

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCHINDLER ELEVATOR
CORPORATION A DELAWARE
CORPORATION,
Appellant,
vs.
SONIA CHERRY,
Respondent.

No. 39980

FILED

AUG 22 2003

DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court's amended judgment in a personal injury case. Respondent Sonia Cherry was injured while riding in an elevator at the Showcase Mall in Las Vegas. She filed a complaint against the mall's owners (Showcase) and appellant Schindler Elevator Corporation (Schindler). After a bench trial, the district court found Showcase and Schindler jointly and severally liable to Cherry on a theory of res ipsa loquitor. The district court entered a judgment and later an amended judgment. Schindler appealed from the amended judgment. Showcase did not. Subsequently, Showcase satisfied the judgment, and Cherry moved to dismiss Schindler's appeal on the ground that Schindler was not an aggrieved party.

In an order filed May 8, 2003, this court denied Cherry's motion to dismiss, but noted that it appeared Schindler's appeal became

moot when Showcase satisfied the judgment. Accordingly, we ordered Schindler to demonstrate that this court has jurisdiction over this appeal.

Cases presenting real controversies at the time of their institution may become moot on appeal by some intervening event.¹ “[I]f a codefendant satisfies a judgment, appeals are mooted as between the plaintiff and any other defendant.”² A defendant’s vulnerability to a future action for contribution does not preserve the appeal in the original action because a case or controversy must be present at every moment of the litigation.³

Schindler, in its response to our show cause order, does not dispute that this appeal is moot. Here, Showcase satisfied the judgment, and Schindler is no longer responsible to Cherry for the judgment. Regardless of whether Schindler is potentially liable for a future action for


¹See NCAA v. University of Nevada, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981).

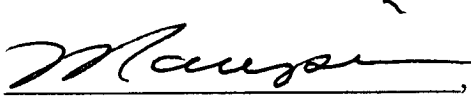
²U.S. v. Balint, 201 F.3d 928, 937 (7th Cir. 2000) (quoting 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3533.2, at 246 (2d ed. 1984); see also Schiller v. Penn Central Transportation Company, 509 F.2d 263 (6th Cir. 1975) (explaining that when defendant satisfied judgment, appellate issues between codefendant and plaintiff became moot, but appellate issues on cross-claims between defendants remained); University of Nevada v. Tarkanian, 95 Nev. 389, 594 P.2d 1159 (1979).


³Balint, 201 F.3d at 937 n.2. At this time we express no opinion on Schindler’s potential liability for contribution.

contribution, at this moment no case or controversy exists.⁴ Accordingly, we dismiss Schindler's appeal as moot.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Mark R. Denton, District Judge
Morse & Mowbray
Hardy & Hardy
Clark County Clerk

⁴We note that if Schindler is aggrieved in any action for contribution, Schindler is not precluded from contesting its liability as a tortfeasor in any appeal from that contribution action.