

IN THE SUPREME COURT OF THE STATE OF NEVADA

WHITAKER ENTERPRISES, 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
TIMOTHY C. WILLIAMS, DISTRICT
JUDGE,

Respondents,

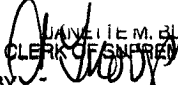
and

LISA GRIFFIN, INDIVIDUALLY; AND
PAMELA HERSHEY, INDIVIDUALLY;
AND THE SAME ON BEHALF OF
THEMSELVES AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Real Parties in Interest.

No. 49284

FILED

MAY 11 2007

DANIEL E. M. BLOOM
CLERK OF SUPREME COURT
BY 
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 a motion to dismiss various constructional defect claims.

According to petitioner, the constructional defect claims relate to a single family home development in North Las Vegas, where petitioner was a subcontractor. Petitioner moved the district court to dismiss some of the defect claims without prejudice, arguing that real parties in interest failed to provide the pre-filing, construction defect cause of action notice

that, under NRS 40.645, it is entitled to.¹ The district court denied petitioner's motion to dismiss. This petition followed.

Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.² Writ relief generally is not available unless the district court manifestly abused its discretion or exercised its discretion arbitrarily or capriciously.³ Further, this court generally will not exercise its discretion to consider petitions for extraordinary writ relief that challenge district court orders denying motions to dismiss, unless dismissal is clearly required by a statute or rule, or an important issue of law requires clarification.⁴

To demonstrate that this court's extraordinary intervention is warranted is petitioner's burden, which includes, among other things,

¹We note that, although NRS 40.645(1) appears to mandate that a contractor receive pre-filing notice of a constructional defect claim, see NRS 40.645(1)(a) (stating that the contractor "must" receive written notice), notice to the subcontractor appears to be discretionary, see NRS 40.645(1)(b) (stating that a subcontractor "may" be provided written notice); see also State, Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 9-10, 866 P.2d 297, 303 (1994) (construing "shall" as mandatory and "may" as permissive).

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

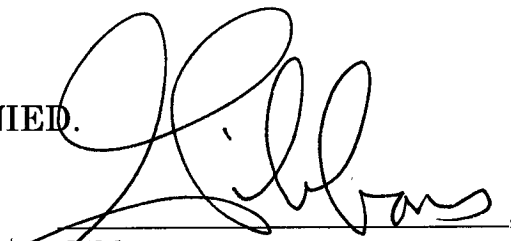
³See State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237-38 (2002).

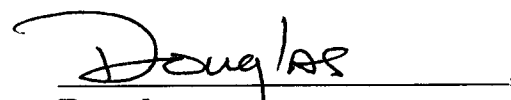
⁴Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).

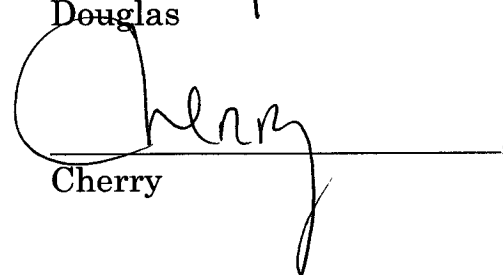
providing this court with any and all documentation that may be essential to understand the matters the petition sets forth.⁵ Petitioner has not met its burden.

Accordingly, we

ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Honorable Timothy C. Williams, District Judge
Bremer Whyte Brown & O'Meara, LLP
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP
Shinnick Law Firm, P.C.
Eighth District Court Clerk

⁵Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004).