

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROY MEYER; AZTEC UTILITY
CONSTRUCTION, INC., A NEVADA
CORPORATION AND THE
ARROWHEAD RANCH FAMILY
LIMITED PARTNERSHIP, A UTAH
LIMITED PARTNERSHIP,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE AND THE HONORABLE
STEVEN P. ELLIOTT, DISTRICT
JUDGE,
Respondents,
and
FARMERS INSURANCE EXCHANGE,
Real Party in Interest.

No. 39607

FILED

AUG 21 2002

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of mandamus or prohibition, challenging district court orders that authorized the real party in interest to record a judgment lien against, and to execute upon, real property owned by petitioner Arrowhead Ranch Family Limited Partnership ("ARFLP"). A petition for a writ of prohibition is the proper vehicle by which to challenge district court orders affecting the property rights of a non-party.¹

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such

¹Guerin v. Guerin, 114 Nev. 127, 953 P.2d 716 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000); Olsen Family Trust v. District Court, 110 Nev. 548, 874 P.2d 778 (1994).

proceedings are in excess of the district court's jurisdiction,² and when petitioner has no plain, speedy and adequate legal remedy.³ A district court exceeds its jurisdiction by acting without authority of law in cases where wrong, damage, and injustice are likely to follow from such action.⁴

James Roy Meyer, Aztec Utility Construction, Inc.,⁵ and ARFLP (collectively, "petitioners") filed the instant writ petition, characterizing it as an emergency and requesting that we vacate the district court orders authorizing Farmers Insurance Exchange ("Farmers") to lien and execute upon ARFLP's real property. On June 3, 2002, we directed Farmers to file an answer to the writ petition by July 3, 2002. Farmers has not filed an answer or otherwise responded to our directive.

Petitioners acknowledge that NRS 88.535(1) allows the district court to "charge the partnership interest of the [debtor] partner with payment of the unsatisfied amount of the judgment."⁶ Petitioners contend, however, that ARFLP's property cannot be liened or executed upon because ARFLP was never sued.

The petitioners' contention has merit. A partner's interest in the partnership is his or her share of the profits and surplus, not the partnership's property.⁷ NRS 88.535(6) provides that "[n]o creditor of a

²NRS 34.320.

³NRS 34.330.

⁴Olsen, 110 Nev. 548, 874 P.2d 778.

⁵It is unclear whether Aztec Utility Construction, Inc. is affected, injured or aggrieved by the district court's execution orders so as to have standing to seek a writ of prohibition. See 73 C.J.S. Prohibition § 10 (1983).

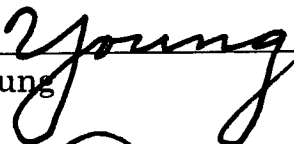
⁶See also NRS 87.280(1).

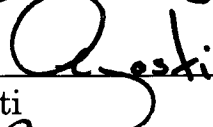
⁷See NRS 88.528; NRS 87.260.

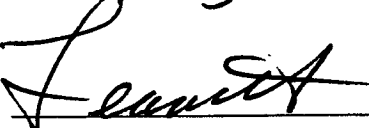
partner has any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.” And we have stated that due process is violated by imposing a judgment against a limited partnership that was never sued.⁸ Here, ARFLP was never sued, and Meyer, the judgment debtor and ARFLP’s general and limited partner, holds no interest in the liened real property. Consequently, petitioners are entitled to a writ of prohibition arresting the execution proceedings in the district court.⁹

Accordingly, we

ORDER the petition granted and we direct the clerk of this court to issue a writ of prohibition precluding the district court from enforcing its April 25, 2002 order authorizing Farmers to execute on ARFLP’s real property, and instructing the district court to expunge the lien on ARFLP’s real property.¹⁰


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁸Richard Matthews, Jr., Inc. v. Vaughn, 91 Nev. 583, 589-90, 540 P.2d 1062, 1066 (1975).

⁹See Guerin, 114 Nev. 127, 953 P.2d 716; Olsen, 110 Nev. 548, 874 P.2d 778.

¹⁰In light of the relief granted, we vacate the temporary stay issued by this court on June 3, 2002.

cc: Hon. Steven P. Elliott, District Judge
Bader & Ryan
Jonathan H. King
Washoe District Court Clerk