

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRASH JAYARAJ, AN INDIVIDUAL;  
NORMAN CHIEN A/K/A NORMAN  
CHEN, AN INDIVIDUAL,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ANNA C. ALBERTSON,  
Respondents,


and

ASCENTIUM CAPITAL, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,  
Real Party in Interest.

No. 88168

FILED

SEP 12 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION*

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

We elect to entertain the merits of this writ petition because it arguably implicates both subject matter jurisdiction and personal jurisdiction.<sup>1</sup> *See Bd. of Rev., Nev. Dep't of Emp., Training & Rehab. v. Second Jud. Dist. Ct.*, 133 Nev. 253, 255, 396 P.3d 795, 797 (2017)

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<sup>1</sup>As explained below, it is unclear whether petitioners' argument regarding the forum-selection clause truly implicates the district court's subject matter jurisdiction. To the extent that it does, we elect to entertain the argument on its merits. *See Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (“[W]hether a court lacks subject matter jurisdiction can be raised by the parties at any time . . . .” (internal quotation marks omitted)).

(observing that a writ of prohibition is the proper means to challenge an improper exercise of subject matter jurisdiction); *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015) (same with respect to personal jurisdiction). Having done so, however, we are not persuaded that the district court acted in excess of its jurisdiction or otherwise manifestly abused its discretion in denying petitioners' motion to dismiss. *Bd. of Rev.*, 133 Nev. at 255, 396 P.3d at 797; *Fulbright & Jaworski*, 131 Nev. at 35, 342 P.3d at 1001; see *Scarbo v. Eighth Jud. Dist. Ct.*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009) ("This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously." (internal quotation marks omitted)); *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted).

Petitioners first contend that the district court lacks subject matter jurisdiction over the underlying matter. In particular, they contend that a forum-selection clause in their Equipment Finance Agreement (EFA) with real party in interest Ascentium Capital provides that the exclusive jurisdiction for this matter is in California. We disagree. *Cf. In re Amerco Derivative Litig.*, 127 Nev. 196, 211, 252 P.3d 681, 693 (2011) ("We apply de novo review to contract interpretation issues."). The relevant clause provides, "You [meaning petitioners] consent to the non-exclusive jurisdiction of the federal and state courts located in the state of California in any action to enforce this Guaranty." Petitioners contend that "non-exclusive jurisdiction" means non-exclusive vis-à-vis California federal courts and state courts but exclusive vis-à-vis California courts and other

jurisdictions. But petitioners' argument is contrary to Nevada law. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 741, 359 P.3d 105, 107 (2015) ("Clauses in which a party agrees to submit to jurisdiction are not necessarily mandatory. Such language means that the party agrees to be subject to that forum's jurisdiction *if sued there*. It does not prevent the party from bringing suit in another forum." (internal quotation marks omitted)). To the extent that petitioners argue that such a plain-language construction under *Soro* produces an absurd result, we again disagree. *See Dunne v. Libbra*, 330 F.3d 1062, 1064 (8th Cir. 2003) (explaining the rationale for such forum-selection clauses). Accordingly, to the extent that interpretation of a forum-selection clause implicates the district court's subject matter jurisdiction,<sup>2</sup> the clause here did not deprive the district court of subject matter jurisdiction.

Petitioners next contend that the district court lacks personal jurisdiction over petitioner Norman Chien.<sup>3</sup> Specifically, they contend that serving as a director of a Nevada-based corporation does not satisfy the minimum contacts necessary to subject Chien to personal jurisdiction. *Cf. Cath. Diocese, Green Bay v. John Doe 119*, 131 Nev. 246, 249, 349 P.3d 518, 520 (2015) ("A court has specific jurisdiction over a defendant when the

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<sup>2</sup>While we assumed as much in *Soro*, 131 Nev. at 738-40, 359 P.3d at 106-07, we did not expressly hold that interpretation of a forum-selection clause implicates subject matter jurisdiction. In this respect, other courts have held that interpretation of a forum-selection clause does not implicate a court's subject matter jurisdiction. *See, e.g., Luffey v. Fredericksburg Props. of Tex.*, 862 So. 2d 403, 407 (La. Ct. App. 2003); *Akesogenx Corp. v. Zavala*, 407 P.3d 246, 256 (Kan. Ct. App. 2017); *Licensed Practical Nurses of N.Y v. Ulysses Cruises*, 131 F. Supp. 2d 393, 402-03 (S.D.N.Y. 2000).

<sup>3</sup>Petitioners do not dispute that the district court has personal jurisdiction over petitioner Prash Jayaraj.

defendant has certain minimum contacts with the forum state and an exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.”).


The district court, however, did not rely solely on Chien’s status as Pebblekick’s director. It also relied on Chien’s personal guaranty of the loan that Ascentium extended to Pebblekick, as well as Chien’s promise to keep the collateral in Nevada and run Pebblekick’s business from Nevada. Petitioners have not presented any authority holding that such contacts with a forum state are insufficient to confer personal jurisdiction on the guarantor. *Cf. Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is a party’s responsibility to support arguments with salient authority). And while our decision in *Basic Food Industries, Inc. v. Eighth Judicial District Court*, 94 Nev. 111, 113, 575 P.2d 934, 936 (1978), suggests that personally guaranteeing a loan for a Nevada company, in and of itself, may not always be sufficient to subject the guarantor to personal jurisdiction in Nevada, this area of law appears to have evolved in the 40-plus years since that decision. *See* 28 A.L.R. 5th 664 § 5[a]-[b] (2024 Supp.) (compiling cases reaching different conclusions). Regardless, Ascentium established that Chien had additional contacts with Nevada beyond personally guaranteeing the loan, and given the record and arguments presented in this case, we are not persuaded that writ relief is warranted regarding the district court’s personal-jurisdiction determination. *Cf. Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) (“We will not supply an argument on a party’s behalf but review only the issues the parties present.”); *Fulbright & Jaworski*, 131 Nev. at 35, 342 P.3d at 1001; *Scarbo*, 125 Nev. at 121, 206 P.3d at 977.

Petitioners finally contend that the district court abused its discretion in denying their motion to dismiss based on forum non conveniens. *Cf. Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 300, 350 P.3d 392, 395-96 (2015) (“We review a district court’s order dismissing [or declining to dismiss] an action for forum non conveniens for an abuse of discretion.”). Namely, petitioners contend the district court erred in giving deference to Ascentium’s choice of forum when its complaint had no bona fide connection to Nevada. *Cf. id.* at 301, 350 P.3d at 396 (“[A] foreign plaintiff’s choice will be entitled to substantial deference only where the case has bona fide connections to and convenience favors the chosen forum.”); *cf. also Pepper v. C.R. England*, 139 Nev., Adv. Op. 11, 528 P.3d 587, 591 (2023) (holding that a sister-state plaintiff is a “foreign” plaintiff for purposes of the forum non conveniens analysis). Petitioners contend that this case has no bona fide connection to Nevada because Ascentium is a Delaware corporation with its principal place of business in Texas, Pebblekick was required to send its loan payments to an Ascentium address in Texas, and petitioners are California residents. Although all that is true, petitioners ignore the district court’s findings that petitioners guaranteed a loan secured by collateral that was required to be located in Nevada for a Nevada-based company, i.e., Pebblekick. Thus, we are not persuaded that the district court abused its discretion—manifestly or otherwise—in giving deference to Ascentium’s choice of forum. *See Placer Dome*, 131 Nev. at 300, 350 P.3d at 395-96; *Scarbo*, 125 Nev. at 121, 206 P.3d at 977.

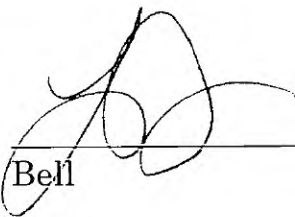
Regardless, even if deference was not owed to Ascentium’s choice of forum, we agree with the district court’s analysis of the private- and public-interest factors. *Cf. generally Placer Dome*, 131 Nev. at 301-04,

350 P.3d at 396-98 (outlining relevant public- and private-interest factors). Primarily, but among other reasons, the district court found that the private-interest factors favored Ascentium's choice of forum because the case is straightforward, any relevant documentation is located in Nevada, and petitioners "are mere hours away and many remote options are available" for petitioners to participate. Accordingly, we reject petitioners' argument that the district court's forum-non-conveniens determination warrants writ relief. Consistent with the foregoing, we

ORDER the petition DENIED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Cadish

  
\_\_\_\_\_, J.  
Herndon

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Anna C. Albertson, Judge  
Hutchison & Steffen, LLC/Las Vegas  
Hutchison & Steffen, LLC/Reno  
Greenberg Traurig, LLP/Las Vegas  
Eighth District Court Clerk

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<sup>4</sup>In light of this disposition, the stay entered by this court on March 8, 2024, is lifted.