

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIEGFRIED LINKE,

No. 35829

Appellant,

FILED

vs.

MAR 16 2001

MOISE J. HAMAOU AND MARGHUERITE
HAMAOU,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

Respondents.

ORDER DISMISSING APPEAL

This is an appeal from a judgment upon jury verdict in a case arising from a real estate transaction. Our preliminary review of the documents transmitted pursuant to NRAP 3(e) and the docketing statement revealed a potential jurisdictional defect. It appeared that the district court had not entered a final written judgment adjudicating all of the rights and liabilities of all the parties.¹

Specifically, respondents Moise J. and Marghuerite Hamaoui filed a complaint in the district court against appellant Seigfried Linke, asserting claims for breach of contract, forcible entry and unlawful detainer, conspiracy, and conversion. The Hamaouis also asserted a claim for accounting against Arthur W. Poehlman and the Arthur W. Poehlman Trust; a claim for recovery of insurance proceeds against Hartford Fire Insurance Company; and a claim for conspiracy against Vi Marsh. Linke filed counterclaims against the Hamaouis for deficiency judgment and unjust enrichment.

The Hamaouis' claim for breach of contract was resolved pursuant to the judgment upon jury verdict entered on

¹See *Rae v. All American Life & Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979).

February 22, 2000, and Linke's counterclaim for deficiency judgment was resolved pursuant to an order granting partial summary judgment entered on January 26, 1999. Further, Hartford Fire Insurance Company was removed from the action pursuant to a good faith settlement entered on December 15, 1998. However, it appeared that the district court had not entered a written judgment or order resolving the Hamaouis' five remaining claims and Linke's remaining counterclaim. Thus, we ordered Linke to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response, Linke contends that all of the remaining claims were resolved. We agree that two of the claims were resolved below. First, the Hamaouis' claim for accounting against Poehlman and the Poehlman Trust was settled prior to trial. Linke provided this court with a copy of the stipulation and order dismissing Poehlman and the Poehlman Trust with prejudice. Second, regarding the Hamaouis' claim for conspiracy against Marsh, Marsh was never served with process and never appeared in the district court. An individual named as a co-defendant is not a party unless that individual has been served, and the fact that a co-defendant was not served does not affect the finality of the judgment.²

As for the remaining three claims and one counterclaim, we conclude that they have not been formally resolved in the district court. Linke states that (1) the Hamaouis' claim for forcible entry and unlawful detainer against Linke was resolved by the jury in favor of Linke; (2) the Hamaouis' conspiracy claim was resolved by the court's directed verdict based on insufficient evidence; (3) the

²See id.

Hamaouis' conversion claim was withdrawn before the close of evidence; and (4) Linke abandoned his counterclaim for unjust enrichment before trial.

In support of his contention that these claims were resolved, Linke cites to portions of the trial transcript revealing that the jury found in favor of Linke on the forcible entry and unlawful detainer claim, the court found insufficient evidence on the conspiracy claim, and the Hamaouis' withdrew their conversion claim before the close of evidence. Further, as evidence that Linke abandoned his unjust enrichment counterclaim, Linke states that he did not mention this claim in his pre-trial statement, and he offered no evidence or jury instructions on this claim. However, Linke has not provided this court with any written orders formally resolving these claims.

This court has held that all claims must be formally resolved for finality.³ "[A] district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose" ⁴ Further, the fact that a party "may not be inclined to pursue [its] counterclaim . . . does not render the counterclaim moot or operate as a formal dismissal of the claim."⁵ Thus, because these three claims and one counterclaim remain pending below, the district court has not yet entered a final written judgment adjudicating all the

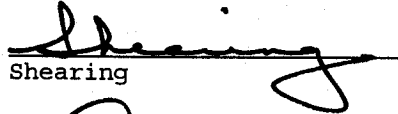
³See KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991) (stating that a judgment resolving less than all claims is not a final, appealable judgment).

⁴Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987).

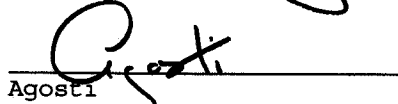
⁵KDI Sylvan Pools, 107 Nev. at 342, 810 P.2d at 1219.

rights and liabilities of all parties.⁶ Accordingly, we lack jurisdiction to entertain this appeal, and we

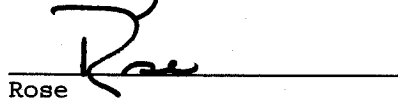
ORDER this appeal DISMISSED.



Shearing J.



Agosti J.



Rose J.

cc: Hon. Michael L. Douglas, District Judge
Lionel Sawyer & Collins
William L. McGimsey
Clark County Clerk

⁶See NRAP 3A(b)(1). We note that the district court has not certified its judgment on jury verdict as final pursuant to NRCP 54(b), and that any such certification would appear improper. See *Hallicrafters Co. v. Moore*, 102 Nev. 526, 728 P.2d 441 (1986).