

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEL WEBB COMMUNITIES, INC., AN ARIZONA CORPORATION; DEL E. WEBB DEVELOPMENT CO., L.P., A DELAWARE LIMITED PARTNERSHIP; DW HOMEBUILDING CO., AN ARIZONA CORPORATION; DEL WEBB CORPORATION, A DELAWARE CORPORATION; PULTE HOME CORPORATION, A MICHIGAN CORPORATION; PULTE HOMES, INC., A MICHIGAN CORPORATION,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE ALLAN R. EARL, DISTRICT JUDGE,  
Respondent,

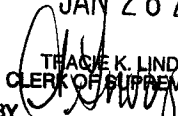
and

GLENN HAYWARD; FRED W. SCHAEFER; DONALD T. BARSKY; SHELDON FACTOR; JOHN P. FRIAR; NORMAN YORK; BERNARD BRONSTEIN; AND D.J. ADDONIZIO,  
Real Parties in Interest.

No. 50958

**FILED**

JAN 28 2008

THOMAS K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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 that sets forth the course and instructions for the upcoming trial in the underlying constructional defect action.

According to petitioners, the underlying constructional defect action includes over one thousand plaintiffs, primarily homeowners in the

Sun City Summerlin community in Las Vegas, Nevada. In light of the potentially unwieldy nature of any trial in this matter, the district court, after conducting two hearings and considering the parties' written proposals with respect to the best course and rules for the upcoming trial, crafted somewhat unique trial instructions, with the goals of practicality, manageability, and judicial economy in mind. At the conclusion of the last hearing, on December 6, 2007, the district court read from the bench the course and instructions for the jury trial. Thereafter, on January 10, 2007, the district court formally entered its determinations. Approximately two weeks later, on January 24, 2008, just days before the jury trial is scheduled to commence, this petition was filed.

In their petition, petitioners specifically challenge the district court's order with regard to its provisions for the number of homeowners whom each side may call to testify at trial. The court's order limits the number of homeowners whom petitioners can call to testify to twenty-five,<sup>1</sup> while providing that real parties in interest, who are plaintiffs below, may call to testify at trial any number of the approximately one thousand homeowners who are parties to the action. In light of that disparity, petitioners contend that the district court has violated their rights, under the Nevada and United States Constitutions, to due process and equal protection. Because the district court's order purportedly violates petitioners' constitutional rights, petitioners seek writ relief from us.

---

<sup>1</sup>The court's order also allows petitioners to call one representative from each of five so-called sub-homeowner's associations within the Summerlin community.

The 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>2</sup> A writ of mandamus's counterpart, a writ of prohibition, is available 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>3</sup> Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.<sup>4</sup> Petitioners bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.<sup>5</sup>

Having considered this petition, and its supporting documentation,<sup>6</sup> we are not persuaded that our extraordinary intervention is warranted.<sup>7</sup> Accordingly, we

---

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

<sup>3</sup>NRS 34.320.


<sup>4</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

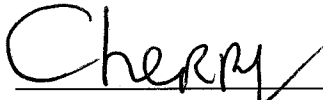
<sup>5</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


<sup>6</sup>Petitioners submitted their petition, an emergency stay motion, and voluminous supporting documents held together only by a rubber band around the middle. We admonish petitioners for their failure to provide an appendix properly bound, separately from the petition. See NRAP 1(a); NRAP 30(c). While we typically return to the petitioners these types of documents that do not comply with our appellate procedural rules, we did not do so here given the emergency nature of the petition and stay motion. We caution petitioners that, in the future, any such improper submissions will be returned unfiled.

<sup>7</sup>NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

ORDER the petition DENIED.<sup>8</sup>

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

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

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

cc: Hon. Allan R. Earl, District Judge  
Koeller Nebeker Carlson & Haluck, LLP  
Wolf, Rifkin, Shapiro & Schulman, LLP  
Eighth District Court Clerk

---

<sup>8</sup>In light of this order, we deny as moot petitioners' emergency motion for a stay.

This order does not obviate petitioners' responsibility to submit the \$250 filing fee. See NRS 2.250(1)(a) and (c)(1). The filing fee is due no later than February 4, 2008, as set forth on our January 25, 2007 Notice to Pay Supreme Court Filing Fee.