

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASPEN FINANCIAL SERVICES, INC., A
NEVADA CORPORATION; ASPEN
FINANCIAL SERVICES, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
JEFFREY B. GUINN, AN INDIVIDUAL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE ALLAN R.
EARL, DISTRICT JUDGE,

Respondents,

and

DONNA A. RUTHE, AN INDIVIDUAL;
TODAY'S REALTY, INC., A NEVADA
CORPORATION; CDR INVESTMENTS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; DONNA A. RUTHE AS
ATTORNEY-IN-FACT FOR CHARLES L.
RUTHE, IN HIS INDIVIDUAL AND IN
REPRESENTATIVE CAPACITIES AS
TRUSTEE FOR THE CHARLES L.
RUTHE TRUST AND ON BEHALF OF
HIS INDIVIDUAL RETIREMENT
ACCOUNT; CALOGERO S. GRANIERI IN
HIS REPRESENTATIVE CAPACITY AS
TRUSTEE FOR RICHARD F. ACOVINO
IRREVOCABLE TRUST; FRANK E.
GRANIERI, IN HIS REPRESENTATIVE
CAPACITY AS TRUSTEE FOR THE
FRANK E. GRANIERI REVOCABLE
LIVING TRUST; RICHARD ACOVINO, AN
INDIVIDUAL; VICTORIA L. QUINN, AN
INDIVIDUAL; AND STEPHEN P. QUINN,
AN INDIVIDUAL,
Real Parties in Interest.

No. 59851

FILED

MAY 22 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anger*
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges the district court's dismissal of petitioners' abuse of process counterclaim.


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. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court 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. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). It is within this court's discretion to determine if a writ petition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioners bear the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

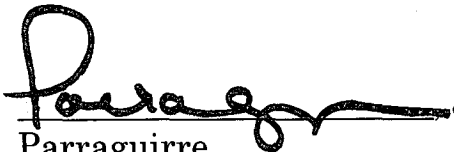
Here, petitioners ask this court to grant extraordinary relief and reinstate their abuse of process counterclaim. As this counterclaim is but one of a number of claims and counterclaims that were brought in the underlying action, which remains pending in the district court, we decline to exercise our discretion to consider this petition and address this matter in a piecemeal fashion. Once a final judgment has been entered, petitioners may challenge the dismissal of their abuse of process counterclaim as part of an appeal from that judgment. Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (stating that interlocutory orders that are not independently

appealable may be reviewed on appeal from the final judgment). Accordingly, we conclude that our intervention by way of extraordinary relief is not warranted and we therefore deny the petition. Smith, 107 Nev. at 677, 818 P.2d at 851; NRAP 21(b)(1).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Allan R. Earl, District Judge
Bailey Kennedy
Hansen Rasmussen, LLC
Murchison & Cumming, LLC/Las Vegas
Pico Rosenberger
Prince & Keating, LLP
Eighth District Court Clerk