

IN THE SUPREME COURT OF THE STATE OF NEVADA

ETHEL POPOWITZ, AN INDIVIDUAL  
AND AS TRUSTEE OF THE ETHEL  
POPOWITZ TRUST; MARILYN  
POPOWITZ, AN INDIVIDUAL; AND  
MARQUIS AURBACH COFFING,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MICHELLE LEAVITT, DISTRICT  
JUDGE,

Respondents,

and

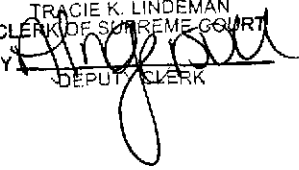
RAYMOND J. SHAPIRO, AN  
INDIVIDUAL; B.A. SUNDOWN, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; MOUNTAIN VISTA, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; BAYSIDE DERIVATIVES,  
LP, A NEVADA LIMITED  
PARTNERSHIP; AND HENRYMAX,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Real Parties in Interest.

No. 58305

**FILED**

FEB 10 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING IN PART AND DENYING IN PART PETITION  
FOR WRIT OF MANDAMUS OR PROHIBITION*

This is a petition for a writ of mandamus or prohibition challenging a district court's order imposing sanctions pursuant to NRCP 11.

The law office of Marquis Aurbach Coffing (MAC), petitioner, represented Ethel and Marilyn Popowitz, also petitioners, against real parties in interest Raymond Shapiro; B.A. Sundown, LLC; Mountain Vista, LLC; Bayside Derivatives, LP; and Henrymax, LLC in a civil suit. The Popowitizes alleged various claims against real parties in interest, including alter ego claim.

Shapiro, Bayside, and Henrymax filed a motion to dismiss the Popowitizes' alter ego claim. On October 12, 2009, real parties in interest sent the Popowitizes a letter pursuant to NRCP 11(c)(1)(A), attaching a proposed motion for sanctions and stating that if the Popowitizes did not dismiss their alter ego claim within NRCP 11(c)(1)(A)'s 21-day safe harbor period, real parties in interest would file the motion.

On November 2, 2009, the district court held a hearing on the motion to dismiss where the court verbally dismissed the Popowitizes' alter ego claim with prejudice; but, the court did not enter its written order until May 3, 2010. Hours after the November 2nd hearing, the Popowitizes informed real parties in interest that they intended to withdraw their alter ego claim pursuant to real parties in interest's NRCP 11 request. Shortly thereafter, the Popowitizes fulfilled their promise and filed a voluntary dismissal of the alter ego claim. Nevertheless, real parties in interest filed a motion for sanctions under NRCP 11. The district court held a hearing on the motion and issued sanctions against MAC and the

Popowitizes pursuant to NRCP 11.<sup>1</sup> The court determined that the voluntary dismissal was ineffective because it came after the court dismissed the alter ego claim at the November 2nd hearing. In response, MAC and the Popowitizes filed this petition challenging the court's order. Additionally, the Popowitizes filed an appeal challenging the order imposing sanctions against them. *See Popowitz v. Shapiro*, Docket No. 59806.

“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.” *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (internal citations omitted). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. NRS 34.320. A petition for extraordinary writ relief is properly used to challenge an order imposing sanctions on counsel. *Albert D. Massi, Ltd. v. Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995). But, extraordinary writ relief is unavailable when the petitioner has “an adequate and speedy legal remedy.” *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558 (2008); *see* NRS 34.170; NRS 34.330.

Writ relief is available for MAC, but not the Popowitizes. MAC was not a party in the proceeding below; therefore, it cannot appeal the district court's sanctions order. *See* NRAP 3A(a); *Albert D. Massi*, 111 Nev. at 1521, 908 P.2d at 706. Without a right to appeal, MAC does not have an adequate legal remedy; thus, writ relief is available for it. *See*

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<sup>1</sup>NRCP 11(c) allows a court to impose sanctions upon attorneys and law firms as well as individual parties.

*Office of the Washoe Cnty. Dist. Attorney v. Second Judicial Dist. Court*, 116 Nev. 629, 635, 5 P.3d 562, 566 (2000). The Popowitzes' appeal in Docket No. 59806 provides them with an adequate legal remedy; therefore, they are not entitled to writ relief, *see Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 223, 88 P.3d 840, 840-41 (2004), and the petition is denied as to the Popowitzes.


The district court erred in awarding the sanctions because the Popowitzes withdrew the alter ego claim within NRCP 11's 21-day safe harbor period. The district court's oral order dismissing the alter ego claim was ineffective. *See* NRCP 58(c) (a court's judgment is not effective until it is written, filed with the clerk, and signed by either the judge or clerk) *see also Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688-89, 747 P.2d 1380, 1382 (1987) (stating that a district court's oral ruling is ineffective for any purpose and cannot be appealed to this court). The Popowitzes notified real parties in interest of their intent to withdraw the alter ego claims prior to the 21-day safe harbor period expiring and before the district court entered its written order dismissing the claims. Consequently, the district court did not have any basis to impose sanctions on MAC under NRCP 11.<sup>2</sup>

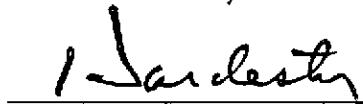
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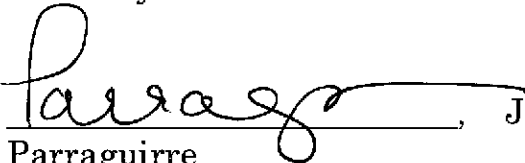
<sup>2</sup>In light of this order, MAC's alternative request for a writ of prohibition is denied as moot.

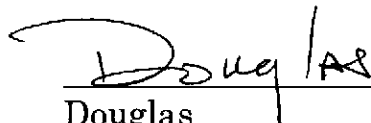
Accordingly, we ORDER the petition GRANTED IN PART and DENIED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order imposing sanctions on MAC.

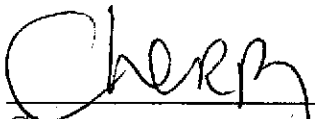
  
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Gibbons

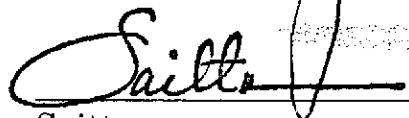
  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

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

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

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Michelle Leavitt, District Judge  
Marquis Aurbach Coffing  
McDonald Carano Wilson LLP/Las Vegas  
McDonald Carano Wilson LLP/Reno  
Eighth District Court Clerk