IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD LARKINS; AND PREMIER PROFESSIONAL SYSTEMS, INC., Petitioners,

VS.

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

and JENNIFER HUNTSMAN, Real Party in Interest. No. 49762

FILED

DEC 0 7 2007

CLARM OF SUPREME COURT
BY U. JULY C. CO
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 striking, as a sanction for discovery abuse, petitioners' answers to a complaint alleging negligence.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise of discretion.¹ A writ of prohibition is available to arrest extrajurisdictional judicial proceedings.² Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.³ It is petitioners' burden to demonstrate that extraordinary relief is warranted.⁴

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

²See NRS 34.320.

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

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

Having considered this petition, the supporting documents, and real party in interest's answer,⁵ we conclude that our intervention by way of extraordinary relief is not warranted.⁶ Accordingly, we

ORDER the petition DENIED.7

Gibbons

J.

Cherry

Saitta

J.

⁵We grant real party interest's unopposed motion to supplement her answer, and we direct the clerk of this court to file the supplement, provisionally received in this court on September 17, 2007.

⁶See <u>GNLV Corp. v. Service Control Corp.</u>, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (explaining the district court's authority to impose discovery sanctions); <u>Young v. Johnny Ribeiro Building</u>, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (noting that district courts have the authority to impose sanctions, including dismissing an action, for litigation abuses).

⁷Since this court entered a stay of the underlying district court proceedings on August 9, 2007, petitioner Richard Larkins' motion for permission to file a supplement to his reply to real party in interest's opposition to the motion for stay is denied as moot. Therefore, we direct the clerk of this court to return, unfiled, Larkins' proposed supplement, provisionally received in this court on October 4, 2007. Additionally, real party in interest's motion to file a response to Larkins' proposed supplement is denied as moot, and we direct the clerk of this court to return, unfiled, real party in interest's proposed response, provisionally received in this court on October 12, 2007.

In light of this order, we vacate the stay imposed by our August 9, 2007 order.

cc: Hon. Michelle Leavitt, District Judge Bremer Whyte Brown & O'Meara, LLP Pyatt Silvestri & Hanlon Simon Law Office Eighth District Court Clerk