

IN THE SUPREME COURT OF THE STATE OF NEVADA

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; SHELDON FACTOR; JOHN P. FRIAR; NORMAN YORK; BERNARD BRONSTEIN; AND D.J. ADDONIZIO,  
Real Parties in Interest.

No. 51896<sup>5</sup>

**FILED**

JUL 14 2008

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

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition 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.<sup>1</sup> A writ of mandamus's counterpart, the writ of prohibition, is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.<sup>2</sup> Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.<sup>3</sup> We generally will not issue either writ when petitioners have a plain, speedy, and adequate alternative legal remedy available to them.<sup>4</sup> Petitioners

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

<sup>2</sup>NRS 34.320.

<sup>3</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

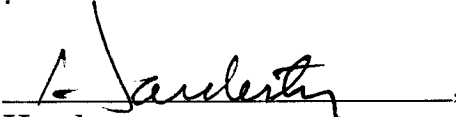
<sup>4</sup>See NRS 34.170; NRS 34.330.


bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.<sup>5</sup>

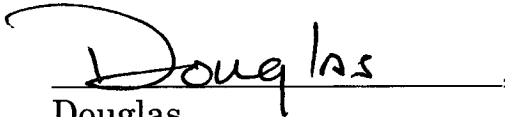
Having considered this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Specifically, petitioners appear to have an adequate legal remedy available to them in the form of an appeal from any adverse final judgment entered in the underlying case.<sup>6</sup> Indeed, as petitioners acknowledge, trial in the underlying matter commenced months ago and, at this point, potentially will conclude in only a few months.

Accordingly, we

ORDER the petition DENIED.<sup>7</sup>

  
Hardesty, J.

  
Parraguirre, J.

  
Douglas, J.

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<sup>5</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

<sup>6</sup>See id. at 224, 88 P.3d at 841 (noting that an appeal generally is an adequate legal remedy precluding writ relief).

<sup>7</sup>NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Susan Johnson, District Judge  
Koeller Nebeker Carlson & Haluck, LLP  
Wolf, Rifkin, Shapiro & Schulman, LLP  
Eighth District Court Clerk