

IN THE SUPREME COURT OF THE STATE OF NEVADA

IMPERIAL PALACE, LLC,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK,
AND THE HONORABLE JOSEPH T.
BONAVENTURE, DISTRICT JUDGE,
Respondents,
and
DEBRA BLAKER,
Real Party in Interest.

No. 52438

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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 petitioner's motion to dismiss an amended complaint based on the statute of limitations.

Real party in interest Debra Blaker filed the underlying action against Harrah's Imperial Palace Corp., a Nevada Corporation, d/b/a Imperial Palace Hotel & Casino, following Blaker's alleged slip and fall at Imperial Palace. Harrah's moved the district court to dismiss the action because it did not own Imperial Palace at the time of Blaker's purported slip and fall. Blaker opposed the motion to dismiss and requested leave from the district court to file an amended complaint naming the correct owner of Imperial Palace Hotel & Casino. The district court granted Harrah's motion to dismiss and granted Blaker's request to amend her complaint.

Blaker amended her complaint by naming petitioner Imperial Palace, LLC, as the owner of the premises where she allegedly slipped and


fell. After being served with the summons and complaint, Imperial Palace moved the district court to dismiss the amended complaint. Specifically, Imperial Palace argued that the statute of limitations had expired because the amended complaint did not relate back to the original complaint's filing date. Imperial Palace also contended that Blaker had failed to sufficiently plead proper Doe allegations for substitution of a party. Blaker opposed the motion. The district court denied Imperial Palace's motion to dismiss. This writ petition followed. As directed, Blaker has filed an answer addressing the pleading requirements for Doe allegations under Nurenberger Hercules-Werke v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1991), and the correction of a party's name according to Servatius v. United Resort Hotels, 85 Nev. 371, 455 P.2d 621 (1969). Imperial Palace was permitted and did file a reply.

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). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320. Both prohibition and mandamus are extraordinary remedies, however, and whether a petition will be considered is within our discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). As petitioner, Imperial Palace bears the burden to demonstrate that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

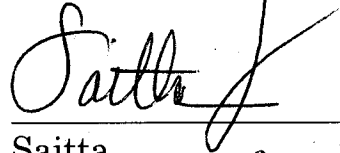
Having considered this petition, the answer, the reply, and the supporting documentation, we conclude that our intervention by way of

extraordinary relief is not warranted. In particular, it does not appear that the district court had a clear duty to dismiss or that it manifestly abused its discretion in denying Imperial Palace's motion to dismiss. Accordingly, we

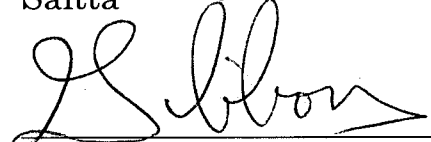
ORDER the petition DENIED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Cooper Levenson April Niedelman & Wagenheim, P.A.
Kolias Law Offices
Eighth District Court Clerk