

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIDLE PATH HOMEOWNERS
ASSOCIATION, A NEVADA NON-
PROFIT MUTUAL BENEFIT
CORPORATION,

Appellant,

vs.

STEVE C. HAMILTON, INC., A
NEVADA CORPORATION;
HAMILTON HOMES, AN ENTITY
OF UNKNOWN FORM; EUROPEAN
INVESTMENT MANAGEMENT
SERVICES, INC., A DELAWARE
CORPORATION; TERRA
PROPERTIES, AN ENTITY OF
UNKNOWN FORM; OAKSPRING
ASSOCIATES, AN ENTITY OF
UNKNOWN FORM; HADDOCK INC.,
A CALIFORNIA CORPORATION;
CFA, INC., AND MARK SMITH,

Respondents.

No. 36617

FILED

OCT 22 2001

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

ORDER DISMISSING APPEAL

This is an appeal of a district court order granting a motion to dismiss a complaint without prejudice. The district court found that respondent/defendant Mark Smith ("Smith") had standing to file the motion to dismiss, and that appellant/plaintiff Bridle Path Homeowners Association ("BPHA") did not follow NRS 116.3115(9) in filing its complaint. Accordingly, the district court granted Mr. Smith's motion to dismiss BPHA's complaint. In the docketing statement filed on September 6, 2000, BPHA described the issues on appeal as: (1) whether BPHA complied with NRS 116.3115 in filing its complaint; (2) whether BPHA was required to submit the issue of litigation to a vote pursuant to NRS 116.3115; and (3) whether Mr. Smith had standing to file a motion to dismiss.

On January 16, 2001, respondent Steven C. Hamilton, Inc., ("Hamilton") filed in this court a "Motion to Strike Appeal, Motion for Attorney's Fees Costs, and Motion to Enlarge Time." On that same date, respondents European Investment Management Services, Inc., Terra

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Properties, Oakspring Associates and Haddock, Inc., filed a joinder in that motion. On January 17, 2001, respondent CFA, Inc., also filed a joinder in that motion. In the motion, respondent Hamilton represents that this appeal has become moot because appellant filed a new complaint in the district court on November 7, 2000. Respondent Hamilton notes that the new complaint, which is attached to the motion as "Exhibit A," "asserts causes of action identical to those of Appellant's dismissed action, which is the subject of the instant appeal, against the same defendants as in the original action, save for the addition of one new defendant."

On January 24, 2001, appellant filed a response to Hamilton's motion to strike appeal. In that response, appellant basically agrees with respondent Hamilton that the second complaint is "essentially the same as the initial complaint." Appellant explains that the second complaint was filed "as a standard and reasonable exercise of caution in order to protect against a statute of limitations defense." Further, appellant informs this court that it would not object if this court were to stay this appeal pending the resolution of the second complaint in district court.

Because it appeared that the filing of the second complaint may have rendered this appeal moot, on July 25, 2001, we directed appellant to show cause why we should not dismiss this appeal. See NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981). On August 24, 2001, appellant filed a response to that order. In that response, appellant again "agrees that the second complaint that it filed with the District Court is essentially the same as the complaint underlying this appeal." The only reason appellant provides for its position that this appeal should not be dismissed as moot is that the district court has stayed the proceeding on the second complaint pending the resolution of this appeal.

We are not persuaded by appellant's response that this appeal is not rendered moot by the filing of the second complaint. Accordingly, we dismiss this appeal as moot. In light of this order, we deny respondent Smith's January 16, 2001, motion for leave to file a proper person brief. The

clerk of this court shall detach and return, unfiled, the proper person brief submitted along with that motion.

It is so ORDERED.

Young J.
Young

Agosti J.
Agosti

Leavitt J.
Leavitt

cc: Janet J. Berry, District Judge
Angius & Terry, LLP
Hale, Lane, Peek, Dennison, Howard & Anderson
Bennion Cardone & Clayson
Lane, Fahrendorf, Vioria & Oliphant, LLP
Mark Smith
Washoe County Clerk