

IN THE SUPREME COURT OF THE STATE OF NEVADA

D.R. HORTON, 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  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,

and

DORRELL SQUARE HOMEOWNER'S  
ASSOCIATION, A DOMESTIC NON-  
PROFIT CORPORATION,  
Real Party in Interest.

No. 49492

**FILED**

JUN 08 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS AND PROHIBITION

This original petition for a writ of mandamus and prohibition challenges a district court order that, among other things, vacated its stay imposed during the so-called pre-litigation phase of the construction defect action below.

The district court's stay appears to have been premised on petitioner's desire to obtain clarification of what may constitute sufficient notice of construction defects under NRS 40.645, an issue pending before this court in D.R. Horton v. District Court (First Light at Boulder Ranch), Docket No. 47654. Here, petitioner essentially challenges the adequacy of real party in interest's NRS 40.645 notice of construction defect, requesting that this court direct the district court to compel real party in

interest to provide in its notice of construction defect, the specificity that petitioner contends subsection two of that statute mandates.

Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.<sup>1</sup> Writ relief generally is not available unless the district court manifestly abused its discretion or exercised its discretion arbitrarily or capriciously.<sup>2</sup> To demonstrate that this court's extraordinary intervention is warranted is petitioner's burden.<sup>3</sup>

Here, we cannot conclude that the district court manifestly abused or arbitrarily or capriciously exercised its discretion, since, based on the documentation before this court, the district court has not yet exercised its discretion with respect to the relief petitioner seeks from this court—more specific notice of construction defects. Instead of specifically requesting the district court to resolve issues concerning the sufficiency of real party in interest's construction defect notice, petitioner apparently merely sought a stay of the action's pre-litigation phase, and opposed vacating the stay, to await our resolution of similar issues raised in D.R. Horton v. District Court (First Light at Boulder Ranch), Docket No. 47654.

Because the district court has not specifically addressed the issues implicated by the precise relief petitioner seeks from us, petitioner

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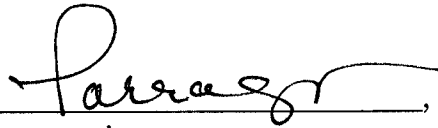
<sup>1</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

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


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

cannot demonstrate that the district court somehow manifestly abused or capriciously or arbitrarily exercised its discretion with respect to those issues. Consequently, we are not persuaded that our extraordinary intervention is warranted. Accordingly, we

ORDER the petition DENIED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Susan Johnson, District Judge  
Marquis & Aurbach  
Quon Bruce Christensen Law Firm  
Eighth District Court Clerk

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<sup>4</sup>See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

In light of this order, we vacate our June 4, 2007 order temporarily staying the proceedings below. Real party in interest thus no longer needs to file an additional response to petitioner's stay motion.