

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PROPERTY NINE DEVELOPMENT,
LLC,
Petitioner,
vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
VERONICA BARISICH, DISTRICT
JUDGE,

Respondents,

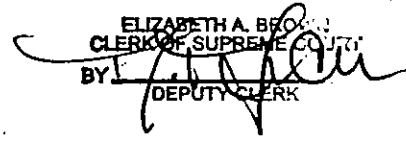
and

SUSTAINABILITY ENGINEERING
GROUP, LLC, AND ALI FAKIH,
Real Parties in Interest.

No. 89579-COA

FILED

JUL 03 2025

ELIZABETH A. BROOKS
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

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

This original petition for a writ of mandamus or prohibition challenges a district court order partially granting a motion in limine precluding the introduction of evidence concerning certain special damages.

In October 2020, petitioner Property Nine Development, LLC, entered into a contract with real party in interest Sustainability Engineering Group, LLC (SEG), for construction of a new Starbucks coffee shop in Las Vegas.¹ Property Nine, together with its investment partner Lusavi Pagosa, LLC, acquired real property that Starbucks was interested in converting into a coffee shop. Under a separate agreement, Starbucks

¹Because Property Nine acted through its affiliate, P9 Devco IV, LLC, during many of the relevant transactions and the record does not clearly distinguish the capacity in which each entity was acting, we refer to both collectively as “Property Nine.”

retained Property Nine to develop the new location, and Property Nine, in turn, hired SEG to provide engineering and architectural services for the project. Real party in interest Ali Fakih serves as the principal and manager of SEG.

Disputes arose between Property Nine and SEG concerning payment delays, alleged overbilling, and the timely and diligent performance of contractual services, which ultimately led to the termination of their contract. Meanwhile, Lusavi grew frustrated with the construction delays, leading Property Nine to buy out its interest in the property using a loan financed by Pathfinder Crimson, LLC, which was later refinanced by Barnett Capital, Ltd. Afterward, Starbucks became frustrated with delays in the coffee shop's construction and terminated its deal with Property Nine. Upon discovering that neither SEG nor Fakih was licensed to perform engineering or architectural work in Nevada during their involvement with the project, Property Nine filed an action in district court alleging various fraud and contract claims as well as claims for quiet title and declaratory relief.

In January 2024, several months after the close of discovery, SEG and Fakih filed a motion in limine to exclude evidence concerning Property Nine's claimed special damages. Property Nine's damages computation included special damages, which encompassed the Lusavi buyout² as well as refinancing costs and losses. SEG and Fakih argued that Property Nine failed to produce sufficient documentation supporting the amounts in its damages computation during discovery, violating NRCP

²Property Nine's computation of damages referenced a "buyout of existing partners." However, the record before this court only establishes that Property Nine bought out Lusavi's interest in the property. Consequently, Lusavi is the only partner of Property Nine that we discuss in connection with the buyout.

16.1(a)(1)(A), and moved to exclude or limit Property Nine's ability to present evidence of special damages under NRCP 37(c)(1). Property Nine opposed the motion, and the district court conducted a hearing on the issues.

Thereafter, the district court entered a written order finding that Property Nine failed to provide adequate supporting documentation for its various categories of special damages as required by NRCP 16.1(a)(1)(A). The court excluded all evidence of special damages related to the Lusavi buyout and refinancing costs and losses. Subsequently, Property Nine filed a motion for reconsideration, which SEG and Fakih opposed, and the district court denied. Property Nine then filed this original petition for a writ of mandamus or prohibition to challenge the district court's order.

Writ relief is appropriate

A writ of mandamus is available to compel the performance of an act that the law requires or to control manifest abuse or an arbitrary or capricious exercise of discretion. NRS 34.160; *Price v. Second Jud. Dist. Ct.*, 141 Nev., Adv. Op. 17, 567 P.3d 319, 321 (2025). A writ of prohibition is proper "to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also* NRS 34.320 (defining a writ of prohibition). Writ relief is generally not available, however, where the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170 (concerning writs of mandamus); *see also* NRS 34.330 (concerning writs of prohibition); *Smith*, 107 Nev. at 677, 818 P.2d at 851. Further, this court generally does not consider writ petitions challenging evidentiary determinations, unless (1) "an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction," (2) "the issue is one of first impression and of fundamental public importance," or (3) "the resolution of the writ petition will resolve related or future litigation." *Torremoro v. Eighth Jud. Dist. Ct.*,

138 Nev. 578, 579, 512 P.3d 765, 767 (2022). “[T]he issuance of a writ of mandamus or prohibition is purely discretionary with this court.” *Smith*, 107 Nev. at 677, 818 P.2d at 851. “Petitioners carry the burden of demonstrating that extraordinary relief is warranted.” *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Property Nine challenges a pretrial order excluding evidence of certain special damages, which we typically do not review in the context of a writ petition since parties may challenge such decisions in an appeal from the final judgment. *See Torremoro*, 138 Nev. at 579, 512 P.3d at 767. Nevertheless, this case presents an important issue of law that needs clarification, specifically, how lower courts should address discrepancies between a computation of damages and the documents or other evidence produced under NRCP 16.1(a)(1)(A)(iv) to support a party’s alleged special damages before such evidence may properly be excluded under NRCP 16.1(e)(3) and NRCP 37(c)(1). Moreover, given the facts and circumstances of this case, which has remained in the pretrial stage for more than three years, judicial economy is best served by correcting the district court’s improper exclusion of some of Property Nine’s evidence of special damages at this stage. *See D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 475, 168 P.3d 737, 737 (2007) (reasoning that an eventual appeal from the final judgment did not provide a speedy and adequate legal remedy in a case involving a pre-litigation notice of constructional defects that may have been dispositive of the plaintiff’s claim when the case had been in the pre-litigation stage for more than two-and-a-half years). As a result, we exercise our discretion to consider whether a writ of mandamus is warranted.³ *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

³Because we conclude the district court had jurisdiction to consider SEG and Fakih’s motion in limine since the motion was made after

The district court manifestly abused its discretion by excluding all evidence related to the Lusavi buyout and refinancing costs and losses

We next address Property Nine’s arguments concerning the special damages it claims from the buyout of Lusavi. In its petition, Property Nine contends that it disclosed evidence of \$398,000 in damages related to the buyout of Lusavi, including documents produced in discovery and deposition testimony from one of its cofounders, Michael DiGangi. In response, SEG and Fakih argue that the documentation was insufficient and that Property Nine failed to identify the specific portions of DiGangi’s testimony that support the claimed damages. We review a district court’s evidentiary rulings for an abuse of discretion. *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008).

NRCP 16.1(a)(1)(A)(iv) requires a party to produce, “without awaiting a discovery request, . . . a computation of each category of damages claimed by the disclosing party—who must make available . . . the documents or other evidentiary material . . . on which each computation is based.” If a party fails to reasonably comply with NRCP 16.1(a), “the court . . . should impose . . . appropriate sanctions in regard to the failure(s) as are just, including . . . an order prohibiting the use of any witness, document, or tangible thing that should have been disclosed.” NRCP 16.1(e)(3). And under NRCP 37(c)(1), “[i]f a party fails to provide information or identify a witness as required by Rule 16.1 . . . the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”

discovery closed and prior to trial, and therefore within the purview of the district court, *see, e.g.*, NRCP 16.1(d); EDCR 2.34(a); *see also Lora v. Reyes*, No. 87033-COA, 2024 WL 4783619, at *2 n.2 (Nev. Ct. App. Nov. 13, 2024) (Order of Reversal and Remand), we deny Property Nine’s alternative request for a writ of prohibition.

In this case, Property Nine made several NRCP 16.1 disclosures in accordance with the rules. Property Nine disclosed a combined settlement statement concerning Lusavi's buyout by Property Nine. The statement indicates that the buyout was initially funded by a loan from Pathfinder Crimson, LLC, and includes a handwritten note showing \$312,500 in buyout costs. Although the record does not support Property Nine's full claim of \$398,000 in buyout costs as set forth in its computation of damages, the NRCP 16.1 disclosure does include evidence supporting \$312,500 in such costs. Further, DiGangi, who was disclosed as a witness pursuant to NRCP 16.1, testified during his deposition that, through informal negotiations between counsel, Property Nine and Lusavi agreed that Property Nine would reimburse Lusavi for its initial investment plus \$312,500 to buy out Lusavi's interest in the property. This testimony constitutes additional evidence of the buyout damages. *See In re Dish Network Derivative Litig.*, 133 Nev. 438, 445 n.3, 401 P.3d 1081, 1089 n.3 (2017) ("[T]estimony is evidence whether it is given in court or a deposition."). We conclude that when a discrepancy exists between the amount of special damages listed in the computation of damages and the documents or other evidence disclosed, the district court should treat the amount supported by the latter as meeting the requirements of NRCP 16.1(a)(1)(A)(iv). Therefore, the district court manifestly abused its discretion by excluding all evidence of special damages tied to the buyout rather than limiting Property Nine's claim to \$312,500, and issuance of a writ of mandamus is warranted on this point.

We next consider Property Nine's argument concerning its claimed special damages related to refinancing costs and losses. Property Nine argues that refinancing costs related to Barnett Capital were thoroughly addressed during DiGangi's deposition, where counsel for SEG and Fakh referenced discovery documents supporting these costs. SEG and

Fakih respond that Property Nine seeks \$265,000 in refinancing costs and losses based on its damages computation, but the record contains no evidence produced during discovery supporting this amount.


Based on the record before us, the documents produced by Property Nine do not explain or justify the full \$265,000 it claims in special damages from refinancing costs and losses. However, DiGangi testified that the refinancing loan with Barnett Capital required Property Nine to pay \$75,000 upfront to cover interest expenses during the loan period, providing evidence of damages related to refinancing costs and losses. *See id.* Moreover, in its NRCP 16.1 disclosures Property Nine produced a borrower's closing statement with Barnett Capital showing a \$75,000 charge to cover interest payments on the loan, which supports DiGangi's testimony. Accordingly, while the record does not support the full \$265,000 claimed by Property Nine for refinancing costs and losses, it does include evidence supporting \$75,000 related to those expenses. Therefore, the district court likewise manifestly abused its discretion by excluding all evidence of special damages related to refinancing costs and losses, warranting issuance of a writ of mandamus.

Moreover, "to comply with [NRCP 37(c)] and impose an appropriate sanction [for violations of NRCP 16.1], the district court must engage in a thoughtful analysis as to whether the violating party's failure to timely disclose was either justified or harmless." *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 852 (Ct. App. 2025). In this case, even assuming that Property Nine's disclosures concerning the Lusavi buyout and the refinancing costs and losses were insufficient because the figures in the damages computation were not fully supported by the evidence produced, the district court never assessed whether any resulting deficiency was substantially justified or harmless. We conclude that any such deficiency was harmless here, as the parties were aware of the figures

supported by DiGangi's deposition testimony, and all documentation underpinning those amounts was provided during discovery through NRCP 16.1 disclosures.

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 directing the district court to permit Property Nine to present evidence at trial of special damages for the buyout of Lusavi and for refinancing costs and losses related to the Barnett Capital loan in accordance with this order.⁴


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Veronica Barisich, District Judge
Black & Wadhams
Clark Hill PLLC
Eighth District Court Clerk

⁴Insofar as Property Nine has raised additional arguments requesting writ relief that are not specifically addressed in this order, we have considered the same and conclude they do not provide a basis for this court to exercise its discretion and provide further writ relief.