

IN THE SUPREME COURT OF THE STATE OF NEVADA

G. STANMORE RASMUSSEN, AN
INDIVIDUAL AND AS A DIRECTOR OF
THE CARSTAN CORPORATION; AND
G.S. RASMUSSEN & ASSOCIATES,
INC., A CALIFORNIA CORPORATION,

Appellants/Cross-Respondents,

vs.

CARLOS LOPEZ, AN INDIVIDUAL AND
AS A DIRECTOR OF THE CARSTAN
CORPORATION; AND THE CARSTAN
CORPORATION, A NEVADA
CORPORATION,

Respondents/Cross-Appellants.

No. 35073

FILED

MAY 25 2000

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

ORDER DISMISSING APPEAL AND CROSS-APPEAL

This is an appeal and cross-appeal from various district court orders following a jury verdict. Our preliminary review of the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect. Specifically, it appeared that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties. See *Rae v. All American Life & Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979); *Alper v. Posin*, 77 Nev. 328, 363 P.2d 502 (1961).

G.S. Rasmussen & Associates (GSR) and G. Stanmore Rasmussen (collectively appellants) filed a complaint against Carlos Lopez and the Carstan Corporation (collectively respondents). Rasmussen and Lopez are the sole shareholders and directors of Carstan. It appears that Carstan's primary business was to secure and license "Supplemental Type Certificates" (STCs), issued by the Federal Aviation Administration (FAA), authorizing an increase of the design weight limitations for Boeing jet aircraft. It also appears that Carstan had contracted with GSR for aeronautical engineering services necessary to the issuance of STCs. In their complaint, appellants claimed breach of contract, declaratory relief, misappropriation of trade secrets,

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it made additional findings in its order. The order also stated that "the Corporation known as Carstan Corporation is and shall be DISSOLVED once an accounting and final distribution, as well as other winding up affairs have been accomplished." The district court ordered dissolution because "the disputes that have arisen between Rasmussen and Lopez have made it impossible for the corporation to conduct business." The parties filed their respective notices of appeal.

It thus appeared to this court that the district court was still supervising the dissolution of Carstan and distribution of its assets, and that the district court had not yet entered a final judgment. In their docketing statements, the parties generally agreed that no claims remained before the district court, although respondents suggested that a final judgment was lacking because the district court had not finished with the dissolution.¹ This court issued an order to show cause why the appeal should not be dismissed for lack of jurisdiction.

The parties then stipulated to and obtained a certification under NRCPC 54(b), which certified as final both the judgment and the order of September 29, 1999, and stated that there was no just reason for delay in the entry of final judgment. They stipulated that the dissolution of Carstan arises out of different transactions and occurrences from the transactions and occurrences that formed the basis of the claims included in the judgment and the order of September 29, 1999. Appellants also filed an amended notice of appeal, and a

¹Respondents also argued that the district court had not yet determined costs; costs, however, may be determined post-judgment without affecting the appealability of the judgment itself. See Lee v. GNLV, 116 Nev. ___, 996 P.2d 416 (2000).

conspiracy, conversion, breach of the duty of good faith and fair dealing, and requested the dissolution of Carstan because the relationship between Rasmussen and Lopez had deteriorated such that they were deadlocked and unable to conduct Carstan's business.

Lopez and Carstan claimed that Lopez made certain proprietary information available to appellants, and that they had potentially misappropriated it. They also alleged that Rasmussen had neglected his duties to Carstan. They counterclaimed for breach of fiduciary duty, breach of contract, misappropriation of trade secrets, fraud, and negligence. They also requested a constructive trust, the appointment of a receiver, injunctive relief, and an accounting of the services GSR provided to Carstan.

Following a jury trial, the district court entered a judgment pursuant to the jury's verdict. The district court determined that Lopez breached a buy-out provision of a pre-incorporation agreement, breached the covenant of good faith and faith dealing, but did not conspire to convert GSR's property. Carstan was found to have breached an obligation to pay certain sums to GSR. According to the district court, Rasmussen was not liable for breach of fiduciary duty to Carstan or misappropriation of trade secrets, but was liable for a breach of fiduciary duty to Lopez.

Appellants then timely moved for judgment notwithstanding the verdict under NRCP 50(b), for amended findings under NRCP 52(b), for a partial new trial under NRCP 59(a), and to alter or amend the judgment under NRCP 59(e).

The district court, in its order of September 29, 1999, denied the post-trial motions except to the extent that

response to the order to show cause in which they argued that this court has jurisdiction over the appeal, either as an appeal from a final judgment or pursuant to NRCP 54(b).

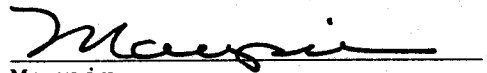
It appears that the district court has still not entered a final written judgment adjudicating all the rights and liabilities of all the parties, see NRAP 3A(b)(1), because it has not finished supervising the dissolution of Carstan.


Nor does it appear that this court has jurisdiction pursuant to the district court's certification under NRCP 54(b). Reviewing the matter at this stage of the proceedings could result in piecemeal litigation, thus defeating the purpose of NRCP 54(b), because the remaining matter for the district court, the dissolution of Carstan, appears to be closely related to the issues before this court. See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986). Appellants want this court to review the claims the parties litigated at trial, while the district court is still supervising one of the remedies requested that is closely related to, and indeed arises out of, the parties' other disputes. See Mid-Century Ins. Co. v. Cherubini, 95 Nev. 294, 593 P.2d 1068 (1979) (suggesting that an order that only determines liability but not damages is not certifiable under NRCP 54(b) because it does not completely resolve a claim, and may not be reviewed in this court until a final judgment is entered); see also Trustees of Chicago Truck Dr. v. Central Transp., 935 F.2d 114 (7th Cir. 1991) (noting that Fed. R. Civ. P. 54(b) allows immediate appeal of separate disputes comprised within a larger litigation, but does not allow appeal when damages have been partially but not completely determined or when the district court will revisit the issues). Appellants'

request for Carstan's dissolution arises from the same set of facts and transactions that gave rise to their other claims against respondents (as well as respondents' claims against appellants), and is closely related to the claims resolved by the district court, all of which counsels that the district court's order is not amenable to certification pursuant to NRC 54(b). See KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991) (holding that an order granting partial summary judgment was not properly certified under NRC 54(b), because the parties' claims against one another, including respondent's counterclaim still pending in the district court, arose from the same set of facts and transactions).

Accordingly, as this court lacks jurisdiction over the appeal and the cross-appeal, we

ORDER the appeal and cross-appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Connie Steinheimer, District Judge
John A. Snow
Schnader Harrison Segal & Lewis LLP
Hale Lane Peek Dennison Howard & Anderson
Washoe County Clerk