

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY WOMACK, AND IRIS LIMITED
PARTNERSHIP,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE LEE A. GATES,
DISTRICT JUDGE,

Respondents,

and

STEVE CATENA AND TISHA CATENA,

Real Parties in Interest.

No. 34742

FILED

DEC 15 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR

WRIT OF MANDAMUS

This petition for writs of certiorari, mandamus and/or prohibition challenges an "injunction" of the district court requiring that petitioners deposit \$350,000.00 in a bank account.

On July 8, 1999, real parties in interest, the Catenas, filed a complaint in Nevada district court, alleging two causes of action for breach of contract, and requesting damages, injunctive relief, and a receivership. Petitioner Jerry Womack purports to be a "day-trader," who makes trades on securities exchanges as the sole general partner of petitioner Iris Limited Partnership ("Iris"). According to Womack, Iris had \$16 million in assets, and forty limited partners, whose money was invested and managed by Womack as general partner. The Catenas are former limited partners in Iris, who "cashed out" in April 1999.

The Catena's complaint alleged \$528,000.00 in damages for breach of contract for petitioners' failure to pay sums

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petitioners allegedly owed the Catenas. The complaint also alleged \$337,000.00 in damages for breach of contract for petitioners' failure to pay withholding taxes as allegedly agreed. It is undisputed that the complaint alleges substantive claims that can be compensated solely by monetary damages. It is also undisputed that the Catenas did not seek a writ of attachment.

On July 22, 1999, the Catenas applied for a preliminary injunction and the appointment of a receiver. On shortened time, the hearing was scheduled for August 2, 1999. On July 28, 1999, the Catenas allegedly served the application on a person authorized to accept service of process for both petitioners.

On August 2, 1999, the district court granted the Catenas' application, and entered a preliminary injunction and appointed a receiver for Iris. The injunction provided that petitioners were enjoined from distributing any money of any kind from Iris or any other financial account over which Womack had control. The receiver was given the authority to freeze and/or take control of any financial accounts maintained by or on behalf of Iris or Womack. The district court required the Catenas to post a \$10,000.00 injunction bond.

Also on August 2, 1999, petitioner Womack presented Caesars Palace with two cashier's checks issued to him in the amount of \$300,000.00. Caesars Palace accepted the checks, but then confiscated them under the aforementioned court order, and sent them to the district court.

On August 4, 1999, petitioners moved to dissolve the appointment of a receiver and the preliminary injunction. The

district court granted the motion and terminated the receivership and the injunction, with one exception. It purported to modify the injunction and required petitioners to post \$350,000.00 in a special account to be created at Nevada State Bank, until further order of the court. The district court forwarded the cashier's checks to the bank, and required petitioners to submit another \$50,000.00 in funds for deposit.

On August 27, 1999, petitioners filed the instant writ petition. On September 21, 1999, this court ordered an answer, which was filed on October 12, 1999.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

Although the district court characterized its order as an injunction, we conclude that it is not an injunction, which would have been an appealable order. See NRAP 3A(b)(2). The district court ordered petitioners' property placed into a bank account as a provisional remedy. By contrast, a preliminary injunction generally requires that the moving party

demonstrate that the nonmoving party's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy. Number One Rent-A-Car v. Ramada Inns, 94 Nev. 779, 587 P.2d 1329 (1978). The Catenas' substantive causes of action, moreover, are for breach of contract, claims for which compensatory damages would ordinarily be an adequate remedy. See id. Effectively, the district court ordered petitioners' property seized pending the outcome of the litigation. Although such a result can be effected through a writ of attachment, see NRS 31.010, it does not appear that the Catenas ever applied for such a writ, although perhaps they could have done so.

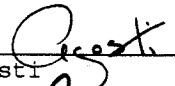
The order most closely resembles an order for a deposit in court. See NRCP 67(2). A deposit in court, however, is only appropriate when a party admits that he or she possesses money as a trustee for another party, or admits that the money belongs to another party. Id.; see Peke Resources, Inc. v. District Court, 113 Nev. 1062, 944 P.2d 843 (1997); Florence-Goldfield v. Dist. Ct., 30 Nev. 391, 97 P. 49 (1908). We are unaware of any such admission here.

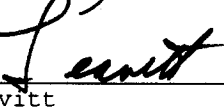
Petitioners lack a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. We are unable to locate a legal basis for the district court's order requiring petitioners to deposit contested funds into a bank account. We therefore conclude that the district court manifestly abused its discretion in issuing its order.

Accordingly, we grant the petition.¹ We direct the clerk of this court to issue a writ of mandamus requiring the district court to vacate its order compelling petitioners to deposit \$350,000.00 in funds in a bank account. The district court shall order the funds released not more than thirty (30) days from the date of this order.

It is so ORDERED.²


_____, C.J.
Rose


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Lionel Sawyer & Collins
Jolley Urga Wirth & Woodbury
McCullough & Associates
Clark County Clerk

¹Petitioners also argue that the original injunction was entered without proper notice to them. In light of the foregoing disposition, we need not reach this issue. We note that without the "injunction," the district court must dissolve the injunction bond.

²On October 25, 1999, petitioners' counsel moved to withdraw under SCR 166. We are inclined to grant the motion, as counsel has shown good cause. We require counsel to remain on the case for the limited purpose of serving the respondent district judge with the original writ and returning the original writ to this court after service. Upon return of the writ to this court, the motion to withdraw shall be deemed to be granted.