

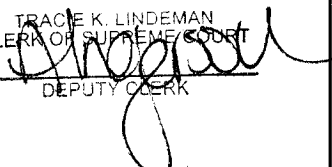
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN A. RITTER,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JESSIE ELIZABETH WALSH,  
DISTRICT JUDGE,  
Respondents,  
and  
BUILDER'S CAPITAL, INC., A  
NEVADA CORPORATION,  
Real Party in Interest.

No. 61110

FILED

NOV 14 2013

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION*

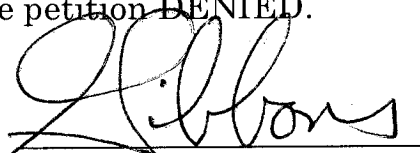
This original petition for a writ of mandamus, or alternatively, prohibition, challenges a district court order granting a motion for partial summary judgment in a breach-of-guaranty action.

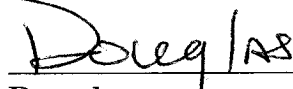
A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. NRS 34.320. Writ relief is not available, however, when a plain, speedy, and adequate legal remedy exists, and the right to appeal is generally considered to be such a remedy. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Moreover, it is petitioner's burden to demonstrate that this court's extraordinary intervention is warranted. *Id.* at 228, 88 P.3d at 844.

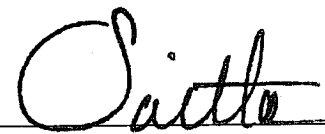
13-34325

Having considered petitioner's arguments, we conclude that our extraordinary intervention is not warranted. *Id.* Specifically, it is undisputed that real party in interest Builder's Capital, Inc., is entitled to at least some payment under the subject loan and guaranty agreement.<sup>1</sup> Moreover, it appears that Builder's Capital has been assigned roughly 91 percent of the beneficial interest in the guaranteed loan, which Builder's Capital contends is a sufficient interest to entitle it to collect on the entire obligation. *Cf.* NRS 645B.340(1) (authorizing a holder of 51 percent or more of a loan's beneficial interest to act on behalf of all other holders). Thus, the district court does not appear to have arbitrarily exercised its discretion in entering partial summary judgment in favor of Builder's Capital. *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558. To the extent that Builder's Capital refuses to provide written confirmation of the assignments or that petitioner contests Builder's Capital's right to a judgment on the portion of the loan it does not own, petitioner may raise these issues in the context of an appeal from a final judgment. *Pan*, 120 Nev. at 224, 88 P.3d at 841. Accordingly, we

ORDER the petition DENIED.

  
Gibbons, J.

  
Douglas, J.

  
Saitta, J.

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<sup>1</sup>To the extent that petitioner contends otherwise and asks this court to order the district court to enter summary judgment in petitioner's favor, that request is denied.

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Bogatz Law Group  
Marquis Aurbach Coffing  
Eighth District Court Clerk