

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAND TITLE OF NEVADA, INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

PERRY MCKINNON,
Real Party in Interest.

No. 46075

FILED

NOV 23 2005

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

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus and/or prohibition challenges a district court order denying petitioner's motion for summary judgment.

On October 17, 2005, this court directed the real party in interest to file an answer to this petition. Petitioner then filed a motion to stay the proceedings in the underlying case. In its stay motion, petitioner represents that trial of the underlying case is set to begin on January 3, 2006.

A writ of mandamus is available only where no plain, speedy, and adequate remedy exists in the ordinary course of law.¹ A writ of

¹NRS 34.170.

prohibition is likewise only available if the petitioner has no plain, speedy, and adequate legal remedy.² This court has repeatedly held that an appeal is a speedy and adequate remedy that precludes the availability of writ relief.³

Given that less than two months remain before the start of trial, it appears that petitioner has a plain, speedy, and adequate remedy available to it in the form of an appeal from the district court's final judgment entered at the completion of trial.⁴ If it is aggrieved by the final judgment, petitioner may appeal from that judgment, and in the context of that appeal, may also challenge the district court's denial of its motion for summary judgment.⁵ As petitioner has a plain, speedy, and adequate legal remedy available to it, this court's intervention by way of extraordinary relief is not appropriate.⁶ The fact that petitioner will have

²NRS 34.330.

³Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

⁴We note that the district court has entered an order granting summary judgment against petitioner on the issue of petitioner's liability. That order and the order denying petitioner's motion for summary judgment based on the running of the statute of limitations do not preclude petitioner from litigating any factual issue in aid of its statute of limitations defense, including the diligence prong of Nurenberger Hercules-Wenke v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1991).

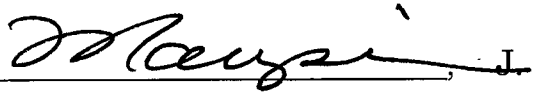
⁵See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (noting that interlocutory orders entered prior to the entry of a final judgment may be challenged on appeal from the final judgment).

⁶NRS 34.170; NRS 34.330; Pan, 120 Nev. at 224, 88 P.3d at 841. In light of this order, we deny as moot petitioner's request for a stay.


to incur the expenses of litigating the underlying case before appealing to this court does not warrant either the requested stay or this court's intervention by way of extraordinary relief.⁷

Accordingly, we conclude that this court's intervention by way of extraordinary relief is not warranted, and we deny the petition.⁸

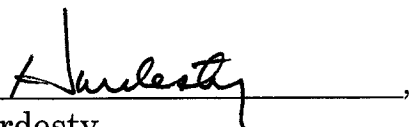
It is so ORDERED.



Maupin



Gibbons



Hardesty

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Bennion & Clayson
Tingey & Tingey
Clark County Clerk

⁷See Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) (noting, in the context of a motion for stay, that incurring expenses for discovery, trial preparation, and trial does not constitute suffering irreparable or serious harm such that a stay is warranted).

⁸Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).