

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRO DISTRIBUTORS, INC.,  
Petitioner,

vs.

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

and

REUBEN J. ROCKER; PHYLLIS  
HOFFMAN; KELLY ANN NASTO; RAY  
HAILE; LIZA MARIE SALAVESSA;  
NATHAN HASHBARGER; WILLIAM C.  
ROONEY; JESSICA LAMBERT;  
ANTHONY BRUNO; DAVID  
DILIBERTI; ALICIA KAGAN; GERALD  
N. NEELY, JR.; CLAYTON YOAKUM;  
SUSAN HEALEY; PATRICK KANE;  
WILLIAM KAVANAUGH; BRUNILDA  
C. KAVANAUGH; MICHAEL  
MANCHESTER; GREG B. MCLENDON;  
DAVE MCLENDON; PETER LUONGO;  
JUSTIN CONDER; JUAN RAMIREZ;  
GARY BAINUM; CURTIS BRANON;  
ROBERT MATTHEWS; PATRICIA  
ALBERICI; SEAN AHANEN; HARVEY  
KOSSMAN; LOUIE BLANKS; NORRIS  
BURRELL; FLERY BURSEY; MOISES  
CARRILLO; ALLEN DEAN; IRMA  
FLORES; SHARON HEWITT; EDWARD  
HOLTON; SANDY KRAMER; ANDREW  
TODD LASHLEY; JOSEPH LUZ;  
RALPH SANDRI; AND ANON BAEZ,  
Real Parties in Interest.

No. 45013

**FILED**

**MAR 13 2006**

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

## ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying a motion to dismiss in a putative class action.

In 2003, National Warranty, incorporated under the laws of the Cayman Islands with its principal place of business in Nebraska, initiated a proceeding in the Cayman Islands analogous to the filing of a Chapter 11 bankruptcy petition. National Warranty also filed a petition in the United States Bankruptcy Court in Nebraska under Title 11 of the United States Code, section 304. This provision allowed the bankruptcy court to order any relief it deemed appropriate, including enjoining commencement of any action against a debtor with respect to property involved in the foreign proceeding. The bankruptcy court granted the petition, enjoining all lawsuits against National Warranty.

In 2004, real party in interest Phyllis Hoffman initiated the current class action lawsuit in Nevada against numerous defendants, including petitioner Pro Distributors. Hoffman alleged that Pro Distributors was the alter ego of National Warranty. Pro Distributors moved to dismiss, arguing that the bankruptcy injunction against National Warranty prohibited the district court from exercising personal jurisdiction over it. The district court denied the motion, and Pro Distributors filed the instant petition with this court.

The district court concluded Hoffman had made a prima facie case that Pro Distributors is the alter ego of National Warranty; therefore, the sole issue presented by this petition is whether the bankruptcy court's injunction against National Warranty applies to Pro Distributors. We conclude it does not and thus deny the petition.

We may issue a writ of mandamus to compel the performance of an act that the law requires as a duty or to control a manifest abuse of discretion.<sup>1</sup> A writ of prohibition is the appropriate method to challenge a district court's improper exercise of personal jurisdiction.<sup>2</sup> Neither writ issues, however, where there is a plain, speedy, and adequate remedy at law.<sup>3</sup> Even when mandamus is available, the decision whether to issue the writ is purely within the discretion of the court.<sup>4</sup>

The Nebraska bankruptcy court's injunction was entered under 11 U.S.C. section 304, a provision of the Bankruptcy Code that specifically applied to foreign entities like National Warranty. The injunction did not refer to any entity other than this foreign corporation.

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<sup>1</sup>NRS 34.160; State v. Dist. Ct., 121 Nev. \_\_\_\_, \_\_\_\_, 112 P.3d 1070, 1074 (2005).

<sup>2</sup>State v. Dist. Ct., 121 Nev. at \_\_\_\_, 112 P.3d at 1074; see also Judas Priest v. District Court, 104 Nev. 424, 425-26, 760 P.2d 137, 138 (1988).


<sup>3</sup>NRS 34.170; see also Widdis v. Dist. Ct., 114 Nev. 1224, 1227, 968 P.2d 1165, 1167 (1998).

<sup>4</sup>Smith v. District Ct., 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

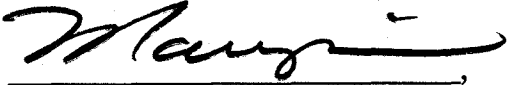
Pro Distributors is not the debtor in the bankruptcy proceeding; therefore, the injunction does not cover its assets.


Accordingly, we

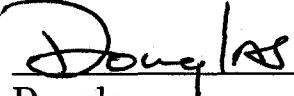
ORDER the petition DENIED.<sup>5</sup>

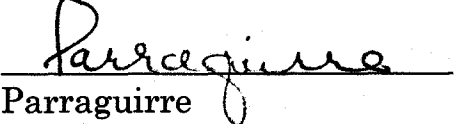
  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>5</sup>Subsequent to the oral argument of this matter on February 23, 2006, it was brought to Justice Hardesty's attention that he had made substantive rulings in a related matter while serving as a visiting district judge in the Eighth Judicial District. He therefore recused himself from participation in the decision of this matter.

cc: Hon. Valerie Adair, District Judge  
Smith Larsen & Wixom  
Gerard & Osuch, LLP  
Clark County Clerk