IN THE SUPREME COURT OF THE STATE OF NEVADA

PERINI BUILDING COMPANY, INC., AN ARIZONA CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
NEVADA RESORT PROPERTIES POLO TOWERS LIMITED PARTNERSHIP; DIAMOND RESORTS, LLC; DIAMOND RESORTS INTERNATIONAL; AND STEPHEN CLOOBECK,
Real Parties in Interest.

No. 49596

FILED

JAN 07 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order refusing to grant prejudgment writs of attachment and garnishment.

Petitioner was the general contractor on real parties in interest's Las Vegas construction project. According to petitioner, real parties in interest failed to make various payments to petitioner for its work on the project. Initially, the parties attempted to negotiate the disputed payments. After those discussions failed, however, real parties in interest instituted the underlying action against petitioner. In response, petitioner asserted various counterclaims against real parties in

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interest, related to their purported failure to pay petitioner for its work on their project.

Thereafter, petitioner moved the district court for pre-judgment writs of attachment and garnishment, under NRS 31.013.[1] After a hearing, the district court ultimately denied the motion, stating that, although petitioner "demonstrated that it has claims of probable validity [as NRS 31.026 requires] and that it otherwise meets the requirements of NRS 31.013(a)," petitioner failed to demonstrate, as the district court believed NRS 31.013 required, that recovering any judgment from real parties in interest would be improbable.

Petitioner subsequently filed a motion requesting that the district court reconsider its decision. The court denied the motion. This petition for a writ of mandamus followed.[2] Real parties in interest have filed an answer, as directed.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or arbitrary or

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[1]See also NRS 31.240 (providing that "[a]t the time of the order directing a writ of attachment to issue . . . the court may order that a writ of garnishment issue").

[2]In addition to challenging the district court's order refusing to grant it writs of attachment and garnishment, petitioner also purports to challenge the district court's oral pronouncement denying reconsideration. But district court orders that deal with "the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective." State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004). Thus, because no formal written order with respect to petitioner's motion for reconsideration appears to exist, we need not address that aspect of this petition.

capricious exercise of discretion.[3] Mandamus, moreover, is an extraordinary remedy, and the decision to entertain such a petition is addressed to our sole discretion.[4] Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.[5]

The primary issue this petition presents is whether, to obtain pre-judgment writs of attachment or garnishment under NRS 31.013,[6] the party seeking the writs must demonstrate in every case the existence of "extraordinary circumstances . . . which will make it improbable for [the party] to reach property of the [adverse party] by execution after judgment has been entered," as set forth in subsection three of that statute. Statutory interpretation is a question of law that we review de novo, even in the context of a writ petition.[7]

To determine the meaning of NRS 31.013, we give that provision its plain effect, unless the language is ambiguous.[8] When a statute's language is clear on its face, we may not go beyond that language

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[3]See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[4]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

[5]Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

[6]See NRS 31.240.

[7]D.R. Horton v. Dist. Ct., 123 Nev. __, 168 P.3d 731 (2007).

[8]See McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).

in determining the Legislature's intent.[9] Conversely, if a statute's language is ambiguous, meaning that it is susceptible to "two or more reasonable but inconsistent interpretations,"[10] a court may look to the statute's history, public policy, and reason to determine what the Legislature intended.[11] Statutory interpretation should not render any part of a statute meaningless, and a statute's language "'should not be read to produce absurd or unreasonable results.'"[12]

With regard to the question presented in this case, NRS 31.013 relevantly provides the following:

> The court may after notice and hearing, order the clerk to issue a writ of attachment in the following cases:
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> 1. In an action upon a judgment or upon a contract, express or implied, for the direct payment of money:
>
> (a) If the judgment is not a lien upon or the contract is not secured by mortgage, lien or pledge upon real or personal property situated in this state[.]
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> . . . .

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[9]Id.

[10]Gallagher v. City of Las Vegas, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998).

[11]McKay, 102 Nev. at 649, 730 P.2d at 442; see also Beazer Homes Nevada, Inc. v. Dist. Ct., 120 Nev. 575, 582, 97 P.3d 1132, 1137 (2004).

[12]Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (quoting Glover v. Concerned Citizens for Fuji Park, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002), overruled in part on other grounds by Garvin v. Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002)).

> 2. In any case where the attachment of the property of the defendant is allowed pursuant to this chapter or other provision of law.
>
> 3. In any other case where the court finds that extraordinary circumstances exist which will make it improbable for the plaintiff to reach the property of the defendant by execution after the judgment has been entered.

This statute is plain on its face; thus, we need not go beyond its language. Specifically, NRS 31.013 plainly delineates three independent "cases" in which a party may obtain a writ of attachment: (1) in an action on an unsecured contract or judgment; (2) when another provision of law provides for such a remedy; and (3) when extraordinary circumstances exist that make recovering the adverse party's property to satisfy any judgment improbable.

To interpret this statute as real parties in interest suggest—that the term "any other case" in subsection three means that subsections one and two, like subsection three, are cases that require the party seeking a writ of attachment or garnishment to demonstrate extraordinary circumstances that make recovering the adverse party's property to satisfy any judgment improbable—is not a reasonable alternative interpretation. To construe subsection three in that way would render superfluous subsections one and two, since it would not then matter whether the case involved a judgment or contract, or another provision of law allowing for attachment—a writ of attachment could be obtained in <u>any</u> case simply by showing extraordinary circumstances and meeting the requirements of the other writ of attachment statutes. But, "a statute should be construed . . . so that no part will be inoperative or

superfluous, void or insignificant, and so that one section will not destroy another."[13] Accordingly, real parties in interest's argument that the term "any other case" in subsection three required petitioner to demonstrate that extraordinary circumstances exist that make recovering their property to satisfy any judgment improbable is incorrect.[14]

As discussed, under NRS 31.013(1)(a)'s plain language, a party need show only that the action is one based on an unsecured contract or judgment. And so long as the party also satisfies NRS 31.026's requirement that its claims have probable validity, the court "shall order the [district court] clerk to issue a writ of attachment." Here, the district court refused to grant petitioner prejudgment writs of attachment and garnishment, concluding that petitioner failed to demonstrate that extraordinary circumstances existed that would make improbable executing on real parties in interest's property to satisfy any judgment against real parties in interest that petitioner obtained. But as discussed, such a demonstration is not a requirement in every case to obtain prejudgment writs of attachment and garnishment. We thus conclude that a writ of mandamus is warranted.

Accordingly, we direct the clerk of this court to issue a writ of mandamus compelling the district court to vacate its order denying

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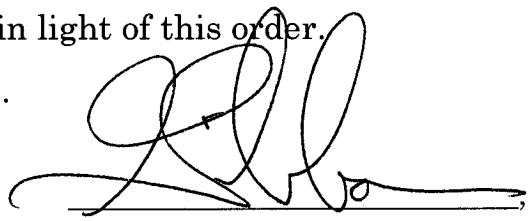
[13]Tomlinson v. State, 110 Nev. 757, 761, 878 P.2d 311, 313 (1994) (quoting 2A Norman J. Singer, Statutes and Statutory Construction § 46:06, at 119-20 (5th ed. 1992)); see Harris Assocs., 119 Nev. at 642, 81 P.3d at 534 (noting that statutory interpretation should not render any part of a statute meaningless).

[14]See id.

petitioner's motion for prejudgment writs of attachment and garnishment and to reconsider that motion in light of this order.

It is so ORDERED.



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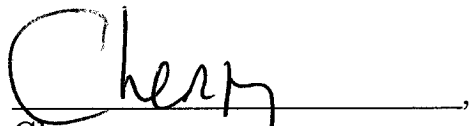
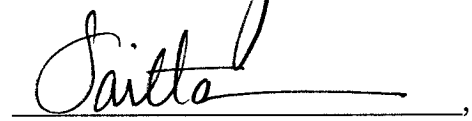
Gibbons



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Mark R. Denton, District Judge
Lemons Grundy & Eisenberg
Martin & Allison, Ltd.
Brady, Vorwerck, Ryder & Caspino
Eighth District Court Clerk