IN THE SUPREME COURT OF THE STATE OF NEVADA

PN II, INC, D/B/A PULTE HOMES OF NEVADA, A NEVADA CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
KEVIN HAFF; DARLENE HAFF; ANDREW WAGNER; SHERRYL PELC; GLOREEN WEAVER; ROBERT DILIDDO; SHARON TAYLOR; SUSAN SONNHEIM; MICHAEL REESE; PAUL BOSSERT; MARC COHEN; AMY KOFFLER; MICHELLE PREMONE; FLINT C. RICHARDSON SEPARATE PROPERTY TRUST; JACQUELINE EDER; ROBERT KERI; CORAZON MANUEL; ASHVINIKUMAR PAREKH, SUN JUNG; THEODORE MORRISON; JENNIFER KELLY; MARCO A. RUVALCABA; ELI AKIVA; JESSE JAMES CHEN; JOEL CASTRO; HELEN D'ABREU; LENORA HAUSEY; NANCY ESTRADA; LAWRENCE STAPLES; STEVEN DANCY; FRANK CACCAMO; LN MANAGEMENT, LLC SER 4425 CARR; ROSIE FERNANDEZ; KEAH CRISTINA BEAVER; KAREN COREAS; DEAN DONIN; SCOTT FRECK; SHEILA FRECK; PAUL DOCKWEILER; KATIE DOCKWEILER; MING CHI; HELEN HSIAO LEE; CHRISTINE LEATHERS; DAVID B. LEATHERS, SR.; ROBERT CHEN; JOYCE CHEN; PIO CLAVECILLA; MARY CLAVECILLA; MARK ADAMS; NAHID

No. 71051

FILED

SEP 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

16-28875

ADAMS; GABRIEL AHRONOVITZ; NATALIE SILVER; JOHN POWELL; KATHERINE POWELL; JOHN GUNNING; ANNE GUNNING; SUSAN MILLER; DIANE MILARCIK; ERIC CHAMBERLAIN; MADELYN CHAMBERLAIN; RICKEY LAROSE; PEPA LAROSE; ROSALIO CATON; ELVA CATON; JAYMIN CHANG; CHUNG-TANG CHANG; LOUIE TANNER; JEANETTE TANNER; LEON IRELAND; DONNA IRELAND; DOROTHEA MAXVILLE; FLOYD MAXVILLE; PAUL HUNTER; VALERIE HUNTER; RAFAEL A. RIVERA-COTTO; AMALIA Z. RIVERA; EDGAR BALAGTAS; FLORIAN BALAGTAS; DAVID MORENCY; EUNICE MORENCY; TERENCE MONIZ; LISA LEE; TODD KUHNWALD; TAMARA KUHNWALD; BENJAMIN C. CHENG; JOYCE CHUN JU WU; KEVIN JIANG; LILY JIANG; LEOPOLDO C. BARILLAS; RUFINA M. BARILLAS; MARVIN ENGELS; JAN ENGELS; WEN SHAO; GLENDA LUI SHAO; FRANK CONDELLO; NADINE S. CONDELLO; CARLOS PEREIRA; KATHIA PEREIRA; BARRY RITTER; SYLVIA RITTER; KEVIN KELLY; STEPHANIE KELLY; GAYLENE SMITH; THOMAS A. HODULIK; MONICA L. HODULIK; NATHANIEL H. PITTMAN; XAVIER PITTMAN; LARRY ROPER; KIM ROPER; CHARLES CALDWELL; MARCELLA CALDWELL; JESUS LOPEZ; ESTELLA LOPEZ; JOHN RUBALCABA; SANDRA RUBALCABA; BERNARD MCCOY; LAVERNE MCCOY; WILLIAM PANZERI; JACQUELYN PANZERI; CHUNGHYON YOM; CHONGSUK YOM; GRETCHEN

NEAL; ROBERT EUGENE NEAL, SR.; RONALD RUDGES; BARBARA RUDGES; CUSTER FAMILY TRUST; MURPHY FAMILY REVOCABLE TRUST; VADLAMANI LIVING TRUST; KLEEN FAMILY LIVING TRUST; MCLELLAN FAMILY TRUST; SCOTT AND BRIDGETTE CRAVENS TRUST; PARADISE HARBOR PLACE TRUST; PETER GERARD AND JEN BORRE REVOCABLE TRUST; JUDGE W. COOLEY LIVING TRUST; PB FOX TRUST; NICK PYKNIS REVOCABLE TRUST; CULMONE FAMILY TRUST; RBR TRUST; BELL FAMILY TRUST; TRIPLE E PROPERTIES, LLC; SATICOY BAY LLC SERIES 9014 SALVATORE; MARY SCOTT LIVING TRUST; DK VEGAS, LLC; JJT HOLDINGS, LLP; STUMPFEGGER LIVING TRUST; AND P & R REEVES FAMILY TRUST,
Real Parties in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

This original petition for a writ of mandamus and prohibition challenges district court orders denying motions for summary judgment and granting leave to amend counterclaims in a declaratory relief and construction defect action.

Having reviewed the petition and supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). While the issues presented in this petition and the petition in Docket No. 70710 are novel and of potential statewide significance, the arguments raised in the petitions were not, for

the most part, raised or adequately vetted in the district court. Mandamus lies to correct clear error or an arbitrary or capricious abuse of discretion by the district court, *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008), a standard that requires adequate presentation of the issue to the district court for decision in the first instance. *See United States v. U.S. Dist. Court*, 384 F.3d 1202, 1205 (9th Cir. 2004) (declining to consider as a basis for mandamus an argument not presented to the district court because a district court's decision cannot be "so egregiously wrong as to constitute clear error where the purported error was never brought to its attention"); *cf. Califano v. Moynahan*, 596 F.2d 1320, 1322 (6th Cir. 1979) ("We decline to employ the extraordinary remedy of mandamus to require a district judge to do that which he was never asked to do in a proper way in the first place."). Thus, although many of these new arguments are legal and not fact-driven, they still needed to be presented to and decided by the district court.[1] *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010) ("[A] de novo standard of review does not trump the general rule that a point not urged in the trial court . . . is deemed waived and will not be considered on appeal." (quotation omitted)); *cf. Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 172-73, 252 P.3d 676, 679-80 (2011) (observing that the above-mentioned general rule applies to situations other than appeals

---

[1]For example, petitioner argues that based on *Otak Nevada, LLC v. Eighth Judicial District Court*, 127 Nev. 593, 260 P.3d 408 (2011), the Provence homeowners' original notice of construction defect was void ab initio. But because this argument was not raised in district court, neither the homeowners nor the district court have had the opportunity to address the argument, which necessarily hinders our review of the issue.

from final judgments because "[a] contrary holding would lead to the inefficient use of judicial resources and allow parties to make an end run around [the lower tribunal]"). Having considered the arguments pertaining to the April 25, 2016, order that *were* presented to the district court, we are not persuaded that the district court committed clear error or arbitrarily or capriciously abused its discretion so as to warrant the issuance of a writ of mandamus.[2] *See Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558; *Pan,* 120 Nev. at 228, 88 P.3d at 844.

With respect to the district court's July 28, 2016, order, we likewise conclude that our intervention is unwarranted insofar as petitioner raises challenges to that order because those challenges suffer from the same shortcomings discussed above. Most notably, in its writ petition, petitioner contends that the district court erred in determining that the previously unnamed homeowners were sufficiently involved in the NRS Chapter 40 process by virtue of the original notices of construction defect. In district court, however, petitioner not only failed to make this argument, but essentially conceded that "[t]he act of serving [petitioner] with the Provence[[3]] notice arguably tolled the unnamed claimants' repose

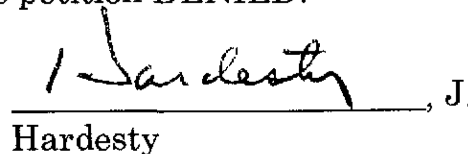
---

[2]Nor is a writ of prohibition warranted with respect to the April 25, 2016, order because petitioner did not ask the district court in the first instance to apply the "reasonable threshold test" to the Provence homeowners' amended notice of construction defect as it related to the pre-AB 125 version of NRS Chapter 40. With regard to the homeowners in the other five communities, we do not construe the district court's order as precluding petitioner from asking the district court to clarify or reconsider its application of the reasonable threshold test.

[3]We presume that this statement was also intended to apply to the Wineridge Village and Westchester Hills homeowners.

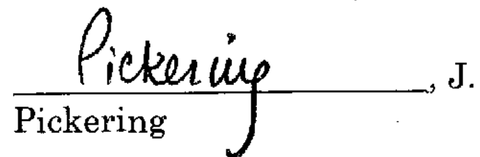
periods as of the February 18, 2015 date of the [original] notice."[4] *Cf. Schuck*, 126 Nev. at 437, 245 P.3d at 544 ("[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (quotation omitted)). Thus, in light of petitioner's concession that the newly added homeowners' repose periods were tolled as of February 18, 2015, or July 14, 2014, it follows that the applicable repose periods were those in effect as of those dates—i.e., the pre-AB 125 periods. While we recognize that some of the newly added homeowners' claims may still be untimely under the pre-AB 125 repose periods, we decline to address that issue in the first instance. In light of the foregoing, we

ORDER the petition DENIED.



_______________, J.
Hardesty

_______________, J.
Douglas



_______________, J.
Pickering

cc: Hon. Jerry A. Wiese, District Judge
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas
Lattie Malanga Libertino, LLP
Canepa Riedy Abele & Castello
Eighth District Court Clerk

---

[4]Although petitioner used the term "arguably," petitioner did not proceed to make an argument as to why the unnamed claimants could not benefit from the original notices.