

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.A. JONES CONSTRUCTION  
COMPANY,  
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

LEHRER MCGOVERN BOVIS, INC.,  
AND NATIONAL FIRE INSURANCE  
COMPANY OF HARTFORD,  
Real Parties in Interest.

No. 46753

**FILED**

NOV 29 2006

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order that, on remand, stayed the underlying action pending restitution and continued trial.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

A writ of mandamus is an extraordinary remedy that may issue if the petitioner has no plain, speedy, and adequate remedy at law.<sup>1</sup> We have absolute discretion whether to consider a mandamus petition.<sup>2</sup>

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<sup>1</sup>NRS 34.170.

<sup>2</sup>State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002).

The writ generally serves “to 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.”<sup>3</sup>

Petitioner J.A. Jones Construction Company (Jones) petitions this court for a writ of mandamus ordering the district court to vacate its stay order. Jones argues that any restitution obligation was discharged in its bankruptcy. Alternatively, Jones contends that restitution is not equitable under the circumstances and that the district court abused its discretion in issuing an immoderate stay.

Lehrer McGovern Bovis, Inc. (LMB) contends that Jones’ rights and obligations in the litigation were expressly assigned to Fireman’s Fund Insurance Company (Fireman’s Fund) in the intercreditor agreement. LMB further argues that because Fireman’s Fund is the real party in interest, Jones has no standing to petition this court for relief.

Although a cause of action for fraud or similar tort cannot be assigned under Nevada law, a cause of action for injury to property rights and breach of contract can be assigned.<sup>4</sup> Such an assignee becomes the real party in interest,<sup>5</sup> and under NRCP 17, actions “shall be prosecuted in the name of the real party in interest.”

The critical issue here is whether Jones assigned the rights to the litigation to Fireman’s Fund. “It is essential that in order for there to

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<sup>3</sup>Id. (citing NRS 34.160); see Wardleigh v. District Court, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

<sup>4</sup>El Rancho, Inc. v. First National Bank of Nevada, 406 F.2d 1205, 1209 n.4 (9th Cir. 1968).

<sup>5</sup>Thelin v. Intermountain Lumber, 80 Nev. 285, 289-90, 392 P.2d 626, 628 (1964).

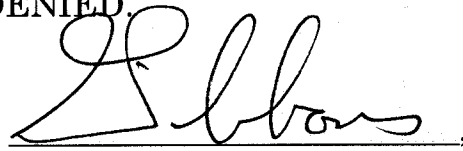
be a legal assignment of rights, the obligee must manifest an intention to transfer the right to another person.”<sup>6</sup>


The section of the intercreditor agreement at issue states that the amount of the judgment received by Jones is “surety collateral,” and as such “shall be distributed to the Sureties, it being understood that the Sureties shall be responsible for the enforcement of such judgment and the collection of any amounts associated therewith.”

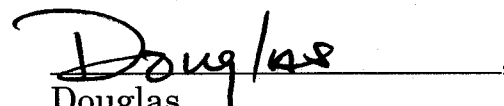
Although the above language expressly assigns only the amount, the enforcement, and the collection of the judgment, we conclude that pursuant to the intercreditor agreement the parties intended that all obligations with regard to the litigation were assigned to Fireman’s Fund.

We conclude, therefore, that since Jones has assigned its interest in the underlying litigation to Fireman’s Fund, Jones has no standing to bring this petition. Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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<sup>6</sup>Stuhmer v. Centaur Sculpture Galleries, 110 Nev. 270, 275, 871 P.2d 327, 331 (1994) (emphasis in original).

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Haney, Woloson & Mullins  
McDermott, Will & Emery/Chicago, IL  
Harrison Kemp & Jones, LLP  
Clark County Clerk