

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA;

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA IN AND FOR THE  
COUNTY OF CLARK, THE  
HONORABLE ADRIANA  
ESCOBAR,

Respondents,

EUSTACHIUS C. BURSEY and  
PRECISION ASSETS LLC, and  
ACRY DEVELOPMENT LLC and  
LILLIAN MEDINA and WFG  
NATIONAL TITLE INSURANCE  
COMPANY and BONITA SPENCER,

Real Parties In Interest.

Supreme Court No. : 83939

District Court No. A-19-704335-C  
Electronically Filed  
Feb 16 2022 01:56 p.m.

PRECISION ASSETS' MOTION  
TO DISMISS PLAINTIFF'S  
PETITION FOR WRIT OF  
MANDAMUS

**PRECISION ASSETS' MOTION TO DISMISS PLAINTIFF'S  
PETITION FOR WRIT OF MANDAMUS**

Precision Assets (as Defendant, Counterclaimant and Crossclaimant against Eustachius Bursey, hereinafter referred to as "Precision"), by and through its counsel of record, Zachary T. Ball of THE BALL LAW GROUP, LLC, hereby files its Motion to Dismiss Petition for Writ of Mandamus filed by Plaintiff John Dattala (the "Petition").

**A. INTRODUCTION**

The Petition should be dismissed because it is procedurally improper and substantively defective. Dattala cannot obtain the relief he seeks through a writ but is required to file an appeal. Furthermore, Dattala is not entitled to a writ because he does not identify any important issues of law that need to be resolved or any urgent circumstances justifying extraordinary relief. In fact, Dattala's rights are more than adequately protected because not only does he have a right to appeal the

1 order he seeks to attack but he has already been awarded compensatory and  
2 punitive damages totaling \$1,422,132.00. For all of these reasons, Dattala's  
3 Petition should be dismissed.

#### 4 **B. STATEMENT OF THE LAW**

5 Dattala provides an accurate but incomplete recitation of the law in his  
6 Petition and his omission is glaring. At the beginning of Section IV, he correctly  
7 cites to *Cote H. v. Eighth Judicial District Court*, 124 Nev. 36, 39 (Nev. 2008), for  
8 the rule that a writ of mandamus is an extraordinary remedy. However, Dattala  
9 then strays when he states that a writ "shall issue" when there is no plain, speedy  
10 and adequate remedy in the ordinary course of law. This statement is simply not  
11 true. In *Cote*, the high court made clear that there is no "shall" and that a writ is  
12 never mandatory as the Supreme Court instead has "complete discretion to  
13 determine whether to consider" petitions for writs. (*Id.*)

14 Further, while the Supreme Court always retains discretion when presented  
15 with a petition for a writ, the *Cote* court observed that "neither a writ of prohibition  
16 nor a writ of mandamus is appropriate when the petitioner has 'a plain, speedy and  
17 adequate remedy in the ordinary course of law.'" (*Cote*, 124 Nev. at 39.) Dattala  
18 also acknowledges this rule but he then ignores its import. The Supreme Court  
19 opined that "an appeal generally constitutes an adequate and speedy remedy  
20 precluding writ relief." (*Cote*, 124 Nev. at 39.)

21 The *Cote* court concluded its discussion of the applicable law by noting that  
22 even when an appeal is available to the petitioner, it has nonetheless exercised its  
23 discretion to intervene but only "under circumstances of urgency or strong  
24 necessity, or when an important issue of law needs clarification and sound judicial  
25 economy and administration favor the granting of the petition." (*Id.*) With these  
26 rules in mind, it is clear that Dattala does not establish a proper basis to obtain a  
27 writ and his Petition should be dismissed.

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1 C. ARGUMENT

2 1. Dattala Has An Adequate And Speedy Remedy As He Can Appeal.

3 It cannot be disputed that a writ is generally inappropriate when the petitioner  
4 has a “plain, speedy and adequate remedy in the course of law.” It also cannot be  
5 disputed that an appeal “generally constitutes an adequate and speedy remedy  
6 precluding writ relief.” In this case, Dattala has the right to appeal from the District  
7 Court’s order by either obtaining certification under NRCP 54(b) or waiting until  
8 all proceedings in the underlying action have concluded, and he therefore has not  
9 presented a basis to seek a writ.<sup>1</sup>

10 Initially, the fact that Dattala may not be able to immediately appeal does not  
11 necessarily mean that writ relief is warranted. In *Tallman ex rel. Situated v. Eighth*  
12 *Judicial District*, 131 Nev. Adv. Op. 71 (Nev. 2015), the Nevada Supreme Court  
13 questioned one of its prior options “to the extent it suggests that orders compelling  
14 arbitration automatically satisfy NRS 34.170’s requirement that there not be a  
15 ‘plain, speedy and adequate remedy in the ordinary course of law.’” (*Id.* at 118  
16 n.1.) The Supreme Court then observed that the unavailability of an immediate  
17 appeal may support writ relief but that “it is an overstatement to say this holds true  
18 in all cases.” (*Id.*) In this case, Dattala does not argue or establish that a delay in  
19 being able to appeal warrants writ relief.

20 Notably, Dattala himself provides the legal authority that defeats his Petition.

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21 <sup>1</sup> Dattala contends that the District Court’s order is interlocutory resulting in his  
22 inability to currently file an appeal. However, the interlocutory nature of the  
23 District Court order itself does not vitiate Dattala’s right to ultimately appeal from  
24 it once it becomes final. *See Pan v. Eighth Judicial Dist. Court ex rel. County of*  
25 *Clark*, 120 Nev. 222, 224–25, 88 P.3d 840, 841 (Nev. 2004) (this Court has held  
26 “that even if an appeal is not immediately available because the challenged order  
27 is interlocutory in nature, the fact that the order may ultimately be challenged on  
28 appeal from the final judgment generally precludes writ relief.”). Here, Dattala has  
elected to delay his appeal rights by not seeking certification under NRCP 54(b).  
Thus, Dattala has an adequate remedy at law in the form of an appeal from final  
judgment that he has elected not to pursue at this time.

1 He cites to *Marquis Aurbach v. Eighth Judicial District Court*, 122 Nev. 1147  
2 (Nev. 2006), to support his argument that he does not have a plain, speedy and  
3 adequate remedy in the ordinary course of law. (Petition, page 2.) However, the  
4 facts of *Marquis* are very different from this action and the opinion does not assist  
5 him.

6 *Marquis* involved a fee dispute between an attorney and its client that  
7 originated in the State Bar of Nevada's fee dispute arbitration program. The fee  
8 dispute arbitration committee upheld the fee and the district court entered judgment  
9 on the award. The client then filed a petition for a writ of mandamus and the first  
10 issue discussed by the Supreme Court was whether the client had "an adequate and  
11 speedy remedy in the form of an appeal from the district court's judgment, which  
12 would preclude writ relief." (*Marquis*, 122 Nev. at 1150.) The high court then held  
13 that it lacked appellate jurisdiction over the district court's judgment because "no  
14 statute or court rule authorizes an appeal from the district court's judgment on  
15 review." (*Id.*) As such, writ relief was available to the client because an appeal was  
16 not available.

17 In this case, on the other hand, Dattala cannot dispute that he either was able  
18 to appeal from the order he attacks by obtaining certification under NRCP 54(b) or  
19 that he will be able to file an appeal at the conclusion of the District Court action.  
20 In either case, he has an adequate legal remedy and he is not entitled to obtain a  
21 writ. Dattala's Petition should be dismissed.

## 22 **2. Dattala Does Not Establish An Alternate Basis To Obtain A Writ.**

23 Precision acknowledges that even when a petitioner has an adequate remedy  
24 a writ may be appropriate "under circumstances of urgency or strong necessity, or  
25 when an important issue of law needs clarification and sound judicial economy and  
26 administration favor the granting of the petition." (*Cote, supra*, 124 Nev. at 39.)  
27 However, Dattala has not attempted to satisfy this high standard and he is not able  
28 to do so. He is not entitled to seek a writ.

1 First, Dattala has not identified any “urgency or strong necessity” supporting  
2 his Petition. His failure is not surprising given that he has already obtained a final  
3 judgment against co-defendants Bursey and Medina for \$355,533.00 in  
4 compensatory damages and \$1,066,599.00 in punitive damages. (PA Vol. 4,  
5 1236:1-14.) Dattala has already been made whole and writ relief is neither urgent  
6 nor necessary.

7 Dattala likewise has not identified any important issue of law that needs  
8 clarification. Dattala tries to attack an order granting an on-the-merits motion for  
9 summary judgment based on facts that were deemed admitted solely against two  
10 defaulted co-defendants. The statutes on which he relies are not novel and the case-  
11 law preventing him from attributing facts that have been deemed true against a  
12 defaulted defendant to a participating party is well-established. While this dispute  
13 is important to the parties themselves, the resolution of the dispute will have no  
14 wide-spread impact and is not important to anyone other than the parties.

15 In *Cote, supra*, the Nevada Supreme Court identified an issue that qualified  
16 as being both an important issue of law that needed clarification and also an issue  
17 involving the interests of sound judicial economy and administration. The *Cote*  
18 court considered whether NRS 201.230(1), which defines the offense of lewdness  
19 with a minor under the age of fourteen, can be used to adjudicate as delinquent a  
20 minor under the age of fourteen. The legal question also justified writ relief  
21 because it was a question of first impression that arose with some frequency. (*Cote*,  
22 124 Nev. at 39-40.) In *Business Computer Rentals v. State Treasurer*, 114 Nev.  
23 63, 67 (Nev. 1998), the Nevada Supreme Court held that writ relief was appropriate  
24 because the petitioner raised “pressing issues involving the Nevada Constitution  
25 and the public policy of this state.” Writ relief was likewise proper in *Falcke v.*  
26 *Douglas County*, 116 Nev. 583 (Nev. 2000), because “land use and development  
27 are important public policy issues confronting Douglas County as well as other  
28 counties in Nevada” and because “public policy would be best served by reaching

1 the merits of the instant petition in order to provide guidance to Douglas County,  
2 and other counties.” (*Id.* at 587.)

3 Dattala, however, does not identify any legal issue that rises to the level of the  
4 issues address in *Cote*, *Business Computer Rentals* or *Falcke*. He has not raised an  
5 issue of first impression, his claim does not involve the Nevada Constitution and  
6 his claim does not affect public policy. Dattala does not raise a legal question that  
7 warrants extraordinary relief and his Petition should be dismissed.

8 **D. CONCLUSION**

9 Dattala’s Petition is improper. He can file an appeal, or could have filed an  
10 appeal, so that he has a plain, speedy and adequate remedy in the normal course of  
11 the law. He also did not identify any urgency or strong necessity supporting his  
12 Petition and he did not identify any important issue of law that needs clarification.  
13 For the foregoing reasons, the Court should dismiss the Petition.

14 DATED this 16<sup>th</sup> day of February, 2022.

15 THE BALL LAW GROUP

16  
17 /s/ Zachary T. Ball, Esq.  
18 Zachary T. Ball, Esq.  
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23 Attorney for *Real Party In Interest*  
24 *Precision Assets*  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I electronically filed on February 16, 2022, the foregoing **PRECISION ASSETS' OPPOSITION TO MOTION TO STAY** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

☐ By placing a true copy enclosed in sealed envelope(s) addressed as follows:

☒ (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

**Service via electronic notification will be sent to the following:**

John Benedict  
Benjamin Childs  
Zachary Ball

☒ (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Hannah Hancock  
An Employee of BALL LAW GROUP