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**IN THE SUPREME COURT OF
OF THE STATE OF NEVADA**

BETTY CHAN; and ASIAN
AMERICAN REALTY &
PROPERTY MANAGEMENT,

Appellants/Cross-Respondents,

VS.

WAYNE WU; JUDITH
SULLIVAN; NEVADA REAL
ESTATE CORP.; and JERRIN
CHIU;

Respondents/Cross-Appellants.

SUPREME COURT CASE NO. 82208

District Court Case No. A-16-744109-C

Eighth Judicial District Court

(Hon. Eric Johnson)

**APPELLANTS' RESPONSE IN OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS SECOND APPEAL**

Appellants/Cross-Respondents BETTY CHAN (“Chan”) and ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT (“Asian American”) (collectively “Appellants,” “Cross-Respondents,” or “Plaintiffs”) now file this, *Appellants’ Response in Opposition to Respondents’ Motion to Dismiss Second Appeal*. In support of this Response, Chan and Asian American would respectfully show the Court as follows:

I. QUESTION PRESENTED AND SUMMARY OF THE ARGUMENT

In their motion to dismiss the present appeal, Respondents raise the following issue: Whether an arbitration award must be appealed immediately after

1 its confirmation. In this appeal, under Nevada’s Uniform Arbitration Act of 2000
2 (the “UAA” or “Act”), the answer is unequivocally “No.”

3 Under NRS 38.247(1)(f), the summary judgment order constitutes a “final
4 judgment,” from which an appeal may be taken and the prior arbitration award and
5 confirmation order challenged. Inasmuch as the previous confirmation order was not
6 sufficiently final, the present appeal is not barred by NRS 38.247(1)(c), which
7 generally allows for immediate appeals of orders confirming arbitration awards. The
8 confirmation order was insufficiently final because Respondents had a counterclaim
9 that remained pending at the time. Both Respondents and the District Court treated
10 the arbitration award and the counterclaim as inextricably intertwined. The District
11 Court resolved both matters in its summary judgment, which it certified as “final.”

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16 Respondents argue that under the doctrine of *res judicata*, this Court’s
17 dismissal order in a prior appeal bars a review of the confirmation order now.
18 However, that dismissal order stated that no final judgment had been entered at the
19 time. Moreover, in that order, there was no “prior adjudication” of the specific
20 jurisdictional issues raised here. Despite Respondents’ ongoing campaign to
21 assassinate Appellants’ character,¹ their *res judicata* argument fails.
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26 ¹ True to form, in their motion, Respondents continue with their campaign to
27 assassinate Chan’s character. (Mot. at pp.1-4). All of these allegations lack any
28 basis whatsoever. (OB at pp.19-21). With respect to Thurgood Marshall in
particular, Chan never presented herself as being his equal; rather, *by analogy*, she
pointed out flaws in Respondents’ reasoning below. (5 Appx 1112).

II. BACKGROUND

This case involves a controversy between real estate agents relating to commissions from the same sale. Appellants filed suit, seeking declaratory relief. (1 Appx 1-10).² Respondents counterclaimed for breach of contract and abuse of process. (1 Appx 39-53). On Appellants' motion, and over Respondents' opposition, the District Court ordered the claims and counterclaims relating to the commissions to go to arbitration. The abuse-of-process counterclaim was stayed. (1 Appx 153-54). At arbitration, the panel split the commissions. (3 Appx 692).

On September 18, 2018, District Court issued an order confirming the arbitration award ("Confirmation Order"). *It did not certify that order as final.* Instead, it lifted the stay so the counterclaim could proceed. (3 Appx 693-94). On March 22, 2019, the District Court awarded Respondents attorney fees. (4 Appx 816-22). Still looking for new counsel to replace their previous attorneys who had withdrawn, on April 22, 2019, Appellants filed their notice of appeal in Supreme Court Case No. 78666 ("First Appeal"). (4 Appx 860).

In the First Appeal, this Court entered an order to show cause ("First OSC"), in which it noted a potential jurisdictional defect arising from the fact that a motion for reconsideration was still pending. (*Exhibit 1*). On January 7, 2020, in the District Court, Appellants filed a motion to resolve the motion for reconsideration

² Herein, the abbreviation "Appx" refers to volumes 1-7 of *Appellants' Appendix* (filed May 26, 2021).

1 and to certify the judgment as final. (4 Appx 892-99). Respondents opposed the
2 motion for the certification of finality. (5 Appx 953-67).

3 On March 9, 2020, this Court entered a second order to show cause
4 (“Second OSC”), in which it noted an additional ground giving rise to a potential
5 jurisdictional defect: The March 22, 2019 fee order did not appear to be final
6 because, among other things, “respondents’ counterclaims remain[ed] pending in
7 the district court.” (*Exhibit 2*). On March 10, 2020, noting that the counterclaim
8 remained, the District Court entered an order denying both the motion for
9 reconsideration and the motion to certify finality. (5 Appx 001018-22). On April 6,
10 2020, Appellants filed an amended notice of appeal. (5 Appx 001031-33). On May
11 14, 2020, in the First Appeal, this Court entered an order dismissing the appeal
12 (“Dismissal Order”), concluding that no final order had been entered. (*Exhibit 3*).

13 In the District Court, the parties then filed dueling motions for summary
14 judgment on respondents’ abuse-of-process counterclaim. (5 Appx 1034-50, 1097-
15 120). On November 23, 2020, the District Court entered an order granting
16 summary judgment in favor of Appellants (“MSJ Order”). (7 Appx 1456-64). The
17 District Court certified the MSJ Order as final. (7 Appx 1461). On December 8,
18 2020, Appellants filed their notice of the present appeal. (7 Appx 1478-83).

19 In the present appeal, Respondents recently filed a *Motion to Dismiss*
20 *Second Appeal* (filed Jul. 6, 2021) (“Motion” or “Mot.”). The present paper
21 constitutes *Appellants’ Response in Opposition to Respondents’ Motion to Dismiss*.

III. LAW AND ARGUMENT

Under NRS 38.247(1)(f), the MSJ Order constitutes a “final judgment,” from which an appeal may be taken and the prior Arbitration Award and Confirmation Order challenged. Inasmuch as the Confirmation Order was not sufficiently final, the present appeal is not barred by NRS 38.247(1)(c), which generally allows for immediate appeals of orders confirming arbitration awards. Respondents argue that under the doctrine of *res judicata*, this Court’s Dismissal Order in the First Appeal bars a review of the Confirmation Order now. (Mot. at p.4-6). However, as expressly stated in the Dismissal Order, “no final judgment ha[d] been entered” at the time. (*Ex. 3*). Moreover, in the Dismissal Order, there was no “prior adjudication” of the specific jurisdictional issues raised in Respondents’ Motion. *See supra* Part I. Thus, Respondents’ *res judicata* argument fails. *See Horvath v. Gladstone*, 97 Nev. 594, 596, 637 P.2d 531, 533 (1981).

A. Under NRS 38.247(1)(f), the MSJ Order Constitutes a “Final Judgment,” from Which an Appeal May Be Taken and the Prior Arbitration Award and Confirmation Order Challenged.

Under the UAA, “[a]n appeal may be taken from: ... [a] final judgment entered pursuant to [the Act].” NRS 38.247(1)(f). “An appeal under [the UAA] ... must be taken as from an order or a judgment in a civil action.” NRS 38.247(2). IN a civil action, “[a]n appeal may be taken from ... [a] final judgment.” NRAP 3A(b)(1). “[A] judgment is final when it resolves all of the issues that the case

1 presents.”³ *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev.
2 1206, 1212-1213, 197 P.3d 1051, 1055 (2008). “[T]here may not be more than
3 one final judgment” *Id.* Appellate “[j]urisdiction extends to all matters
4 inextricably bound up with the order from which appeal is taken.” *Idaho*
5 *Watersheds Project v. Hahn*, 307 F.3d 815, 824 (9th Cir. 2002). ““An appeal from
6 a final judgment draws in question all earlier, non-final orders and rulings which
7 produced the judgment.”” *Comm. Concerning Cmty. Improvement v. City of*
8 *Modesto*, 583 F.3d 690, 703 n.5 (9th Cir. 2009).⁴

11 Here, Appellants have appealed the MSJ Order, which the District Court
12 certified “as a final order as to any and all claims and counterclaims between and
13 among” the parties. (7 Appx 1461). The Confirmation Order was subsumed into
14 the MSJ Order. Thus, under the UAA, this Court has jurisdiction to consider the
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17 ³ The UAA does not define “final judgment.” Therefore, “consideration must be
18 given to the need to promote uniformity of the law with respect to its subject
19 matter among states that enact it.” NRS 38.248. Under the New Mexico UAA,
20 “[f]inality must be determined by applying the general law concerning finality of
21 judgments in civil cases.” *Collier v. Pennington*, 69 P.3d 238, 242 (N.M. App.
22 2003). Under the Federal Arbitration Act, “[b]ecause [it] does not define ‘a final
23 decision ...’ or otherwise suggest that the ordinary meaning of ‘final decision’
24 should not apply, [courts] accord the term its well-established meaning.” *Green*
25 *Tree Fin. Corporation-Alabama v. Randolph*, 531 U.S. 79, 85-86 (2000).

26 ⁴ See also *Sheet Metal Workers’ Int’l Ass’n v. Madison Indus.*, 84 F.3d 1186, 1193
27 (9th Cir. 1996) (“To the extent that any claims were resolved against the plaintiffs
28 by previous orders in the case, those orders are reviewable as part of this appeal.”);
Los Angeles Memorial Coliseum Comm’n v. National Football League, 791 F.2d
1356, 1359 (9th Cir. 1986) (holding that previous orders were “merged into the
final judgment”); *Chadha v. Immigration & Naturalization Service*, 634 F.2d 408,
412 9th Cir. 1980) (“[T]he phrase ‘final orders’ includes all matters on which the
validity of the final order is contingent”).

1 Confirmation Order. Respondents argue that the MSJ Order “may be final, but [it]
2 is not a final order pursuant to the [UAA].” (Mot. at p.10). This argument conflicts
3 with *Frank Settlemeyer*, in which this Court expressly held that there can only be
4 ““one final judgment.”” Moreover, in dismissing the First Appeal—long after the
5 Confirmation Order was entered—this Court noted that “no final judgment ha[d]
6 been entered in this action.” (*Ex. 3*). Under NRS 38.247(1), this Court may now
7 review the Arbitration Award and the Confirmation Order.
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10 **B. Inasmuch as the Previous Confirmation Order was *Not***
11 ***Sufficiently Final*, the Present Appeal Is Not Barred by NRS**
12 **38.247(1)(c), Which Generally Allows for Immediate**
13 **Appeals of Orders Confirming Arbitration Awards. The**
14 **Confirmation Order Was *Insufficiently Final* Because**
15 **Respondents’ Counterclaim Remained Pending at the Time.**
16 **Both Respondents and the District Court Treated the**
17 **Arbitration Award and the Counterclaim as Inextricably**
18 **Intertwined. The District Court Conclusively Resolved Both**
19 **Matters in the MSJ Order, Which It Certified as “Final.”**

20 In Oklahoma the appeals provisions of the UAA are “no hurdle” to an
21 appeal under that state’s final-judgment rule. *Gilliland v. Chronic Pain Assocs.*,
22 904 P.2d 73, 77-78 (Okla. 1995). Respondents argue to the contrary, contending
23 that in this case, an appeal of the arbitration award could only have been taken upon
24 the entry of the Confirmation Order. (*See* Mot. at p.10 at p.8-10). NRS 38.247(1)(c)
25 does allow for an appeal from “[a]n order confirming or denying confirmation of
26 an award.” Nevertheless, orders confirming or denying an arbitration award are
not appealable if they are insufficiently final.

27 In *Karcher Firestopping v. Meadow Valley Contrs., Inc.*, 125 Nev. 111, 112,
28 204 P.3d 1262, 1263 (2009), this Court considered the issue whether, despite the

1 terms of NRS 38.247(1)(c), it had jurisdiction to consider an appeal of an
2 arbitration award when “the district court order denied [a] motion to confirm the
3 award, vacated the award, and directed a rehearing.” This Court held that “NRS
4 38.247(1), when read as a whole, implicitly contains a policy choice of permitting
5 appellate review only when there is a sufficient degree of finality to the arbitration
6 proceedings.” *Id.* at 115, P.3d at 1265. It concluded that because matters remained
7 unresolved, the district court’s order was insufficiently final to give rise to
8 appellate jurisdiction. *See id.* at 117, P.3d at 1266.

11 In a case cited in *Karcher*, the D.C. court of appeals flat-out rejected the
12 argument Respondents are pressing here. *See Connerton, Ray & Simon v. Simon*,
13 791 A.2d 86, 87 (D.C. App. 2002). The *Connerton* court held: “When it is
14 apparent that an order confirming or denying confirmation of an arbitration award
15 does not represent the conclusion of the proceeding on the merits, it lacks the
16 quality of finality that underlies [the UAA] and is not appealable.” *Id.* at 88.

19 In *Karcher* and *Connerton*, the determinative factor was that the trial court
20 orders were insufficiently final because matters remained adjudicated. “[A]
21 judgment is final when it resolves all of the issues that the case presents.” *Frank*
22 *Settelmeier & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1212-1213, 197
23 P.3d 1051, 1055 (2008). Here, when the District Court entered its Confirmation
24 Order, Respondents’ counterclaim for abuse of process remained. Thus, under
25 *Karcher*, that order was insufficiently final for appeal. Sufficient finality arose
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1 only when the District Court ruled upon the counterclaim in the MSJ Order, which
2 it certified as final. *See also Deiab v. Shaw*, 138 S.W.3d 741, 743 (Mo. App.
3 2003) (holding that, under the Missouri UAA, a judgment was not “final” because
4 claims and counterclaims were “still pending in the trial court”).

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6 Below, Respondents linked their counterclaim to the arbitration award,
7 thereby causing these two matters to become inextricably intertwined. In their
8 counterclaim, Respondents made repeated references to “arbitration” and Chan’s
9 actions in relation thereto. (5 Appx 1034-50). They also alleged that Chan violated
10 the arbitration “ethical rules” and breached the arbitration agreement. (1 Appx 51;
11 5 Appx 1034-50). Respondents sought \$110,625.85 in damages. (5 Appx 1044).
12
13 The District Court also treated the two matters as intertwined. Although the UAA
14 permitted it, the District Court did not sever the arbitrable claims from and the non-
15 arbitrable counterclaim or limit the stay of the judicial proceedings to the arbitrable
16 claims alone. *See* NRS 38.221(7). Rather, it stayed everything. It lifted the stay
17 only after the arbitration award had been entered.

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21 Later, it confirmed the award, but even then, the District Court refused to
22 certify the Confirmation Order as final. *See* NRCP 54(b) (allowing the for a
23 district court to certify as “final” an order that does not resolve all issues “[w]hen
24 an action presents more than one claim for relief—whether as a claim ... [or]
25 counterclaim ... only if the court expressly determines that there is no just reason
26 for delay”). Only after it entered the Confirmation Order did the District Court
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1 even consider the counterclaim. Ultimately, it granted summary judgment in favor
2 of Appellants, ruling that they “committed no abuse of process.” *Under NRCP*
3 *54(b), it certified the MSJ Order as final.* (5 Appx 1459).

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5 “Nevada has an interest in ‘promoting judicial economy by avoiding ...
6 piecemeal appellate review.’” *Barbara Ann Hollier Trust v. Shack*, 131 Nev. 582,
7 590, 356 P.3d 1085, 1090 (2015). Piecemeal appellate review would have resulted
8 if Chan had to appeal the Confirmation Order immediately and then appeal the
9 MSJ Order over two years later. Under *Karcher* and *Hollier Trust*, the
10 Confirmation Award was not “sufficiently final.” Only the MSJ Order resolved all
11 of the issues relating to the arbitration award and the counterclaim. Therefore, it
12 was certified as “final” and rendered the Confirmation Order appealable.
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15 **IV. REQUEST FOR RELIEF**

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17 WHEREFORE, Appellants request this Court to deny Respondents’ *Motion*
18 *to Dismiss Second Appeal* (filed Jul. 6, 2021); to allow this appeal to proceed as to
19 the arbitration award and Confirmation Order; and to grant Appellants all such
20 other and further relief to which they may justly deserve at law or in equity.
21

22 DATED: August 3, 2021.

23 **FRIZELL LAW FIRM**

24 By: /s/ R. Duane Frizell
25 **R. DUANE FRIZELL, ESQ.**
26 Nevada Bar. No 9807
27 *Attorney for Appellants*
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10 *Cross-Respondents*

11 **IN THE SUPREME COURT**
12 **OF THE STATE OF NEVADA**

13 BETTY CHAN; and ASIAN
14 AMERICAN REALTY &
15 PROPERTY MANAGEMENT,

16 Appellants/Cross-Respondents,

17 vs.

18 WAYNE WU; JUDITH
19 SULLIVAN; NEVADA REAL
20 ESTATE CORP.; and JERRIN
21 CHIU;

22 Respondents/Cross-Appellants.

SUPREME COURT CASE NO. 82208

District Court Case No. A-16-744109-C

Eighth Judicial District Court

(Hon. Eric Johnson)

23 **EXHIBITS TO APPELLANTS' RESPONSE IN OPPOSITION TO**
24 **RESPONDENTS' MOTION TO DISMISS SECOND APPEAL**

25 Appellants now file these *Exhibits to Appellants' Response in Opposition to*
26 *Respondents' Motion to Dismiss Second Appeal*. The Exhibits are as follows:

27 **EXHIBITS**

28 *Exhibit 1* [First] *Order to Show Cause* (filed Nov. 14, 2019)
First Appeal, Supreme Court Case No. 78666
["First OSC" or "1st OSC"]

Exhibit 2 [Second] *Order to Show Cause* (filed Mar. 9, 2020)
First Appeal, Supreme Court Case No. 78666
["Second OSC" or "2nd OSC"]

1 *Exhibit 3 Order Dismissing Appeal* (filed May 14, 2020)
2 First Appeal, Supreme Court Case No. 78666
3 ["Dismissal Order" or "Dism. Ord."]
4

5 DATED: August 3, 2021.

6 **FRIZELL LAW FIRM**

7 By: /s/ R. Duane Frizell
8 **R. DUANE FRIZELL, ESQ.**
9 Nevada Bar. No 9807
10 *Attorney for Appellants*
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EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

BETTY CHAN; AND ASIAN
AMERICAN REALTY & PROPERTY
MANAGEMENT,

Appellants,

vs.

WAYNE WU; JUDITH SULLIVAN;
NEVADA REAL ESTATE CORP.;
JERRIN CHIU; AND KB HOME SALES-
NEVADA INC.,

Respondents.

No. 78666

FILED

NOV 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a district court order granting a motion for summary judgment and awarding attorney fees and costs. Initial review of the docketing statement and documents before this court reveals a potential jurisdictional defect. It appears that the notice of appeal may have been prematurely filed after the filing of a timely tolling motion for reconsideration on April 1, 2019, but before that motion was formally resolved by the district court. *See* NRAP 4(a)(4), 4(a)(6); *AA Primo Builders, LLC, v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (explaining when a post-judgment motion carries tolling effect).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. This court notes that any jurisdictional defect may be cured by providing this court with a copy of a written, file-stamped order resolving the April 1, 2019, motion. Respondents may file any reply within 14 days of service of appellants' response. Failure to demonstrate that this court has jurisdiction may result in the dismissal of this appeal.

The deadlines to file documents in this appeal are suspended pending further order of this court.

It is so ORDERED.

 C.J.

cc: Frizell Law Firm, PLLC
Wood, Smith, Henning & Berman, LLP/Las Vegas
Blackrock Legal, LLC

EXHIBIT 2

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

BETTY CHAN; AND ASIAN
AMERICAN REALTY & PROPERTY
MANAGEMENT,

Appellants,

vs.

WAYNE WU; JUDITH SULLIVAN;
NEVADA REAL ESTATE CORP.;
JERRIN CHIU; AND KB HOME SALES-
NEVADA INC.,

Respondents.

No. 78666

FILED

MAR 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a district court order granting a motion for summary judgment and awarding attorney fees and costs. This court previously entered an order directing appellants to show cause why this appeal should not be dismissed for lack of jurisdiction because it appeared that the notice of appeal may have been prematurely filed. *See* NRAP 4(a)(6). Appellants have filed a response and respondents have filed a reply. Respondents' reply raises additional jurisdictional concerns.

First, it appears that the March 22, 2019, order may not be appealable under NRS 38.247(1)(c) as an order confirming an arbitration award because that order does not actually confirm an arbitration award. The order merely states that it affirms the previous confirmation order, entered September 18, 2018. To the extent the March 22, 2019, order can be construed as an order confirming the arbitration award, it appears superfluous and unappealable. *Campos-Garcia v. Johnson*, 130 Nev. 610, 331 P.3d 890 (2014).

Second, the March 22, 2019, order may not be appealable pursuant to NRS 34.247(1)(f) as a final judgment entered under NRS

38.206-.248 because appellants' claims against KB Home Sales-Nevada Inc. and respondents' counterclaims remain pending in the district court.¹ See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment).

In addition, it appears that the notice of appeal was improperly filed by appellant Betty Chan, a non-attorney, on behalf of appellant Asian American Realty & Property Management. See *Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (2000) ("[N]o rule or statute permits a non-attorney to represent any other person, a company, a trust, or any other entity in the district courts or in this court."). It thus appears that this court lacks jurisdiction over the appeal filed on behalf of Asian American Realty. See *id.* (dismissing an appeal for lack of jurisdiction where the notice of appeal was filed by a non-attorney on behalf of a trust).

Accordingly, appellants shall have 28 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction.² In responding to this order, appellants should specifically explain how this court has jurisdiction to consider the district court's March 22, 2019, order under NRS 34.247(1)(c) and/or NRS 34.247(1)(f). Appellants should identify which claims and counterclaims were addressed in the arbitration proceedings and which claims and counterclaims were at issue in respondents' August 6, 2018, countermotion for summary judgment. Appellants should also respond to respondents' contention that appellants

¹It appears that respondents' counterclaim for declaratory relief may have been implicitly resolved or rendered moot by the September 18, 2018, and March 22, 2019, orders.

²Appellants' alternative request for an extension of time to cure any jurisdictional defect is denied as moot.

may not challenge the confirmation of the arbitration award in the context of this appeal from the March 22, 2019, order. Respondents may file any reply within 14 days of service of appellants' response. The parties should provide this court with any written, file-stamped order formally resolving appellants' claim against KB Homes, respondents' counterclaims, and appellants' April 1, 2019, motion, discussed in this court's previous order to show cause. *See* NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction.").

The deadlines to file documents in this appeal remain suspended pending further order of this court.

It is so ORDERED.

Pickering, C.J.

cc: Frizell Law Firm, PLLC
Wood, Smith, Henning & Berman, LLP/Las Vegas
Blackrock Legal, LLC

EXHIBIT 3

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

BETTY CHAN; AND ASIAN
AMERICAN REALTY & PROPERTY
MANAGEMENT,

Appellants,

vs.

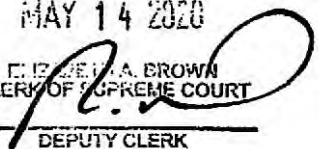
WAYNE WU; JUDITH SULLIVAN;
NEVADA REAL ESTATE CORP.;
JERRIN CHIU; AND KB HOME SALES-
NEVADA INC.,

Respondents.

No. 78666

FILED

MAY 14 2020

C. J. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This court previously ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellants have filed a response and respondents have filed a reply.¹

First, it appeared that the March 22, 2019, order may not be appealable under NRS 38.247(1)(c) as an order confirming an arbitration award because that order does not actually confirm an arbitration award. The order merely states that it affirms the previous confirmation order, entered September 18, 2018. To the extent the March 22, 2019, order can be construed as an order confirming the arbitration award, it appeared superfluous and unappealable. *See Campos-Garcia v. Johnson*, 130 Nev. 610, 331 P.3d 890 (2014).

Appellants seem to assert that the March 22, 2019, order substantively amended the September 18, 2018, order and is thus appealable as an amended judgment. *See* NRAP 4(a)(5). But the March 22,

¹Appellants' motion to strike the reply or for leave to file a sur-reply is denied.

2019, order does not amend the confirmation of the arbitration award. To the extent appellants challenge only the portion of the March 22, 2019, order declaring Wu to be the procuring cause, no statute or court rule allows an appeal from an order declaring someone to be a procuring cause.² See *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (this court “may only consider appeals authorized by statute or court rule”). And the order is not appealable under NRS 38.247(1)(c) because it does not actually confirm an arbitration award.

Second, it appeared that the March 22, 2019, order may not be appealable pursuant to NRS 38.247(1)(f) as a final judgment entered under NRS 38.206-.248 because appellants’ claims against KB Home Sales-Nevada Inc. and respondents’ counterclaims remained pending in the district court. Appellants respond that the finality requirements of NRS 38.247(1)(f) are inapplicable because the appeal challenges the confirmation of an arbitration award and pending claims do not defeat jurisdiction. Accordingly, appellants appear to concede that the March 22, 2019, order is not appealable under NRS 38.247(1)(f).³

²It appears appellants may also contend that the March 22, 2019, order is appealable as a special order after final judgment. See NRAP 3A(b)(8). However, appellants do not dispute that no final judgment has been entered in this action. In the absence of a final judgment, there can be no special order after final judgment.

³This court also identified two other potential jurisdictional defects—it appeared the notice of appeal was improperly filed by appellant Betty Chan, a non-attorney, on behalf of appellant Asian American Realty & Property Management, and the notice of appeal may have been prematurely filed prior to the resolution of a pending tolling motion. Given the conclusion that the March 22, 2019, order is not appealable, these issues are not discussed further.

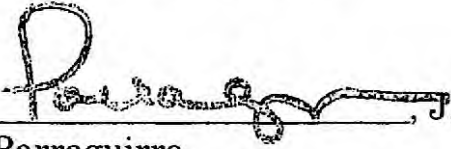
Appellants also seem to assert that the notice of appeal was timely filed from the September 18, 2018, order confirming arbitration award. That order was not identified in the notice of appeal and it does not appear reasonable to interpret the notice of appeal and the documents filed therewith as challenging that order. *See Abdullah v. State*, 129 Nev. 86, 90–91, 294 P.3d 419, 421 (2013) (stating the general rule that an order not included in the notice of appeal is not considered on appeal but recognizing that an appeal will not be dismissed if an intent to appeal from a judgment “can be reasonably inferred and the respondent is not misled”). However, even if the notice of appeal is construed as a challenge to the September 18, 2018, order, the notice of appeal was untimely filed on April 22, 2019, more than 30 days after service of notice of entry of that order on September 21, 2018. *See* NRAP 4(a)(1) (providing that a notice of appeal must be filed within 30 days after service of notice of entry of the order challenged on appeal); NRS 38.247(2) (providing that appeals from orders confirming an arbitration award are to be taken “as from an order or a judgment in a civil action”).

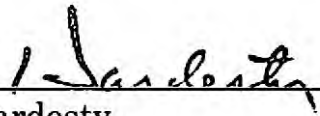
Appellants filed an amended notice of appeal on April 6, 2020, that purports to appeal from the March 22, 2019, order, a March 10, 2020, order, and “[a]ll prior court judgments, orders, rulings, and decisions” previously entered by the district court and that appellants are aggrieved by. To the extent this amended notice of appeal can be construed as an appeal from the September 18, 2018, order, the notice of appeal was untimely filed. The March 22, 2019, order is not independently appealable as discussed above. And the March 10, 2020, order, which grants in part a motion to resolve a pending motion, denies a motion for reconsideration,

denies a motion for summary judgment, and denies a motion to certify a judgment as final under NRCP 54(b), is also not substantively appealable.

Accordingly, it appears that this court lacks jurisdiction and this court

ORDERS this appeal DIMISSED.⁴


Parraguirre


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cc: Hon. Eric Johnson, District Judge
James A. Kohl, Settlement Judge
Frizell Law Firm, PLLC
Wood, Smith, Henning & Berman, LLP/Las Vegas
Blackrock Legal, LLC
Eighth District Court Clerk

⁴Respondents' request for attorney fees incurred on appeal is denied.

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10 **IN THE SUPREME COURT**
11 **OF THE STATE OF NEVADA**

12 BETTY CHAN; and ASIAN
13 AMERICAN REALTY &
14 PROPERTY MANAGEMENT,

15 Appellants/Cross-Respondents,

16 vs.

17 WAYNE WU; JUDITH
18 SULLIVAN; NEVADA REAL
19 ESTATE CORP.; and JERRIN
20 CHIU;

21 Respondents/Cross-Appellants.

SUPREME COURT CASE NO. 82208

District Court Case No. A-16-744109-C

Eighth Judicial District Court

(Hon. Eric Johnson)

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that, pursuant to NRAP 25(c), on August 3, 2020, I served a
24 true and correct copy of ***APPELLANTS' RESPONSE IN OPPOSITION TO***
25 ***RESPONDENTS' MOTION TO DISMISS SECOND APPEAL*** and ***EXHIBITS***
26 ***TO APPELLANTS' RESPONSE IN OPPOSITION TO RESPONDENTS'***
27 ***MOTION TO DISMISS SECOND APPEAL***, together with any and all exhibits
28 and attachments, via the Supreme Court's Electronic Filing System to the
following:

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