

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE VENETIAN LIEN LITIGATION.

No. 37054

VENETIAN CASINO RESORT, LLC,  
GRAND CANAL SHOPS MALL  
CONSTRUCTION, LLC, AND  
FRONTIER INSURANCE COMPANY,  
Appellants,

vs.

TRM CORPORATION, D/B/A  
SUPERIOR TILE COMPANY,  
Respondent.

FILED

MAF 3 1 2003

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

IN RE VENETIAN LIEN LITIGATION.

No. 37546

VENETIAN CASINO RESORT, LLC,  
GRAND CANAL SHOPS MALL  
CONSTRUCTION, LLC, AND  
FRONTIER INSURANCE COMPANY,  
Appellants,

vs.

HERRICK CORPORATION; AND  
LEHRER MCGOVERN BOVIS, INC.,  
Respondents.

IN RE VENETIAN LIEN LITIGATION.

No. 37558

VENETIAN CASINO RESORT, LLC,  
GRAND CANAL SHOPS MALL  
CONSTRUCTION, LLC, AND  
FRONTIER INSURANCE COMPANY,  
Appellants,

vs.

CAPITOL BUILDERS HARDWARE;  
AND LEHRER MCGOVERN BOVIS,  
INC.,  
Respondents.

IN RE VENETIAN LIEN LITIGATION

No. 39928

VENETIAN CASINO RESORT, LLC;  
GRAND CANAL SHOPS MALL  
CONSTRUCTION, LLC; AND  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.,  
Appellants,

vs.

HARRIS/ARIZONA REBAR, INC.;  
LEHRER MCGOVERN BOVIS, INC.;  
AND DICK CORPORATION,  
Respondents.

ORDER DISMISSING APPEALS<sup>1</sup>

These are appeals from district court orders and a judgment entered after NRS 108.2421 preferential lien hearings. In three consolidated appeals, Docket Nos. 37054, 37546 and 37558, appellants have moved for a jurisdictional determination. In the fourth appeal, Docket No. 39928, appellants have responded to our jurisdictional order to show cause.

<sup>1</sup>Appellants' motion to remand the appeals in Docket Nos. 37054, 37546 and 37558 is denied as moot. Respondent TRM Corporation's motion for entry of case management orders in those appeals is denied as moot. Harris/Arizona Rebar, Inc.'s motions for extensions of time to file a reply in the appeal under Docket No. 39928 are denied as moot. Harris' motion to dismiss that appeal on the basis that appellants are not aggrieved – the secondary jurisdictional concern mentioned in our show cause order – is likewise denied as moot. Finally, Harris' request for permission to file a reply in support of the motion to dismiss is denied as moot.

Nos. 37054, 37546, 37558

On January 6, 2003, appellants moved for a jurisdictional determination, arguing that the orders adopting the special master's recommendations from the NRS 108.2421 hearings are neither final orders or judgments nor appealable interlocutory determinations. Respondent TRM Corporation opposes appellants' motion as a mere delaying tactic, and asks that any jurisdictional evaluation by this court be preceded by full briefing of the appeals with a section devoted to jurisdiction. Respondents Lehrer McGovern Bovis, Inc. and Capitol Builders Hardware concede that this court lacks jurisdiction, not because of finality reasons, but because the district court has not yet complied with this court's writ directive to reevaluate the special master's recommendations in the case underlying the appeal in Docket No. 37558.<sup>2</sup> We grant appellants' motion, and as explained below, we conclude that this court lacks jurisdiction over these consolidated appeals.

Jurisdictional rules go to the very power of this court to act.<sup>3</sup> This court has jurisdiction to consider an appeal only when an appeal is authorized by statute or court rule.<sup>4</sup> No such authorization exists for the orders adopting the special master's recommendations.

Although NRAP 3A(b)(1) allows an appeal to be taken from a final judgment, the orders presently on appeal do not qualify. A final judgment disposes of all issues presented in the case and leaves nothing

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<sup>2</sup>See Venetian Casino Resort v. Dist. Ct., 118 Nev. \_\_\_, \_\_\_, 41 P.3d 327, 332 (2002).

<sup>3</sup>Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

<sup>4</sup>Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000).

for the court's future consideration, except for issues like attorney fees and costs.<sup>5</sup> Here, there are issue-generating claims pending below in each case. Further, the number of unadjudicated claims extends far beyond these three cases to include all claims asserted in the consolidated lawsuits against appellants.<sup>6</sup>

Although two statutory provisions in the mechanic's lien statutes mention appellate review, neither appears to apply here. NRS 108.2275(6) allows an appeal from an order releasing a frivolous lien and awarding fees and costs, reducing an excessive lien and awarding fees and costs, or declaring the lien neither frivolous nor excessive and awarding fees and costs. But appellants' liability for amounts due was determined in actions for judgment on lien-release bonds, rather than in hearings instituted by motion to determine frivolity or excessiveness of mechanic's liens.<sup>7</sup> NRS 108.2423(2) likewise fails to confer appellate jurisdiction. That statute provides that a claimant may file a motion to enforce a surety's liability on its lien-release bond thirty days after "the giving of notice of entry of judgment" in the preferential hearing. And "if an appeal has been taken from the judgment," an enforcement motion may not be

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<sup>5</sup>Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

<sup>6</sup>Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 609, 797 P.2d 978, 980 (1990) ("[W]hen cases are consolidated by the district court, they become one case for all appellate purposes."). Although NRCP 54(b) certification can confer finality on an otherwise interlocutory determination, the orders presently on appeal do not appear amenable to certification because the claims below and on appeal are so interrelated. See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

<sup>7</sup>Compare NRS 108.2275(1) with NRS 108.2421(1).

filed until after this court issues its remittitur.<sup>8</sup> But this statutory provision does not purport to provide an independent basis for interlocutory review.

Accordingly, we conclude that this court lacks jurisdiction over the consolidated appeals in Docket Nos. 37054, 37546 and 37558, and we, therefore, dismiss these appeals.

No. 39928

Our preliminary review of the docketing statement and the NRAP 3(e) documents revealed two potential jurisdictional defects in the appeal from the June 17, 2002 judgment. Consequently, on December 12, 2002, we ordered appellants to show cause why their appeal should not be dismissed. Our primary jurisdictional concern was that the district court had improvidently certified the judgment as final. Specifically, we noted that the judgment related only to respondent Harris/Arizona Rebar, Inc.'s claim for foreclosure of a mechanic's lien based on work and materials devoted to one of three construction projects at the Venetian Casino Resort Hotel. But fourteen claims for relief remain pending below regarding Harris' work on the three projects.

Because the avoidance of piecemeal litigation is crucial to the proper utilization of NRCP 54(b),<sup>9</sup> a district court must take into account judicial administrative interests in addition to the equities involved.<sup>10</sup> Thus, we observed that our review of certified rulings regarding construction at the Venetian Casino Resort Hotel on a project-by-project basis would be an inefficient use of judicial resources.

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<sup>8</sup>NRS 108.2423(2).

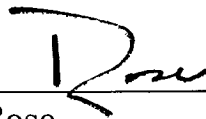
<sup>9</sup>Hallicrafters Co., 102 Nev. 526, 728 P.2d 441.

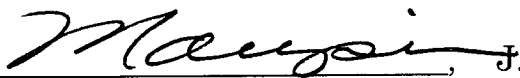
<sup>10</sup>Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1 (1980).

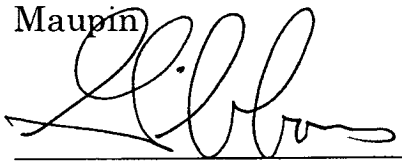
We further noted that the claims asserted in the action appeared so closely related as to require the resolution of important issues pending below in order to decide the issues on appeal.<sup>11</sup> For instance, our review of the certified judgment, which determines the amount appellants Venetian Casino Resort, LLC and Grand Canal Shops Mall Construction, LLC owe Harris for work and materials allegedly furnished<sup>1</sup> under contract and at the request of respondents Dick Corporation and Lehrer McGovern Bovis, Inc., may require a resolution of issues common to Harris' breach of contract claim against Dick as well as Harris' unjust enrichment claim against Dick, Lehrer, Venetian and Grand Canal. Thus, we questioned whether the district court's certification of the judgment was an abuse of discretion.

In response to our show cause order, appellants concede that "NRCP 54(b) certification should not have been entered" and that "this appeal should be dismissed for lack of jurisdiction." Accordingly, we conclude that this court lacks jurisdiction over the appeal in Docket No. 39928, and we, therefore, dismiss the appeal.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

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<sup>11</sup>See Hallicrafters Co., 102 Nev. at 528, 728 P.2d at 442-43.

cc: Hon. James A. Brennan, Senior Judge  
Lester H. Berkson, Settlement Judge  
Hale Lane Peek Dennison Howard & Anderson/Las Vegas  
Lionel Sawyer & Collins/Las Vegas  
Beckley Singleton, Chtd./Las Vegas  
Griffin Cochrane & Marshall  
Harrison Kemp & Jones, Chtd.  
Mead, Salamone & Sofen  
Peel, Brimley, Spangler & Brown  
Woods & Aitkin, LLP  
Ballard Spahr Andrews & Ingersoll, LLP  
MBV Law LLP  
Monteleone & McCrory, LLP  
Clark County Clerk