IN THE SUPREME COURT OF THE STATE OF NEVADA

LEGACY CONSTRUCTION ENTERPRISES; LEGACY CONSTRUCTION, INC.; AND ANDY J. KAY,

Appellants,

vs.

IMPACT SAND & GRAVEL, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondent.

No. 51559

FILED

DEC 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to set aside a default judgment. Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect. Specifically, although an order denying a motion to set aside a default judgment is appealable as a special order after final judgment under NRAP 3A(b)(2),[1] it appeared that the order was not made after a final judgment. In particular, although the district court entered a default judgment on February 5, 2008, entering judgment against appellants Legacy Construction Enterprises and Andy Kay, that judgment did not resolve the claims against Legacy Construction, Inc. (not a party to this appeal). Because the February 5,

[1]See Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987) (an order denying a NRCP 60(b) motion is appealable as a special order after final judgment).

2008, judgment did not appear to be a final judgment[2] and the district court had not otherwise disposed of the claims against Legacy Construction, Inc., the subsequent order denying the motion to set aside default judgment did not appear to be appealable as a special order after final judgment. Accordingly, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response to that order, appellants admit that no judgment was entered by the district court disposing of the claims against Legacy Construction, Inc. However, appellants argue that Legacy Construction, Inc. was erroneously omitted from the order granting default judgment, and that "it is clear that . . . Legacy Construction, Inc. was indeed intended to be a defaulted party per Order of the Eighth Judicial District Court." Respondent has filed a reply to appellants' response in which respondent states that the omission of Legacy Construction, Inc. from the default judgment "was not a clerical error and all of the parties and all of the claims have not yet been resolved for purposes of this appeal."[3]

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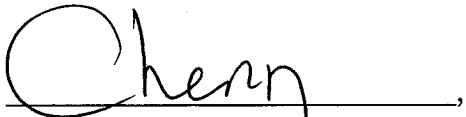
[2]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (holding that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except certain post-judgment matters).

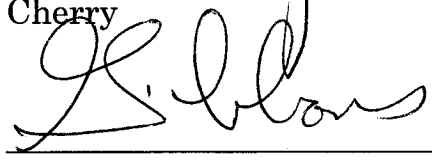
[3]In a letter to appellants' counsel, appended to appellants' response as exhibit H, respondent's counsel indicates that Legacy Construction, Inc. was intentionally omitted from the default judgment because Legacy Construction, Inc, was and still is, subject to the automatic bankruptcy stay. See 11 U.S.C. § 362(a)(1). However, in their response, appellants specifically state that Legacy Construction, Inc. has not been in bankruptcy since September 24, 2007. Accordingly, it appears that Legacy Construction, Inc, is not currently subject to the automatic bankruptcy stay.

Contrary to appellants' assertion, there is no indication from the documents available to this court that the district court inadvertently omitted Legacy Construction, Inc. from the default judgment. We conclude that the district court's order denying the motion to set aside default judgment is not appealable as a special order after final judgment because the district court has not entered a final judgment resolving all of the issues presented in the underlying action. We therefore lack jurisdiction over this appeal.[4] Accordingly, we

ORDER this appeal DISMISSED.



_____, J.
Cherry



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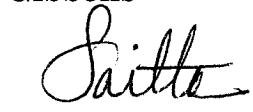
Gibbons



_____, J.
Saitta

cc: Chief Judge, Eighth Judicial District
Hon. Norman C. Robison, Senior Judge
Lansford W. Levitt, Settlement Judge
Callister & Reynolds
Susan Frankewich, Ltd.
Eighth District Court Clerk

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[4]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).