IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN GABRIEL SHOWS, LLC, A NEVADA LIMITED LIABILITY COMPANY; ALBERTO V. AGUILERA, A/K/A JUAN GABRIEL, INDIVIDUALLY; JORGE PINOS, INDIVIDUALLY; AND ROSA AMELIA LOZANO ZAMBRANO, A/K/A ROMY LOZANO, INDIVIDUALLY,
Appellants,
vs.
CME ENTERPRISES, INC., A NEVADA CORPORATION,
Respondent.

No. 49120

FILED

DEC 19 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a district court order refusing to dissolve an attachment in a contract and tort action. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

In the spring of 2005, popular singer Juan Gabriel agreed to receive an award and give a short performance at a Las Vegas Cinco de Mayo event planned by respondent CME Enterprises. Although Gabriel did not charge a fee for his performance, CME agreed to pay travel expenses, including the use of a private jet, for Gabriel, his manager, agent, and his musicians. As a result, Gabriel's agent entered into a contract with CME on behalf of Gabriel and Juan Gabriel Shows, a business entity that facilitates Gabriel's performances. While it appears that CME fulfilled its obligations under the agreement, and that Gabriel and his entourage arrived in Las Vegas, Gabriel failed to appear on the day of the scheduled event.

Due to Gabriel's failure to appear, CME brought suit against Gabriel, his manager and agent, and Juan Gabriel Shows in the Eighth

Judicial District. CME also filed a motion for a prejudgment writ of attachment, arguing that Gabriel and his managers were residents of Mexico, that Juan Gabriel Shows was in default, and that due to a recent arrest for tax evasion, Gabriel was likely to attempt to remove assets from Nevada. The district court accordingly issued a $500,000 prejudgment writ of attachment against Gabriel's only known asset in Nevada, a Bank of America account in the name of Juan Gabriel Shows. However, because CME was not aware of the actual amount in the account, the district court only ordered CME to post a bond in the amount of $10,000. In actuality, the account contained almost $500,000.

Over a year after the writ of attachment issued, Juan Gabriel Shows, Gabriel, and his manager and agent (collectively Juan Gabriel) filed a motion to discharge the prejudgment writ. The district court denied the motion and the subsequent motion for reconsideration. This appeal followed.

Standard of review

NRAP 3A(b)(2) provides that an appeal may be taken from a district court's "dissolving or refusing to dissolve an attachment." Although this court has not explicitly addressed the proper standard of review for orders granting or dissolving an attachment, NRS 31.200, which addresses the grounds for discharging an attachment, requires the district court to discharge the writ if it finds any of the grounds stated in NRS 31.200(1). Thus, the district court does not have discretion to discharge a writ if it improperly issued the writ, the levied property is exempt, or the levy is excessive.[1] Therefore, this court reviews the district

[1]NRS 31.200(1).

court's decision for error, which requires us to determine if substantial evidence supports the district court's findings.[2]

The district court did not err in denying the motion to dissolve the attachment because Juan Gabriel failed to timely challenge the attachment.

Generally, when a defendant challenges the propriety of an attachment, the plaintiff bears the burden of demonstrating the propriety of the lien.[3] Here, Juan Gabriel argues that the district court erred in denying the motion to discharge the writ because the bond posted by CME was deficient.

Sufficiency of the posted bond

NRS 31.030(1) requires that the plaintiff provide two or more sureties that, at a minimum, equal the plaintiff's claim. In addition, NRS 31.020(3) allows the defendant to challenge the sufficiency of the sureties between the issuing of the attachment and within 5 days of the notice of the levy. If the defendant does not challenge the sufficiency of the sureties within the time period, then he waives all objections to them.[4]

Here, the actual dollar amount in the Juan Gabriel Shows bank account was close to $500,000, but the district court only required CME to post a bond in the amount of $10,000. According to Juan Gabriel,

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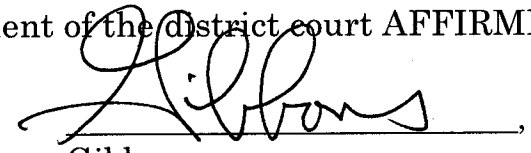
[2]Charmicor, Inc. v. Bradshaw Finance Co., 92 Nev. 310, 313, 550 P.2d 413, 415 (1976). We reject appellant's contention that this court "implicitly" adopted a de novo standard of review in Clarence E. Morris, Inc. v. Vitek. 80 Nev. 408, 398 P.2d 521 (1964). While the court in Vitek determined that a district court improperly denied a motion to discharge a writ of attachment, the case dealt primarily with contract interpretation.

[3]See Kuehn v. Paroni, 20 Nev. 203, 19 P. 273, 274 (1888) (quoting Herrmann v. Amedee, 30 La. Ann. 393 (La. 1878)).

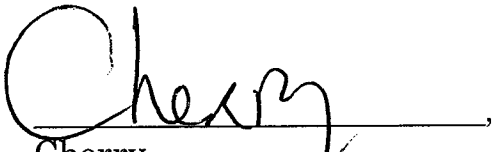
[4]NRS 31.020(3).

the bond was also only guaranteed by one surety, not the two required by NRS 31.030(1). However, Juan Gabriel received notice of the writ of attachment on October 13, 2005, but he did not challenge the sufficiency of the sureties until January 22, 2007. Therefore, we conclude that the district court did not err in refusing to dissolve the attachment because substantial evidence shows that Juan Gabriel failed to challenge the sureties within the statutory prescribed period. As a result, Juan Gabriel waived his right to challenge the sureties. Accordingly, we

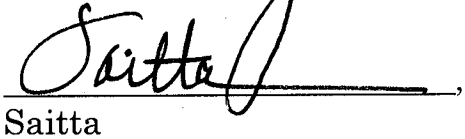
ORDER the judgment of the district court AFFIRMED.[5]



_____, J.
Gibbons



_____, J.
Cherry



_____, J.
Saitta

[5]We have reviewed the remainder of appellant's claims on appeal, and conclude that they lack merit. Specifically, we reject appellants' argument that this court should adopt the approach taken in states such as California, and require the district court to consider the plaintiff's likelihood of success at trial when deciding whether to dissolve an attachment. Such considerations are clearly prohibited under the language of Kuehn. We also decline to review appellant's argument that the district court erred in denying their motion for reconsideration. See Rico v. Rodriguez, 121 Nev. 695, 700 n.1, 120 P.3d 812, 815 n.1 (2005) (stating that "an order denying a motion for reconsideration is not substantively appealable").

cc: Eighth Judicial District Court Dept. 6, District Judge
William F. Buchanan, Settlement Judge
Gibbs, Giden, Locher & Turner, LLP
Hofland & Associates
Eighth District Court Clerk