

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIAN LANE ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION,
Appellant,
vs.
DENNIS M. HART,
Respondent.

No. 40536

FILED

MAR 04 2004

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

ORDER DISMISSING APPEAL

This is an appeal from a district court's partial summary judgment, certified as final under NRCP 54(b), in a real property case. When our preliminary review of the documents before this court revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. We were concerned that the judgment was not amenable to certification.

NRCP 54(b) certification is not available if only one claim for relief is presented in the action and the challenged order fails to resolve the rights and liabilities of a party.¹ Here, appellant's complaint and respondent's counterclaim present merely opposing sides of the same quiet title claim, with respondent seeking damages for interference with his

¹NRCP 54(b); Mid-Century Ins. Co. v. Cherubini, 95 Nev. 293, 593 P.2d 1068 (1979).

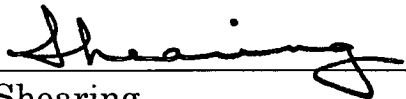
title. Specifically, appellant alleges that it acquired Vivian Lane and the beach lot from Incline Park Association, and that no dedication of Vivian Lane has ever occurred. Respondent, on the other hand, alleges that Vivian Lane is a public road, acquired by Washoe County through dedication. As noted by the district court in its certification order, all that remains for decision below is respondent's damages claim for losses of property value and use, emotional distress, and attorney fees. As these items are not independent of the parties' title dispute, but rather, are merely alleged consequences of appellant's assertion of title, they cannot stand as a separate claim.² Consequently, this case presents only one NRCP 54(b) claim for relief. Further, given the pending damages claim, the partial summary judgment does not resolve the rights and liabilities of any party. Under these circumstances, the partial summary judgment


²See Liberty Mutual Ins. Co. v. Wetzel, 424 U.S. 737, 742-44 (1976) (concluding that a decision establishing liability on a claim for relief but leaving damages for later resolution is not certifiable under FRCP 54(b)); accord Cherubini, 95 Nev. at 295, 593 P.2d at 1070 (stating that multiple NRCP 54(b) claims are present when they can be separately enforced and assert more than one legal right). We note appellant's point that respondent identified in an interrogatory response various items of damages purportedly unrelated to the quiet title dispute, such as "frivolous complaints regarding [respondent's] American flag." But the interrogatory response also identifies many items clearly related to the title dispute, and we are in no position to discern the factual correlation of every discovery response to the counterclaim's allegations.

was not amenable to NRCP 54(b) certification,³ and this court lacks jurisdiction over this appeal.

Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Shearing


_____, J.
Becker


_____, J.
Gibbons

cc: Hon. Peter I. Breen, District Judge
Philip A. Olsen, Settlement Judge
Alling & Jillson, Ltd.
Lauria Tokunaga & Gates, LLP
Prezant & Mollath
Washoe District Court Clerk

³To the extent the district court also certified as final its denial of appellant's summary judgment motion, that certification was invalid. Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (concluding that an order denying a motion for summary judgment is not certifiable because the order does not resolve a claim or the rights and liabilities of a party).