

IN THE SUPREME COURT OF THE STATE OF NEVADA

BEKAM DEVELOPMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Petitioner,

vs.

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

and

VEGAS HOLDINGS, LLC, A NEVADA
LIMITED LIABILITY COMPANY; TROP
PARADISE, LLC, A NEVADA LIMITED
LIABILITY COMPANY; TLGG, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; CENNEDIG, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY; AND HEIMAN
PROPERTIES, LLC NEVADA SERIES
III, A DELAWARE LIMITED
LIABILITY COMPANY;
Real Parties in Interest

No. 48400

FILED

JAN 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 that, among other things, denied a motion to expunge a lis pendens and provided real parties in interest until January 11, 2007, to choose from two contractual remedies available to them based on petitioner's breach of the parties' land purchase agreement.

Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be

considered.¹ Writ relief generally is not available unless the district court manifestly abused its discretion or exercised its discretion arbitrarily or capriciously.² It is petitioner's burden, moreover, to demonstrate that this court's extraordinary intervention is warranted.³ After considering the petition and the answer thereto in light of these principles, we conclude that our extraordinary intervention is unwarranted.

First, concerning petitioner's objection to the district court imposing a January 11, 2007 deadline for real parties in interest to elect their remedy under the terms of the land purchase agreement, we note that the district has a duty to supply essential terms missing from a valid agreement, including a setting reasonable time for its continuation.⁴ Here, after the parties amended the land purchase agreement, it essentially lacked any deadline for its performance, providing that "the parties agree . . . to extend the Closing Date for a reasonable time necessary to satisfy [certain] conditions precedent." It became the district court's duty, then, to supply that reasonable time when petitioner instituted the underlying declaratory relief action requesting a declaration

¹See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

²See State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237-38 (2002).

³Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁴See Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107, 114-15, 424 P.2d 101, 106 (1967); Restatement (Second) of Contracts § 204 (1981) (recognizing that, when a valid contract omits an essential term, a court may supply a term reasonable under the circumstances).

of the parties' rights under the agreement.⁵ And nothing in the petition or supporting documentation indicates that January 11 is an unreasonable deadline, much less a manifest abuse of the district court's discretion.⁶

Second, as regards the district court's denial of petitioner's motion to expunge the notice of lis pendens, petitioner maintains that, under NRS 14.015(2)(c), the district court was compelled to grant its motion. NRS 14.015(2)(c) pertinently provides that the party recording a notice lis pendens must demonstrate its ability "to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property."

Contrary to petitioner's position, real parties in interest's demonstration of their ability to pay the full purchase price for the land is a condition concurrent, not precedent, to petitioner's obligation to transfer title in the parcel to them.⁷ Thus, because petitioner's reliance on NRS 14.015(2)(c) is unavailing, petitioner has failed to demonstrate that the

⁵Id.

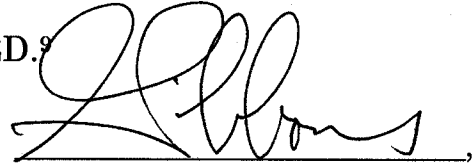
⁶According to petitioner, extending the deadline by which real parties in interest must select their contractual remedy constitutes "insert[ing] a 'cure' provision" into the parties' unambiguous agreement, arbitrarily allowing real parties in interest to cure petitioner's breach. But the district court's deadline extension merely supplied an essential term that the parties' amendment eliminated from their agreement. Any ensuing cure by real parties in interest of petitioner's breach is incidental to that extension of time.

⁷See Thornton v. Agassiz Construction, 106 Nev. 676, 677 n.1, 799 P.2d 1106, 1107 n.1 (1990) (noting that "[f]ull payment of the purchase price may be deemed a constructive condition concurrent to conveyance of title").

district court abused its discretion in denying its motion to expunge the notice of lis pendens.⁸

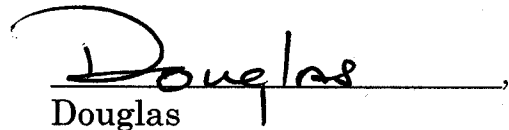
Accordingly, we

ORDER the petition DENIED.⁹



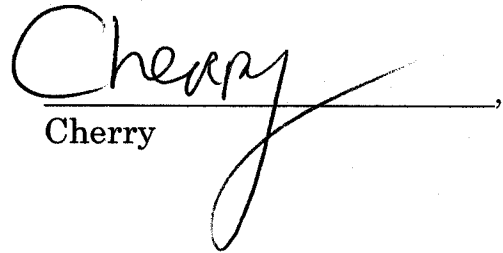
Gibbons

J.



Douglas

J.



Cherry

J.

cc: Hon. David Wall, District Judge
Marquis & Aurbach
Snell & Wilmer, LLP/Las Vegas
Clark County Clerk

⁸Petitioner's reliance on the agreement's provision making time of the essence in support of this argument is likewise unavailing. The parties' blunted the import of that clause when they amended the agreement, removing any precise deadline for its performance.

⁹NRCP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.