

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEWPORT MANAGEMENT, INC., A
WYOMING CORPORATION DOING
BUSINESS IN THE STATE OF
NEVADA AS GREATER NEWPORT
MANAGEMENT, INC.; BRIAN J.
HORNER AND BJH TRUST, BRIAN J.
HORNER, TRUSTEE,
Petitioners,

vs.

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

and

TRACY O'REILLY KOHLRAUTZ, AN
INDIVIDUAL; AND CHRISTOPHER J.
WEBER, AN INDIVIDUAL,
Real Parties in Interest.

No. 49464

FILED

SEP 11 2007

JANE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order that, in expunging real parties in interest's notices of lis pendens recorded against petitioners' parcels of real property, directed that any net proceeds from the sale of any of the parcels be placed in an attorney trust account or with the district court, until the court's further order. Petitioners also challenge the adequacy of the \$100 security bond that the district court directed real parties in interest to post.

Courts in a handful of jurisdictions, including the Bahamas, Texas, and the Nevada federal district court, have considered various aspects of the underlying matter. Like the Bahamas Supreme Court and

the Nevada federal district court, we note that this matter's factual and procedural background is tortured. With respect to the dispute below, petitioners essentially assert that, in light of the procedural and substantive deficiencies of real parties in interest's notices of lis pendens recorded against four parcels of Henderson, Nevada real property, the district court abused its discretion in conditioning the notices' cancellation on the requirement that proceeds from any sale of the properties be placed in an attorney trust account or deposited with the court. According to petitioners, the district court should have unconditionally cancelled real parties in interest's notices of lis pendens, and petitioners effectively request that we direct the district court to enter an order doing so.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or arbitrary or capricious exercise of discretion.¹ Mandamus, moreover, is an extraordinary remedy, and the decision to entertain such a petition is addressed to our sole discretion.² After considering this petition, the answer thereto, petitioners' reply, and the parties' supporting documents, we have concluded that our extraordinary intervention is warranted, and we grant the petition.

Specifically, we agree with petitioners that real parties in interest's notices of lis pendens were statutorily insufficient, warranting

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

²See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

their cancellation.³ The district court, based on its challenged order, ostensibly also agreed. It appears, however, that in conditioning its cancellation of the notices, the court attempted to simultaneously issue a preliminary injunction, enjoining petitioners from expending or transferring proceeds from any sale of the parcels at issue, which is generally within the district court's discretion to do.⁴ But, based on the documents before us, the court, in issuing a preliminary injunction, failed to make the determinations required by NRS 33.010 and NRCP 65.⁵

Accordingly, we direct the clerk of this court to issue a writ of mandamus directing the district court to vacate its March 29, 2007 order that cancelled real parties in interest's notices of lis pendens on the

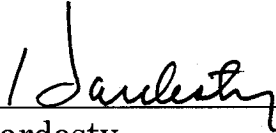
³For example, real parties in interest recorded the notices of lis pendens when no "action for the foreclosure of a mortgage upon [the] real property [at issue], or affecting the title or possession of [the] real property [at issue]" had been filed. See NRS 14.010(1). But NRS 14.010 presupposes such an action. Indeed, "lis pendens" is Latin for "[a] pending lawsuit." Black's Law Dictionary 950 (8th ed. 2004).

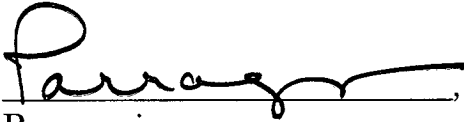
⁴See Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142-43, 978 P.2d 311, 319 (1999).

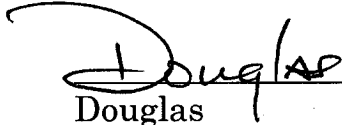
⁵See id. at 142, 978 P.2d at 319 (recognizing that "[a] preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy" (citing NRS 33.010)); see also id. at 146, 978 P.2d at 321 (noting that a preliminary injunction that maintains the status quo may issue when "the questions of law or fact to be ultimately determined in a suit are grave and difficult, and injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted" (quoting Rhodes Co. v. Belleville Co., 32 Nev. 230, 239, 106 P. 561, 563 (1910))).

requirement that proceeds from any sale from the parcels at issue be deposited in an attorney trust account or with the court. The writ shall further direct the court to enter an order unconditionally cancelling real parties in interests' lis pendens recorded on the parcels at issue in this case. Finally, the writ shall direct the court to comply with NRS 33.010 and NRCP 65 in considering and issuing any preliminary injunction requested in this case.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Lawrence J. Semenza
Alverson Taylor Mortensen & Sanders
Christopher J. Weber
Eighth District Court Clerk