

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL MILLER, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE MARK
R. DENTON, DISTRICT JUDGE,
Respondents,

and

ACRES GAMING INCORPORATED;
FLOYD W. GLISSON; ROGER B.
HAMMOCK; RICHARD FURASH;
DAVID R. WILLENSKY; ROBERT W.
BROWN; AND RONALD G. BENNETT,
Real Parties in Interest.

No. 51350

FILED

MAY 09 2008

TRACIE 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 denying a motion to certify a class.

The underlying action arises from real party in interest Acres Gaming, Inc.'s merger with International Game Technology. To enjoin the merger, petitioner Paul Miller, a then-shareholder of Acres Gaming, instituted an action seeking injunctive relief. The merger nevertheless closed, and Miller amended his complaint to seek damages for real parties in interest's alleged breach of their fiduciary duties to Acres Gaming shareholders in pursuing the merger. Thereafter, Miller moved to certify

a class of similarly situated former Acres Gaming shareholders. The district court denied the motion. 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.¹ 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 jurisdiction.² Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.³ Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁴

Having considered this petition and its supporting documentation, we are not persuaded that our extraordinary intervention is warranted. Specifically, questions of law and fact affecting individual putative class members appear to predominate over questions of law and fact common to the putative class.⁵ Accordingly, the district court did not

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

²NRS 34.320.

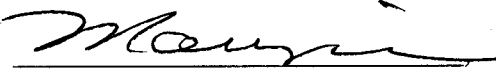
³See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

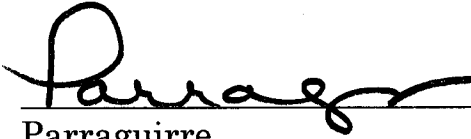
⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

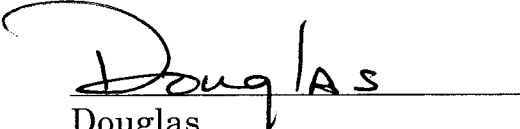
⁵See NRCP 23(b); Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 851, 124 P.3d 530, 540 (2005) (noting that "when the facts and the law necessary to resolve the claims vary from person to person, taking into account the nature of the defenses presented . . . individual questions predominate so that class action is an inappropriate method of adjudication") (internal footnotes omitted).

manifestly abuse its discretion or act in excess of its jurisdiction when it denied petitioner's motion for class certification, and we

ORDER the petition DENIED.⁶

 J.
Maupin

 J.
Parraguirre

 J.
Douglas

cc: Hon. Mark R. Denton, District Judge
Coughlin Stoia Geller Rudman & Robbins LLP
Lewis & Roca, LLP/Las Vegas
Brownstein Hyatt Farber Schreck, LLP
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk

⁶See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.