

IN THE SUPREME COURT OF THE STATE OF NEVADA

HEIMAN PROPERTIES, LLC NEVADA
SERIES III, A DELAWARE 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

BEKAM DEVELOPMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Real Party in Interest.

No. 48631

FILED

JAN 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Smith*
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 directing petitioner to, by January 11, 2007, choose from two remedies available to it based on real party in interest's breach of the parties' land purchase agreement.

Under the land purchase agreement, if real party in interest, as the seller, breached the agreement, petitioner, as the buyer, could elect to (1) cancel the agreement or (2) "pursue an action for specific performance . . . and obtain from [real party in interest] payment of costs, expenses[,] and losses" arising out real party in interest's breach. The agreement, however, does not provide a precise deadline for petitioner to make its selection. With respect to option (2), the district court apparently determined that, under the purchase agreement's language, petitioner

could not obtain “payment of costs, expenses[,] and losses” arising from real party in interest’s breach until after the agreement had been specifically performed.

Petitioner requests that this court direct the district court to extend the January 11, 2007 deadline for petitioner to select its remedy, or alternatively, that this court direct the district court to determine petitioner’s “costs, expenses[,] and losses” before any specific performance is undertaken.

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

As regards petitioner’s request that this court direct the district court to extend the deadline for petitioner to select a remedy, after reviewing the petition and accompanying documentation, we conclude that petitioner has failed to demonstrate that the district court abused its discretion in imposing a January 11 deadline.⁴

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) (recognizing the duty of the district court to supply terms missing from a valid agreement, including a reasonable time for its continuation); Restatement (Second) of Contracts § 204 (1981) (recognizing

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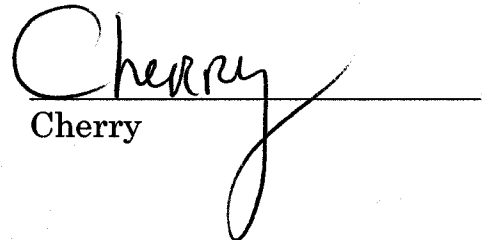
With respect to petitioner's alternative request—that this court direct the district court to determine petitioner's "costs, expenses[,] and losses" arising from real party in interest's breach of the agreement before any specific performance—the matter is not ripe for our determination if and until petitioner opts to specifically perform the parties' land purchase agreement.⁵ And if petitioner makes such an election, we note that petitioner appears to have an adequate and speedy legal remedy in the form of an appeal from any ensuing adverse final judgment.⁶

Accordingly, we

ORDER the petition DENIED.⁷


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

... continued

that, when a valid contract omits an essential term, a court may supply a term reasonable under the circumstances).

⁵See Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (recognizing that this court has consistently required "an actual justiciable controversy as a predicate to judicial relief").

⁶Pan, 120 Nev. at 224, 88 P.3d at 841 (recognizing that an appeal is generally an adequate legal remedy, precluding writ relief).

⁷NRCP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

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