

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
SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,

and

COURT AT ALIANTE HOMEOWNERS
ASSOCIATION, A NEVADA
CORPORATION,
Real Party in Interest.

No. 51399

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, except with respect to alleged defects to one component of the structures at issue. The district court's order also directed petitioner to specify how it will proceed with respect to the satisfactorily noticed defects.

According to petitioner, real party in interest's notice of constructional defects failed to comply with this court's statement in D.R. Horton v. District Court that a constructional defect notice based on

extrapolation¹ is valid under NRS 40.645 only “if it identifies the subset or characteristics of the subset” of homes in the community to which the constructional defects apply.² Real party in interest argued in the district court that its notice of constructional defects complied with that requirement by identifying the alleged constructional defects by address, unit, or floor plan within the community.³ The district court, exercising its “wide discretion” with regard to the sufficiency of a constructional defect notice,⁴ agreed with real party in interest, except with respect to alleged defects to one component of the structures at issue. The district court consequently directed petitioner to determine how it wished to proceed regarding real party in interest’s notice of constructional defects,⁵ to the extent that the court had determined that it complied with NRS 40.645’s requirements. 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.⁶ A writ of mandamus’s counterpart, the writ of prohibition, is

¹That is, the notion that the scope of constructional defects within a community may be estimated from the scope of the alleged defects’ presence within a representative sample of residences in the community. See D.R. Horton v. Dist. Ct., 123 Nev. __, __, 168 P.3d 731, 739-40 (2007).

²123 Nev. at __, 168 P.3d at 740.

³See id. at __, 168 P.3d at 740.

⁴Id. at __, 168 P.3d at 739.

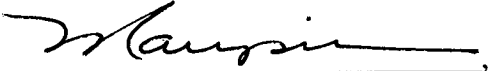
⁵See NRS 40.647; NRS 40.6472.

⁶See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

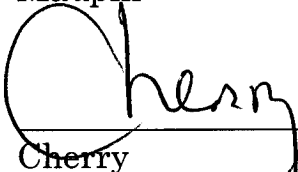
available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.⁷ Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our sole discretion.⁸ Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁹

Having considered this petition and its supporting documents 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.¹⁰ Accordingly, we

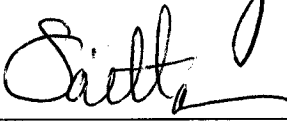
ORDER the petition DENIED.

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

⁷NRS 34.320.

⁸See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁹Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

¹⁰NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Susan Johnson, District Judge
Marquis & Aurbach
Quon Bruce Christensen Law Firm
Eighth District Court Clerk