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



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

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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.1 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 IIand Nam Development Corporation, Partnership. Schulman 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)." 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,

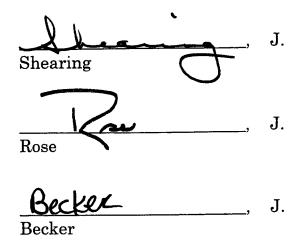
¹See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).

²Steve'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."³ In such a scenario, the need for appellate review might be mooted by future developments in the district court.⁴

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.



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

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

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