

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS AGUILAR AND ADELINA
MONROY AGUILAR,
Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR CARSON CITY, AND THE
HONORABLE MICHAEL R. GRIFFIN,
DISTRICT JUDGE,

Respondents,

and

WELLS FARGO BANK, N.A., A
FEDERALLY CHARTERED BANKING
INSTITUTION,
Real Party in Interest.

No. 39507

FILED

MAY 20 2003

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

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of mandamus challenging a district court order that affirmed a summary judgment entered by the justice's court in a breach of contract action.¹

Based upon our review of the petition and the answer thereto, it appeared that the district court lacked jurisdiction over petitioners' appeal from the justice's court's judgment. Specifically, the underlying action arose from petitioners Luis and Adelina Aguilar's purchase of a

¹Because we conclude that the district court lacked jurisdiction over the matter, we construe the petition as one seeking a writ of prohibition. See Koza v. District Court, 99 Nev. 535, 665 P.2d 244 (1983).

used vehicle from Internet Auto Rent & Sales-Daewoo of Reno. At the time of the sale, Internet Auto simultaneously assigned the purchase contract and security agreement to real party in interest Wells Fargo Bank. Because the Aguilers did not make payments on the vehicle, Wells Fargo took possession of and sold the vehicle, and applied the proceeds towards the loan. After the Aguilers failed to pay the deficiency amount, Wells Fargo filed a breach of contract action against the Aguilers in the justice's court. The Aguilers filed counterclaims against Wells Fargo and a third-party complaint against Internet Auto. The Aguilers asserted a breach of warranty claim against Internet Auto and claims for restitution and cancellation of the purchase contract against both Internet Auto and Wells Fargo. The Aguilers alleged that Internet Auto refused to repair the vehicle despite its warranty and representations to the contrary.

Thereafter, Wells Fargo only moved for summary judgment as to its breach of contract claim and the Aguilers' counterclaims against it. On April 13, 2001, the justice's court granted the motion, entered judgment against the Aguilers for the \$6,242.18 deficiency amount, and dismissed the Aguilers' counterclaims against Wells Fargo. After the justice's court resolved the Aguilers' post-judgment tolling motion, they filed a timely appeal to the district court.² The district court affirmed the justice's court's order on March 6, 2002, determining that the Aguilers failed to establish that Wells Fargo was not a holder in due course and

²See NRAP 4(a).

subject to claims and defenses the Aguilars may have had against Internet Auto.³

An appeal may be taken from a final judgment.⁴ A final judgment is one that disposes of all issues presented in the case, and leaves nothing for the court's future consideration except post-judgment issues such as costs and attorney fees.⁵ This court has held that all claims must be formally resolved for finality.⁶

Here, if the Aguilars' third-party claims against Internet Auto were not resolved in the justice's court, then the district court lacked appellate jurisdiction over the Aguilars' appeal from the summary judgment entered only as to Wells Fargo. A writ of prohibition may issue when the district court exercises its judicial functions in excess of its jurisdiction,⁷ while a writ of mandamus is available to compel the performance of an act required by law.⁸

³See St. James v. Diversified Commercial Fin., 102 Nev. 23, 714 P.2d 179 (1986).

⁴NRAP 3A(b)(1).

⁵See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); see also KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991).

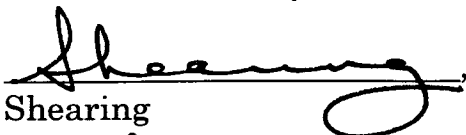
⁶KDI Sylvan Pools, 107 Nev. at 343, 810 P.2d at 1219 (stating that a judgment resolving less than all claims is not a final, appealable judgment).

⁷NRS 34.320.


⁸NRS 34.160.

Accordingly, on February 11, 2003, we allowed Wells Fargo thirty days in which to file a response, showing cause why a writ should not issue directing the district court to vacate its order and/or prohibiting the district court from entertaining the Aguilers' appeal. Wells Fargo has not responded. Accordingly, we treat Wells Fargo's lack of response as a confession of error. We grant the petition, and direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate its March 6, 2002 order and precluding the district court from entertaining appellate jurisdiction over the Aguilers' appeal.⁹


It is so ORDERED.



Shearing, J.



Leavitt, J.



Becker, J.

cc: Hon. Michael R. Griffin, District Judge
Karen L. Winters
Robison Belaustegui Sharp & Low
Carson City Clerk

⁹This order does not preclude the Aguilers from filing a new appeal to the district court once the justice's court enters a final judgment resolving the claims against Internet Auto.