

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE ROBERT V. JONES COMPANY;
THE ROBERT V. JONES
CORPORATION; AND ROBERT V.
JONES,

Appellants,

vs.

LOWE ENTERPRISES RESIDENTIAL
PARTNERS, L.P., A CALIFORNIA
LIMITED PARTNERSHIP,

Respondent.

No. 36866

FILED

JAN 04 2002

JANE LEE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order granting partial summary judgment in a complex breach of contract action arising out of a multi-million dollar real property development project. The district court found that appellants executed a valid loan payment guaranty in favor of respondent and, upon loan default, became liable under their guaranty. The district court then entered judgment in favor of respondent for more than \$8,000,000 and certified its judgment as final under NRCP 54(b). Appellants filed notice of appeal.

Our preliminary review of the documents submitted to this court pursuant to NRAP 3(e), along with the docketing statement, revealed a potential jurisdictional defect. Specifically, it appeared that the district court's judgment was not amenable to NRCP 54(b) certification because the claims asserted in the action are so closely related that we would have to decide pending issues to decide the issues appealed. We directed appellants to demonstrate jurisdiction.

Respondent moved for leave to file a memorandum in support of the district court's certification, while appellants opposed the motion, arguing that certification was improper. Appellants filed an emergency motion to stay all proceedings to enforce the judgment, together with motions to determine the propriety of certification and this court's jurisdiction. Respondent opposed the motions, and appellants moved for leave to file a reply. We granted respondent's motion to file a memorandum, entered a temporary stay and deferred ruling on

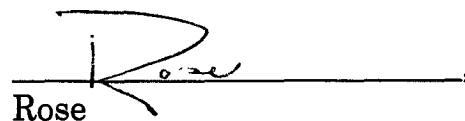
02-00197

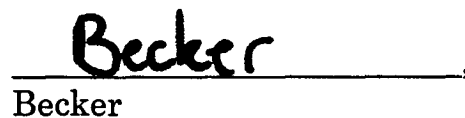
appellants' other motions. Respondent timely filed a memorandum in support of the district court's certification of the judgment, and appellants moved for leave to file a response.¹

Having reviewed the memoranda and documents submitted by the parties, we conclude that the district court should not have certified the partial summary judgment as final under NRCP 54(b). To decide the issues on appeal—whether subsequent agreements affected appellants' obligations or modified the terms of the loan payment guaranty—we would have to decide claims and issues pending below.² We conclude, therefore, that we do not have jurisdiction over this appeal. Accordingly, we

ORDER this appeal DISMISSED.³

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Ara H. Shirinian, Settlement Judge
James J. Lee
John Peter Lee Ltd.
Irell & Manella, LLP
Smith Larsen & Wixom
Clark County Clerk

¹We grant appellants' motion for leave to file a reply to respondent's opposition to its motions, and appellants' motion for leave to file a response to respondent's memorandum, and we direct the clerk of this court to file the reply received by fax on May 7, 2001, and by mail on May 9, 2001, and to file the response received on July 13, 2001. We also grant respondent's November 27, 2001 motion for leave to file a supplement, which notifies the court that some parties have been dismissed below, and we direct the clerk of this court to file the supplement received with the motion. We deny appellant's motion to determine the propriety of certification and this court's jurisdiction, as the motion is moot.

²See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

³We vacate our temporary stay, which was entered May 7, 2001.