

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS ROOF CONSULTING, 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

RANCHO OCASO APARTMENTS, LLC,
A NEVADA LIMITED LIABILITY
COMPANY,

Real Party in Interest.

No. 53236

FILED

MAR 05 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Wood
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 summary judgment in a real property action.

Real party in interest, Rancho Ocaso Apartments, LCC, owns the Rancho Ocaso apartment complex in Las Vegas, Nevada. Initially, Rancho Ocaso Apartments instituted an action against the complex's developers alleging various contract and tort causes of action. Ultimately, however, Rancho Ocaso Apartments settled with the developers, which, as part of the settlement, assigned their claims, if any, against the complex's subcontractors and design professionals to Rancho Ocaso. Rancho Ocaso, then, amended its complaint to assert claims against the complex's subcontractors and design professionals, including petitioner Willis Roof Consulting, Inc.

Thereafter, Willis Roof Consulting moved for summary judgment, primarily arguing that the parties lacked the contractual privity necessary to sustain Rancho Ocaso's contract claims and that the economic loss doctrine barred Rancho Ocaso's tort claims. The district court denied the motion. This writ petition followed.

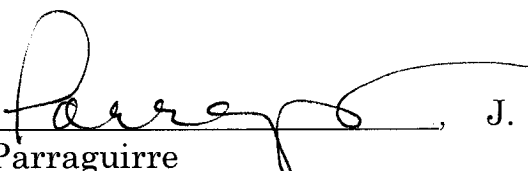
A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Mandamus is an extraordinary remedy, however, and whether a petition will be considered is solely within our discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

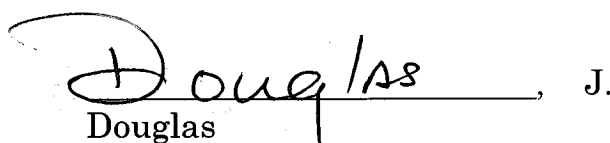
After reviewing this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. In particular, we generally will not exercise our discretion to consider petitions for extraordinary writ relief that challenge district court orders denying motions for summary judgment, unless no factual dispute exists and summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification. International Game Tech. v. Dist. Ct., 124 Nev. ___, ___, 179 P.3d 556, 559 (2008); Smith v. Dist. Ct., 113 Nev. 1343, 950 P.2d 280 (1997). Even then, a writ may issue only when petitioner has no plain, speedy, and adequate legal remedy, NRS 34.170, and this court has consistently held that an appeal is generally an adequate legal remedy precluding writ relief. See Pan, 120 Nev. at 224, 88 P.3d at 841.

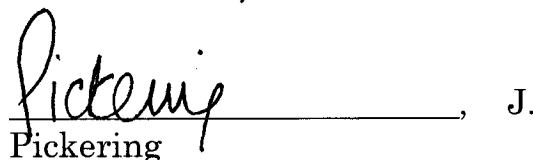
Here, petitioner has not demonstrated that this petition fits firmly within any exception to our general policy to decline considering writ petitions challenging district court orders denying summary judgment, and the availability of an appeal from any adverse final judgment in this case appears to constitute an adequate legal remedy precluding writ relief, particularly in light of the imminent trial date in the underlying proceedings. See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

Accordingly, we

ORDER the petition DENIED.¹


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Susan Johnson, District Judge
Lincoln, Gustafson & Cercos
Feinberg Grant Mayfield Kaneda & Litt, LLP
Eighth District Court Clerk

¹In light of this order, we deny as moot petitioner's motion for a stay.