

IN THE SUPREME COURT OF THE STATE OF NEVADA

HORIZON HOMES, INC., A NEVADA CORPORATION,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JESSIE WALSH, DISTRICT JUDGE,  
Respondents,

and

KEITH CLEGG, AN INDIVIDUAL; AND RSC HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,  
Real Parties in Interest.

No. 46137

**FILED**

MAY 17 2006

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus and/or prohibition challenging a district court order expunging a notice of lis pendens in a real property contract dispute. The undisputed facts show that the parties entered into a December 5, 2002 agreement for petitioner Horizon Homes, Inc. ("Horizon") to purchase from real party in interest Keith Clegg real property that was to be improved and subdivided into ten lots. The land was actually owned by real party in interest RSC Holdings, LLC, whose sole member is the Clegg Family Trust and whose president, secretary, treasurer and resident agent is Keith Clegg. The contract required Clegg to make certain improvements and obtain final subdivision approval from the City of Las Vegas. By letter dated March 16, 2006,

Clegg terminated the contract after realizing that the improvement costs exceeded his original estimates, which had been reviewed by Horizon.

Horizon filed suit to specifically enforce the parties' agreement and recorded a notice of lis pendens against the property. Following a hearing, the district court granted RSC's motion to expunge the notice of lis pendens, without explaining its reasons for so doing.

When, as in the underlying case, the recordation of a notice of lis pendens is challenged in a district court hearing, NRS 14.015(2) requires the party who recorded the notice to establish the following:

- (a) The action is for the foreclosure of a mortgage upon the real property described in the notice or affects the title or possession of the real property described in the notice;
- (b) The action was not brought in bad faith or for an improper motive;
- (c) He will be able to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property; and
- (d) He would be injured by any transfer of an interest in the property before the action is concluded.

Additionally, NRS 14.015(3) requires the party who recorded the notice to establish to the satisfaction of the court either:

- (a) That he is likely to prevail in the action; or
- (b) That he has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him in the event of a transfer would be greater

than the hardship on the defendant resulting from the notice of pendency, and that if he prevails he will be entitled to relief affecting the title or possession of the real property.

Our review of the documents before us at this early stage of the underlying proceedings shows that the district court abused its discretion in expunging the notice of lis pendens. Clegg filed in the district court a July 7, 2005 affidavit listing the various tasks needed to complete the property's development and stated:

I cannot perform these tasks. When I originally agreed to do the development of the property for \$350,000 (of the \$950,000.00 contract price), I thought the estimates were fair, and Mr. Shannon and Mr. Powers [of Horizon Homes] told me they were, too. In 2003, as I tried to do the development, I learned the estimates were way off, requiring another \$200,000.00. Today, it's even more than that. I can't do this work and take a loss. I would never have signed the contract had I known the actual costs to develop were so much more than the estimates.

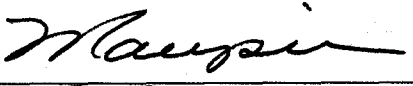
Horizon has demonstrated an ability to pay the contract price.<sup>1</sup> And, given Clegg's admission that he does not intend to perform under the contract, it appears that Horizon has, at least initially, demonstrated a likelihood of prevailing under NRS 14.015(3). Consequently, Horizon's notice of lis pendens should not have been expunged.

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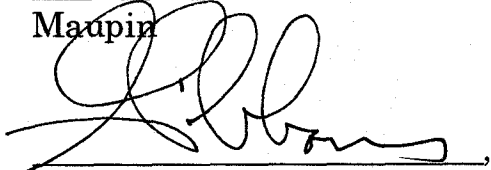
<sup>1</sup>On December 30, 2005, Horizon posted a \$950,000 supersedeas bond, which was required as a condition of this court's stay entered on December 19, 2005. In light of this order, we vacate our prior stay, as well as the requirement that Horizon post a supersedeas bond.

Accordingly, we grant the petition and direct the court clerk to issue a writ of mandamus directing the district court to vacate its order expunging the notice of lis pendens.


It is so ORDERED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Perry & Spann/Las Vegas  
Singer & Brown  
Winner & Carson, P.C.  
Clark County Clerk