

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTRELLA HOMEOWNERS' ASSOCIATION,
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 KATHLEEN E. DELANEY,
DISTRICT JUDGE,

Respondents,

and

MONICA MOFFATT; SHELBY MOFFATT;
MADISON MOFFATT; THOMAS GIGLIO;
KRISTEN DOLOKOWSKI A/K/A KRISTEN
DOLOKOSKY; COMPLETE ASSOCIATION
MANAGEMENT COMPANY A/K/A CAMCO, A
NEVADA LIMITED LIABILITY COMPANY;
AND RICHARD ALAN LEWSADER,
Real Parties in Interest.

No. 53570

FILED

OCT 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order denying petitioner's motion to dismiss certain real parties in interest's complaint.

Real parties in interest Monica, Shelby, and Madison Moffatt filed a complaint for damages in the district court, alleging that their neighbor was interfering with their right to privacy. According to the complaint, the Moffatts reported the neighbor's conduct to petitioner Estrella Homeowners' Association's board members, but the board took no corrective action. The complaint alleged, among other things, that petitioner breached the association's governing documents and the covenant of good faith and fair dealing by failing to apply and enforce the association's covenants, conditions, and restrictions (CC&Rs) and other rules. Petitioner moved to dismiss the complaint for failing to comply with

NRS 38.310's pre-complaint mediation and arbitration requirement. The district court denied the motion, and this writ petition followed. The pertinent real parties in interest have timely filed an answer.

A writ of prohibition is available when a district court acts without or in excess of its jurisdiction. State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320. Although this court generally declines to consider writ petitions that challenge district court orders denying motions to dismiss, Beazer Homes Nevada, Inc. v. Dist. Ct., 120 Nev. 575, 578-79, 97 P.3d 1132, 1134 (2004), such petitions might be considered when no disputed factual issues exist and the district court is obligated to dismiss an action pursuant to clear statutory authority. Id. Because the district court was obligated to dismiss the complaint against petitioner under NRS 38.310's clear authority, our consideration of this petition is warranted.

Under NRS 38.310(1), a party may not commence a civil action asserting a claim related to interpreting, applying, or enforcing a common interest community's CC&Rs, "unless the action has been submitted to mediation or arbitration." If a party commences such an action without submitting it to mediation or arbitration, the district court must dismiss it. NRS 38.310(2); Hamm v. Arrowcreek Homeowners' Ass'n, 124 Nev. ___, 183 P.3d 895 (2008) (explaining that when a party files an action against a homeowners' association, seeking money damages or equitable relief based on allegations related to interpreting, applying or enforcing CC&Rs, the action must be dismissed unless the claims were submitted to arbitration or mediation before the district court action was filed).

Having considered the writ petition, the answer thereto, and the parties' supporting documents, we grant the petition. In their complaint, the Moffatts sought money damages based on petitioner's

alleged failures to apply or enforce the CC&Rs and the association's rules. That type of action may not be commenced unless first submitted to mediation or arbitration, which the Moffatts failed to do.¹ NRS 38.310(1); see Hamm, 124 Nev. ___, 183 P.3d 895. Accordingly, since the district court was obligated to dismiss the action against petitioner, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the district court to vacate its May 25, 2009, order denying the motion to dismiss the complaint against petitioner, and to enter an order granting that motion.²

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

¹Although the Moffatts apparently filed an ombudsman intervention complaint with the Nevada Real Estate Division before filing their district court action, nothing in their answer to the writ petition or in the documents submitted to this court indicates that they submitted their claims for mediation or arbitration in accordance with NRS 38.320.

²On July 14, 2009, this court entered an order directing the Moffatts to answer the petition and the remaining real parties in interest to file an answer or notify this court that their interests are not implicated by this proceeding and that they thus do not intend to answer the petition. To date, the remaining real parties have not complied with this court's directive. In light of this order, however, they are no longer required to file an answer or notify this court of their intention not to do so.

cc: Hon. Kathleen E. Delaney, District Judge
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
Alverson Taylor Mortensen & Sanders
Flangas McMillan Law Group, Inc.
Eighth District Court Clerk