

IN THE SUPREME COURT OF THE STATE OF NEVADA

MONARCH ESTATES HOMEOWNERS  
ASSOCIATION, A NON-PROFIT  
CORPORATION,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
TIMOTHY C. WILLIAMS, DISTRICT  
JUDGE,

Respondents,  
and

JOHNSON COMMUNITIES OF  
NEVADA, INC., A NEVADA  
CORPORATION; AND RICHMOND  
AMERICAN HOMES OF NEVADA,  
INC., A FOREIGN CORPORATION,  
Real Parties in Interest.

No. 51942

**FILED**

DEC 03 2009

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

ORDER GRANTING REHEARING AND  
ISSUING AMENDED ORDER GRANTING PETITION

On September 3, 2009, this court entered an order granting a petition for writ of mandamus challenging a district court order granting partial summary judgment in a constructional defect matter. On September 22, 2009, real party in interest Johnson Communities of Nevada, Inc., filed a petition for rehearing arguing that the order violated its due process rights by conducting an NRCP 23 analysis sua sponte without affording either party the opportunity to file briefs on the issue of whether the asserted claims were subject to class certification. Having considered the petition for rehearing and the answer thereto, we grant

rehearing and issue the following amended order in place of the order filed September 3, 2009.

AMENDED ORDER GRANTING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order granting partial summary judgment in a constructional defect action.

Petitioner Monarch Estates Homeowners Association (Monarch) governs a planned community that was developed by real party in interest Johnson Communities of Nevada (Johnson). Monarch owns the common elements of the planned community and members of Monarch own their respective units. A concrete masonry unit wall (CMU) surrounds the community and abuts the properties of approximately 35 out of 84 units. The CMU wall is not located in the common elements, and property owners whose properties abut the CMU wall are, under Monarch's Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements (CC&Rs), responsible for maintaining and repairing the portion of the CMU wall adjoining their property.

In July 2006, Monarch filed suit on behalf of its members against Johnson, alleging, in part, that the CMU wall was defectively constructed. Johnson filed a motion for summary judgment, contending that because Monarch does not have an ownership interest in the CMU wall and does not have the duty to maintain or repair the CMU wall, Monarch did not have standing to assert claims for damages for the defective CMU wall. The district court granted Johnson's motion for summary judgment based on the language of NRS 116.3102(1)(d). This original petition followed.

In its petition, Monarch argues that NRS 116.3102(1)(d) confers standing on a homeowners' association to assert claims affecting individual units. In opposition, Johnson contends that the statute prohibits a homeowners' association from raising claims that do not involve common areas.

We recently resolved this issue in D.R. Horton v. Dist. Ct., 125 Nev. \_\_\_, 215 P.3d 697 (2009), and concluded that a homeowners' association has standing to institute litigation on behalf of owners for defects in individual units so long as the claims are subject to class certification. Therefore, we grant Monarch's petition. See We the People Nevada v. Secretary of State, 124 Nev. \_\_\_, \_\_\_, 192 P.3d 1166, 1170 (2008) ("A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion."); see also NRS 34.160.

Monarch has standing under NRS 116.3102(1)(d) to assert causes of action for constructional defects related to the CMU wall

In D.R. Horton v. Dist. Ct., 125 Nev. \_\_\_, 215 P.3d 697 (2009), we recognized that in the absence of an express statutory grant, a homeowners' association does not have standing to sue. Therefore, we turned to NRS 116.3102(1) to determine whether NRS chapter 116 grants standing to a homeowners' association to sue on behalf of its members for constructional defects in individual units.

NRS 116.3102(1) provides, in pertinent part:

Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

....

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

The parties in this case do not dispute that Monarch has standing under NRS 116.3102(1) to assert claims that affect the common elements<sup>1</sup> of the common-interest community. However, Johnson argues that any defects related to the CMU wall are not considered a part of the common-interest community because the CMU wall is a part of an individual homeowner's unit. Thus, Johnson contends that individual homeowners, not Monarch, have standing to sue for defects affecting their units.<sup>2</sup>

Pursuant to our holding in D.R. Horton, we conclude that where NRS 116.3102(1)(d) confers standing on a homeowners' association to assert claims "on matters affecting the common-interest community," a homeowners' association has standing to assert constructional defect

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<sup>1</sup>NRS 116.017 defines "[c]ommon elements" as:

1. . . . all portions of the common-interest community other than the units, including easements in favor of units or the common elements over other units; and

2. In a planned community, any real estate within the planned community owned or leased by the association, other than a unit.

<sup>2</sup>Because Johnson is not seeking to enforce provisions of Monarch's CC&Rs, we do not discuss whether the CC&Rs limit Monarch's standing to assert claims affecting the CMU wall. However, to the extent that Johnson argues that the CC&Rs limit Monarch's standing, we conclude that Johnson's arguments have no merit.

claims that affect individual units. 125 Nev. at \_\_\_, 215 P.3d at 704. The definitions of “common-interest community,” NRS 116.021, “unit,” NRS 116.093, and “common elements,” NRS 116.017, demonstrate that the Legislature intended a common-interest community to include both units and common elements. D.R. Horton, 125 Nev. at \_\_\_, 215 P.3d at 702. In addition, section 6.11 of the Restatement (Third) of Property supports our interpretation of the term “common-interest community” to include individual units. Id. at \_\_\_, 215 P.3d at 703. Therefore, because alleged constructional defects affect individual units in the Monarch community, the alleged damages are “matters affecting the common-interest community” under NRS 116.3102, and Monarch has standing to sue.

Nevertheless, we also ruled in D.R. Horton that a homeowners’ association filing a suit on behalf of its members will be treated much the same as a plaintiff in class action litigation. Id. at \_\_\_, 215 P.3d at 703. Thus, although Monarch has standing to assert claims on behalf of its members for defects related to the CMU wall, the suit must fulfill the requirements of NRCP 23 and the principles and concerns discussed in Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530 (2005). In particular, Monarch may assert claims on behalf of its members only if the claims and various theories of liability satisfy the requirements of numerosity, commonality, typicality, adequacy, and meet one of the three conditions set forth in NRCP 23(b). See id. at 846-850, 124 P.3d at 537-539.

Therefore, in accordance with the analysis set forth in D.R. Horton, we direct the district court to review the claims asserted by Monarch to determine whether the claims conform to class action principles, and thus, whether Monarch may file suit in a representative

capacity for constructional defects affecting the CMU wall. Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to conduct further proceedings consistent with this order.

It is so ORDERED.

Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

cc: Hon. Timothy C. Williams, District Judge  
Feinberg Grant Mayfield Kaneda & Litt, LLP  
Lee, Hernandez, Kelsey, Brooks, Garofalo, & Blake  
Marquis & Aurbach  
Marquiz Law Office  
Deanne M. Rymarowicz  
Snell & Wilmer, LLP/Las Vegas  
Eighth District Court Clerk