

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN DELPIANO,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE GARY L. REDMON, DISTRICT
JUDGE,

Respondents,

and

DIAMONDS, ETC.,

Real Party in Interest.

No. 36400

FILED

DEC 29 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition challenging a district court order denying petitioner's motion to quash service of process.

Petitioner Dan Delpiano, a resident of Georgia, requests that this court issue a writ of prohibition restraining the district court from exercising personal jurisdiction over him. Delpiano argues that he is not bound by a forum selection clause naming Nevada as the "place of performance and jurisdiction." Delpiano contends that the district court erred as a matter of law by ruling that he is bound by the forum selection clause.¹ After reviewing the record, as well as case law from other jurisdictions, we hold

¹Delpiano also argues that the district court erred by ruling that his argument before a California court constituted an acceptance or waiver of the exercise of personal jurisdiction over him by the Nevada courts. Because we conclude that the district court correctly found that Delpiano is bound by the forum selection clause, we do not reach this argument.

that the district court correctly determined that it could properly exercise personal jurisdiction over Delpiano.

This court reviews a district court's determination regarding personal jurisdiction de novo. See Hospital Corp. of America v. District Court, 112 Nev. 1159, 1160-61, 924 P.2d 725, 725-26 (1996); see also Panavision Int'l L.P. v. Toeppen, 141 F.3d 1316, 1319-20 (9th Cir. 1998). Additionally, the issuance of a writ of prohibition is within the sound discretion of this court. See State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

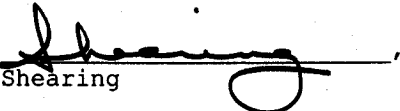
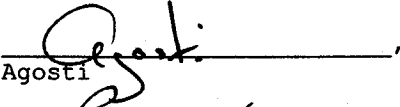

In this case, the district court found that, although Delpiano was not a signatory to the forum selection clause, he was bound by its terms. While we have never ruled on this specific question, several other courts have addressed this issue. Most instructive of these cases is the Ninth Circuit Court of Appeal's decision in Manetti-Farrow, Inc. v. Gucci America, Inc., 858 F.2d 509 (9th Cir. 1988). Addressing Manetti-Farrow's argument that, since it was not a signatory to the contract containing the forum selection clause, it was not bound by the clause, the Ninth Circuit held that because Manetti-Farrow was "closely related" to the signatory parties, it too was bound by the forum selection clause. See id. at 514 n.5. Other federal courts have relied on this decision and have likewise ruled that non-signatories may be bound by forum selection clauses. See Lipcon v. Underwriters at Lloyd's, London, 148 F.3d 1285, 1299 (11th Cir. 1998); Hugel v. Lloyd's, 999 F.2d 206, 207 (7th Cir. 1993); Bonny v. Society of Lloyd's, 3 F.3d 156, 162 (7th Cir. 1993).

We hold that the district court correctly found that Delpiano was bound by the forum selection clause. Such a conclusion is justified because the very reason for the guarantee was to allow Delpiano and the other defendants to

continue to receive diamonds and other jewelry from real party in interest Diamonds, Etc. Furthermore, the underlying lawsuit in this case is based on these transactions, some of which would presumably not have occurred had the guarantee not been executed. Therefore, Delpiano is, in the words of the Ninth Circuit, "closely related" to the contractual relationship at issue in this case and is bound by the forum selection clause.

For these reasons, we conclude that the district court did not err in denying Delpiano's motion to quash service of process. We therefore deny this petition.²

It is so ORDERED.


Shearing J.

Agosti J.

Leavitt J.

cc: Hon. Lee A. Gates, Chief District Judge
Kolesar & Leatham, Chtd.
Freberg & Manley
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk

²On December 1, 2000, real party in interest Diamonds, Etc. filed a "MOTION REQUESTING PERMISSION TO FILE SUPPLEMENTAL ANSWER TO PETITION FOR WRIT OF PROHIBITION." Since we have denied the petition for a writ of prohibition, we deny Diamond, Etc.'s motion as moot. Accordingly, the clerk of this court shall forthwith return, unfiled, the "REAL PARTY IN INTEREST'S SUPPLEMENTAL ANSWER TO PETITION FOR WRIT OF PROHIBITION" received November 29, 2000.