IN THE SUPREME COURT OF THE STATE OF NEVADA

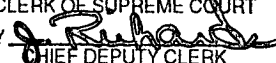|	
DESERT PALACE, INC., D/B/A CAESARS PALACE HOTEL AND CASINO, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE, Respondents, and ALVARO ANTONIO CASTRO, INDIVIDUALLY; AND NEVADA RETAIL NETWORK SELF-INSURED GROUP, Real Parties in Interest.	No. 48892 **FILED** MAR 09 2007 JANETTE M. BLOOM CLERK OF SUPREME COURT BY _____ CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or, in the alternative, prohibition challenges a district court order denying summary judgment in a tort action. Petitioner asserts that, because it hired the injured worker's employer to clean kitchen hoods under a service contract requiring the employer to maintain workers' compensation coverage, and

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because its own employees perform similar tasks, it is entitled to immunity under the Nevada Industrial Insurance Act (NIIA).[1]

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,[2] or to control an arbitrary or capricious exercise of discretion.[3] The counterpart to a writ of mandamus, a writ of prohibition is available when a district court acts without or in excess of its jurisdiction.[4] Neither writ will issue, however, when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.[5] Accordingly, this court will not exercise its discretion to consider petitions for extraordinary writ relief that challenge district court orders denying motions for summary judgment, unless summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification.[6]

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[1]NRS Chapters 616A-616D; see Meers v. Haughton Elevator, 101 Nev. 283, 701 P.2d 1006 (1985); NRS 616B.603; see also Harris v. Rio Hotel & Casino, 117 Nev. 482, 25 P.3d 206 (2001).

[2]NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

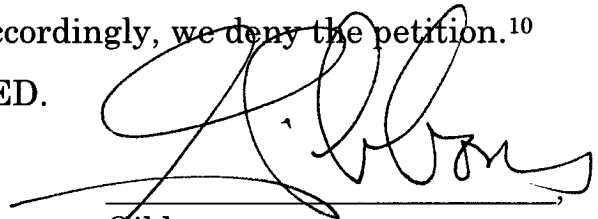[3]Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[4]State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

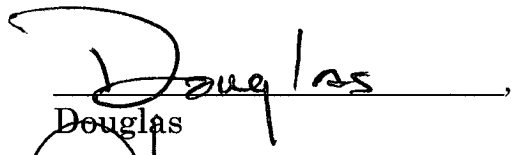[5]Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170; NRS 34.330.

[6]Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. In particular, the documents submitted to this court do not demonstrate that no factual dispute exists and that the district court was clearly obligated to grant petitioner summary judgment because petitioner was the injured worker's statutory employer under the test set forth in <u>Meers v. Haughton Elevator</u> (or any exception thereto),[7] or because immunity was otherwise available under our decision in <u>Harris v. Rio Hotel & Casino</u>.[8] Further, we conclude that this petition does not raise legal issues appropriate for immediate clarification.[9] Accordingly, we deny the petition.[10]
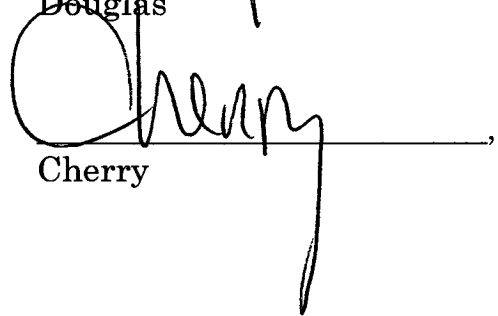
It is so ORDERED.

_____, J.
Gibbons

_____, J.
Douglas

_____, J.
Cherry

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[7]101 Nev. 283, 701 P.2d 1006; <u>see also</u> NRS 616B.603.

[8]117 Nev. 482, 25 P.3d 206; <u>see</u> <u>Richards v. Republic Silver State Disposal</u>, 122 Nev. ___, 148 P.3d 684 (2006).

[9]<u>See, e.g.</u>, <u>Richards</u>, 122 Nev. ___, 148 P.3d 684 (clarifying the extent to which <u>Harris</u> immunizes property owners).

[10]<u>See</u> NRAP 21(b); <u>Smith</u>, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Royal, Jones, Dunkley & Wilson
Richard S. Staub
Tingey & Tingey
Eighth District Court Clerk