

IN THE SUPREME COURT OF THE STATE OF NEVADA

VACATION VILLAGE, INC., A
NEVADA CORPORATION; SHANGRI
LA, LTD., A NEVADA GENERAL
PARTNERSHIP; TERRIE HEERS
THOMPSON, INDIVIDUALLY AND AS
GENERAL PARTNER OF SHANGRI
LA, LTD.; TIM S. HEERS,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
CATHLEEN HEERS NORCOTT,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
GARY R. HEERS, INDIVIDUALLY AND
AS GENERAL PARTNER OF SHANGRI
LA, LTD.; AND CHERYL D. NOLTE,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
Appellants,

vs.

FOOTHILL CAPITAL CORPORATION,
A CALIFORNIA CORPORATION,
Respondent.

VACATION VILLAGE, INC., A
NEVADA CORPORATION; SHANGRI
LA, LTD., A NEVADA GENERAL
PARTNERSHIP; TERRIE HEERS
THOMPSON, INDIVIDUALLY AND AS
GENERAL PARTNER OF SHANGRI
LA, LTD.; TIM S. HEERS,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
CATHLEEN HEERS NORCOTT,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
GARY R. HEERS, INDIVIDUALLY AND
AS GENERAL PARTNER OF SHANGRI
LA, LTD.; AND CHERYL D. NOLTE,

No. 41819

FILED

NOV 06 2003

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

No. 42013

INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.,
Appellants,

vs.

FOOTHILL CAPITAL CORPORATION,
A CALIFORNIA CORPORATION,
Respondent.

No. 42164

VACATION VILLAGE, INC., A
NEVADA CORPORATION; SHANGRI
LA, LTD., A NEVADA GENERAL
PARTNERSHIP; TERRIE HEERS
THOMPSON, INDIVIDUALLY AND AS
GENERAL PARTNER OF SHANGRI
LA, LTD.; TIM S. HEERS,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
CATHLEEN HEERS NORCOTT,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.;
GARY R. HEERS, INDIVIDUALLY AND
AS GENERAL PARTNER OF SHANGRI
LA, LTD.; AND CHERYL D. NOLTE,
INDIVIDUALLY AND AS GENERAL
PARTNER OF SHANGRI LA, LTD.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE LEE
A. GATES, DISTRICT JUDGE,
Respondents,

and

FOOTHILL CAPITAL CORPORATION,
A CALIFORNIA CORPORATION,
Real Party in Interest.

ORDER DISMISSING APPEALS IN DOCKET NOS.
41819 AND 42013, AND GRANTING PETITION
FOR WRIT OF MANDAMUS IN DOCKET NO. 42164

Docket No. 41819 is an appeal from a July 7, 2003 judgment for breach of guaranty and deficiency. Docket No. 42013 is an appeal from an August 21, 2003 order granting appellants partial summary judgment and a stay, conditioned on the posting of a supersedeas bond. Docket No. 42164 is an original petition for a writ of mandamus or prohibition requesting that we “bar[] any post-judgment proceedings on a Judgment filed July 7, 2003, . . . until the Judgment becomes final.”

Respondent/real party in interest Foothill Capital Corporation has moved to dismiss the appeals for lack of jurisdiction. As to the appeal in Docket No. 41819, Foothill argues that it is defective because it was filed before resolution of appellants’ timely motion to amend.¹ Regarding the appeal in Docket No. 42013, Foothill construes the August 21 order as denying a motion to alter or amend a judgment, which is not appealable.² Appellants oppose dismissal on the grounds advanced by Foothill, but admit that the appeals are jurisdictionally defective because the July 7 judgment and August 21 order do not resolve all claims pleaded below. We agree with appellants.

A final appealable judgment disposes of all the issues presented in the case, and leaves nothing for the district court’s future consideration, except for post-judgment issues like costs and attorney fees.³ The appeal in Docket No. 41819 is jurisdictionally defective because

¹See NRAP 4(a)(2) (stating that a notice of appeal is ineffective if filed before the resolution of a timely post-judgment tolling motion).

²Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995).

³Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

it left unresolved Foothill's first, second, and third causes of action. The appeal in Docket No. 42013 is jurisdictionally defective for a number of reasons. First, the order left unresolved Foothill's second cause of action.⁴ Second, appellants are not aggrieved by the summary judgment on Foothill's first and third causes of action and the granting of their stay request.⁵ And third, orders resolving stay requests and denying motions to alter or amend and for remittitur are not independently appealable.⁶ Thus, as we lack jurisdiction over these appeals, we dismiss them.⁷

⁴Foothill's contention that the second cause of action was resolved in an April 1, 2003 order is without merit. That order merely granted Foothill's application for a deficiency judgment, ordered the distribution of assets from the "Shangri La Receivership Estate," struck Shangri La's answer and counterclaim, and denied appellants' motion for "Relief from Summary Judgment and for Turnover of Shangri La Receivership Proceeds to Shangri La." The April 1, 2003 order did not resolve the second cause of action's request for loss of use damages, or, apparently, the request for delivery of Vacation Village, Inc. collateral. And even if Vacation Village collateral was auctioned off in bankruptcy and Foothill "is seeking nothing more from the District Court on any claim against [Vacation Village]," that does not constitute the formal resolution of a claim pleaded in state district court. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991).

⁵NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

⁶NRAP 3A(b) (listing appealable determinations); Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) (stating that, "unless permitted by rule or statute, no appeal may be taken"); Mercer, 111 Nev. at 320 n.1, 890 P.2d at 787 n.1; Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 404 P.2d 902 (1965).

⁷Foothill's motions to dismiss are denied as moot.

The original petition for a writ of mandamus or prohibition in Docket No. 42164 requests that we “bar[] any post-judgment proceedings” on the July 7, 2003 judgment until it becomes final. Appellants/petitioners have also filed a motion for stay, seeking similar relief. Foothill has filed a combined answer and opposition.

The only execution proceedings referenced in the petition are debtor examinations. Consequently, we limit our analysis to those proceedings. NRS 21.270(1) provides that a judgment debtor may be examined concerning her property “at any time after the judgment is entered.” Construing “judgment” to require a final appealable judgment makes sense, given that, under NRCP 54(b), any order or other decision that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the case and “is subject to revision at any time before the entry” of a final judgment. It would appear inappropriate to hold a debtor’s exam if the district court could issue a ruling nullifying a defendant’s debtor status. Thus, we conclude that the district court manifestly abused its discretion in ordering debtor examinations without a final judgment.⁸


Accordingly, we grant the petition insofar as it seeks mandamus relief,⁹ and we direct the clerk of this court to issue a writ of

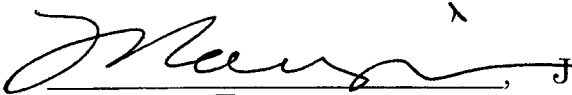
⁸See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (recognizing that mandamus is available to control a manifest abuse of discretion).


⁹A writ of prohibition is not available here. See Mineral County v. State, Dep’t of Conserv., 117 Nev. 235, 20 P.3d 800 (2001) (observing that the purpose of a writ of prohibition is to prevent courts from exceeding their jurisdiction).

mandamus compelling the district court to vacate its September 18, 2003 orders allowing the debtor examinations of petitioners Terrie Heers Thompson, Cathleen Heers Norcott, Cheryl Nolte, Gary Heers and Tim Heers.¹⁰

It is so ORDERED.


_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Thomas J. Tanksley, Settlement Judge
John Peter Lee Ltd.
Gordon & Silver, Ltd.
Buchalter, Nemer, Fields & Younger
Clark County Clerk

¹⁰As to petitioners' request for reassignment of this case based on the district court mislabeling as final certain orders and judgments, we deny relief. The district court's labeling of its orders and judgments, even if inaccurate, has no bearing on appealability. Lee v. GNLV Corp., 116 Nev. 424, 427, 996 P.2d 416, 418 (2000) (stating that this court determines the finality of an order or judgment by looking at what the order or judgment does, not what it is called). Finally, in light of our issuance of extraordinary relief, we deny as moot petitioners' stay motion, and we vacate our temporary stay, entered on October 14, 2003, in Docket No. 42164.