

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORTH MAIN, LLC, A NEVADA LIMITED LIABILITY COMPANY; LOIS LEVY, TRUSTEE OF THE LOIS LEVY FAMILY TRUST DTD 2/11/93; JAMES B. GERKE AND DAWN J. GERKE, TRUSTEES OF THE BYRON TRUST, DTD 5/2/85; CHERYL ROGERS-BARNETT AND LARRY BARNETT, TRUSTEES OF THE ROGERS-BARNETT FAMILY TRUST, DTD 11/28/03; KRISTI D. RICE, TRUSTEE OF THE RICE GRANDCHILDREN EDUCATION TRUST; AND CHARLES BEARUP AND BERNARDINE BEARUP, INDIVIUDALLY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,

and

ASPEN FINANCIAL SERVICES, INC., A NEVADA CORPORATION; ASPEN FINANCIAL SERVICES, LLC, A NEVADA LIMITED LIABILITY COMPANY; JEFFREY B. GUINN, INDIVIUDALLY; MILANO RESIDENCES, LLC, A NEVADA LIMITED LIABILITY COMPANY; JOSHUA TREE, LLC, A NEVADA LIMITED LIABILITY COMPANY; SUSAN MARDIAN, INDIVIDUALLY; HK INVESTMENTS, LLC, A NEVADA LIMITED LIABILITY COMPANY; NEVADA CONSTRUCTION SERVICES,

No. 58452

FILED

MAY 23 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

A NEVADA CORPORATION; AND THE
BRITTON GROUP, A NEVADA
PROFESSIONAL CORPORATION
D/B/A ROI APPRAISAL/BRITTON
GROUP,
Real Parties in Interest.

ORDER DENYING PETITION

This is an original proceeding on a petition for a writ of mandamus or prohibition challenging a district court order granting a motion to compel arbitration.

Petitioners North Main, et al. (collectively North Main) brought suit against Real Parties in Interest Aspen Financial Services, Inc., et al. (collectively Aspen). In its complaint, North Main alleged that Aspen engaged in a pattern of fraud and neglect, and conspired to defraud North Main of funds they loaned to Aspen in order to develop real property. Following service of a second amended complaint, Aspen asserted its rights under the loan servicing agreements and demanded that the parties submit to arbitration. Aspen argued that because the second amended complaint had materially altered the facts alleged and the claims asserted, as well as added a new defendant, Aspen had a renewed right to demand arbitration. Following a hearing on Aspen's motion to compel arbitration, the district court ordered the parties to participate in arbitration. Although North Main filed a motion for reconsideration, the district court denied the motion and again directed the parties to arbitration.

North Main now petitions this court for a writ of mandamus or prohibition to direct the district court to vacate its order granting Aspen's

motion to compel arbitration and/or to prohibit the arbitration of the claims.

We deny the petition for extraordinary writ relief. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

Writ relief is inappropriate

In its petition, North Main contends that writ relief is appropriate because a district court order granting a motion to compel arbitration is not appealable.

A writ of mandamus or prohibition is an extraordinary remedy and therefore, the decision to entertain the petition lies solely within our discretion. Cheung v. Dist. Ct., 121 Nev. 867, 869, 124 P.3d 550, 552 (2005). “A writ of prohibition ‘serves to stop a district court from carrying on its judicial functions when it is acting outside its jurisdiction.’” Stephens Media v. Dist. Ct., 125 Nev. 849, 857, 221 P.3d 1240, 1246 (2009) (quoting Sonia F. v. Dist. Ct., 125 Nev. 495, 498, 215 P.3d 705, 707 (2009)); see also NRS 34.320. “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 an arbitrary or capricious exercise of discretion.” Williams v. Dist. Ct., 127 Nev. ___, ___, 262 P.3d 360, 364 (2011) (quoting International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008)); see also NRS 34.160. “Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously.” Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981) (citations omitted).

A writ will not issue if the petitioner has a “plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170; NRS 34.330.


A writ of mandamus or prohibition is the only way for North Main to prevent the arbitration of its claims. See Kindred v. Dist. Ct., 116 Nev. 405, 409, 996 P.2d 903, 906 (2000) (concluding that writ relief is procedurally appropriate because NRS 38.205, now enrolled as NRS 38.247, does not allow appeals from a district court's order compelling arbitration). Accordingly, we will exercise our discretion and consider the merits of this writ petition.

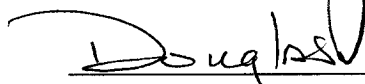
In this case we review the district court's denial of North Main's motion for reconsideration. EDCR Rule 2.24 provides, in pertinent part, that a party may seek "reconsideration of a ruling of the court." We have determined that "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Additionally, a district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous. Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." Achrem v. Expressway Plaza Ltd., 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

North Main failed to raise the issue of enforceability of the arbitration provision in its opposition to Aspen's motion to compel arbitration. Its arguments instead focused on the untimeliness of Aspen's motion. The first time North Main broached enforceability was during the hearing itself. Even then, North Main did not specifically address the issue in the context of the enforceability of the unsigned arbitration provision.

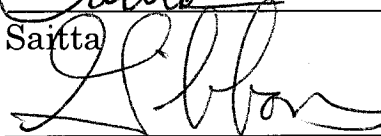
The district court did not abuse its discretion in denying North Main's motion for reconsideration because North Main raised the issue of the enforceability of the arbitration provisions for the first time in the motion for reconsideration. See Achrem, 112 Nev. at 742, 917 P.2d at 450. Furthermore, even if the district court considered North Main's new legal contentions as to enforceability of the arbitration provision, it was not an abuse of discretion for it to conclude that its previous order was not clearly erroneous. Masonry and Tile, 113 Nev. at 741, 941 P.2d at 489. Because the district court did not arbitrarily or capriciously exercise its discretion, writ relief is inappropriate. For the foregoing reasons, we

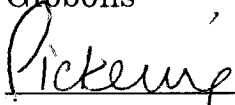
ORDER the petition DENIED.


_____, C.J.
Cherry

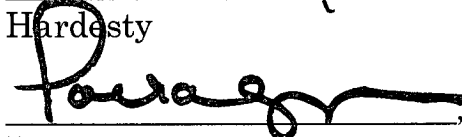

_____, J.
Douglas


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Mark R. Denton, District Judge
Woods Erickson Whitaker & Maurice LLP
Bailey Kennedy
Lionel Sawyer & Collins/Las Vegas
Foley & Oakes, PC
Eighth District Court Clerk