

IN THE SUPREME COURT OF THE STATE OF NEVADA

INSURANCE COMPANY OF THE
WEST, A CALIFORNIA
CORPORATION; BECKLEY
SINGLETON, CHTD., A NEVADA LAW
FIRM; AND ALVERSON, TAYLOR,
MORTENSEN, NELSON & SANDERS,
A NEVADA LAW FIRM,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JESSIE WALSH, DISTRICT JUDGE,
Respondents,

and

GIBSON TILE COMPANY, INC., A
NEVADA CORPORATION; THOMAS
GIBSON; AND KELLY GIBSON,
Real Parties in Interest.

No. 42897

FILED

DEC 03 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruben*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order finding appellant in contempt.

On April 29, 2004, we issued an order in Docket Number 42343 granting a stay pending appeal in all proceedings in consolidated District Court Case Nos. A393957, A416027, and A401531. This petition arises from those consolidated cases, and challenges the district court's contempt order filed on February 24, 2004.

We had previously ordered a temporary stay of all proceedings in the underlying consolidated cases on November 21, 2003.¹ By order entered on February 24, 2004, the district court nevertheless held petitioners in contempt for failing to post an \$8 million cash bond as it had earlier ordered, and imposed sanctions of \$5,000 for the real parties in interest's attorney fees. On April 29, 2004, we ordered a stay of the contempt order and directed an answer to this petition.

Also on April 29, 2004, we entered an order in a related appeal, Docket No. 42343, confirming the temporary stay and requiring Insurance Company of the West ("ICW") to post a corporate surety bond in the amount of \$8 million from Employers Reinsurance Corporation. Additionally, the order in Docket No. 42343 directed the district court to discharge the Bank of America garnishment upon the filing of the supersedeas bond, and denied Gibson Tile Company's motion for release of the Bank of America funds.

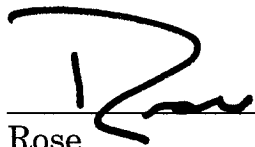
But before petitioners received our April 29 orders, they filed a withdrawal of their emergency motion for immediate stay of the contempt order, because they had paid the \$5,000 sanction. Therefore, on July 20, 2004, we rescinded our stay of the contempt order, and required petitioners to show cause why this writ petition should not be dismissed as moot.

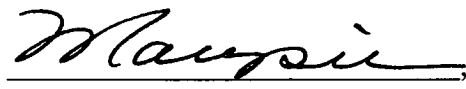
Petitioners' response indicates that the matter is not moot, because they still wish to challenge the contempt finding and seek repayment of the sanctions paid to the real parties in interest. The


¹Insurance Company of the West v. Gibson Tile Company, Inc., Docket No. 42343 (Order Granting Temporary Stay, November 21, 2003).

contempt order was entered in violation of our November 21, 2003 order staying the district court proceedings. Additionally, the contempt order and fine were not warranted, because ICW has filed with this court proof that it has posted the required surety bond in the district court.² Therefore, we direct the clerk of this court to issue a writ of mandamus directing the district court to vacate its contempt order, and to order Gibson's attorney to repay the \$5,000 fine.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
Alverson Taylor Mortensen Nelson & Sanders
Beckley Singleton, Chtd./Las Vegas
Orin G. Grossman, P.C.
Clark County Clerk

²At the time of the April 29, 2004 order, we were aware of the \$8 million bond obtained from Employers Reinsurance Corporation in November 2003, but did not know that it had actually been posted with the district court on November 21, 2003, until ICW filed proof of posting with this court on May 13, 2004. We are satisfied that adequate security from a Nevada licensed surety company has been posted pending the appeal in Docket No. 42343.