

IN THE SUPREME COURT 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.

No. 82208

FILED

JAN 19 2022

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

ORDER DENYING MOTION TO DISMISS

This is an appeal from the district court's (1) September 19, 2018, order denying motion to vacate or modify arbitration award; (2) March 22, 2019, order granting countermotion for summary judgment and attorney fees and costs; (3) March 10, 2020, order on motion to formally resolve motion for reconsideration and certify judgment as final; and (4) November 23, 2020, order, certified as a final judgment under NRCP 54(b), granting in part motion for summary judgment or alternatively for contractual award of attorney fees, writ of execution, and release of bond.

Respondents/cross-appellants have cross-appealed from the district court's November 23, 2020, final judgment. Additionally, respondents/cross-appellants have filed a motion to dismiss the appeal for

lack of jurisdiction to the extent appellants/cross-respondents challenge the district court's September 19, 2018, order. In the motion, respondents/cross-appellants contend that the September 19, 2018, order was independently and immediately appealable under NRS 38.247(1)(c) and that appellants/cross-respondents did not timely appeal.¹ Thus, respondents/cross-appellants assert, appellants/cross-respondents may not challenge the order as part of the appeal from the final judgment. We disagree.²

Under NRS 38.247(1)(c), an appeal may be taken from "[a]n order confirming or denying confirmation of an [arbitration] award." In *Karcher Firestopping v. Meadow Valley Contractors, Inc.*, this court observed that NRS 38.247(1) "implicitly contains a policy choice of permitting appellate review only when there is a sufficient degree of finality to the arbitration proceedings." 125 Nev. 111, 115, 204 P.3d 1262, 1264 (2009). Indeed, "the statutory structure providing for appeals from arbitration-related orders, when read as a whole, is designed to permit appeals only from orders that bring an element of finality to the arbitration process." *Id.* at 117, 204 P.3d at 1266.

¹Although respondents/cross-appellants suggest that the district court's March 22, 2019, and March 10, 2020, orders should also be dismissed on the same basis, this court already concluded that these orders were not independently appealable. See *Chan v. Wu*, No. 78666, 2020 WL 2510925 (Nev. May 14, 2020) (Order Dismissing Appeal). Thus, this court has jurisdiction to consider these orders as part of the appeal from the final judgment.

²Nor are we persuaded by respondents/cross-appellants' remaining arguments, including those regarding the doctrine of res judicata.

Here, the district court's September 18, 2018, order effectively confirmed the arbitration award. Respondents/cross-appellants had related counterclaims, however, that remained pending in the district court. Thus, the order lacked sufficient finality to be appealable. See *Karcher* 125 Nev. at 115, 204 P.3d at 1264; *Frank Settelmeier & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1213, 197 P.3d 1051, 1055 (2008) ("a judgment is final when it resolves all of the issues that the case presents"); see also NRS 38.247(2) ("An appeal under this section must be taken as from an order or a judgment in a civil action."). Concluding otherwise would conflict with the rule that "[t]here may not be more than one final judgment in an action or proceeding," *Frank Settelmeier*, 124 Nev. at 1213, 197 P.3d at 1056, and the interest in "promoting judicial economy by avoiding the specter of piecemeal appellate review." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 733 (1994).

As the September 18, 2018, order was interlocutory in nature, it is appealable under NRAP 3A(b)(1) and NRS 38.247(1)(f) as part of the appeal from the final judgment. See *Estate of Adams v. Fallini*, 132 Nev. 814, 818, 386 P.3d 621, 624 (2016) ("a party may appeal interlocutory orders after entry of final judgment because those orders merge into that final judgment"); see also *Sheet Metal Workers' Int'l Ass'n Loc. Union No. 359 v. Madison Indus., Inc. of Arizona*, 84 F.3d 1186, 1193 n.7 (9th Cir. 1996) (jurisdiction over an appeal from a final judgment extends "to all previous orders in the case"). Accordingly, the motion to dismiss is denied.

The briefing schedule in this appeal and cross-appeal is reinstated as follows. Appellants/cross-respondents shall have 30 days from the date of this order to file and serve the combined reply brief on appeal

and answering brief on cross-appeal. Thereafter, briefing shall proceed in accordance with NRAP 28.1(f)(3)(D).

It is so ORDERED.

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Eric Johnson, District Judge
Frizell Law Firm, PLLC
Blackrock Legal, LLC
Eighth District Court Clerk