

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA CONSTRUCTION CLEAN-
UP, INC., A NEVADA CORPORATION,
Petitioner,

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

AARON L. TEMPLE AND TEMPLE
DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,
Real Parties in Interest.

No. 53123

FILED

JUN 04 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

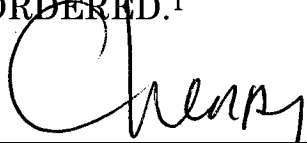
This original petition for a writ of mandamus or prohibition challenges district court orders denying motions to amend a complaint in a contract action.


A writ of mandamus is available 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. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). The counterpart to a writ of mandamus, a writ of prohibition, is available when a district court acts without or in excess of its jurisdiction. NRS 34.320. Neither writ will issue when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2001) (recognizing that the right to appeal is generally an adequate legal remedy precluding writ relief). Whether a petition for a writ of mandamus or prohibition will

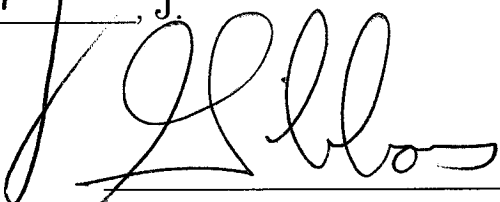
be considered is purely discretionary with this court. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that such extraordinary relief is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844.

Having considered the petition, answer, and supporting documents, we conclude that petitioner has not met its burden of demonstrating that our intervention by way of extraordinary relief is warranted at this time. Accordingly, we order the petition denied. Smith, 107 Nev. 674, 818 P.2d 849.

It is so ORDERED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
L. Earl Hawley
Ellsworth Moody & Bennion Chtd.
Eighth District Court Clerk

¹We note that our denial of this petition does not bar petitioner from challenging the denial of its motions to amend as part of an appeal from a final judgment in the underlying action. See Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment as “one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs”); Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (recognizing that an appeal from interlocutory orders may be challenged within the context of an appeal from a final judgment).