

IN THE SUPREME COURT OF THE STATE OF NEVADA

FORTUNET, INC.,  
Appellant,

vs.

PLAYBOOK PUBLISHING, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; PLAYBOOK  
MANAGEMENT, INC., A NEVADA  
CORPORATION; JACK CORONEL, AN  
INDIVIDUAL; DEWAYNE WOOTEN,  
AN INDIVIDUAL; ROSALINA  
WOOTEN, AN INDIVIDUAL; WOOTEN  
CONSULTING, A NEVADA ENTITY;  
HIMELFARB & ASSOCIATES, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND BRUCE HIMELFARB,  
AN INDIVIDUAL,  
Respondents.

No. 64427

**FILED**

**MAR 17 2014**

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

*ORDER DISMISSING APPEAL*

This is an appeal from a district court judgment on a jury verdict and as a matter of law in a breach of contract and tort action. Respondents Himelfarb & Associates, LLC and Bruce Himelfarb have filed a motion for summary affirmance of the district court's rulings pertaining to them or, in the event that jurisdiction is lacking, to dismiss this appeal with prejudice and to award monetary sanctions under NRAP 38 because appellant knowingly filed a defective and frivolous appeal. Appellant opposes the motion, essentially asserting that summary affirmance is not warranted and that it filed the appeal in good faith because jurisdiction was unclear, and appellant also moves to voluntarily dismiss this appeal without prejudice for lack of jurisdiction.

Although the case below went to a trial before a jury, during which most of the claims and issues between the parties were resolved, the claims against two defendants were subject to the automatic bankruptcy

stay, and thus, were not resolved. Apparently, the parties were unclear as to whether the stayed claims remained pending below so as to defeat appellate jurisdiction, and appellant filed this notice of appeal to preserve its right to appeal in the event that a final judgment had been rendered, and on the basis that it was seeking an NRCP 54(b) certification of finality as to the parties whose claims and issues had been resolved. See NRAP 4(a)(6) (providing that, generally, a premature notice of appeal will be deemed filed after an appealable written order is entered). The district court denied NRCP 54(b) certification after learning that the bankruptcy cases had been dismissed, and the district court has now been asked to resolve the claims involving those two defendants. Accordingly, claims remain pending below, and this court lacks jurisdiction over this appeal. NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). As we lack jurisdiction, we do not reach the merits of this appeal and deny as moot respondents' motion for summary affirmance. Because appellant appears to have had a valid reason to file this appeal, we decline to award sanctions. Accordingly, we

ORDER this appeal DISMISSED.<sup>1</sup>

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Cherry, J.  
Cherry

<sup>1</sup>Pursuant to Watson Rounds' February 11, 2014, notice of withdrawal as counsel for appellant, which withdrawal was consented to by appellant, the clerk of this court shall remove Watson Rounds as appellant's counsel in this appeal. Appellant continues to be represented in this appeal by Greenberg Traurig. NRAP 46(e); SCR 46(1).

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Watson Rounds  
Greenberg Traurig, LLP/Las Vegas  
Kolesar & Leatham, Chtd.  
DeWayne Wooten  
Jack B. Coronel  
Rosalina Wooten  
Wooten Consulting  
Eighth District Court Clerk