

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMAN AHLERS, AS TRUSTEE OF AHLERS
FAMILY TRUST, AND THE AHLERS FAMILY
TRUST,

Appellants,

vs.

RYLAND HOMES NEVADA, LLC, A
DELAWARE LIMITED LIABILITY COMPANY,

Respondent.

No. 52511

HERMAN AHLERS, AS TRUSTEE OF AHLERS
FAMILY TRUST,

Petitioner,

vs.

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

Respondents,

and


RYLAND HOMES NEVADA, LLC, A
DELAWARE LIMITED LIABILITY COMPANY;
ZOMACK 1, LLC, A NEVADA LIMITED
LIABILITY COMPANY; 5440 W. SAHARA, LLC,
A NEVADA LIMITED LIABILITY COMPANY;
D'NAL 3, LLC, A NEVADA LIMITED
LIABILITY COMPANY; ONECAP HOLDING
CORPORATION, A NEVADA CORPORATION;
AND ONECAP REAL ESTATE FUND 1, LLC, A
NEVADA LIMITED LIABILITY COMPANY,

Real Parties in Interest.

No. 53526

FILED

JUL 30 2009

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER ALLOWING APPEAL IN DOCKET NO. 53526
TO PROCEED AND DENYING PETITION FOR WRIT
OF MANDAMUS IN DOCKET NO. 52511

Docket No. 52511 is an appeal from the portion of a district court order denying a motion to compel arbitration. Docket No. 53526 is a petition for a writ of mandamus challenging the same district court order to the extent that it denies a motion to expunge a mechanic's lien.

Docket No. 52511

On May 15, 2009, this court consolidated these cases and directed appellants/petitioner to show cause regarding whether an order denying a motion to expunge a mechanic's lien is substantively appealable under NRAP 3A(b)(2) or (3). In response, appellants/petitioner contend that this court lacks jurisdiction to consider an appeal from orders denying a motion to expunge a mechanic's lien, and thus, the appropriate vehicle for challenging such an order is through a petition for extraordinary writ relief. The reply to this response simply notes that appellants/petitioner concede that this court lacks appellate jurisdiction over such orders. Both the reply and the response fail to address the availability of appellate jurisdiction under NRAP 3A(b)(2) or (3), as directed in our show cause order.

Because appellants/petitioner fail to address the availability of appellate review of an order denying a motion to expunge a mechanic's lien under NRAP 3A(b)(2) or (3), we decline to consider whether appellate review of such orders is available under these rules. As a result, we reinstate briefing in the appeal in Docket No. 52511 and allow that appeal to proceed as to only the portion of the district court's order denying the motion to compel arbitration. Appellants shall have 60 days from the date of this order to file and serve an opening brief. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

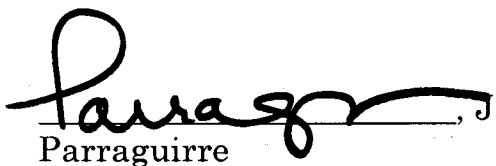
Docket No. 53526

In light of our decision to allow the appeal to go forward in Docket No. 52511, only as to the arbitration order, we therefore address the petitioner's challenge to the denial of the motion to expunge the mechanic's lien through the original writ proceeding in Docket No. 53526. Our consideration of the petition, requires the application of the

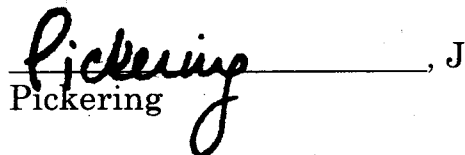
heightened standard pertinent to this court's discretionary review of petitions for extraordinary relief. See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982) (stating that "[m]andamus is an extraordinary remedy, and the decision as to whether a petition will be entertained lies within the discretion of this court" and noting that, in mandamus petitions, the burden on petitioners "is a heavy one"). While 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, NRS 34.160; see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981), mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that this court's intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition in light of the heightened standard applicable to petitions for writ relief, we conclude that petitioner has not demonstrated that our intervention by way of extraordinary relief is warranted. Smith, 107 Nev. 674, 818 P.2d 849; Poulos, 98 Nev. at 455, 652 P.2d at 1178. Accordingly, we deny the petition in Docket No. 53526. NRAP 21(b).

It is so ORDERED.


Parraguirre


Douglas


Pickering

cc: Hon. Kenneth C. Cory, District Judge
Michael H. Singer, Settlement Judge
Marquis & Aurbach
Watt, Tieder, Hoffar & Fitzgerald
Harold P. Gewerter, Esq., Ltd.
Eighth District Court Clerk