


IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS FARIAS; MICHAEL BARKER;  
CATHERINE TROUTMAN; MICHAEL  
RANSOM; JAMES ANDERSON; BOSTON  
ROBINSON; CRAIG FRANKLIN;  
KENNETH EMMER; BHAGWANDAS  
GOBIN; CLARENCE FRIEND; JOHN  
SEDA; JEREMY SCHEEL; JESSE BATTS;  
WILL RADFORD; NICHOLAS  
ANDERSON; MICHAEL BIRD; JEFF  
RAND; CLAUDENA WESLEY; JULIO  
CONVERS; BOOKER T. COLLINS;  
ANGELA RICHARDSON; FERNANDO  
LEOS; DONALD LYTTLE; ADRIENNE  
TRENT; MICHAEL RAINES; GLORIA  
CABRERA; CARMEN SANCHEZ; SHAWN  
SEWELL; LAWRENCE DUDLEY; MARY  
BROWN; BERTHA GOMEZ; RICARDO  
RONQUILLO; AGA JIMENEZ;  
SATURNINA CANCINO; CARLOS DE  
LAS HERAS; REGINA OWENS; STEVE  
RADNOR; TERRIE HERNANDEZ;  
ADRIAN DE HOYOS; LILIAN CANCINO;  
EDDIE WORMWOOD; DANIEL SMITH;  
LILLIE JEFFERSON; DAVID HORNER;  
FERNANDO URBANEJA; KENNETH C.  
BRANDAN; ANDREW HEMINGWAY;  
WILLIAM GILMORE; STUART  
WASSERMAN; SIAM KHOO; CATHY  
DEMARS; ROSA TORRES; LILIA DIAZ;  
BRYAN BLEICH; BRIAN BUTZIN; JESSE  
JUGO; LEONARD MATUSZEWSKI; RON  
ORBAS; ONEIDA BANKS; CLYDE  
MILLER; DWAYNE MORRIS; GERRAINE  
GRAFF; JOHN DEAN; ELIZEO RUIZ;  
ERNESTO SEGOVIANO; LINDA BYES;  
MICHAEL PARHAM; RENEE  
GUERRERO; DORA RIVERA; JUAN  
MUNOZ; BIJAN YAKOUBOFF; VICTOR  
DIAZ; KATHLEEN LONG; BETH ELLYN  
ROSENTHAL; CHANDA TRAVIS;

No. 52117

**FILED**

SEP 05 2008

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ELEANOR AHERN; LATANGLIA SAMUELS; SANDRA BAQUIRAN; DEREK GALBRETTI; ADRIAN LOPEZ; JOSE YANEZ; MURIEL SANDERS; ESTER JACKSON; JERRY WEINERT; MICHAEL CAMPBELL; ROBERTO VELASCO; THOMAS ROBINSON; BRIAN BOLES; JAMES BARNES; VINCE DONUTO; DANIEL PEDROSO; WILLIAM SLACK; SAUL LOPEZ; RANDY BARNEGROVER; JOHN NIKITAS; DON HENRY; AUTORIA TOLEFREE; ANACLETO RAGUNTON; VONTESE SHINGLES; EFRAIN PEREZ; STACY REGISTER; REGIS ASHLEY; GLEN BASSHAM; RANDY BOOM; MARCELINO RAPUET; HENRY SCHIPPER; TERRY CASTERLIN; SHAWN MELVILLE; MARIA LARIOS; KARA HILL; JOSE LANDA; JOSHUA PARKER; LATANJI KENNEDY; TYRONE SCHUBARTH; DANIEL BROOKS; AUDREY WESLEY; RONALD GREEN; ABEL CASTENADA; THOMAS CORRAL; CHERYLL PAGLINAWAN; JIMMIE TOWNSEL; RUSSEL LISTON; JAMES MCCANN; MICHAEL MCMAHON; NORMAN CAMPOS; HIROYUKI TAHARA; CARMENCITA MOSS; ADRIAN LOPEZ; JOSE CARDONA; CHARLES BEAUMONT; OLIBAMA VALENCIA; LARRY BERETT; SAGANYA WATANARATKUL; MINNIE BRADLEY; KAREN GEORG; PETER FEDELE; KARLA VELEZ; JENNY BEDSAUL; JORGE MENDEZ; GABRIEL MORALES; ADAN EUSTAQUIO; TODD YOUNG; ANTHONY WESTOVER; DAVID LANCASTER; EARNE LUMAIG; JORGE MERCADO; EVAN AL-CHOKHACHY; NOE CABRERA; BILL GRATTAN; LARRY AUSTIN; AND DEATRIC QUICKSEY,  
Petitioners,

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

STANPARK CONSTRUCTION CO., INC.,  
A NEVADA CORPORATION D/B/A  
STANPARK HOMES OF NEVADA;  
STANPARK CONSTRUCTION CO.;  
STANPARK CONSTRUCTION, INC.;  
AMERICAN ASPHALT & GRADING  
COMPANY; AVANTI WINDOW CO.;  
CAMPBELL CONCRETE OF NEVADA,  
INC.; NATIONAL FLOORING, INC. D/B/A  
CARPET BARN; COOPER ROOFING CO.,  
INC.; DESERT DRYWALL & PAINTING,  
INC.; INTERSTATE PLUMBING & AIR  
CONDITIONING, INC.; GENERAL  
ALUMINUM CORP. OF TX LLP; JELD-  
WEN, INC.; LANDSCAPE SERVICES,  
INC. D/B/A LSI, INC.; MAGNUM AIR,  
INC.; MENDENHALL SMITH, INC., A  
PROFESSIONAL CORPORATION;  
METRO ELECTRIC; R.W. STUCCO, INC.;  
RYSTIN CONSTRUCTION, INC.; SIERRA  
AIR CONDITIONING, INC.; WERCO,  
INC.; AND WESTCOR CONSTRUCTION,  
Real Parties in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order that determined that NRS 40.650(2) does not preclude real parties in interest, contractors and subcontractors, from inspecting petitioners' residences as part of discovery during a constructional defect action, even though the contractor or subcontractor did not submit a

written response or inspect the alleged defects in response to the prelitigation notice of constructional defects.

Alleging that their homes in the Tempo development in North Las Vegas, Nevada, contained constructional defects, petitioners sent Tempo's developer, real party in interest Stanpark Construction Co., Inc., a notice of constructional defects. Stanpark apparently forwarded a copy of petitioners' notice to subcontractors, certain real parties in interest, with which it had contracted to perform work in the Tempo community during its construction. According to petitioners, some of the subcontractors failed to respond to the notice of constructional defects and many of them did not inspect the purported defects.

Ultimately, petitioners filed in the district court a constructional defect complaint against Stanpark. Stanpark answered the complaint and instituted a third-party action against the subcontractors. Thereafter, the subcontractors requested to make inspections of the alleged defects. In response, petitioners moved the district court for a protective order, requesting that the court preclude the subcontractors from conducting any inspections. Petitioners argued in part that the subcontractors' failure to participate in inspections during the prelitigation phase of their constructional defect action precluded them from conducting inspections as part of discovery during the litigation process, under NRS 40.650(2). That statute essentially imposes certain penalties on a contractor or subcontractor for failing to participate in the prelitigation process set forth in NRS Chapter 40's residential constructional defect provisions.

The district court determined that NRS 40.650(2)'s application was limited to the prelitigation process and did not preclude a contractor or subcontractor that failed to participate in prelitigation from conducting

discovery once litigation was commenced. The court then referred petitioners' motion to the special master for resolution in light of the court's conclusion with respect to NRS 40.650(2). This petition followed.

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.<sup>1</sup> Mandamus is an extraordinary remedy, however, and whether a petition will be considered is within our discretion.<sup>2</sup> We generally will not exercise our discretion to review discovery orders through petitions for extraordinary relief, unless petitioners demonstrate that the challenged discovery order is either (1) a so-called blanket discovery order, issued without regard to the relevance of the information sought, or (2) one that requires disclosure of privileged information.<sup>3</sup> Moreover, a writ of mandamus generally may be issued only when petitioners have no plain, speedy, and adequate legal remedy.<sup>4</sup> Petitioners bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.<sup>5</sup>

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

<sup>2</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

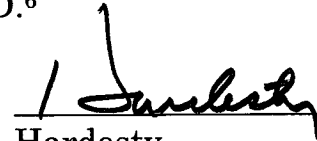
<sup>3</sup>See Hetter v. District Court, 110 Nev. 513, 515, 874 P.2d 762, 763 (1994).

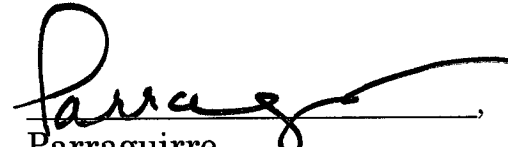
<sup>4</sup>NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (recognizing that an appeal is generally an adequate legal remedy precluding writ relief); Schlatter v. District Court, 93 Nev. 189, 561 P.3d 1342 (1977) (noting that a party generally may raise challenges to discovery matters in the context of an appeal from any adverse final judgment).

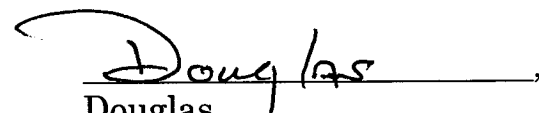
<sup>5</sup>Pan, 120 Nev. at 228, 88 P.3d at 844.

Having considered this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Accordingly, we

ORDER the petition DENIED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Timothy C. Williams, District Judge  
Law Offices of Terry L. Wike  
Bennion Clayson & Marias  
Bremer Whyte Brown & O'Meara, LLP  
Carraway & Associates  
Floyd A. Hale  
Hoy & Hoy  
Hurtik & Manke, LLC  
Lincoln, Gustafson & Cercos  
Luh & Associates  
Marks & Isaacson, LLP  
Parker, Nelson & Associates  
Pengilly Robbins Slater  
Stephenson & Dickinson  
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas  
Wilde Hansen, LLP  
Eighth District Court Clerk

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<sup>6</sup>NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.