

IN THE SUPREME COURT OF THE STATE OF NEVADA

VISTANA CONDOMINIUM OWNERS  
ASSOCIATION, INC.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
NANCY L. ALLF, DISTRICT JUDGE,

Respondents,

and

MONTESA, LLC; HODAKA, LLC; PARK  
VILLAGE HOMEOWNERS  
ASSOCIATION; PEAKS  
HOMEOWNERS ASSOCIATION;  
SAHARA MOUNTAIN VISTA  
HOMEOWNERS ASSOCIATION;  
SEASONS AT ALIANTE COMMUNITY  
ASSOCIATION; SEVEN HILLS  
MASTER ASSOCIATION; SILVERADO  
RANCH LANDSCAPE MAINTENANCE  
CORPORATION; SILVERLYN  
HEIGHTS COMMUNITY  
ASSOCIATION; SOUTHPARK  
CONDOMINIUM ASSOCIATION;  
SOUTHWEST RANCH HOMEOWNERS  
ASSOCIATION; SPRING MOUNTAIN  
RANCH MASTER ASSOCIATION;  
SQUIRE VILLAGE AT SILVER  
SPRINGS COMMUNITY  
ASSOCIATION; SUMMERFIELD  
VILLAGE HOMEOWNERS  
ASSOCIATION, INC.; SUN CITY  
SUMMERLIN COMMUNITY  
ASSOCIATION, INC.; SUNRISE RIDGE

No. 68595

**FILED**

APR 15 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

HOMEOWNERS ASSOCIATION, INC.;  
TALASERA AND VICANTO  
HOMEOWNERS' ASSOCIATION;  
TIERRA LAS PALMAS OWNERS  
ASSOCIATION; TERRA LINDA  
TOWNHOUSE HOMEOWNERS  
ASSOCIATION; TRIPOLY AT WARM  
SPRINGS SOUTH HOMEOWNERS  
ASSOCIATION; VICTORY OVATION  
HOMEOWNERS ASSOCIATION; AND  
VILLAGE AT CRAIG RANCH  
HOMEOWNER'S ASSOCIATION,  
Real Parties in Interest.

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS*

This is an original petition for a writ of mandamus challenging a district court order denying a motion to dismiss for failure to pursue alternative dispute resolution before bringing suit against a Nevada homeowner association (HOA).

In May 2011, real party in interest Montesa challenged the superpriority liens petitioner Vistana and other HOAs recorded against properties Montesa acquired at first deed of trust foreclosure sales. NRS 38.310 requires that disputes involving the "interpretation, application or enforcement" of covenants, conditions and restrictions (CC&Rs) be submitted to mediation and, if the parties agree, arbitrated before suit is brought. Accordingly, Montesa pursued Nevada Real Estate Division (NRED) arbitration against Vistana and the other named defendants before commencing this action. Montesa was asked during NRED discovery to identify the properties involved in its claims, which it did. Thereafter, Montesa purchased Vistana condominium #207, which it did not include on its NRED discovery response list. In an attachment to its second amended complaint, Montesa nonetheless identified Vistana

condominium #207 as one of the many properties whose HOA liens are at issue in this lawsuit.

Vistana joined its co-defendants' partial motion to dismiss for lack of subject matter jurisdiction, claiming the district court lacked jurisdiction to entertain the dispute over the HOA lien calculations as to certain properties, including Vistana condominium #207, because those properties had not been included on Montesa's NRED discovery response list. The district court denied the motion to dismiss on September 18, 2014. Vistana did nothing further on the issue until March 27, 2015, when it filed its motion for reconsideration. After the district court denied Vistana's motion for reconsideration on May 4, 2015, Vistana waited until August 11, 2015, to file its petition for a 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 or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Mandamus is reserved for matters "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. The decision to entertain an extraordinary writ petition, such as mandamus, lies within this court's discretion. *Libby v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 39, 325 P.3d 1276, 1278 (2014). Review on eventual direct appeal normally affords an adequate remedy, sufficient to defeat mandamus relief. *Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011) ("[T]he opportunity to appeal a final judgment typically provides an adequate legal remedy.").

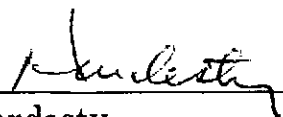
Here, if Vistana is correct about condominium #207 being included in error in the suit because arbitration was required but not

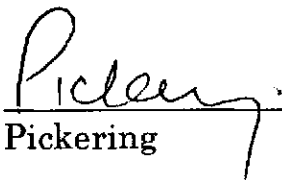
pursued as to its HOA lien on that unit, the issue is one this court can review on appeal from the eventual final judgment. There appear to be a number of different properties involved, and a mix of statutory and CC&R-based claims, with exhaustion of NRED alternative dispute resolution an issue for very few of them. While it is true that the law remains unsettled respecting NRS 38.310's arbitration requirements, allowing this case to proceed to judgment in the district court will present a better record for resolving the legal issues involved, as the factual and legal posture will be more fully developed. *Cf. Buckwalter v. Eighth Judicial Dist. Court*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010) ("Normally, this court will not entertain a writ petition challenging the denial of a motion to dismiss but we may do so where, as here, the issue is not fact-bound and involves an unsettled and potentially significant, recurring question of law."). Also, Vistana's nearly year-long delay in seeking mandamus militates against extraordinary writ relief. *See State v. Eighth Judicial Dist. Court*, 116 Nev. 127, 134-35, 994 P.2d 692, 697 (2000) (applying the doctrine of laches to a petition for a writ of mandamus after an 11 month delay in the filing of the petition).

Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Nancy L. Allf, District Judge  
Pengilly Law Firm  
Alverson Taylor Mortensen & Sanders  
Law Office of Andrew H. Pastwick, LLC  
Boyack Orme & Taylor  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas  
Adams Law Group  
Lipson Neilson Cole Seltzer & Garin, P.C.  
Puoy K. Premsrirut, Inc.  
Leach Johnson Song & Gruchow  
Messner Reeves LLP  
Eighth District Court Clerk