

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK WHITE CUSTOM HOMES, A  
NEVADA CORPORATION AND JACK  
WHITE, AN INDIVIDUAL,  
Petitioners,

vs.

THE NINTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
DOUGLAS, AND THE HONORABLE  
MICHAEL P. GIBBONS, DISTRICT  
JUDGE,

Respondents,

and

HERBERT M. BURRIDGE AND  
VIRGINIA M. BURRIDGE, HUSBAND  
AND WIFE; AND MCGUIRE MURRAY  
LIMITED PARTNERSHIP, A NEVADA  
LIMITED PARTNERSHIP,  
Real Parties in Interest.

No. 45323

**FILED**

JUN 17 2005

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

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR CERTIORARI

This original petition for a writ of mandamus or certiorari challenges a district court order granting a motion to amend answer and for partial summary judgment filed by the real parties in interest. Specifically, the petitioners challenge the district court's grant of partial summary judgment, which gave collateral estoppel effect to certain findings of the Nevada State Contractors Board made pursuant to a disciplinary investigation involving petitioner Jack White Custom Homes. Petitioners also seek a stay of the underlying proceedings pending this court's resolution of this petition.

A writ of mandamus is available when there is not a plain, speedy and adequate remedy in the ordinary course of law.<sup>1</sup> Similarly, a writ of certiorari is available when there is no appeal nor, in the judgment of the court, any plain, speedy and adequate remedy available to the party seeking the writ.<sup>2</sup> Having reviewed the petition and the motion for a stay, it appears that petitioners have a plain, speedy and adequate remedy available to them in the form of an appeal from a final judgment in the underlying case.<sup>3</sup> Petitioners' motion for a stay indicates that the trial in the underlying case is set to begin on June 29, 2005. Upon the completion of the trial and the entry of a final judgment, petitioners will be able to challenge the district court order granting partial summary judgment in favor of the real parties in interest as part of a timely filed appeal from the final judgment.<sup>4</sup>

As petitioners have a plain, speedy and adequate remedy available to them, it does not appear that this court's intervention by way of extraordinary relief is warranted.<sup>5</sup> Additionally, we note that, under

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<sup>1</sup>NRS 34.170.

<sup>2</sup>NRS 34.020.

<sup>3</sup>See Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (noting that this court has held that "the right to appeal is generally an adequate legal remedy that precludes writ relief."); Schumacher v. District Court, 77 Nev. 408, 410, n.2, 365 P.2d 646, 647, n.2 (1961) (noting, in a case involving a writ of certiorari, that the right of appeal has been held to afford a plain, speedy, and adequate remedy).

<sup>4</sup>See Consolidated Generator v. Gummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

<sup>5</sup>NRS 34.170; Pan, 120 Nev. 222, 88 P.3d 840; NRS 34.020; Schumacher, 77 Nev. 408, 365 P.2d 646.

NRS 34.020(2), the availability of an appeal automatically precludes this court's intervention by way of a writ of certiorari.<sup>6</sup> Accordingly, we deny the petition,<sup>7</sup> and, in light of this decision, we deny as moot petitioners' motion for a stay.

It is so ORDERED.

Becker, C.J.  
Becker

Rose, J.  
Rose

Hardesty, J.  
Hardesty

cc: Hon. Michael P. Gibbons, District Judge  
Sullivan Law Offices  
Kelly R. Chase  
Douglas County Clerk

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<sup>6</sup>Schumacher, 77 Nev. 408, 365 P.2d 646.

<sup>7</sup>See NRAP 21(b); NRAP 21(c); Schumacher, 77 Nev. 408, 365 P.2d 646; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).