

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA
COMMISSIONER OF INSURANCE AS
RECEIVER OF LEWIS AND CLARK
LTC RISK RETENTION GROUP, INC.,
Appellant,

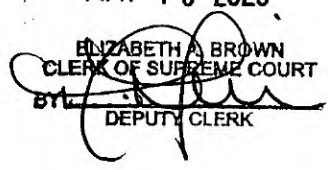
vs.

ROBERT CHUR; STEVE FOGG; MARK
GARBER; CAROL HARTER; ROBERT
HURLBUT; BARBARA LUMPKIN;
JEFF MARSHALL; ERIC STICKELS;
UNI-TER UNDERWRITING
MANAGEMENT CORP.; UNI-TER
CLAIMS SERVICES CORP.; AND U.S.
RE CORPORATION,
Respondents.

No. 85907

FILED

MAY 10 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER AMENDING CAPTION AND TO SHOW CAUSE

This is an appeal challenging a post-judgment order granting attorney's fees and costs. It appears that Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. Re Corporation are proper respondents to this appeal. Accordingly, the clerk of this court shall amend the caption in this appeal to conform with the caption on this order. Any objections to the caption as amended shall be made in writing within 14 days of the date of this order.

Preliminary review of the docketing statement and the documents submitted to the court pursuant to NRAP 3(g) reveals a potential jurisdictional defect. Specifically, the notice of appeal appears to be premature under NRAP 4(a) because it appears that it was filed after the timely filing of a tolling motion and before the tolling motion was formally resolved. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245

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P.3d 1190 (2010) (a motion for reconsideration can be considered a tolling motion to alter or amend); and *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 314 P.3d 946 (2013) (tolling motions directed at an appealable post-judgment order toll the time to appeal from that order).

A timely tolling motion terminates the 30-day appeal period, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed, and before the district court enters a written order finally resolving the motion. *See* NRAP 4(a)(4). The district court docket entries reflect that a motion to reconsider the order granting the motion for attorney fees and costs was timely filed on December 16, 2022. There is no indication as to whether this motion has been resolved by the district court.

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction.¹ Failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The deadlines for filing documents in this appeal shall be suspended pending further order of this court. Respondents may file any reply within 14 days from the date that appellant's response is served.

It is so ORDERED.

Stiglin, C.J.

¹A premature notice of appeal does not divest the district court of jurisdiction. NRAP 4(a)(6). Should the district court enter a written order resolving the motion to reconsider prior to dismissal of this appeal, the notice of appeal shall be considered timely filed on the date of entry of the order. *Id.* Respondent is directed to provide this court with a file-stamped copy of any order resolving the tolling motion.

cc: Hutchison & Steffen, LLC/Las Vegas
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