

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERENCE A. DAVIS AND JOHN P.
O'MEARA,
Appellants,
vs.
DANIEL TEPPER,
Respondent.

No. 36611

FILED

JUN 02 2003

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

ORDER VACATING JUDGMENT AND REMANDING

This is a proper person appeal from a district court order granting default judgments against appellants Terence A. Davis and John P. O'Meara in the amount of \$482,000.00.

Because our review of the district court record suggested that the district court lacked jurisdiction to enter the default judgments, we directed respondent Daniel Tepper to file a response addressing this issue, which he did on April 14, 2003. Based upon the record and the response, we conclude that the district court did not have jurisdiction over Davis and O'Meara at the time it entered the default judgments. Accordingly, we vacate the judgments entered against Davis and O'Meara.

On February 8, 1999, Tepper filed a complaint against a revoked corporation, Investamerica, Inc. and Terence A. Davis as trustee of the revoked corporation. In his complaint, Tepper sought a declaration that he was the corporation's sole officer, director and trustee, and an injunction restraining Davis from exercising any rights or duties on the corporation's behalf. The complaint also sought damages related to Tepper's attempts to obtain the corporation's books and records. The revoked corporation was served through its resident agent. Davis was not served. Investamerica filed no answer and a default was entered against

the revoked corporation. Tepper subsequently scheduled a prove-up hearing, and the district court then entered a default judgment on the complaint on April 5, 1999. That judgment granted declaratory relief to Tepper, finding him to be the sole director, officer, and trustee of the corporation. Further, the district court ordered that all corporate records be turned over to Tepper.¹ No evidence was submitted to prove a damages claim, however, Tepper did request attorney fees, which were awarded in the amount of \$2,500.00. The judgment was against Investamerica.

Based upon the judgment, Tepper then made a demand for the corporate books and records from Davis and/or his representatives. Davis did not turn over the books or records in his position or control, and Davis, or Davis' representatives, apparently informed Tepper that some of the records were in control of a third party. As a result, Tepper filed an amended complaint naming additional parties, including Davis and O'Meara, as individuals and in their representative capacity as alleged trustees of the revoked corporation.²

¹No notice of entry has ever been served on the default. Investamerica never sought relief from the default judgment by filing a motion to set it aside pursuant to NRCP 60(b) or to vacate it under NRCP 59(e). In other pleadings, Investamerica did allege the district court should take no action to enforcement the default judgment because the revoked corporation was not properly served. Investamerica has not appealed from the default judgment entered against it.

²The amended complaint listed the defendants below as: Investamerica, Inc., f/k/a Progressive Polymerics International, Inc., a revoked Nevada Corporation, The Progressive Polymerics International, Inc. Liquidating Trust (PPYM), a Nevada trust, and Terence A. Davis and John P. O'Meara, individually and as trustees of Investamerica, Inc., f/k/a Progressive Polymerics International, Inc., a revoked Nevada Corporation
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Davis, O'Meara and PPYM filed an answer to the amended complaint. Tepper then filed motions to compel Davis, O'Meara and Progressive Polymerics International, Inc. Liquidating Trust (PPYM) to turn over Investamerica's books and records.³ The district court granted the motion and ordered Davis and O'Meara to disgorge the records. The records were not produced, and after issuing orders to order to show cause and conducting hearings, the district court held Davis and O'Meara in contempt of court. Monetary sanctions were awarded based upon the amount of attorney fees Tepper incurred in the prosecution of the contempt orders. The district court also struck the answers of Davis and O'Meara and entered a default against them. Thereafter, a prove-up hearing was held, and damages relating to Tepper's additional efforts to secure the records were awarded and reduced to judgment.

Between the time of the entry of default and the prove-up hearing, Tepper filed a second amended complaint (referred to as a

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and as trustees of The Progressive Polymerics International, Inc. Liquidating Trust, a Nevada trust.

³From the record, it appears the PPYM trust was established to receive the assets of Investamerica, and Davis and O'meara were trustees of the PPYM trust. The relationship between the two revoked corporations, Investamerica and PPYM, Inc., is unclear from the record. In addition, the parties were involved in previous lawsuits and negotiated settlements in California. Finally, PPYM was negotiating some type of settlement with a third party regarding PPYM's assets, and PPYM was alleging Tepper's actions were interfering with those negotiations and that many of the records were in the hands of a third party pursuant to the negotiations. Davis, O'Meara and PPYM asserted that Tepper was not a valid shareholder of Investamerica, but a disgruntled independent contractor.

supplemental complaint) alleging additional causes of action against Davis and O'Meara and seeking punitive damages. Due to illness on the part of their attorney, Davis and O'Meara sought additional time to file answers. The record is unclear about when they were to have filed answers. Nevertheless, the district court subsequently entered defaults and default judgments on the additional causes, awarding compensatory and punitive damages. Davis and O'Meara then filed this appeal challenging the two judgments entered against them.

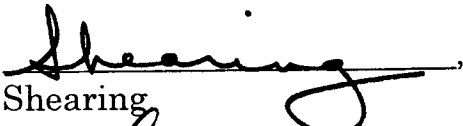
This court has held that a "district court lacks jurisdiction to allow amendment of a complaint, once final judgment is entered, unless that judgment is first set aside or vacated pursuant to the Nevada Rules of Civil Procedure."⁴ The purpose of this rule is to avoid multiple judgments within a single action as that is "inconsistent with the normal meaning of the term "final judgment."⁵ We conclude the district court erred in allowing Tepper to file the May 6, 1999, amended complaint, and the March 13, 2000, supplemental complaint. Once the default judgment was entered against Investamerica, a final judgment had been entered and the district court lacked jurisdiction to permit amendments adding new parties and causes of action. Davis was not originally sued in his individual capacity, and thus, the original judgment disposed of all pending claims and actions in the original complaint, constituting a final judgment. Since the district court lacked the authority to permit any of

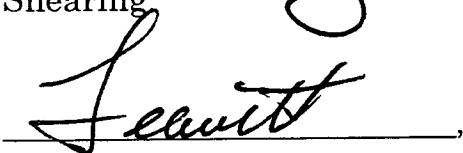
⁴Greene v. District Court, 115 Nev. 391, 396, 990 P.2d 184, 187 (1999).

⁵Id. at 395, 990 P.2d at 186 (quoting Black's Law Dictionary 843 (6th ed. 1990)).

the additional proceedings, the default judgments of June 19 and 22, 2000, are void for lack of jurisdiction.⁶ Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.⁷


Shearing, J.


Leavitt, J.


Becker, J.

cc: Hon. Mark R. Denton, District Judge
Terence A. Davis
John P. O'Meara
Patrick C. Clary
Clark County Clerk

⁶Greene, 115 Nev. at 396, 990 P.2d at 187.

⁷Appellants also asserted they were not properly served and provided notice of the action as required by NRCP 4 and NRS 78.750. We have reviewed appellant's argument and conclude it is without merit.