

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADVENTURES
INTERNATIONAL, LLC, a
Nevada Limited Liability
Company; ITCO, Corporation, a
Nevada corporation,

Appellants,

vs.

SG VEGAS OWNER, LLC, a
Nevada limited liability
company,

Respondent.

Electronically Filed
Jul 06 2022 12:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84937

District Court Case No.

A-22-851990-C

**From the Eighth Judicial District Court, Dept. IX
The Honorable Mark Gibbons**

RESPONSE TO ORDER TO SHOW CAUSE

Kelly H. Dove (Nevada Bar No. 10569)
Charles E. Gianelloni (Nevada Bar No. 12747)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
kdove@swlaw.com
cgianelloni@swlaw.com

Attorneys for Real Party In Interest SG Vegas Owner, LLC

Introduction

On June 29, 2022, Adventures International, LLC (“AI”) and ITCO, Corporation (“ITCO,” and together “Appellants”) filed a Notice of Appeal challenging (1) a June 27, 2022 stipulation and order granting a temporary writ of restitution in favor of their landlord, SG Vegas Owner, LLC (“SG Vegas”); and (2) a minute order denying their request for a TRO, noting that an order was pending. For the reasons the Court identified in its Order to Show Cause and as further discussed below, this Court lacks jurisdiction over Appellants’ improper appeal.

Additionally, Appellants have since been evicted from all but two of the ten subject Properties. And, since the docketing of this appeal, circumstances have changed such that, pursuant to subsequent stipulations and orders agreed to by the parties, AI and ITCO are each permitted to occupy the remaining Property through July 10, 2022, and July 15, 2022, respectively. As such, the subject of their appeal and accompanying stay motion has been mooted.

Argument

This Court identified three jurisdictional defects in this appeal, each of which is sound, and each of which warrants dismissal.

I. No Immediate Appeal Lies from an Order Granting a Temporary Writ of Restitution.

An appeal may only be taken when authority is granted by statute. *Taylor Const. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). NRAP 3A(b) enumerates the orders from which an appeal may be taken. A temporary writ of restitution is not one of the enumerated orders under NRAP 3A(b), nor the subject of any statute providing for a direct appeal from such an order. Indeed, this Court has recognized that “[n]o statute or court rule authorizes an appeal from an order granting a temporary writ of restitution; thus the challenged order is not substantively appealable....” *Shawhan v. Shawhan*, 124 Nev. 1507, 238 P.3d 854 (2008) (unpublished).

Nor is a temporary writ of restitution appealable as a final order. NRAP 3A(b) allows for an appeal to be taken following a final judgment. A final judgment “disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). In contrast, because a temporary order may be “subject to periodic review,” its temporary nature makes it “unsuitable for appellate review.” See *Matter of Guardianship of Wittler*, 135 Nev. 237, 238, 445 P.3d 852, 854

(2019). Because a temporary writ of restitution is not appealable under any statute or rule, the Court should dismiss the appeal.

II. A Minute Order Is Not Appealable.

A minute order is not final in nature (and accordingly not appealable) because until a final judgment or written order is entered, “a [] court remains free to reconsider and issue a written judgment different from its oral pronouncement. *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). This Court has made it clear that “only a written judgment has any effect, and only a written judgment may be appealed.” *Id.* at 689, 747 P.2d at 1382. Although dispositional oral orders are enforceable, valid, and a necessary tool of our judicial system, they are not effective until they are “written, signed, and filed.” *See Div. of Child & Family Services, Dept. of Human Res., State of Nevada v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004). Appellants’ Notice of Appeal purports to appeal from a minute order, which is improper and cannot serve as the basis for an appeal.

///

///

III. Appellants Have Not Appealed from the Denial of a TRO, which Is in Any Event Not Appealable.

An order denying a motion for a temporary restraining order is, again, not one of the enumerated appealable orders under NRAP 3A(b). Further, this Court has held that a temporary restraining order is not appealable because of its “limited duration pending further proceedings on the injunction request.” *See Sicor, Inc. v. Sacks*, 127 Nev. 896, 900, 266 P.3d 618, 620 (2011); *see also Sugarman Iron & Metal Co. v. Morse Bros. Mach. & Supply Co.*, 50 Nev. 191, 255 P. 1010, 1012 (1927) (holding that an appeal may not be taken from a temporary restraining order).

Here, the appealed-from June 27 order does not mention the denial of a TRO, but instead only an order granting a temporary writ of restitution. Nor is there any written order denying a TRO. However, to the extent that Appellants purport to appeal from a ruling denying a TRO, there is no jurisdiction over such an appeal.

///

///

///

///

///

Conclusion

As this appeal suffers from several fatal jurisdictional defects, the Court should dismiss the appeal.

DATED: July 6, 2022

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

Kelly H. Dove

Nevada Bar No. 10569

Charles E. Gianelloni

Nevada Bar No. 12747

3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

Attorneys for Real Party In Interest

SG Vegas Owner, LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On July 6, 2022, I caused to be served a true and correct copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams

An Employee of SNELL & WILMER L.L.P.