

IN THE SUPREME COURT OF THE STATE OF NEVADA

D.R. HORTON, INC., A DELAWARE CORPORATION,
Petitioner,
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
HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION,
Real Party in Interest.

No. 58533

FILED

JAN 25 2013

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order holding that real party in interest may litigate, on behalf of individual homeowners, claims for alleged construction defects.

Petitioner D.R. Horton argues that, under this court's decision in D.R. Horton v. District Court, 125 Nev. 449, 215 P.3d 697 (2009) (First Light II), the district court erred in concluding that no NRCP 23 analysis was necessary for real party in interest High Noon at Arlington Ranch Homeowners Association to bring claims on behalf of individual

homeowners for alleged constructional defects occurring in building envelopes.¹

Standard of review

“A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion.” State v. Dist. Ct., 116 Nev. 374, 379, 997 P.2d 126, 130 (2000). “Mandamus is an extraordinary remedy which ‘will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously.’” Mineral County v. State, Dep’t of Conserv., 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (quoting Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (citation omitted)). A writ of prohibition is an extraordinary remedy which may be used to arrest the proceedings of a district court when it has exceeded its jurisdiction. Mineral County, 117 Nev. at 243, 20 P.3d at 805. Both mandamus and prohibition are issued at the discretion of this court and are unavailable when a “petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.” Id.

Here, the challenged order granted a motion for declaratory relief regarding whether the case was appropriate for class action certification; thus, it is not independently appealable. As D.R. Horton lacks a plain, speedy, and adequate remedy at law, we elect to exercise our discretion to consider its petition. See id. In considering a writ petition,

¹High Noon has also filed a petition for a writ of mandamus, High Noon at Arlington v. Dist. Ct. (D.R. Horton, Inc.), Docket No. 58630, which arises from the same district court case that is the subject of this petition.

this court gives deference to a district court's factual determinations; however, we review questions of law de novo. Gonski v. Dist. Ct., 126 Nev. ___, ___, 245 P.3d 1164, 1168 (2010).

The district court failed to conduct a sufficient NRCP 23 analysis

This court has held that an HOA has standing to institute a representative action on behalf of its individual members if the HOA's claims meet the NRCP 23 requirements as directed in Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 846-52, 124 P.3d 530, 537-41 (2005). First Light II, 125 Nev. at 458-59, 215 P.3d at 703-04. Pursuant to NRCP 23, a class action may be maintained only if all four of the NRCP 23(a) requirements (numerosity, commonality, typicality, and adequacy) and one of three additional NRCP 23(b) requirements is met.

"[F]ailure of a common-interest community association to strictly satisfy the NRCP 23 factors does not automatically result in a failure of the representative action." Beazer Homes Holding Corp. v. Dist. Ct., 128 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 66, December 27, 2012). However, the district court must conduct and document an NRCP 23 analysis upon request. Id. Accordingly, even if an HOA has standing under NRS 116.3102(1)(d) to institute a representative action on behalf of two or more of its members, the HOA still must satisfy the requirements of NRCP 23 if it wishes to bring its representative action as a class-action suit. First Light II, 125 Nev. at 458, 215 P.3d at 703.

Here, the district court found that under First Light II, assignment of claims to an HOA did not eliminate the duty of the class to comply with the class-action requirements of NRCP 23. The district court then conducted a full NRCP 23 analysis as to the assigned claims and found that High Noon had not satisfied the NRCP 23 prerequisites and

therefore did not have standing to pursue those claims in a representative capacity.

However, the district court failed to perform a full and thorough NRCP 23 analysis as to the claims involving the building envelopes. The district court interpreted this court's holding in First Light II as applicable only to alleged interior defects of individual units located within a common-interest community. Consequently, the district court found, without performing an NRCP 23 analysis, that High Noon had standing to litigate representative claims based on the building envelopes. The district court reasoned that NRS 116.3102(1)(d) permits an HOA to bring representative claims on matters affecting the common-interest community, and the district court had "no doubt" that the building envelope claims affected the common-interest community.

This was error. This court previously directed the district court to review High Noon's claims in accordance with the analysis set forth in First Light II "to determine whether the claims conform to class action principles, and thus, whether High Noon may file suit in a representative capacity for constructional defects affecting individual units." In First Light II, this court held that although NRS 116.3102(1)(d) grants an HOA standing to file an action in a representative capacity, this statutory grant must be reconciled with the requirements of NRCP 23 and Shuette. First Light II, 125 Nev. at 458, 215 P.3d at 703. This court's holding in First Light II was not intended to apply only to defects that occur within individual units, but rather to all claims affecting individually owned units that an HOA brings in a representative capacity.

NRS 116.093 defines "[u]nit" as "a physical portion of the common-interest community designated for separate ownership or

occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105.” NRS 116.2105(1)(e) states

In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit’s identifying number or, in a cooperative, a description, which may be by plats, of each unit created by the declaration, including the unit’s identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit.


Accordingly, we look to the Community’s declaration. Here, the Community’s CC&Rs provide that the elements of the building envelope are part of the individually owned units. This court’s decision in First Light II instructed district courts to perform a full and thorough NRCP 23 analysis for claims that affect individual units. Because the building envelopes are individually owned, any claims that High Noon wishes to bring relating to the building envelopes are in a representative capacity and must survive an NRCP 23 analysis. The district court therefore abused its discretion by failing to follow the mandate of this court and perform a full and thorough NRCP 23 analysis of the claims involving the building envelopes. Accordingly, writ relief is warranted, and we

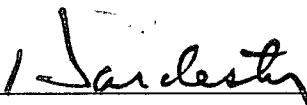
ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to conduct further proceedings in light of this order and this court’s recent decision in Beazer Homes Holding Corp. v. District Court.²

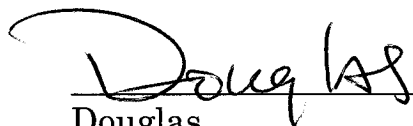
²In light of this order, D.R. Horton’s alternative request for a writ of prohibition is denied.

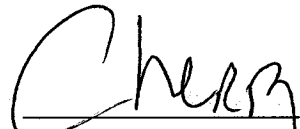
We also vacate the stay of the underlying district court proceedings that was granted pending the consideration of this petition.³


_____, C.J.
Pickering


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Susan Johnson, District Judge
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas
Angius & Terry LLP/Las Vegas
Eighth District Court Clerk

³The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in this matter.