

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOUIS G. NAVELLIER, AN
INDIVIDUAL AND TRUSTEE AND
SHAREHOLDER OF THE NAVELLIER
SERIES FUND ON HIS OWN BEHALF,
AND AS A TRUSTEE ON BEHALF OF
THE NAVELLIER SERIES FUND,
Appellant,
vs.
DONALD SIMON, AN INDIVIDUAL
AND FORMER TRUSTEE OF THE
NAVELLIER SERIES FUND; AND
KENNETH SLETTEN, AN
INDIVIDUAL AND FORMER TRUSTEE
OF THE NAVELLIER SERIES FUND,
Respondents.

No. 40662

FILED

MAR 05 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 order denying appellant's motion to stay enforcement of a foreign judgment. When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed. Specifically, we were concerned that the order designated in the notice of appeal is not substantively appealable.¹ This court has jurisdiction to consider an

¹See NRAP 3A(b).

appeal only when the appeal is authorized by statute or court rule.² There is no such authorization for an order denying a stay motion.³

Contrary to appellant's assertion, an order denying a stay motion does not qualify in Nevada as a special order after final judgment,⁴ because such an order does not affect the rights incorporated in the judgment.⁵ Appellant's liability on the judgment is the same both before and after the order denying a stay.⁶

Nor can the challenged order be construed as denying injunctive relief,⁷ as the motion was apparently brought under NRS 17.370, which allows the judgment debtor to seek a stay of the foreign judgment's enforcement during an "an appeal from the foreign judgment."⁸

²Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

³Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 404 P.2d 902 (1965).

⁴See NRAP 3A(b)(2).

⁵See Gumm v. Mainor, 118 Nev. ___, 59 P.3d 1220 (2002).

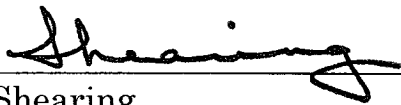
⁶Cf. Burton v. Burton, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983) (observing that, outside the divorce context, an order refusing to modify a judgment is arguably not a special order after final judgment because the order "does not change any rights arising out of the judgment").


⁷See NRAP 3A(b)(2).

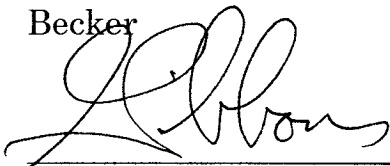
⁸NRS 17.370(1).

Appellant is not appealing the foreign judgment, but rather, as described in appellant's notice of appeal, "the Order of [the district court] denying [appellant's] Motion to Stay."

Because this court lacks jurisdiction over this appeal, we
ORDER this appeal DISMISSED.⁹

 _____, C.J.
Shearing

 _____, J.
Becker

 _____, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Patrick O. King, Settlement Judge
Gayle A. Kern
Law Offices of Samuel Kornhauser
Sinai Schroeder Mooney Boetsch Bradley & Pace
Washoe District Court Clerk
Preston, Gates & Ellis

⁹As this court is without jurisdiction over this matter, we decline respondents' invitation to "make clear that execution on the foreign judgment may proceed."