

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

COURT AT ALIANTE HOMEOWNERS  
ASSOCIATION, A NEVADA NON-  
PROFIT CORPORATION,  
Real Party in Interest.

No. 49610

**FILED**

JAN 07 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING IN PART PETITION FOR WRIT OF MANDAMUS

This original petition for writs of mandamus and prohibition challenges a district court order that, among other things, denied petitioner's motion to dismiss the constructional defect action below. Petitioner's motion to dismiss challenged, in part, the adequacy of real party in interest's NRS 40.645 notice of constructional defects, arguing that real party in interest's notice lacked the specificity that petitioner contends subsection two of that statute mandates. Real party in interest has filed an answer, as directed, and petitioner has filed its permitted reply.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or an arbitrary

or capricious exercise of discretion.<sup>1</sup> This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.<sup>2</sup> Both prohibition and mandamus are extraordinary remedies, and whether a petition will be considered is within our discretion.<sup>3</sup> To demonstrate that our intervention by way of extraordinary relief is warranted is petitioner's burden.<sup>4</sup>

Having considered this petition, the answer thereto, and petitioner's reply in light of those principles, we conclude that our intervention by way of extraordinary relief is warranted. In particular, while this petition was pending, we issued an opinion in a substantially similar matter, D.R. Horton v. District Court,<sup>5</sup> which addressed issues identical to those raised in this petition. In that opinion, we set forth several factors to guide district courts in determining whether a NRS 40.645 notice of constructional defects contains the reasonable detail required by that statute.<sup>6</sup> In so doing, we stated that "district courts have wide discretion to make that determination."<sup>7</sup> After D.R. Horton was

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

<sup>2</sup>See NRS 34.320.

<sup>3</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>4</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


<sup>5</sup>123 Nev. \_\_\_, 168 P.3d 731 (2007).

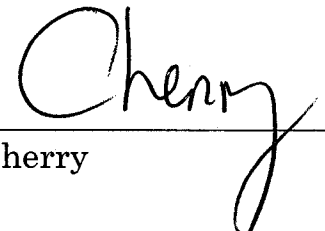
<sup>6</sup>Id. at \_\_\_, 168 P.3d at 739-41.

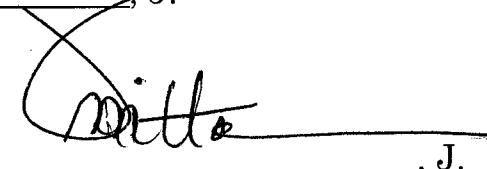
<sup>7</sup>Id. at \_\_\_, 168 P.3d at 739.

issued, petitioner filed a document modifying the relief that it requested in its petition. Petitioner now requests that we direct the district court to reevaluate its motion to dismiss based on real party in interest's notice of constructional defects, in light of our opinion in D.R. Horton. Because the district court did not have the benefit of the D.R. Horton analysis when it considered petitioner's motion to dismiss the underlying action, we grant the petition, in part, and we direct the clerk of this court to issue a writ of mandamus directing the district court to vacate its order denying petitioner's motion to dismiss and to reconsider this issue in light of D.R. Horton.<sup>8</sup>

It is so ORDERED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

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

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

<sup>8</sup>123 Nev. \_\_\_\_, 168 P.3d 731.

<sup>9</sup>In light of this order, petitioner's alternative request for a writ of prohibition is denied. We deny real party in interest's motion to dismiss this petition based on mootness and judicial estoppel.