

SUPREME COURT OF NEVADA

D.R. Horton, Inc. v. Eighth Judicial District Court

123 Nev. 468 (2007) · Decided October 11, 2007

SUMMARY

The Nevada Supreme Court addresses the sufficiency of pre-litigation notice of constructional defects under NRS 40.645. The court establishes a reasonable threshold test for extrapolated notices based on expert sampling, requires reasonable detail identifying defects and their locations, and directs the district court to reconsider the notice and make written findings. The court also holds that supporting expert opinions and reports used to prepare the notice must be disclosed.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Gibbons, J.; Maupin, C.J.; Hardesty, J.; Parraguirre, J.; Douglas, J.; Cherry, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	October 11, 2007
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for extraordinary writ relief challenging the district court's denial of a motion for declaratory relief concerning the sufficiency of a pre-litigation constructional-defect notice.
STANDARD OF REVIEW	The interpretation of NRS 40.645 is reviewed de novo. Decisions concerning extraordinary writ relief and the reasonableness of a pre-litigation notice are reviewed under the Supreme Court's broad discretionary authority, with the district court afforded wide discretion in determining notice adequacy.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	D.R. Horton, Inc., Central Valley Insulation Las Vegas, LLC, Builder Services Group, Inc., d/b/a Central Valley Insulation v. Eighth Judicial District Court

TOPICS

- construction defects
- construction law
- statutory interpretation
- writ of certiorari
- appellate procedure

PRACTICE AREAS

construction law

civil procedure

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Nevada Supreme Court should exercise extraordinary writ jurisdiction to review the district court's refusal to declare First Light's NRS 40.645 pre-litigation notice insufficient.
2. What constitutes sufficient reasonable detail under NRS 40.645 for an extrapolated pre-litigation notice concerning common constructional defects in multiple homes.
3. Whether an extrapolated notice must identify the applicable subset of similarly situated homes, provide a reasonable statistical basis, identify tested homes and their addresses, and disclose supporting expert reports.
4. Whether the district court must make specific written findings regarding the adequacy of the notice and preservation of the contractor's opportunity to inspect and repair.

HOLDINGS

1. Writ relief was available because an eventual appeal from a final judgment would not provide a speedy or adequate remedy for resolving the sufficiency of a pre-litigation notice intended to prevent litigation.
2. An adequate extrapolated pre-litigation notice must have a reasonable statistical basis describing the alleged defects and their locations in reasonable detail sufficient to provide contractors a meaningful opportunity to inspect and repair.
3. When challenged by a contractor, an extrapolated notice must identify a narrow subset of similarly situated homes, identify the characteristics of that subset, provide a valid and reliable statistical basis, and ordinarily include testing and verification of the alleged defect in at least one home in each subset, together with the address of each tested home.
4. Pre-litigation notices are presumed valid; a contractor challenging adequacy bears the burden of making a specific challenge. District courts have wide discretion to determine reasonableness and must make specific written findings explaining whether the notice preserves the contractor's opportunity to inspect and repair.
5. NRS 40.645(4)(c) requires a claimant to disclose expert opinions and reports in the claimant's possession that were used to prepare the pre-litigation notice.

KEY QUOTATIONS

"We conclude that adequate extrapolated pre-litigation notice must have a reasonable statistical basis to describe the alleged defects and their locations in reasonable detail sufficient to afford contractors a meaningful opportunity to repair the alleged defects." (468)

"Because of the variety of constructional defects that can occur, no universal formula exists for use in measuring whether every pre-litigation notice that comes before a district court is reasonable." (479)

“In all cases, an extrapolated notice is valid only if it identifies the subset or characteristics of the subset to which it applies.” (480)

“We further conclude that pre-litigation notices are presumed valid under NRS 40.645.” (481)

“We conclude that a claimant cannot utilize the phrase “to the extent known” in NRS 40.645(2)(c) to justify withholding pertinent information from a pre-litigation notice.” (482)

FACTUAL BACKGROUND

D.R. Horton built a Henderson, Nevada, community consisting of 414 residences with multiple floor plans and elevations, constructed by approximately 40 contractors and subcontractors. First Light hired experts who used visual and invasive testing of a small sample of homes, then extrapolated the existence and frequency of approximately 160 alleged defects throughout the development. The notice generally did not identify the tested homes, their addresses, the applicable floor plans or elevations, or the location of particular defects within individual residences. After D.R. Horton disputed the notice’s sufficiency, the district court declined to declare it inadequate.

PROCEDURAL HISTORY

First Light at Boulder Ranch Homeowners Association sent a pre-litigation notice under NRS 40.645 based on expert testing of a representative sample of homes and extrapolation to the development. The district court denied D.R. Horton’s motion for declaratory relief seeking a determination that the notice was statutorily insufficient. D.R. Horton and subcontractor petitioners sought writs of prohibition and mandamus, and the Nevada Supreme Court granted the petition in part, vacating the order and directing reconsideration under a newly articulated reasonable-threshold test.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court must vacate its declaratory-relief order, reconsider the adequacy of First Light’s pre-litigation notice under the reasonable-threshold test, determine whether the notice preserves D.R. Horton’s statutory opportunity to inspect and repair, disclose the supporting expert reports used to prepare the notice, and make specific written findings explaining its conclusions.

CASES CITED

- State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002)
- Pan v. Dist. Ct., 120 Nev. 222, 225, 88 P.3d 840, 841 (2004)
- Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)
- Houston Gen. Ins. Co. v. District Court, 94 Nev. 247, 248, 578 P.2d 750, 751 (1978)
- Ducharm, 118 Nev. at 614, 55 P.3d at 423

- Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991)
- Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 853-57, 124 P.3d 530, 542-44 (2005)
- Marquis & Aurbach v. Dist. Ct., 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006)
- McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 650-51, 730 P.2d 438, 441, 443 (1986)
- Thompson v. District Court, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984)
- Diamond v. Swick, 117 Nev. 671, 676, 28 P.3d 1087, 1090 (2001)
- Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003)
- Glover v. Concerned Citizens for Fuji Park, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002)
- Garvin v. Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002)
- State v. Dist. Ct. (Riker), 121 Nev. 225, 234-35, 112 P.3d 1070, 1076 (2005)