IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN DANIELS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE RONALD D. PARRAGUIRRE, DISTRICT JUDGE,
Respondents,
and
PATTI & SGRO, LTD., A NEVADA CORPORATION; REALTY MANAGEMENT, INC., A NEVADA CORPORATION; AND CENTRAL PARK WEST APARTMENTS,
Real Parties in Interest.

No. 37188

FILED

FEB 11 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order denying petitioner's motion to certify a class of plaintiffs. Petitioner claims that the denial of class certification is akin to dismissal because joinder is impractical and judicially inefficient given the small dollar value of the individual claims.

Petitioner, on behalf of herself and other tenants similarly situated, challenges written provisions in the lease agreement calling for the payment of attorney fees whenever rent is paid after the third of the month. Petitioner contends that the provision for these fees, and the landlord's practice of refusing to accept rent after the third of each month - and instead automatically submitting the tenant to an attorney for collection - is illegal. Further, petitioner contends that the lease provision

which requires payment of returned check fees in excess of the amount allowed by statute is illegal. Petitioner filed a motion for class certification, defining the class as "all tenants of [the realty management company] whose lease, rental agreement, or apartment policy requires the payment of more than $25 for returned check charges or $75.00 attorney fees or both, to DEAN PATTI or PATTI & SGRO." The district court denied petitioner's motion for class certification on the basis that "a class action cannot exist where each Plaintiff would have to prove his or her actual reliance on the alleged [fraudulent] misrepresentations." On December 22, 2000, petitioner filed this petition for a writ of mandamus. The Nevada Trial Lawyers Association ("NTLA") received leave to file an amicus curiae brief and did so on February 26, 2001. The real parties in interest filed a motion to strike the petition on March 27,2001, which was denied.

Mandamus is an extraordinary remedy and it is within this court's discretion whether a petition will be entertained.[1] A writ of mandamus is available to compel the performance of an official act[2] or to control the arbitrary or capricious exercise of discretion when petitioners lack a "plain, speedy and adequate remedy in the ordinary course of law."[3]

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[1]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

[2]See NRS 34.160, which provides in part that a "writ may be issued . . . to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station".

[3]NRS 34.170. See also Round Hill General. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

This court has previously considered a writ petition challenging a district court's denial of class certification.[4] Likewise, this order of the district court is interlocutory and inasmuch as no appealable order has been entered by the district court, petitioner claims that she and the tenants who would be covered by the class definition have no "plain, speedy, or adequate remedy" by appeal or otherwise since the class action cannot proceed without relief from this court.[5] We agree. Consideration of the writ petition is thus appropriate.

When determining whether to certify a class, the allegations of the complaint should generally be accepted as true.[6] The real parties in interest argue that petitioner failed to satisfy any of the prerequisites and any of the requirements for class certification in NRCP 23(a) and (b). However, the district court order only stated that the basis for denying class certification was the lack of commonality. NRCP 23(a)(2) requires petitioners to establish that questions of law or fact are common to the class. In Meyer v. District Court,[7] we held that a single corporate policy could be used as the basis to satisfy this requirement. We also stated that common questions of law are sufficient to establish commonality and that

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[4]See Meyer v. District Court, 110 Nev. 1357, 885 P.2d 622 (1994).

[5]See Cronin v. District Court, 105 Nev. 635, 639 n.4, 781 P.2d 1150, 1152 n.4 (1989) (noting that mandamus is properly used to challenge a district court's order disqualifying counsel).

[6]See Meyer, 110 Nev. at 1363-64, 885 P.2d at 626 (citing Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975) (citations omitted)).

[7]Id. at 1364, 885 P.2d at 626.

"when a general corporate policy is the focus of litigation, class status for those adversely affected by the policy is appropriate."[8]

Here, petitioner contends that the primary claims of all the tenants relate to the apartment and/or management company's policy of charging attorney fees and excessive returned check fees, as well as the manner in which the law firm collected these fees, which they allege are contrary to law. Under the standard we articulated in Meyer, the commonality element of NRCP 23(a)(2) would be satisfied since there are common questions of law. We thus need not consider whether common questions of fact are also present.

A plaintiff seeking class treatment must also satisfy one of the elements of NRCP 23(b). Here, petitioner sought certification under NRCP 23(b)(2) and alternatively, under NRCP 23(b)(3). Under NRCP 23 (b)(3), certification may be granted if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

The real parties in interest argue that tenants do not meet the requirements of NRCP 23(b)(2) because the management company utilizes different lease agreements, only some of which contained the provision complained about. They also argue that the tenants do not satisfy NRCP 23(b)(3) because the individual claims predominate over any common claims. We conclude that neither contention has merit.

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[8]Id.

First, the class definition itself would include only those tenants whose lease or apartment policy provide for the fees being challenged. The provisions for the challenged fees are alleged to be the same for all members of the class. Further, these provisions are alleged to be in writing in the standard lease forms executed by the tenants in the defined class, in the eviction notices, and in the sign posted in the petitioner's apartment complex. The real parties in interest thus acted on grounds generally common to the class, thereby rendering appropriate the declaratory or injunctive relief sought by the members of the class. Second, the claims brought by petitioner satisfy the commonality element because they present the same questions of law. The rules do not require that there be no individual claims - they require only that common questions of law or fact predominate over any individual claims.[9] Though there may be some reliance issues with respect to oral representations made to individuals, these would be easily resolved because the fact that tenants paid the extra fees assessed shows that they relied on the representations that the fees were required. The requirements for class certification were thus satisfied. Class treatment in this case furthers the "fair and efficient adjudication of the controversy" because it will avoid duplicitous proceedings to resolve the same questions – whether the challenged fee provisions, and the collection policy utilized to enforce

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[9]See Eisenburg v. Gagnon, 766 F.2d 770, 786 (3d Cir. 1985) (citations omitted) (stating that "[t]he presence of individual questions as to the reliance of each [class member] does not mean that the common questions of law and fact do not predominate"; In re ORFA Securities Litigation, 654 F. Supp. 1449, 1461 (D.N.J. 1987) (stating that "questions of actual reliance do not render class treatment . . . unworkable."

them, are illegal.[10] The district court thus erred in denying class treatment. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to CERTIFY A PLAINTIFF CLASS.

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Ronald D. Parraguirre, District Judge
Clark County Legal Services Program, Inc
Kajioka, Christiansen & Toti
Marquis & Aurbach
Rawlings Olson Cannon Gormley & Desruisseaux
Beckley, Singleton, Chtd./Las Vegas
Bradley Drendel & Jeanney
Crockett & Myers
Clark County Clerk

[10]NRCP 23(b)(3).

MAUPIN, C.J., concurring in part and dissenting in part:

I would deny this application because the district court's order refusing class certification does not meet the "arbitrary and capricious" standard that governs issuance of writs of mandate by this court. I would note, however, that blanket claims of fraud do not of necessity prevent commonality of claims under NRCP 23.

 , C.J.

Maupin