

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAIRWAY VILLAS PROPERTY OWNERS ASSOCIATION, A NEVADA NON-PROFIT MUTUAL BENEFIT CORPORATION; SUE ALLEN, PAT BENNETT, ANTONIO GARCIA, SUE JAMBOR, AND GLEN LEONHARDT, BOARD MEMBERS OF THE FAIRWAY VILLAS HOMEOWNERS ASSOCIATION, INDIVIDUALLY AND ON BEHALF OF THE CLASS MEMBERS AT FAIRWAY VILLAS,  
Appellants,

vs.

FAIRWAY VILLAS LIMITED PARTNERSHIP, A CANCELLED NEVADA LIMITED PARTNERSHIP; SCHULMAN DEVELOPMENT CORPORATION OF NEVADA, AN ENTITY OF UNKNOWN ORIGIN, IN ITS OWN CAPACITY AND AS THE GENERAL PARTNER OF FAIRWAY VILLAS LIMITED PARTNERSHIP; AND NAM II CORPORATION, A NEVADA CORPORATION, IN ITS OWN CAPACITY AND AS SUCCESSOR ENTITY TO SCHULMAN DEVELOPMENT CORP.,  
Respondents.

No. 36258

FILED

MAY 16 2002

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

ORDER DISMISSING APPEAL

This is an appeal from a district court's NRCP 54(b) certified order granting respondents partial summary judgment in a construction defect action. When our review of the documents submitted to this court revealed a potential jurisdictional defect, we ordered appellants to show cause why their appeal should not be dismissed. We were concerned that

the order granting partial summary judgment was not eligible for NRCP 54(b) certification, and in any event, was improvidently certified as final.

NRCP 54(b) permits certification of a judgment as final only if the judgment completely resolves all claims against a party or completely resolves a separate claim for relief.<sup>1</sup> Here, the district court entered summary judgment on appellants' causes of action for negligence, negligent misrepresentation and failure to disclose, breach of NRS 82.221, and strict liability. But the summary judgment only resolved those causes of action to the extent they were pleaded against Fairway Villas Limited Partnership, Schulman Development Corporation, and Nam II Corporation; the same causes of action were also pleaded against Bramble Development Group and First Republic Bank, and remained pending below. Further, the breach of warranty cause of action remained in the case against all five of the defendants.

“[A]n order dismissing a claim against one party but not completely dismissing either the claim or the party from the litigation is not eligible for entry of a final judgment under Rule 54(b).”<sup>2</sup> The district court's order granting partial summary judgment did neither: all the parties and all the claims remained in the case.

Also, “[i]t will be a rare case where Rule 54(b) can appropriately be applied when the contestants on appeal remain,

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<sup>1</sup>See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).


<sup>2</sup>Steve's Homemade Ice Cream, Inc. v. Stewart, 907 F.2d 364, 364 (2d Cir. 1990) (holding that the dismissal of a claim against one of two defendants does not resolve the claim for purposes of FRCP 54(b)).

simultaneously, contestants below.”<sup>3</sup> In such a scenario, the need for appellate review might be mooted by future developments in the district court.<sup>4</sup>

In their response, appellants concede that the district court’s order was not amenable to certification, and that this court is without jurisdiction to entertain this appeal. Accordingly, we

ORDER this appeal DISMISSED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Michelle Leavitt, District Judge  
Beckley, Singleton, Chtd./Las Vegas  
Burdman & Benson, LLP  
Weil & Lee  
Bradley Drendel & Jeanney  
Lorber/Pengilly  
Clark County Clerk

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<sup>3</sup>Spiegel v. Trustees of Tufts College, 843 F.2d 38, 44 (1st Cir. 1988).

<sup>4</sup>See 10 Charles A. Wright et al., Federal Practice and Procedure § 2659, at 122 (3d ed. 1998).