

IN THE SUPREME COURT OF THE STATE OF NEVADA

GK ELITE REALTY, 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
MARK R. DENTON, DISTRICT JUDGE,

Respondents,

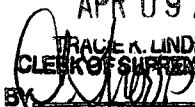
and

MERVIN Y.J. AHANA SEMI-REVOCABLE
LIVING TRUST AND DORIS Y. AHANA SEMI-
REVOCABLE LIVING TRUST, D/B/A AHANA
INVESTMENT COMPANY,

Real Parties in Interest.

No. 52303

FILED

APR 09 2009
TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order granting a motion to expunge a notice of lis pendens recorded against parcels of commercial real property in Las Vegas, Nevada.

Real party in interest Ahana Investment Company entered into an agreement with Hacienda Motel, Inc., to sell Hacienda two parcels of Las Vegas commercial property for \$2.2 million. Pursuant to the agreement, Hacienda deposited \$100,000 into an escrow account. Thereafter, Hacienda assigned its rights under the agreement to petitioner GK Elite Realty, Inc.

When the parties failed to consummate the sale, Ahana instituted the underlying action against GK Elite and Hacienda, among others, asserting contract and tort causes of action and seeking to enjoin them from recording a notice of lis pendens against the properties and recovering the escrow deposit, which Ahana asserted was nonrefundable

under the parties' agreement. GK Elite and Hacienda filed an answer to Ahana's complaint and a counterclaim, requesting that the district court compel the parties to "negotiate . . . in good faith for a reasonable purchase price." They couched this request in terms of declaratory relief and specific performance. Alternatively, they sought a refund of the \$100,000 escrow deposit. Additionally, GK Elite and Hacienda recorded a notice of lis pendens against the properties.

Thereafter, Ahana moved the district court to expunge the notice of lis pendens. The district court ultimately granted the motion, determining that, because GK Elite and Hacienda had cancelled the purchase and escrow agreements, they were unlikely to prevail to the extent that they sought specific performance of the parties' purchase agreement. The court further concluded that the case fundamentally concerned whether GK Elite and Hacienda were entitled to a refund of the \$100,000 escrow deposit and did not affect the title or possession of the real property sufficient to support maintaining a notice of lis pendens against it. This writ 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. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Mandamus is an extraordinary remedy, however, and whether a petition for such relief will be considered is solely within our discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

After reviewing this petition, the answer¹ thereto, and the parties' supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Specifically, the district court did not manifestly abuse its discretion when it determined that the underlying action does not affect title to or possession of real property and that, in any event, GK Elite and Hacienda were unlikely to prevail in their request for specific performance. See NRS 14.015(2)(a) (requiring that the parties that recorded a notice of lis pendens must satisfy the district court that the action "affects the title or possession of the real property described in the notice"); NRS 14.015(3)(a) (providing that the parties that recorded a notice of lis pendens must satisfy the district court that they are "likely to prevail in the action").

Accordingly, we

ORDER the petition DENIED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹Ahana filed a motion on January 15, 2009, requesting to exceed, or clarification as to, any page limit on its answer. In the event that a page limit applied, Ahana also sought an extension of time to file its answer. Because NRAP 21 does not impose a page limit on answers to writ petitions, we deny as moot Ahana's January 15 motion and direct the clerk of this court to file the answer and accompanying appendix, provisionally received in this court on January 15, 2009.

cc: Hon. Mark R. Denton, District Judge
Lionel Sawyer & Collins/Las Vegas
Kung & Wilson
Eighth District Court Clerk