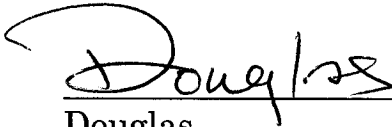
presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).


Here, appellant's complaint named as defendants the three respondents, McKinzie, and Bostrack. McKinzie filed counterclaims against appellant, seeking declaratory relief. The three respondents filed motions to dismiss based on the contractual statute of limitations, attended the district court's hearing on those motions, and were granted the requested relief. Although McKinzie also filed a motion to dismiss, that motion was primarily based on other grounds, he was apparently not at or represented at the district court hearing on respondents' motions, and the district court's order does not mention him or his motion. Bostrack also is not mentioned in the district court's order, and nothing in that order compels that the same conclusion be reached with regard to the claims against McKinzie and Bostrack. Moreover, the order fails to address McKinzie's counterclaims. Thus, despite the ambiguity of the language purporting to dismiss the "above-captioned matter," we conclude that the district court intended to dismiss the matter as to the three defendants named in the order, only. See generally Ilor, LLC, v. Google, Inc., 550 F.3d 1067 (Fed. Cir. 2008) (concluding that despite the district court's order containing language "[t]hat this action be, and the same hereby is, dismissed with prejudice," the order was not final, as it did not dispose of or mention defendant's counterclaims); Safetcare Mfg., Inc. v. Tele-Made, Inc., 497 F.3d 1262, 1267 (Fed. Cir. 2007) (holding that the appellate court did not have jurisdiction because claims remained pending before the district court; statement by district court that judgment is final was not sufficient to establish appellate jurisdiction); Rotella v. Nelson Architectural Engineers, 251 S.W.3d 216, 218 (Tex. Civ. App. 2008) (noting that the inclusion of a "Mother Hubbard Clause," which implies

that all relief not expressly granted is denied, in the district court's summary judgment order did not necessarily dispose of the case against defendants who were not parties to the summary judgment proceeding). Because the order is not a final, appealable judgment, we lack jurisdiction to consider this appeal. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 343, 810 P.2d 1217, 1219-20 (1991).¹ Accordingly, we

ORDER this appeal dismissed.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Patrick Flanagan, District Judge
Madelyn Shipman, Settlement Judge
Robert C. Maddox & Associates/Reno
Hoffman Test Guinan & Collier
Lee, Hernandez, Brooks, Garofalo & Blake, APC
Kelly L. Turner
Washoe District Court Clerk

¹We find without merit appellant's reliance on the district court's February 24, 2010, order to support appellant's argument that the court intended to dispose of the entire case in its January 14 order.