

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUN CITY SUMMERLIN COMMUNITY
ASSOCIATION AND GLENN
HAYWARD, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Petitioners,

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

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; ANSE,
INC., D/B/A NEVADA STATE
PLASTERING; MS CONCRETE CO.,
INC.; PRATTE DEVELOPMENT CO.,
INC.; AND DEAN ROOFING, INC.,
Real Parties in Interest.

No. 51238

FILED

APR 02 2008

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

ORDER GRANTING IN PART PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court oral ruling granting a brief trial continuance based on

petitioners' counsel's sudden illness. Petitioners contend that a lengthier continuance or a mistrial was required under the circumstances of this case. On March 14, 2008, we granted a temporary stay and directed the real parties in interest to answer the petition, which they have done.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹ Mandamus, moreover, is an extraordinary remedy, and the decision to entertain such a petition is addressed to our sole discretion.² Finally, petitioner bears the burden of demonstrating that extraordinary relief is warranted.³

After considering this petition, the answer thereto, and the parties' supporting documents, we conclude that our extraordinary intervention is warranted, and we grant the petition in part. Specifically, the unexpected illness of plaintiffs' counsel, in the context of this complex constructional defect trial, warranted more than the two-week continuance granted by the district court. We determine that a continuance to and including Friday, April 11, 2008, so that trial may recommence the following Monday, April 14, 2008, is reasonable.

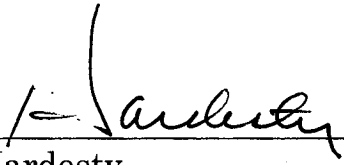
¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981); see also Bongiovi v. Sullivan, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006) ("We review the district court's decision on a motion for continuance for an abuse of discretion.").

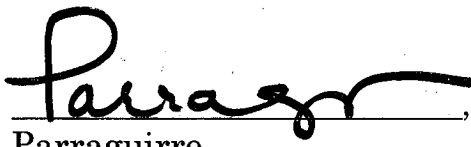
²See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

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

Accordingly, we direct the clerk of this court to issue a writ of mandamus directing the district court to vacate its March 6, 2008 oral ruling that granted a continuance to March 18, 2008, and to resume trial no earlier than April 14, 2008.

It is so ORDERED.⁴


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴In our discretion, we decline to consider the portion of the petition that challenges the district court's pre-trial ruling concerning whether "physical damage" is required under the constructional defect statute. See id. In light of this order, we terminate the temporary stay granted on March 14, 2008, and we deny real parties in interest's motion to lift the stay as moot. We grant the motion of ANSE dba Nevada State Plastering, MS Concrete Co., Pratte Development Co., Inc., and Dean Roofing, Inc., to intervene, and we note that the answer filed on April 1, 2008, indicates that it was filed on their behalf as well as the originally named real parties in interest. We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

cc: Hon. Susan Johnson, District Judge
Sterling Law, LLC
Wolf, Rifkin, Shapiro & Schulman, LLP
Koeller Nebeker Carlson & Haluck, LLP
Lewis & Roca, LLP/Las Vegas
Helm & Associates
Eighth District Court Clerk