

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEPSI BOTTLING GROUP, INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DOUGLAS HERNDON, DISTRICT
JUDGE,

Respondents,

and

ROBERT J. PRESS AND AMBER S.
PRESS,
Real Parties in Interest.

No. 45609

FILED

MAR 14 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss. We have considered the petition, answer, and reply, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted.¹

First, this court generally declines to exercise its discretion to consider mandamus petitions challenging district court orders that deny

¹See NRAP 21(b).

motions to dismiss, and petitioner has not demonstrated that this case fits firmly within any exception to this policy.²

Second, as regards petitioner's alternative request, this court may issue a writ of prohibition to arrest the proceedings of a district court exercising judicial functions in excess of its jurisdiction.³ But the issue raised by petitioner—whether real parties in interest's claims against petitioner should be dismissed with prejudice pursuant to the terms of the parties' stipulated dismissal—is, despite petitioner's use of jurisdictional nomenclature to frame it, fundamentally, a matter of interpreting the parties' agreement. To resolve that issue is thus clearly within the district court's judicial functions.⁴

²See Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997) (acknowledging rare exceptions to this court's general policy where "no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action[, or] where . . . an important issue of law requires clarification.").

³NRS 34.320; see Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

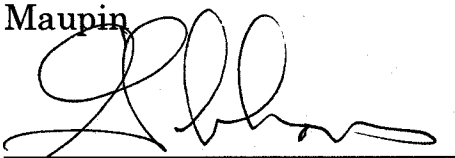
⁴See Casino Operations, Inc. v. Graham, 86 Nev. 764, 769, 476 P.2d 953, 956 (1970) (stating that it is for the district court to determine the construction that parties give an agreement by their conduct); see generally Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967) (recognizing the district court's judicial function to hear, examine, and determine controversies before it).

Finally, petitioner's right to appeal any adverse final decision constitutes a plain, speedy and adequate legal remedy that precludes extraordinary relief.⁵ Accordingly, we

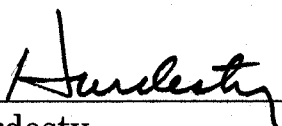
ORDER the petition DENIED.⁶

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Douglas W. Herndon, District Judge
Beckley Singleton, Chtd./Las Vegas
Benson, Bertoldo, Baker & Carter, Chtd./Las Vegas
Lemons Grundy & Eisenberg
Clark County Clerk

⁵See NRS 34.170; NRS 34.330; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (noting that an appeal is generally an adequate legal remedy).

⁶See NRAP 21(b).