

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
ALLAN R. EARL, DISTRICT JUDGE,

Respondents,

and

FIRST LIGHT AT BOULDER RANCH
HOMEOWNERS ASSOCIATION, A
NEVADA CORPORATION,

Real Party in Interest.

No. 51261

FILED

APR 10 2008

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

ORDER DENYING PETITION FOR
WRITS OF MANDAMUS AND PROHIBITION

This original petition for writs of mandamus and prohibition challenges a district court order that determined that real party in interest's NRS 40.645 notice of constructional defects satisfied the requirements of that statute and directed petitioner to specify how it planned to proceed with respect to real party in interest's notice of constructional defects.

This petition is the second time that petitioner has challenged the district court's determinations with respect to real party in interest's notice of constructional defects. Initially, petitioner moved the district court for a declaratory judgment that real party in interest's constructional defect notice failed to satisfy the requirements of NRS 40.645. The district court ultimately denied the motion, and petitioner

sought from this court extraordinary writ relief. We granted petitioner's request, in part, in our opinion in D.R. Horton v. District Court.¹ In D.R. Horton, 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.² In so doing, we stated that "district courts have wide discretion to make that determination,"³ and we directed the district court to consider petitioner's challenge to real party in interest's notice in light of the factors set forth in our opinion.

Thereafter, based on our opinion, the parties argued in the district court with regard to the sufficiency of real party in interest's constructional defect notice. Applying the D.R. Horton factors, the district court again determined that real party in interest's notice of constructional defects satisfied the requirements of NRS 40.645 and directed petitioner to determine how it wished to proceed.⁴ This petition followed.

The writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.⁵ A writ of mandamus's counterpart, the 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

¹123 Nev. ___, 168 P.3d 731 (2007).

²D.R. Horton v. Dist. Ct., 123 Nev. at ___, 168 P.3d at 739-41.

³Id. at ___, 168 P.3d at 739.

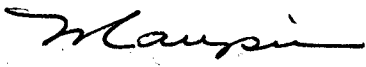
⁴See NRS 40.647; NRS 40.6472.

⁵See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


jurisdiction.⁶ Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.⁷ Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁸

Having considered this petition and its supporting documentation we are not persuaded that the district court manifestly abused its discretion or acted in excess of its jurisdiction such that our extraordinary intervention is warranted.⁹ Accordingly, we

ORDER the petition DENIED.¹⁰

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

⁶NRS 34.320.

⁷See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁸Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁹NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

¹⁰In light of this order, we deny as moot petitioner's motion for a stay and its motion for leave to file a reply to real party in interest's opposition to its stay motion. We further deny as moot the Nevada Subcontractors Association's March 24, 2008 motion for leave to file an amicus curiae brief and the Associated General Contractors and Coalition for Fairness in Construction's April 9, 2008 motion for leave to file an amicus curiae brief.

cc: Hon. Allan R. Earl, District Judge
Marquis & Aurbach
Wolfenzon Schulman & Ryan
Quon Bruce Christensen Law Firm
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Eighth District Court Clerk