

IN THE SUPREME COURT OF THE STATE OF NEVADA

TM & KKH, INC., D/B/A MICHAEL
HOHL HONDA SUBARU,
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR CARSON CITY, AND THE
HONORABLE WILLIAM A. MADDOX,
DISTRICT JUDGE,

Respondents,

and

CARSON TAHOE HOSPITAL, A
NEVADA CORPORATION; MARV
MCQUEARY EXCAVATING, INC., A
NEVADA CORPORATION; AND AMES
CONSTRUCTION, INC.,
Real Parties in Interest.

No. 52962

FILED

JAN 09 2009

TRACIE 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 denying petitioner's motion for a protective order.

Petitioner instituted the underlying tort action against real parties in interest alleging that they failed to properly secure dust and sand during construction on real party in interest Carson Tahoe Hospital's property. According to petitioner, the dust and sand blew over petitioner's nearby property and damaged petitioner's car dealership's inventory. Petitioner sought damages based on, among other things, the cost to repair the damaged vehicles.

In general, damages based on the cost to repair personal property may be reduced by an amount equal to the diminution in the property's value from the damage, if the cost to repair the property exceeds the property's value's diminution. See Pfingsten v. Westenhaver, 244 P.2d 395, 402 (Cal. 1952). To determine whether the cost to repair the vehicles exceeded the vehicles' diminution in value from any damage caused by the dust and sand, real parties in interest moved the district court to compel petitioner to disclose the names and addresses of the damaged vehicles' purchasers. Real parties in interest stated that they wished to determine whether the purchasers were informed of any damage to the vehicles from the sand and dust, and if so, to what extent that damage affected the price paid for the vehicles.

Petitioner moved the district court for a protective order, primarily asserting that any discussions that it had with its customers regarding damage to the vehicles from the dust and sand were not relevant to determine the vehicles' diminution in value, since that is best determined using market value. Petitioner was also concerned that any conversations between real parties in interest and its customers regarding the damage to the vehicles would unnecessarily harm its business relationship with the customers. The district court denied the motion. This writ petition followed.

The writ of mandamus is available to compel the performance of an act that the law requires, see NRS 34.160, or to control a manifest abuse of discretion, see Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus's counterpart, the writ of prohibition, 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. NRS 34.320. Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

We generally will not exercise our discretion to review discovery orders through petitions for extraordinary relief, unless petitioners demonstrate that the challenged discovery order is either (1) a so-called blanket discovery order, issued without regard to the relevance of the information sought, or (2) one that requires disclosure of privileged information. See Hetter v. District Court, 110 Nev. 513, 515, 874 P.2d 762, 763 (1994). Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered this petition and its supporting documentation, we are not persuaded that our intervention by way of extraordinary relief is warranted. In particular, we are not convinced that the district court manifestly abused its discretion or exceeded its jurisdiction when it denied petitioner's motion for a protective order. See Hetter, 110 Nev. at 515, 874 P.2d at 763.

Accordingly, we

ORDER the petition DENIED.

1 Hardesty, C.J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. William A. Maddox, District Judge
Burton Bartlett & Glogovac, Ltd.
Robert E. Lyle
Doyle Berman Murdy, P.C.
Carson City Clerk