

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT B. SAUCIER,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
ELISSA F. CADISH, DISTRICT JUDGE,
Respondents,

and

SHERRON ASSOCIATES, INC., AS
ASSIGNEE OF SHERRON
ASSOCIATES LOAN FUND V (MARS
HOTEL), LLC,
Real Party in Interest.

No. 52626

FILED

NOV 14 2008
THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order refusing to quash a writ of execution that directed petitioner to satisfy, out of certain personal property, real party in interest's approximately \$1.6 million domesticated foreign judgment against petitioner. According to the writ of execution, petitioner's personal property includes "that chose of action," apparently an abuse of process cause of action, pending against real party in interest in a separate district court proceeding.

The writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹ The writ of mandamus's counterpart, the writ of prohibition,

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.² Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.³ Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁴

Having considered this petition and its supporting documentation, we are not persuaded that our extraordinary intervention is warranted. Specifically, personal property is liable to execution, and personal property generally includes things in action; thus, petitioner's abuse of process cause of action is liable to execution.⁵ The exception to that principle noted by petitioner, is inapposite to this case.⁶ Accordingly,

²NRS 34.320.

³See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

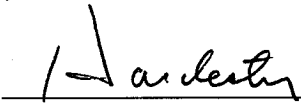
⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

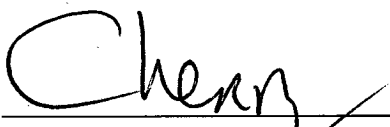
⁵See NRS 21.080(1) (listing property liable to execution, including personal property); NRS 10.045 (defining "personal property" to include "things in action"); see also Sportsco Enter. v. Morris, 112 Nev. 625, 630, 917 P.2d 934, 937 (1996) (providing that statutes specifying kinds of property liable to execution "must be liberally construed" for the judgment creditor's benefit); see generally Denham v. Farmers Ins. Co., 262 Cal. Rptr. 146, 152 (1989) (applying Nevada law and interpreting NRS 21.080, NRS 10.045, and NRS 21.110 to allow a judgment creditor to execute on a judgment debtor's cause of action).

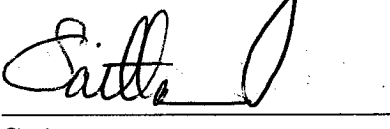
To the extent that the subject chose in action includes a false imprisonment claim, or any other non-legal malpractice claim, that claim is likewise liable to execution.

the district court neither manifestly abused its discretion nor exceeded its jurisdiction when it issued the writ of execution, and we thus

ORDER the petition DENIED.⁷


_____, J.
Hardesty


_____, J.
Cherry


_____, J.
Saitta

... continued

⁶See Chaffee v. Smith, 98 Nev. 222, 223-24, 645 P.2d 966, 966 (1982) (providing that public policy prohibited enforcement of an unasserted legal malpractice claim acquired through a writ of execution).

Petitioner also suggests that because including his abuse of process cause of action within the writ of execution prevents its adjudication, the value of his claim for purposes of satisfying real party in interest's judgment against him cannot be determined. But the value of his abuse of process cause of action will be determined at the sheriff's execution sale. See generally Citizens Nat. Bank v. Dixieland Forest, 935 So. 2d 1004, 1010 (Miss. 2006) (stating that "[a]s with any other personal property, a chose in action's value—for purposes of levy and execution—is determined at a sheriff's execution sale"); NRS 21.110 (explaining the process for executing on things in action).

⁷Petitioner's failure to include with his petition the required affidavit of the party beneficially interested in this writ proceeding constitutes an independent basis on which to deny relief. See NRS 34.170; 34.330.

In light of this order, we deny as moot petitioner's opposed emergency motion to stay the sheriff's execution sale, scheduled for November 18, 2008.

cc: Hon. Elissa F. Cadish, District Judge
Richard Edmund Hawkins
Lewis & Roca, LLP/Las Vegas
Eighth District Court Clerk