

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK NIELSEN, AN INDIVIDUAL;
AND ROBERT H. SCHULMAN, AN
INDIVIDUAL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DOUG SMITH, DISTRICT JUDGE,
Respondents,

and

BRANCH BANKING AND TRUST
COMPANY, SUCCESSOR-IN-
INTEREST TO COLONIAL BANK BY
ACQUISITION OF ASSETS FROM THE
FDIC AS RECEIVER FOR COLONIAL
BANK, A NORTH CAROLINA
BANKING CORPORATION
ORGANIZED AND IN GOOD
STANDING UNDER THE LAWS OF
THE STATE OF NORTH CAROLINA,
Real Parties in Interest.

No. 59823

FILED

NOV 15 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying a motion for summary judgment in a deficiency action.

Real party in interest Branch Banking and Trust Company (BB&T) brought suit seeking a deficiency judgment against petitioners Frank Nielsen and Robert Schulman (collectively, Nielsen) to recover the outstanding debt remaining, after a foreclosure sale, on a loan guaranteed

by Nielsen. BB&T alleged that Nielsen, as guarantor for a loan made to Tropical-Lamb, LLC, was liable for almost \$13 million in unpaid principal, interest and fees. However, BB&T did not originate the loan; instead, it acquired the loan from the Federal Deposit Insurance Corporation, which was acting as receiver for Colonial Bank, a failed financial institution.

Following acquisition of the loan, BB&T proceeded with a non-judicial foreclosure. At the foreclosure sale, it obtained ownership of the property by placing an \$8 million credit bid. BB&T then filed suit to obtain a deficiency judgment for the difference between the outstanding loan amount and the sales price. After the filing of BB&T's suit seeking a deficiency judgment, the Nevada Legislature approved, and the Governor signed, Assembly Bill 273 on June 10, 2011, which, in pertinent part, added NRS 40.459(1)(c) to the Nevada Revised Statutes, limiting the amount a successor loan holder is able to recover in a deficiency action to the amount paid for the loan. Nielsen brought a motion for summary judgment, alleging that BB&T failed to prove the amount of consideration it paid to acquire the loan, as well as the fair market value of the property at the time of the foreclosure sale. The district court denied Nielsen's motion. This petition for extraordinary relief followed.

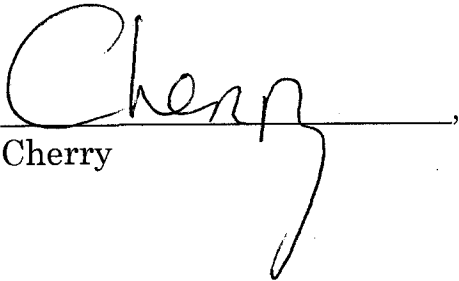
Nielsen asks this court to grant the petition for extraordinary writ relief, arguing that the district court acted arbitrarily and capriciously in denying the motion for summary judgment.

Because an adequate remedy exists, in the form of an appeal from a final judgment, *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NRS 34.160; NRS 34.170; NRS 34.330, and in light of our disposition in *Sandpointe Apartments, LLC v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, ___

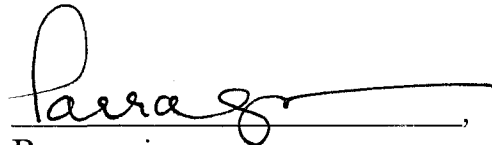
cc: Hon. Doug Smith, District Judge
Foley & Oakes, PC
Sylvester & Polednak, Ltd.
Legislative Counsel Bureau Legal Division
O'Mara Law Firm, P.C.
Holland & Hart LLP/Reno
Eighth District Court Clerk

CHERRY, J., with whom PARRAGUIRRE, J., joins dissenting:

I would grant the writ petition for the reasons set forth in my dissent in *Sandpointe Apartments, LLC v. Eighth Judicial District Court*, 129 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. ___, ___, 2013). I therefore dissent.


Cherry, J.

I concur:


Parraguirre, J.