

IN THE SUPREME COURT OF THE STATE OF NEVADA

HALCROW, INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

MGM MIRAGE DESIGN GROUP,
Real Party in Interest.

No. 63339

FILED

SEP 20 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK


ORDER DENYING PETITION FOR WRIT OF MANDAMUS

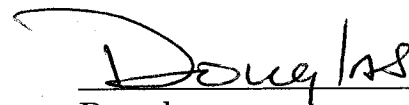
This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss causes of action for breach of contract and express indemnity.


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). Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Mandamus will not issue when the petitioner has a plain, speedy, and adequate remedy at law, NRS 34.170, and we have consistently held that an appeal is generally an adequate legal remedy precluding writ relief. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

Having reviewed the petition and documents submitted, we are not persuaded that writ relief is warranted. The district court's denial of the motion is based, at least in part, on material questions of fact involving whether there is a contract between the parties, performance by the parties, and whether estoppel applies to preclude application of the statute of frauds. This court typically declines to exercise its discretion to consider a writ petition challenging a district court order denying a motion to dismiss or motion for summary judgment, unless "no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action." *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). As there are disputed issues of material fact in the present case, and petitioner has an adequate remedy in the form of an appeal, we decline to exercise our discretion to consider this writ petition. *Id.*; *Pan*, 120 Nev. at 224, 88 P.3d at 841; NRAP 21(b)(1). Accordingly, we

ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Lloyd, Gray, Whitehead & Monroe, P.C.
Backus, Carranza & Burden
Robertson & Associates, LLP
Greenberg Traurig, LLP/Las Vegas
Eighth District Court Clerk