

IN THE SUPREME COURT OF THE STATE OF NEVADA

RINKER MATERIALS WEST, LLC;
AND RINKER MATERIALS
CORPORATION,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DOUGLAS W. HERNDON,
Respondents,
THOMAS O'CONNOR,
Real Party in Interest.

No. 56909

FILED

JUL 29 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of prohibition challenging a district court order denying a motion to dismiss a contract action.

Real party in interest Thomas O'Connor was injured in an accident while operating an automobile in the scope and course of his employment with petitioners Rinker Materials West, LLC and Rinker Materials Corporation (collectively, Rinker). O'Connor filed a workers' compensation claim with Rinker, and both subsequently agreed to settle the pending claim. The settlement agreement states that "the issue of continued medication . . . [is] not affected" and that "with the payment of the . . . permanent partial disability award, this claim shall be closed for all benefits, other than the medication mention[ed] above."

Rinker paid for O'Connor's medication for a period of time but later discontinued doing so. O'Connor consequently filed a breach of contract action against Rinker, asserting breach of the settlement agreement. Rinker filed a motion to dismiss the action, arguing that the

Nevada Industrial Insurance Act (NIIA) preempted O'Connor's breach of contract action and that he must proceed within the workers' compensation scheme to seek continued payment for the medication. The district court denied the motion to dismiss. Rinker now seeks a writ of prohibition to prevent the district court from acting in excess of its jurisdiction.

Because the plain language of the settlement agreement provides that part of O'Connor's workers' compensation claim would remain open—specifically, the issue of medication—we conclude that the NIIA preempts his breach of contract action and his exclusive remedy is to proceed in accord with the workers' compensation scheme. We therefore grant the petition for a writ of prohibition. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

DISCUSSION

Propriety of writ relief

Our inquiry regarding a writ petition necessarily begins with whether we should exercise our discretion to entertain the petition. Rinker argues that the petition should be entertained because the district court acted in excess of its jurisdiction in denying the motion to dismiss in light of the NIIA's preemption of O'Connor's breach of contract action.

A writ of prohibition is an extraordinary remedy and therefore the decision to entertain the petition lies within our discretion. Cheung v. Dist. Ct., 121 Nev. 867, 869, 124 P.3d 550, 552 (2005). Such a writ is available to “arrest[] the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.” NRS 34.320. “[W]rit relief is available to review a district court's

denial of a motion to dismiss, but only on a limited basis.” State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 238 (2002).

A writ challenging the denial of a motion to dismiss may be considered when: “(1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule; or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.” Id. “Few such writ petitions are granted and most are summarily denied.” Beazer Homes Nevada, Inc. v. Dist. Ct., 120 Nev. 575, 579, 97 P.3d 1132, 1134 (2004). The petitioner bears “the burden of demonstrating that extraordinary [writ] relief is warranted.” Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Rinker seeks a writ of prohibition to preclude the district court from acting in excess of its jurisdiction. More specifically, it asserts that the district court is without jurisdiction to entertain O’Connor’s breach of contract action and that his exclusive remedy is to proceed in accord with the workers’ compensation scheme. Even though few writ petitions challenging the denial of a motion to dismiss are granted, Rinker’s contention is the proper subject of a writ of prohibition and fits within the narrow limitation in favor of entertaining such writs. See NRS 34.320; Anzalone, 118 Nev. at 147, 42 P.3d at 238. We therefore exercise our discretion to entertain Rinker’s petition for a writ of prohibition.

Part of O’Connor’s workers’ compensation claim remains open and therefore his breach of contract action is preempted by the NIIA


Rinker contends that part of O’Connor’s workers’ compensation claim remains open and therefore his breach of contract claim is preempted by the NIIA’s exclusivity provision. We agree.

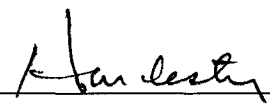
A “complaint should be dismissed only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [him or her] to relief.” Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). We regard all factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party. Id. We review a district court’s legal conclusions in connection with a motion to dismiss de novo. Id.

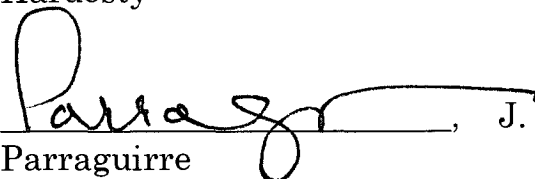
O’Connor’s complaint alleges that he and Rinker entered into a settlement agreement with respect to his workers’ compensation claim and that, as part of the settlement, O’Connor agreed to reduce his permanent partial disability award by two percent, in exchange for Rinker’s agreement to continue providing certain health benefits, including medication. While the complaint makes this allegation, the settlement agreement does not; in fact, it indicates the opposite. See Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (“[A] court may take into account . . . exhibits attached to the complaint when ruling on a motion to dismiss” without converting the motion into one for summary judgment.). The agreement states that “the issue of continued medication . . . [is] not affected” and that “with the payment of the . . . permanent partial disability award, this claim shall be closed for all benefits, other than the medication mention[ed] above.” The plain language of the agreement provides that part of O’Connor’s workers’ compensation claim remains open—specifically, the issue of medication. Because it so provides, the NIIA, codified in NRS Chapters 616A to 616D, preempts O’Connor’s breach of contract action and his exclusive remedy is to proceed in accord with the workers’ compensation scheme. NRS 616A.020(1) (“The rights and remedies provided in chapters 616A to

616D . . . for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive.”); Fanders v. Riverside Resort & Casino, 126 Nev. ___, ___, 245 P.3d 1159, 1163 (2010) (recognizing that the NIIA provides the exclusive remedy for injuries sustained in work-related accidents). We therefore grant the petition for a writ of prohibition. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the district court to dismiss O’Connor’s complaint.

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Fisher & Phillips LLP
Sterling Law, LLC
Cobeaga Law Firm
Eighth District Court Clerk