

IN THE SUPREME COURT OF THE STATE OF NEVADA

REGENCY TOWERS ASSOCIATION,
INC.; AND CERTAIN MEMBERS OF
LAS VEGAS INTERNATIONAL
COUNTRY CLUB ESTATES HOME
OWNERS ASSOCIATION 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

LAS VEGAS INTERNATIONAL
COUNTRY CLUB ESTATES HOME
OWNERS ASSOCIATION INC.,
Real Party in Interest.

No. 50625

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for writ of prohibition challenges a district court order granting real party in interest's petition to amend its bylaws. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Las Vegas International Country Club Estates Home Owners Association, Inc. (LVCC) petitioned the district court to, under NRS 116.21175, amend its declaration of restrictions and bylaws regarding the manner in which it allocates the costs of maintaining its common areas among its property owners. These owners include owners in the Regency

Towers Association, Inc., and the Regency Towers Association (collectively Regency Towers).

This court previously dismissed Regency Towers' appeal because it had not properly intervened below, and therefore was not a party entitled to appeal. Regency Towers now petitions this court to issue a writ of prohibition vacating the district court's order amending LVCC's bylaws. Regency Towers argues that the district court exceeded its jurisdiction in granting LVCC's petition to amend the bylaws because (1) NRS 116.21175 does not authorize the amendment, (2) LVCC was required to join Regency Towers in the proceedings below, (3) NRS 116.21205 is unconstitutional, (3) Regency Towers' rights were violated under 116.21205, and (4) LVCC did not comply with NRS 116.21175.

After oral argument, Regency Towers filed a motion to reject LVCC's newly raised argument that NRS 116.2117(2)'s one-year statute of limitations bars Regency Towers' petition. This court then issued an order directing an answer and a reply regarding the statute of limitations argument and ordered the parties to brief the issue of whether Regency Towers had an adequate remedy of law that it did not pursue, thereby making a writ an inappropriate form of relief. The parties briefed the statute of limitations issue but did not address the issue of an adequate remedy at law.¹

¹LVCC has filed a motion for leave to file an untimely supplement addressing the issue. Regency Towers has opposed the motion. We deny the motion. The clerk shall return the proposed supplement received on January 12, 2009, unfiled, to LVCC.

The parties are familiar with the facts and procedural history of this case; therefore, we do not recount them in this order except as is necessary for our disposition.

Regency Towers had an adequate remedy at law and is not entitled to a writ of prohibition

A writ of prohibition is an extraordinary remedy within this court's discretion. Walker v. Dist. Ct., 120 Nev. 815, 819, 101 P.3d 787, 790 (2004). This court may grant a writ of prohibition if the district court acted outside its jurisdiction and there is no adequate remedy at law. Id. "[T]he right to appeal is generally an adequate legal remedy that precludes writ relief." Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

In our prior order dismissing Regency Towers' appeal in this case, we held that Regency Towers never requested to intervene below and therefore never became a party with standing to appeal. Regency Towers Ass'n, Inc. v. Las Vegas Int'l Country Club Estates Home Owners Ass'n, Inc., Docket No. 47187 (Order Dismissing Appeal, November 16, 2007). Therefore, Regency Towers' first adequate remedy at law would have been to request to intervene, thereby preserving its right to appeal, which would have afforded it full relief. Pan, 120 Nev. at 224, 88 P.3d at 841.

Second, Regency Towers could have filed suit after the district court granted LVCC's petition to amend the bylaws. Under NRS 116.2117, Regency Towers could have sued to challenge the validity of the amendment within one year after amendment was recorded. Such a suit, and the subsequent right to appeal from a judgment, would also have afforded Regency Towers an adequate remedy at law.

There were two remedies at law available to Regency Towers by which it could have preserved its right to appeal. The availability of appeal makes a writ of prohibition an inappropriate remedy in this case, and we accordingly

ORDER the petition DENIED.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Ellsworth Moody & Bennion Chtd.
Hale Lane Peek Dennison & Howard/Las Vegas
Eighth District Court Clerk