

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUTO SALES OF NEVADA, LLC, D/B/A
AUTO SALES,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
JEROME M. POLAHA, DISTRICT
JUDGE,

Respondents,

and

POLA, INC., AND ADDI 1994 TRUST,
Real Parties in Interest.

No. 53559

FILED

APR 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Angerson*
DEPUTY CLERK

ORDER DENYING PETITION FOR A WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court's oral ruling requiring petitioner Auto Sales of Nevada, LLC, to pay, by April 17, 2009, all rental amounts due. Petitioner has also filed a motion for an immediate stay of the district court's oral ruling.

Petitioner contends that because it has presented a legal defense, its landlord¹ cannot be granted relief under the summary proceedings of NRS 40.253 and this court's decision in Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 163 P.3d 405 (2007). Petitioner thus contends that the district court improperly granted relief to the landlord by ordering petitioner to pay past due or ongoing rental amounts.

¹Petitioner contends that its lease is with real party in interest Pola, Inc., and questions the validity of the transfer of the lease to real party in interest Addi 1994 Trust.

This court may issue a writ of mandamus 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 NRS 34.160; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Whether we will consider a petition for extraordinary relief is within our sole discretion. Smith, 107 Nev. at 677, 818 P.2d at 851.

NRS 40.253(6) states in relevant part

If the [district] court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive.

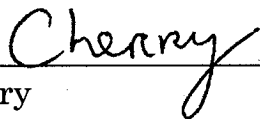
In Anvui, we held that summary eviction proceedings were not appropriate in that case because the tenant had raised a legal defense to the eviction. Anvui, 123 Nev. at 216, 163 P.3d at 407. Consequently, the landlord in Anvui was required to pursue restitution of the premises under the provisions of NRS 40.290 to 40.420. Id.


According to the documents provided to this court, including the transcript of the district court's March 30, 2009, hearing in the underlying case, the district court found that petitioner had raised a legal defense and denied the landlord's request for summary eviction under NRS 40.253(6). The court thus determined that the landlord must proceed under the provisions of NRS 40.290 to 40.420 to obtain restitution of the premises. Pending resolution of the underlying case, the district court


further ordered petitioner to maintain the status quo and to pay, by April 17, 2009, all rental amounts due. As the court noted, if the case is ultimately resolved in petitioner's favor, the landlord may be required to pay back the disputed rental amounts with interest.

Based on NRS 40.253(6) and our decision in Anvui, we conclude that the district court properly denied petitioner's request to be relieved from the payment of rent pending the resolution of the case. Thus, having considered this petition and its supporting documents, we are not satisfied that our intervention by way of extraordinary relief is warranted. See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we

ORDER the petition DENIED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Law Offices of Mark Wray
Gunderson Law Firm
Washoe District Court Clerk

²In light of our decision, we deny petitioner's stay motion as moot.