

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANDALAY CORPORATION D/B/A
MANDALAY BAY RESORT AND
CASINO,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JEROME T. TAO, DISTRICT JUDGE,

Respondents,

and

JULIA MORAN,

Real Party in Interest.

No. 61189

FILED

NOV 12 2013

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

*ORDER GRANTING PETITION IN PART AND DENYING PETITION IN
PART*

This is an original petition for a writ of mandamus challenging a district court order denying a motion to compel in a negligence action.

In this petition, we are asked to determine whether Juan Teutle-Ramirez is a necessary party to a tort action by real party in interest Julia Moran against petitioner Mandalay Bay Resort and Casino. Mandalay Bay is the owner of the premises where Teutle-Ramirez sexually assaulted Moran. Pursuant to a recent decision of this court, we conclude that Teutle-Ramirez is not a necessary party under NRCP 19(a). Accordingly, we deny the petition in that regard. Nevertheless, we conclude that the district court erred by refusing to allow Mandalay Bay to implead Teutle-Ramirez as a third-party defendant on a contribution claim, and we grant the petition in that regard.

Writ of mandamus

“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.” *State v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 267 P.3d 777, 779 (2011). A writ will not issue where there is a plain, speedy, and adequate remedy in the ordinary course of the law. 127 Nev. at ___, 267 P.3d at 779 (citing NRS 34.170).

This court has the discretion to grant a writ of mandamus to correct a legal error by the district court in exercising its discretion regarding prospective additional parties in order to avoid further error. *Lund v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 255 P.3d 280, 284 (2011) (citing *Ex Parte Simons*, 247 U.S. 231, 239 (1918), in which the United States Supreme Court concluded that extraordinary relief was warranted to correct a legal error prior to entry of the final judgment). This court reviews the district court’s interpretation of the Nevada Rules of Civil Procedure de novo. *Id.* at ___, 255 P.3d at 283. On a writ of mandamus, this court reviews the application of those rules, however, for a manifest abuse of discretion. *Id.* at ___, 255 P.3d at 284.

Prior to the district court’s order, *Café Moda, LLC v. Palma* created some uncertainty regarding whether intentional tortfeasors must be joined under NRCP 19. 128 Nev. ___, 272 P.3d 137 (2012). Our recent decision in *Humphries v. Eighth Judicial Dist. Court*, ___ Nev. ___, ___ P.3d ___, ___ (Adv. Op. No. 85, November 7, 2013), resolves that uncertainty by concluding that such a cotortfeasor is not a necessary party. Accordingly, because the determination of whether Moran is required to join Teutle-Ramirez has an important effect on the pending litigation, consideration of this petition is proper.

The district court did not err in denying Mandalay Bay's motion to compel joinder of Teutle-Ramirez as a necessary party

Mandalay Bay moved the district court to compel joinder of Teutle-Ramirez, an intentional tortfeasor, as a necessary party. We concluded in *Humphries* that an intentional tortfeasor is not a necessary party under NRC 19 in cases involving a negligence action premised on a duty to protect if the plaintiff is not asserting claims against the intentional tortfeasor. ___ Nev. at ___, ___ P.3d at ___. Accordingly, we affirm the district court's determination that Teutle-Ramirez is not a necessary and indispensable party.

The district court erred in denying Mandalay Bay leave to file a third-party complaint

Mandalay Bay sought leave to file a third-party complaint to assert claims against Teutle-Ramirez for indemnity, contribution, and apportionment.¹ The district court denied leave to file a third-party complaint, reasoning that the complaint would be futile since there was no legal relationship permitting equitable indemnity and because Teutle-Ramirez was insolvent and unlikely to participate in the proceedings. Mandalay Bay argues that it should be permitted to conduct discovery to determine the existence of any legal relationship with Teutle-Ramirez in order to pursue the indemnity claim. Mandalay Bay further argues that Teutle-Ramirez's insolvency and potential default are irrelevant, as securing a judgment is not the only purpose of impleading Teutle-Ramirez,

¹Mandalay Bay originally filed a motion to amend its answer to assert counterclaims against Teutle-Ramirez. Because Moran's dismissal of Teutle-Ramirez rendered Mandalay Bay's motion to amend moot, the district court treated Mandalay Bay's motion as a motion seeking leave to file a third-party complaint.

and that the district court made no findings regarding the claims of apportionment and contribution.

We conclude that the district court did not err in refusing to grant Mandalay Bay leave to implead Teutle-Ramirez on a claim of equitable indemnity, but that Mandalay Bay's remaining arguments are persuasive.

Equitable indemnity

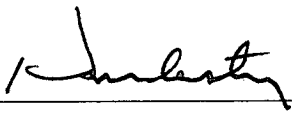
NRCP 14(b) allows a party to implead a non-party to pursue a claim of equitable indemnity. The doctrine of indemnity only applies, however, to tortfeasors that have a legal relation to one another. *Pack v. LaTourette*, 128 Nev. ___, ___, 277 P.3d 1246, 1248-49 (2012). Furthermore, a cause of action for equitable indemnity only accrues upon the establishment and discharge of an obligation by the claimant to a third party. *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 590, 216 P.3d 793, 801 (2009). Mandalay Bay does not plead a legal relationship with Teutle-Ramirez, and Mandalay Bay has neither accrued nor discharged any obligation to Moran. Accordingly, the district court correctly denied leave to implead Teutle-Ramirez on a theory of equitable indemnity.

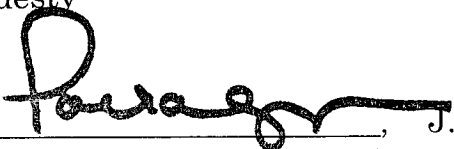
Contribution and apportionment

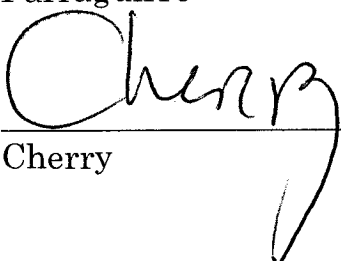
NRS 17.225(1) provides a right of contribution between joint or several tortfeasors and permits claims for contribution prior to judgment. NRCP 14 provides the procedural mechanism for impleading non-party tortfeasors for purposes of contribution and apportionment. *Pack*, 128 Nev. at ___, 277 P.3d at 1249. The purpose of contribution claims is to apportion damages between tortfeasors. *Clark Cnty. Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 388 n.4, 168 P.3d 87, 91 n.4 (2007).

In denying Mandalay Bay leave to implead Teutle-Ramirez, the district court stated that “[i]n all likelihood, any cause of action asserted against him would result in the entry of a default judgment of no monetary value to any party.” However, Mandalay Bay sought to implead Teutle-Ramirez for the purpose of apportionment and contribution, which is relevant for determining liability under *Café Moda*. 128 Nev. at ___, 272 P.3d at 138. The ability to collect against Teutle-Ramirez is irrelevant to Mandalay Bay’s apportionment claim, and the district court never addressed the issue of contribution or apportionment in its order. Thus, the district court manifestly abused its discretion in denying leave to implead Teutle-Ramirez. *See Lund*, 127 Nev. at ___, 255 P.3d at 284 (explaining that failure to entertain an application to join third parties can constitute a manifest abuse of discretion warranting writ relief).

Accordingly, we ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant Mandalay Bay leave to file a third-party complaint against Teutle-Ramirez on a claim of contribution.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Jerome T. Tao, District Judge
Kravitz, Schnitzer, Sloane & Johnson, Chtd.
Eglet Wall Christiansen
Eighth District Court Clerk