

IN THE SUPREME COURT OF THE STATE OF NEVADA

UPPER DECK COMPANY, 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 TIMOTHY C. WILLIAMS, DISTRICT JUDGE,

Respondents,

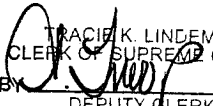
and

MATT CONSTRUCTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; HERBERT GORDON PRESS DESIGN ASSOCIATES, A NEVADA CORPORATION A/K/A HGP DESIGN ASSOCIATES; AND ARCO ELECTRIC OF NEVADA, INC.,
Real Parties in Interest.

No. 54432

FILED

AUG 28 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS AND PROHIBITION

This original petition for a writ of mandamus and prohibition seeks to compel the district court to approve a jury verdict form different from the one currently approved and to refrain from submitting the case to the jury until such change is made. As the case is scheduled to be submitted to the jury today, petitioner also seeks an emergency stay of the district court proceedings pending our review of this writ petition.

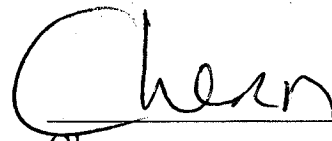
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion. See NRS 34.160;

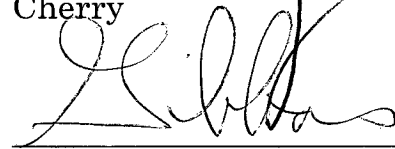
Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). We may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. NRS 34.320. Both mandamus and prohibition are extraordinary remedies, however, and whether a petition for extraordinary relief will be considered is solely within our discretion. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). A writ will issue only when petitioners have no plain, speedy, and adequate legal remedy, NRS 34.170; NRS 34.330, and this court has consistently held that an appeal typically is an adequate legal remedy precluding writ relief. See, e.g., D.R. Horton v. Dist. Ct., 123 Nev. 468, 474, 168 P.3d 731, 736 (2007); Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844.


Because the majority of the trial apparently already has concluded and the matter's submission to the jury is imminent, it appears that petitioner, if aggrieved, will have a speedy and adequate remedy available in the form of an appeal from the final judgment. The fact that petitioner may be required to incur additional attorney fees and other litigation expenses in the event that the district court's final judgment is reversed on appeal and the matter is remanded for a new trial does not warrant this court's intervention by way of extraordinary relief in this case. See D.R. Horton, 123 Nev. at 474-75, 168 P.3d at 736 (noting some of the considerations in determining whether an appeal is a speedy and adequate legal remedy); Co. of Washoe v. City of Reno, 77 Nev. 152, 156, 360 P.2d 602, 603 (1961) (explaining that "[a] remedy does not fail to be speedy and adequate, because, by pursuing it through the ordinary course

of law, more time probably would be consumed than in a mandamus proceeding”); cf. Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) (concluding that litigation expenses, while potentially substantial, do not constitute sufficient irreparable or serious harm to warrant the imposition of a stay). Accordingly, we conclude that our extraordinary intervention by way of writ relief is not warranted, see NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851, and we

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Douglas

cc: Hon. Timothy C. Williams, District Judge
Gibbs, Giden, Locher, Turner & Senet LLP
Bennion Clayson & Marias
Cooksey, Toolen, Gage, Duffy & Woog
Howard & Howard
Lee, Hernandez, Brooks, Garofalo & Blake, APC
Marks & Isaacson, LLP
Sherman & Associates
Eighth District Court Clerk