

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANSE, INC., D/B/A NEVADA STATE
PLASTERING; DEL WEBB
COMMUNITIES, INC., AN ARIZONA
CORPORATION; DEL E. WEBB
DEVELOPMENT CO., L.P., A
DELAWARE LIMITED PARTNERSHIP;
DW HOMEBUILDING CO., AN
ARIZONA CORPORATION; DEL WEBB
CORPORATION, A DELAWARE
CORPORATION; PULTE HOMES
CORPORATION, A MICHIGAN
CORPORATION; AND PULTE HOMES,
INC., A MICHIGAN CORPORATION,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,

and

GLENN HAYWARD; FRED W.
SCHAEFER; DONALD T. BARSKY;
JAMES F. SEARCY; SHELDON
FACTOR; JOHN P. FRIAR; NORMAN
YORK; BERNARD BRONSTEIN; AND
D.J. ADDONIZIO, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Real Parties in Interest.

No. 51858

FILED

JUL 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion for partial summary judgment.

According to petitioners, the underlying constructional defect action concerns approximately 1000 residences in the Sun City Summerlin community in Las Vegas, Nevada. Petitioners moved the district court for summary judgment on the claims brought by owners of approximately 400 of those residences, arguing that claims regarding those homes are barred by NRS 11.203's ten-year statute of repose for constructional defect claims, as more than ten years apparently has passed since the completion of those homes. The district court ultimately denied the motion based on an exception to NRS 11.203's ten-year limitation period, set forth in NRS 11.202(a), for constructional defects arising from willful misconduct. This petition followed.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹ Mandamus is an extraordinary remedy, however, and whether a petition will be considered is within our discretion.² We generally will not exercise our discretion to issue a writ when petitioners have a plain, speedy, and adequate alternative legal remedy available to them.³ Petitioners bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁴

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

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

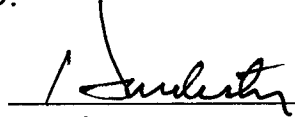
³See NRS 34.170.

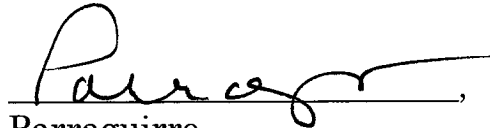
⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

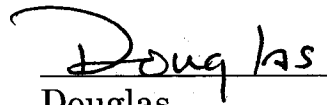
Having considered this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Specifically, petitioners appear to have an adequate legal remedy available to them in the form of an appeal from any adverse final judgment entered in the underlying case.⁵ Indeed, as petitioners acknowledge, trial in the underlying matter has already commenced and, at this point, potentially will conclude in only a few months.

Accordingly, we

ORDER the petition DENIED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Susan Johnson, District Judge
Helm & Associates
Koeller Nebeker Carlson & Haluck, LLP
Lincoln, Gustafson & Cercos
Canepa Riedy & Rubino
Sterling Law, LLC
Wolf, Rifkin, Shapiro & Schulman, LLP
Eighth District Court Clerk

⁵See *id.* 120 Nev. at 224, 88 P.3d at 841 (noting that an appeal generally is an adequate legal remedy precluding writ relief).

⁶NRAP 21(b); *Smith*, 107 Nev. 674, 818 P.2d 849.