

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOS PRADOS COMMUNITY ASSOCIATION,
A NEVADA NON-PROFIT MUTUAL BENEFIT
CORPORATION,

Appellant/Cross-Respondent,

vs.

U.S. HOME CORPORATION, A DELAWARE
CORPORATION; AND VISTA HILLS,
INC.,

Respondents/Cross-Appellants.

No. 36255

FILED

APR 12 2001

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

ORDER DISMISSING APPEAL AND CROSS-APPEAL

This is an appeal and cross-appeal from an order denying a motion to dismiss and granting in part and denying in part a motion for summary judgment, certified under NRCP 54(b). This court's preliminary jurisdictional review uncovered two potential jurisdictional defects. First, NRCP 54(b) certification appeared improper because no party or separate claim for relief had been completely removed from the action.¹ Second, the denial of a motion to dismiss or for summary judgment is not appealable.² Accordingly, this court ordered the parties to show cause why their appeals should not be dismissed.

The parties filed a joint response, arguing that Los Prados Community Association's (Los Prados) "construction defect claims can easily be separated into three distinct claims: 1) defects of the clubhouse; 2) defects of the golf course; and 3) defects of the common areas." Therefore, the parties assert, on appeal this court would not be faced with having to decide the statute of repose issues on the "claims"

¹See *Mallin v. Farmers Insurance Exchange*, 106 Nev. 606, 610, 797 P.2d 978, 981 (1990).

²See *First Interstate Bank v. H.C.T., Inc.*, 108 Nev. 242, 250, 828 P.2d 405, 410 (1992); *Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984).

still pending in the district court, i.e., the golf course and common areas.³ The parties' argument fails because it mischaracterizes the claims for relief involved in the litigation.

Under NRCPC 54(b), when more than one claim for relief is presented in an action, the district court may direct the entry of a final judgment as to one or more but fewer than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. Accordingly, two distinct concerns must guide a district court's Rule 54(b) certification: (1) that the disputed ruling is final, in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action; and (2) that the matter is ready for appeal, taking into account the administrative interests and the equities involved.⁴

Here, the district court directed the entry of a final judgment only as to defects in one building of a master planned community, yet the complaints⁵ cite a variety of claims for relief, none of which is predicated solely upon defects in a single building, common area, or the golf course. It is true that at least some of the claims for relief appear to "requir[e] proof of facts and elements not necessary to the

³See *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442-43 (1986) ("If the claims asserted in an action, albeit separate, are so closely related that this court must necessarily decide important issues pending below in order to decide the issues appealed, there can be no finding that there is no just reason for delay, and certification of an order deciding some but not all of those claims as final is an abuse of the district court's discretion.").

⁴*Sussex Drug Products v. Kanasco, Ltd.*, 920 F.2d 1150, 1153 (3d Cir. 1990); *Spiegel v. Trustees of Tufts College*, 843 F.2d 38, 42-43 (1st Cir. 1988).

⁵"[W]hen cases are consolidated by the district court, they become one case for all appellate purposes." *Mallin*, 106 Nev. at 609, 797 P.2d at 980.

proof of the other claims,"⁶ and therefore, constitute separate claims for purposes of NRCP 54(b).⁷ For instance, the negligence claim for relief concerns U.S. Home Corporation's and Vista Hills Inc.'s (collectively, USHC's) alleged failure to exercise reasonable care in designing, engineering and completing "the subject premises and subject structures," whereas the NRS 82.221 claim for relief concerns, among other things, USHC's alleged failure to disclose its relationship with certain real estate brokers and sales people. But the district court's order entering judgment as to Los Prados' clubhouse completely disposes of neither of these claims for relief nor any of the other claims for relief.

"The partial adjudication of a single claim is not appealable, despite a rule 54(b) certification."⁸ "NRCP 54(b) clearly contemplates certification of a judgment resolving a claim,"⁹ rather than "elements of damage."¹⁰ Defects in Los Prados' clubhouse are merely elements of damage. Because no single claim for relief has been removed from controversy by the district court's judgment, NRCP 54(b) certification was improper; therefore, this court lacks jurisdiction over Los

⁶Hallicrafters, 102 Nev. at 528, 728 P.2d at 442.

⁷See Bernard v. Rockhill Dev. Co., 103 Nev. 132, 134 n.2, 734 P.2d 1238, 1240 n.2 (1987) ("An order partially adjudicating a complaint which asserts only one claim for relief is not amenable to a Rule 54(b) certification.").

⁸Sussex, 920 F.2d at 1154.

⁹Mallin, 106 Nev. at 610, 797 P.2d at 981.

¹⁰Marino v. Nevitt, 311 F.2d 406, 408 (3d Cir. 1963) (vacating district court's FRCP 54(b) certification where complaint alleged that defendants had divested plaintiff of his interest in three separate contracts, but court's order of dismissal concerned only two of the contracts); see also International Controls Corp. v. Vesco, 535 F.2d 742, 748 (2d Cir. 1976) (A "district court may utilize its Rule 54(b) powers with respect to a given claim only if all damages stemming from that claim have been fixed.").

Prados' appeal from the order granting partial summary judgment.¹¹


Also beyond the jurisdiction of this court is USHC's cross-appeal from the partial denial of its motion for summary judgment and the complete denial of its motion to dismiss.¹²

Accordingly, as we lack jurisdiction over this appeal and cross-appeal, we


ORDER this appeal and cross-appeal DISMISSED.



Young J.



Leavitt J.



Becker J.

cc: Honorable Norman C. Robison, Senior District Judge
John F. Mendoza, Settlement Judge
Burdman & Benson, LLP
Perry & Spann
Clark County Clerk

¹¹Although such a conclusion may end our NRCP 54(b) inquiry, see 10 Charles A. Wright et. al, Federal Practice & Procedure § 2655, at 42 (3d ed. 1998), we voice our concern that appellate review at this stage of the proceedings would result in piecemeal appeals, which, taken to an extreme, could proceed on a building-by-building basis. See Hallicrafters, 102 Nev. at 528-29, 728 P.2d at 443. There has been no demonstration that the costs and risks of multiplying the proceedings and of overcrowding the appellate docket are justified. See Spiegel, 843 F.2d at 46.

¹²See First Interstate, 108 Nev. at 250, 828 P.2d at 410; Taylor Constr., 100 Nev. at 209, 678 P.2d at 1153.