

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTGATE RESORTS, LTD.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,
Respondents,
and
TUTOR-SALIBA CORPORATION,
Real Party in Interest.

No. 62176

FILED

JAN 17 2013


TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tragie K. Lindeman*
DEPUTY CLERK

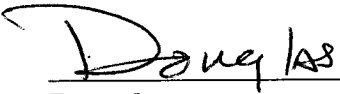
ORDER DENYING PETITION FOR WRIT OF MANDAMUS

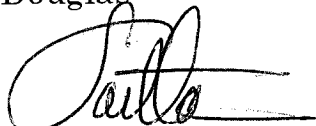
This original petition for a writ of mandamus challenges a district court order denying a motion for judgment on the pleadings in a contract action.

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). Whether a writ of mandamus will be considered is purely discretionary with this court. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). It is petitioner's burden to demonstrate that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). "Judgment on the pleadings is proper when, as determined from the pleadings, the material facts are not in dispute and the moving party is entitled to judgment as a matter of law." Lawrence v. Clark County, 127 Nev. ___, ___, 254 P.3d 606, 608 (2011).

Having considered the petition and appendix, we conclude that our intervention by way of extraordinary relief is not warranted. NRAP 21(b)(1); Smith, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Gordon & Rees, LLP
McDonald Carano Wilson LLP/Las Vegas
Eighth District Court Clerk