

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAMILY DEVELOPMENT GROUP, A CALIFORNIA CORPORATION; RUDY C. HERRERA, INDIVIDUALLY AND ON BEHALF OF FAMILY DEVELOPMENT GROUP, INC.; PACWEST MANAGEMENT GROUP, LLC, A NEVADA LIMITED LIABILITY COMPANY; JAC CONSULTING GROUP, INC., A DELAWARE CORPORATION; FTB CONSULTING GROUP, INC., A DELAWARE CORPORATION; WHITE STALLION ESTATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY; H & K CONSULTING, INC., A CALIFORNIA CORPORATION; VINCENT BARBATO, INDIVIDUALLY; RAYMOND C. HERRERA, INDIVIDUALLY; AND ANTUN BARBATO, INDIVIDUALLY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT JUDGE,

Respondents,

and

ONECAP MORTGAGE, A NEVADA CORPORATION; AND ASCENDENT UNIVERSAL FUND 1, LLC, A NEVADA LIMITED LIABILITY COMPANY,  
Real Parties in Interest.

No. 54326

**FILED**

SEP 09 2009

TRACIE H. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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 summary judgment 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, NRS 34.160; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991), or to control a manifest abuse of discretion. 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; State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002). Neither writ will issue, however, when the petitioners have a plain, speedy, and adequate remedy in the ordinary course of law. Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170; NRS 34.330. Accordingly, we generally will not exercise our discretion to consider petitions for extraordinary writ relief that challenge district court orders denying motions for summary judgment. Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997) (noting that this court might exercise its discretion to consider writ petitions challenging orders denying summary judgment when summary judgment is clearly required by a statute or rule, or when an important issue of law requires clarification). The decision to entertain a writ petition is addressed to our sole discretion. Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

Having considered this petition, we are not satisfied that our intervention by way of extraordinary relief is warranted. Although petitioners assert that the material facts are undisputed and real parties in interest's claims are now moot, such that the district court was obligated to grant judgment as a matter of law, the district court's obligation as to those claims is not so clear as petitioners suggest.

Accordingly, we adhere to our general policy of declining to consider writ petitions challenging orders that deny summary judgment, and therefore we

ORDER the petition DENIED.

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Timothy C. Williams, District Judge  
Bailey Kennedy  
Harold P. Gewerter, Esq., Ltd.  
Eighth District Court Clerk