

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEW BOCA SYNDICATIONS GROUP,
LLC, A DELAWARE LIMITED
LIABILITY COMPANY,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

R.A. SOUTHEAST LAND COMPANY, A
NEVADA LIMITED LIABILITY
COMPANY,

Real Party in Interest.

No. 72241

FILED

FEB 27 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION*

This is an original petition for a writ of mandamus or prohibition challenging a district court order permitting amendment of a counterclaim to add a new counterdefendant.

Petitioner New Boca Syndications Group, LLC, filed the underlying complaint asserting various claims against real party in interest R.A. Southeast Land Company. R.A. Southeast filed an answer and counterclaims for unjust enrichment, intentional interference with prospective economic advantage, intentional interference with contract, and slander of title. Subsequently, R.A. Southeast moved for leave to file a third-party complaint to bring negligence and breach of fiduciary duty claims against an attorney who, according to R.A. Southeast, provided

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legal assistance to New Boca¹ while the attorney's law firm was simultaneously representing R.A. Southeast in a dispute between R.A. Southeast and New Boca without disclosing the conflict. New Boca opposed the motion, and R.A. Southeast filed a reply.

Ultimately, the district court ruled that R.A. Southeast could not bring the attorney in as a third-party defendant under NRCP 14, but that it could add counterclaims against him under NRCP 13(h), which provides that "[p]ersons other than those made parties to the original action may be made parties to a counterclaim or a cross-claim in accordance with the provisions of [NRCP] 19 and 20." This writ petition followed.

In the petition, New Boca argues that the district court's order was contrary to *Lund v. Eighth Judicial Dist. Court*, 127 Nev. 358, 361, 255 P.3d 280, 283 (2011), which recognized that "[f]ederal courts that have interpreted NRCP 13(h)'s federal counterpart have concluded that a counterclaim or cross-claim brought under the rule must include at least one existing party, and thus, may not be brought solely against an unnamed party." New Boca contends that the district court's order impermissibly permits R.A. Southeast to add new counterclaims solely against the attorney, instead of allowing R.A. Southeast to add the attorney to its existing counterclaims against New Boca.

While the proposed third-party complaint asserted claims for negligence and breach of fiduciary duty, which were not the same as the counterclaims previously asserted against New Boca, it is not clear that


¹Some of the allegations in the filings below relate to New Boca's predecessor-in-interest. For convenience, we refer only to New Boca in this order.

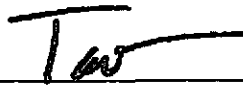
the district court's order permits R.A. Southeast to add these claims as new counterclaims solely against the attorney. In particular, at the hearing on the motion, R.A. Southeast, in response to questions by the court, represented that the new claims against the attorney would be the "exact same" claims as those currently pending against New Boca. And in granting the motion, the court orally noted that the claims would have to be revised to make them counterclaims under *Lund*. Thus, the record demonstrates that the court intended any amendment of the complaint and addition of claims to be consistent with *Lund*.

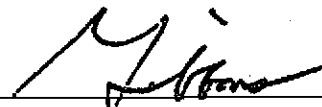
Moreover, the court specifically stated, both orally and in writing, that the order was without prejudice to the right of the parties, including currently existing parties, to file a new motion as they deem necessary. Thus, the court expressed a clear willingness to revisit the issue if R.A. Southeast submits its amended counterclaims in a manner that is not consistent with the law. Under these circumstances, New Boca has not demonstrated that the district court failed to perform an act it was required to perform, arbitrarily or capriciously exercised its discretion, or acted in excess of its jurisdiction. *See* NRS 34.160 (providing that a writ of mandamus is available to compel the performance of an act the law requires as a duty resulting from an office, trust, or station); *Int'l Game Tech, Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (holding that a writ of mandamus is appropriate to control an arbitrary or capricious exercise of discretion); *see also* NRS 34.320 (explaining that a writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction).

Accordingly, we conclude that our extraordinary intervention is not warranted at this time, and we therefore deny the petition. See NRAP 21(b)(1); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (providing that whether to consider a writ petition is discretionary); see also *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (recognizing that petitioner bears the burden of demonstrating that extraordinary relief is warranted).

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Joseph Hardy, Jr., District Judge
Hejmanowski & McCrea LLC
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk