

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES R. LA FRIEDA, AN INDIVIDUAL, AND  
ELLEN A. LA FRIEDA, AN INDIVIDUAL,  
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF WASHOE, AND THE  
HONORABLE PATRICK FLANAGAN,  
DISTRICT JUDGE,

Respondents,

and

REYNEN & BARDIS (MT. ROSE ESTATES),  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; REYNEN & BARDIS  
DEVELOPMENT (NEVADA), LLC, A NEVADA  
LIMITED LIABILITY COMPANY; REYNEN &  
BARDIS COMMUNITIES (NEVADA), INC., A  
NEVADA LIMITED LIABILITY COMPANY;  
CEDAR VALLEY CONCRETE CORP. OF  
NEVADA, A NEVADA CORPORATION; BLACK  
EAGLE CONSULTING, INC., A NEVADA  
CORPORATION; AND BUILDING CONCEPTS,  
INC., A NEVADA CORPORATION,  
Real Parties in Interest.

No. 52638

**FILED**

**JUL 30 2009**

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

ORDER DISMISSING IN PART AND DENYING  
IN PART PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order in a construction defect action that (1) compelled binding arbitration and dismissed the action with prejudice as to the Reynen & Bardis real parties in interest, and (2) dismissed the action without prejudice as to real parties in interest Black Eagle Consulting, Inc., and Building Concepts, Inc., based on a finding that petitioners failed to comply with NRS Chapter 40's notice requirements.



Presently before this court is a stipulation, signed by all parties, informing that they have agreed to waive their arbitration rights and allow the matter to proceed in the district court. The stipulation provides that the only issue remaining to be resolved in this writ proceeding is petitioners' challenge to the portion of the district court's order granting real parties in interest Building Concepts' and Black Eagle Consulting's motions to dismiss. Accordingly, we construe the stipulation as a joint motion to dismiss this petition as it pertains to the portion of the district court order dismissing the Reynen & Bardis parties and compelling arbitration. We grant the joint motion and dismiss the writ as to the Reynen & Bardis parties.<sup>1</sup> The parties shall bear their own attorney fees and costs related to that portion of this petition, if any. NRAP 42(b).

With respect to the remaining issue, the dismissal of Building Concepts and Black Eagle Consulting for failure to provide notice, petitioners assert that because they were not in contractual privity with Building Concepts, a Reynen & Bardis subcontractor, and Black Eagle Consulting, a design firm hired by Reynen & Bardis, they were not required to provide notice of the alleged defects to those parties before commencing their construction defect action. In particular, petitioners assert that NRS Chapter 40 requires them to provide such notice only to the "contractor," Reynen & Bardis, and that the district court therefore

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<sup>1</sup>Since petitioners' request for relief here does not directly pertain to Cedar Valley Concrete, Corp., which was not dismissed from the action below by the challenged order, this writ proceeding is dismissed as to Cedar Valley Concrete as well, and Cedar Valley Concrete therefore is not required to file an answer to this writ petition.

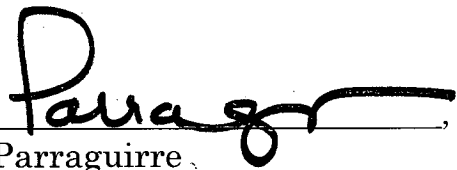
erred by dismissing their action against Building Concepts and Black Eagle Consulting for failing to comply with NRS Chapter 40 notice requirements. See NRS 40.645 (outlining notice requirements in construction defect actions); NRS 40.647(2) (providing that a district court must dismiss without prejudice a construction defect action if the claimant fails to comply with NRS 40.645's notice requirement). Building Concepts and Black Eagle Consulting timely filed an answer to the petition, as directed.

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. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Mandamus is an extraordinary remedy, however, and the decision to entertain such a petition is within this court's sole discretion. See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). Petitions for extraordinary relief generally will not issue when petitioners have a plain, speedy, and adequate remedy at law, and this court has consistently held that an appeal is an adequate legal remedy precluding writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Petitioners bear the burden of demonstrating that extraordinary intervention is warranted. Id. at 228, 88 P.3d at 844.


Having reviewed the petition, answer, and supporting documents, we are not persuaded that mandamus relief is warranted. In particular, petitioners are challenging a partial dismissal order, and an appeal from the district court's final judgment, when entered, will provide

an adequate legal remedy, precluding writ relief.<sup>2</sup> Id. at 224, 88 P.3d at 841. Accordingly, we deny the petition as it relates to petitioners' challenge to the portion of the district court's order dismissing without prejudice the construction defect action against Building Concepts and Black Eagle Consulting.<sup>3</sup> Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

It is so ORDERED.

\_\_\_\_\_, J.  
Parraguirre

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

\_\_\_\_\_, J.  
Pickering

cc: Hon. Patrick Flanagan, District Judge  
Nancy F. A. Gilbert  
Erickson Thorpe & Swainston, Ltd.  
Fahrendorf, Viloría, Oliphant & Oster, LLP  
Holland & Hart LLP/Reno  
Laxalt & Nomura, Ltd./Reno  
Washoe District Court Clerk

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<sup>2</sup>Nothing in this order precludes petitioners from seeking NRCPC 54(b) certification in the district court, if appropriate.

<sup>3</sup>Further supporting denial of petitioners' mandamus request is petitioners' failure to include with the petition an affidavit of the parties beneficially interested in writ relief, as required under NRS 34.170.