

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISB I, LLC, A NEVADA LIMITED
LIABILITY COMPANY FORMERLY
D/B/A CARMINE'S LITTLE ITALY;
AND RONALD ALLEN MEMO,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,
and
CARMINE VENTO AND ANN M.
VENTO REVOCABLE FAMILY TRUST,
Real Party in Interest.

No. 58446

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angers*
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 a motion to dismiss or for summary judgment.

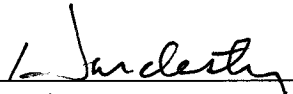
A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. NRS 34.320. Mandamus and prohibition are extraordinary remedies, and whether a petition will be considered is within our sole

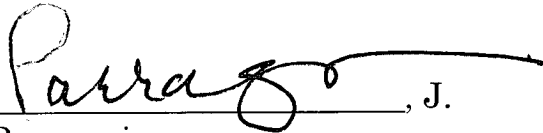
discretion. Smith v. District Court, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991).

Having reviewed the petition and documents submitted, we are not persuaded that writ relief is warranted. The district court's denial of the motion is based, at least in part, on a question of fact concerning the parties' stipulation in justice court. This court typically declines to exercise its discretion to consider a writ petition challenging a district court order denying a motion to dismiss or motion for summary judgment, unless "no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action." Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). As there are disputed issues of material fact in the present case, we decline to exercise our discretion to consider this writ petition. Id.; Smith, 107 Nev. at 677, 818 P.2d at 851; NRAP 21(b)(1). Accordingly, we

ORDER the petition DENIED.¹


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Susan Johnson, District Judge
Hutchison & Steffen, LLC
Kaempfer Crowell Renshaw Gronauer & Fiorentino
Eighth District Court Clerk

¹In light of this order, we deny as moot real party in interest's motion to dismiss and petitioners' motion to strike the motion to dismiss.