

IN THE SUPREME COURT OF THE STATE OF NEVADA

MPTV, INC., A NEVADA
CORPORATION,
Appellant,

vs.

KENNETH OBERLIN; WALTER
HAVEKORST, III; NEWPORTWEB
CORPORATION; JAMES D.
MCCOLLUM, JR.; AND TRANSWORLD
TOOL AND ELECTRONICS, A
NEVADA CORPORATION,
Respondents.

No. 39517

FILED

JAN 22 2003

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

ORDER DISMISSING APPEAL


This is an appeal from an order granting partial summary judgment, certified as final under NRCP 54(b).

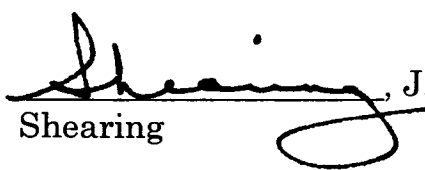
Respondents filed the underlying action against appellant for breach of contract; money due and owing from promissory notes, personal loans, and services rendered; and unjust enrichment. On March 11, 2002, the district court granted respondents' motion for partial summary judgment as to liability, and determined that the promissory notes, stock warrants, and consulting agreements between the parties were valid and binding. The order did not set forth any specific amounts due, but stated that respondents' "claims of contract validity be granted and certified as final for purposes of NRCP 54(b), leaving only the issue of damages for trial." On April 12, 2002, appellant filed this appeal. Respondents have moved to dismiss this appeal for lack of jurisdiction, and appellant opposes the motion.

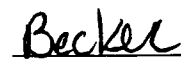
Under NRCP 54(b), when more than one claim for relief is presented in an action, the district court may direct entry of a final judgment as to one or more, but fewer than all, of the claims upon an express determination that there is no just reason for delay under NRCP

54(b). NRC 54(b) certification is not proper, however, if the order does not completely resolve a separate claim for relief.¹ Here, even assuming that the complaint stated a separate claim for each promissory note or agreement, the order determined only liability under the various notes and agreements and expressly deferred the issue of damages for trial. Thus, the order does not completely resolve any separate claim for relief.² The NRC 54(b) certification, therefore, was improper and this court lacks jurisdiction over this appeal. Accordingly, we grant respondents' motion, and we

ORDER this appeal DISMISSED.³


_____, J.
Leavitt


_____, J.
Shearing


_____, J.
Becker

¹See Hallicrafters Co. v. Moore, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986).

²See Mid-Century Ins. Co. v. Cherubini, 95 Nev. 293, 593 P.2d 1068 (1979) (stating that an interlocutory order on liability alone could not be reviewed until a final judgment had been entered on the one claim for relief).

³On November 1, 2002, this court ordered appellant's counsel to inform this court within twenty days whether this appeal is automatically stayed pursuant to the federal bankruptcy code. To date, no response has been filed. Nevertheless, an appellate court may dismiss an appeal for lack of jurisdiction even when the automatic stay provisions under the bankruptcy code otherwise apply. See Royal Dynasty, Inc. v. Chin, 638 N.E.2d 921 (Mass. App. Ct. 1994). Accordingly, we conclude that a response to our November 1, 2002 order is no longer necessary. We admonish appellant's counsel, however, that failure in the future to respond to an order of this court may result in the imposition of sanctions.

cc: Hon. Nancy M. Saitta, District Judge
Janet Trost, Settlement judge
Haney, Woloson & Mullins
Callister & Reynolds
Clark County Clerk