IN THE SUPREME COURT OF THE STATE OF NEVADA

WEST CHARLESTON LOFTS III, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND SAVWCL III, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
JOHN FARINA AND TINA FARINA, IN THEIR CAPACITIES AS CO-TRUSTEES OF THE FARINA LIVING TRUST,
Real Parties in Interest.

No. 87609

FILED
NOV 04 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court order denying summary judgment on the grounds that compelled arbitration tolled the relevant statutes of limitations.

Petitioners West Charleston Lofts III, LLC and SAVWCL III, LLC (collectively, the Lofts) seek a writ of mandamus directing the district court to vacate the challenged order. Real parties in interest John and Tina Farina are California residents who invested in a property owned by West Charleston Lofts via a $100,000 loan. They allege that West Charleston Lofts defaulted on the loan as part of a larger fraud perpetuated by

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nonparties Jeffrey Guinn and Aspen Financial Services. Eventually, West Charleston Lofts transferred the property to SAVWCL, which then sold the property to a third party. SAVWCL distributed money to West Charleston Lofts' lenders following the sale, resulting in the Farinas receiving roughly 17 cents for each dollar they loaned. SAVWCL distributed those checks on February 10, 2016. Both parties agree that the distribution date is the relevant date of accrual for the Farinas' causes of action against the Lofts.

In December 2016, the Lofts, as putative defendants, initiated litigation in Nevada's Eighth Judicial District Court, by filing a motion seeking to compel arbitration regarding any potential dispute with the Farinas. At that time, the Farinas had not initiated suit against either Lofts entity. Before the Nevada district court could rule on the Lofts' motion to compel arbitration, the Farinas filed suit against the Lofts in California state court. In September 2017, the Nevada district court granted the Lofts' motion and compelled arbitration. During the arbitration period, the California courts dismissed the Farinas' suit for lack of personal jurisdiction over the Lofts. *See Farina v. SAVWCL III, LLC*, 263 Cal. Rptr. 3d 756, 768 (Ct. App. 2020). The parties returned to Nevada. On October 6, 2022, the parties stipulated to proceed through the courts rather than through arbitration. Consequently, the Lofts filed a first amended complaint on November 28, 2022, and the Farinas filed a first amended answer and counterclaims on March 9, 2023. Shortly thereafter, the Lofts moved for summary judgment, asserting that the Farinas' counterclaims were barred by the statute of limitations. The district court issued an order denying the Lofts' motion, finding that the September 2017 order compelling arbitration tolled the statutes of limitations relevant to the Farinas' counterclaims.

The order tolled the statutes from September 2017 through October 2022. The Lofts now petition for a writ of mandamus to vacate that order.

We elect to entertain the writ petition

A writ of mandamus may "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 Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NRS 34.160. For a writ to issue, the party seeking the writ must have "no plain, speedy, and adequate remedy at law." *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Whether to consider a petition for extraordinary writ relief rests within our sound discretion. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007). While we generally do not "consider petitions for extraordinary writ relief that challenge district court orders denying summary judgment, [ ] an exception applies when 'no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action.'" *Libby v. Eighth Jud. Dist. Ct.*, 130 Nev. 359, 363, 325 P.3d 1276, 1278 (2014) (quoting *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997)).

The Lofts' petition presents a unique situation regarding the tolling effects of compelled arbitration on statutes of limitations. We have previously entertained writ petitions concerning the applicability of statutes of limitations because, when applicable, a statute of limitations operates to protect a litigant from defending against stale claims. *See, e.g., City of Mesquite v. Eighth Jud. Dist. Ct.*, 135 Nev. 240, 241, 445 P.3d 1244, 1246 (2019); *Libby*, 130 Nev. at 363, 325 P.3d at 1278-79. Such protection is lost if a district court erroneously permits stale claims to go to trial. Resultingly, the Lofts do not have a plain, speedy, and adequate remedy at

law if forced to appeal after a final judgment. Furthermore, the parties do not contest any factual issues; the dispositive inquiry is purely a question of law. We therefore elect to entertain the petition to clarify the legal issue raised by the Lofts.

We deny the petition on its merits

"Even in a writ petition, this court reviews de novo issues of law[.]" *State, Dep't of Transp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 549, 553, 402 P.3d 677, 681 (2017). "When reviewing an order granting or denying summary judgment in the context of a writ petition, we must also be cognizant of the summary judgment standard." *Id.* at 553, 402 P.3d at 682. "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (cleaned up).

As a threshold matter, the parties agree that the date of accrual for the Farinas' counterclaims is February 10, 2016, and the Farinas filed those counterclaims on March 9, 2023. Those events bookend a span of seven years and one month. The parties were compelled to arbitrate between September 7, 2017, and October 6, 2022—a span of five years and one month. And all of the Farinas' causes of action are subject to three- or six-year statutes of limitations. *See* NRS 11.190(1)(b), (3)(a), (3)(d). Therefore, the Farinas' counterclaims against the Lofts would be barred if the applicable statutes of limitations are not tolled, but each counterclaim would still be ripe if the statutes are tolled.

Consistent with *State, Department of Human Resources, Welfare Division v. Shively*, 110 Nev. 316, 871 P.2d 355 (1994), we conclude that statutes of limitations may be tolled by an order compelling arbitration

issued by a court of competent jurisdiction. In *Shively*, we stated that "it does not make sense for [a plaintiff] to lose [a] cause of action simply because it was pursuing, and was required to pursue, administrative remedial action." 110 Nev. at 318, 871 P.2d at 356. The same reasoning applies to a party required to attend court-ordered arbitration.

This is because "the concerns alleviated by traditional statute of limitations law simply do not apply." *Id.* For example, one concern served by a statute of limitations is notice to a putative defendant of a plaintiff's claims. *Id.* at 318-19, 871 P.2d at 356. By suing in California, the Farinas "put[ ] the defendant on notice that his actions [were] in dispute and [could] spur additional and separate legal battling." *Id.* at 319, 871 P.2d at 356. In California, the Farinas averred all seven causes of action that they now bring as counterclaims, so the Lofts had actual notice of the Farinas' counterclaims within the period in which those claims were ripe.

While we have been reticent to expand *Shively* tolling in the past, this case presents a unique set of circumstances.[1] Normally, the Lofts would have been the putative defendant to the Farinas' claims. Instead, the Lofts, clearly on notice that their conduct was in dispute, acted as a plaintiff in the state court, preemptively seeking to arbitrate before the Farinas filed the claims that would be the basis of the arbitration. As a result, the Lofts compelled the Farinas to arbitration over the challenged

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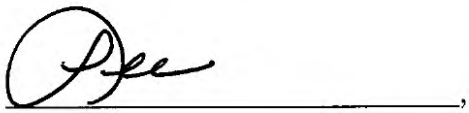
[1]In this case, there is no argument being raised that the Farinas failed to exercise reasonable diligence in discovering the Lofts' role in the alleged counterclaims. *Cf. Siragusa v. Brown*, 114 Nev. 1384, 1394, 971 P.2d 801, 807 (1998). Furthermore, the Farinas were compelled to arbitrate by court order. *Cf. Wilson v. Las Vegas Metro. Police Dep't*, 137 Nev. 685, 688, 498 P.3d 1278, 1281 (2021) (declining to toll the statute of limitations after the plaintiff pursued an optional administrative remedy).

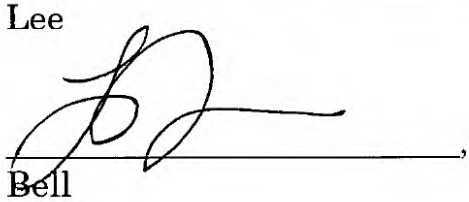
claims *before* the Farinas actually filed those claims. The Farinas attempted to initiate those claims in California but failed for want of jurisdiction. Because of the order compelling arbitration, the Farinas had no opportunity to initiate their counterclaims in a court of competent jurisdiction in Nevada before the respective statutes of limitations expired. Having concluded that, under the unique circumstances of this case, the compelled arbitration tolled the statutes of limitations pertaining to the Farinas' counterclaims, we

ORDER the petition DENIED.

_____, J.
Herndon



_____, J.
Lee



_____, J.
Bell

cc: Hon. Mark R. Denton, District Judge
Marquis Aurbach Chtd.
Lee Landrum & Ingle
Eighth District Court Clerk