IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS FETISH & FANTASY HALLOWEEN BALL, INC., D/B/A FETISH & FANTASY HALLOWEEN BALL,
Appellant,
vs.
AHERN RENTALS, INC.,
Respondent.

No. 41747

FILED

MAR 24 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order partially dissolving a writ of attachment. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant Las Vegas Fetish & Fantasy Halloween Ball, Inc. (LVFFHB) hosts an annual, sexually-explicit Halloween party in Las Vegas. Respondent Ahern Rentals provided materials and services in support of appellant's 1998 party. Ahern was never paid for its services and sued to collect. After filing its complaint, Ahern sought and received an ex parte writ of attachment under NRS 31.017. LVFFHB filed several motions to dissolve the writ, claiming that Ahern had contracted with a third party and that Ahern had manufactured evidence in support of its suit against LVFFHB. LVFFHB further challenged the constitutionality of NRS 31.017. The district court partially dissolved the writ of attachment to the extent that it covered potential attorney fees, but refused to dissolve the remaining writ of attachment. On appeal, LVFFHB argues that NRS 31.017 unconstitutionally deprived it of property without due process of law.

FACTS

LVFFHB incorporated in 1997 for the sole purpose of hosting an annual, sexually-explicit Halloween party in Las Vegas. Jeffrey M. Davis was the original president of LVFFHB, but Kerry Schatz became president sometime after January 5, 1999.

On August 31, 1998, LVFFHB hired Signature Events to manage the event. Signature Events' duties included negotiating contracts with host venues, negotiating goods and services contracts, coordinating the provision of goods and services, and supervising staff and personnel. Signature Events proceeded to enter into contracts presumably on LVFFHB's behalf with Davis' oversight. Annmarie Batteria, a Signature Events employee, was primarily responsible for contracting on behalf of LVFFHB. Signature Events contracted with Ahern Rentals to provide tents, tables, canopies, a dance floor, and other materials pursuant to its contract with LVFFHB.

Ahern memorialized that agreement in a rental invoice billing LVFFHB. However, there was an apparent discrepancy in Ahern's recording. The unpaid contract price was either $14,749.07 or $14,746.27. Though Ahern provided the materials to LVFFHB for its 1998 event, LVFFHB never paid Ahern. Batteria testified that Signature Events never received money from LVFFH to pay for rental equipment and that Signature Events was not responsible for paying Ahern. Ahern sought payment from Davis directly. Davis acknowledged that debt. On July 2, 1999, Davis signed an individual confession of judgment in favor of Ahern for the amount of $12,000 plus interest and attorney fees and costs in the event of collection. On March 10, 2000, Davis notified Ahern that he was unable to pay and intended to declare bankruptcy.

On October 13, 2000, Ahern filed suit against LVFFHB for collection of the unpaid contract price. In its complaint, Ahern alleged causes of action for breach of contract, unjust enrichment, and monies due and owing. On October 24, 2000, Ahern moved for an ex parte prejudgment attachment on the grounds that its claim against LVFFHB had a strong likelihood of success on the merits and that it believed LVFFHB would dispose of or conceal property if notice of an attachment hearing was sent. The district court granted Ahern's motion, conditioned on Ahern's posting of a $25,000 bond. Pursuant to the writ, $20,699.27 in cash from LVFFHB's account was attached and deposited with the court pending resolution of the case. LVFFHB moved to dissolve attachment on the grounds that the debt was Davis' alone, Ahern had fabricated evidence in support of its motion, and thus, the writ was improvidently or improperly granted. The district court denied LVFFHB's motion.

LVFFHB then sued Ahern, the State of Nevada, and the Eighth Judicial District Court in the United States District Court for the District of Nevada claiming that it had been deprived of its property without due process. The State moved for dismissal of the federal complaint on the ground that LVFFHB was improperly seeking review of a state decision in federal court. That motion was granted. LVFFHB appealed the dismissal to the United States Court of Appeals for the Ninth Circuit. That court remanded some issues to the District Court, but stayed federal litigation pending resolution of the state court claim.

LVFFHB then moved for summary judgment, to dissolve the writ of attachment, and for forfeiture of Ahern's bond. The motion was essentially a reiteration of LVFFHB's earlier motion to dissolve the writ of

attachment and rested on claims that there was no contract between LVFFHB and Ahern, that Ahern had manufactured evidence, and that no grounds existed for attachment. Ahern opposed the motion, arguing that there was a contract, grounds existed for attachment, and LVFFHB was misleading the court. LVFFHB's reply merely attacked the credibility of Ahern's counsel and the veracity of her arguments in opposition.

After hearing argument, the district court found that Ahern had abandoned its breach of contract claim; thus, Ahern was not entitled to recover attorney fees pursuant to the contract. Accordingly, the district court partially dissolved the writ of attachment to the extent that money had been attached to cover potential attorney fees. However, the court found that Ahern's claim for unjust enrichment supported the writ of attachment and refused to dissolve the writ altogether. Finally, the court determined that NRS 31.017 did not deprive LVFFHB of its property without due process of law.

LVFFHB timely appealed the district court's order partially dissolving the attachment. On appeal, LVFFHB raises two claims. First, it argues that ex parte attachment under NRS 31.017 unconstitutionally deprives persons of their property without due process of law. Second, it argues that the district court erred in not completely dissolving the writ and forfeiting Ahern's bond.

DISCUSSION

Jurisdiction

Under NRAP 3A(b)(2), a party may appeal an order "dissolving or refusing to dissolve [a writ of] attachment." However, the denial of a motion for summary judgment may not be appealed.

For the purposes of jurisdiction, we treat LVFFHB's appeal as challenging the district court's refusal to dissolve entirely a writ of

attachment. LVFFHB may appeal such a decision under NRAP 3A(b)(2). Accordingly, we have jurisdiction to consider this appeal.

NRS 31.017 does not deprive persons of property without due process of law

"No person shall . . . be deprived of life, liberty, or property, without due process of law."[1] "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."[2] LVFFHB contends that NRS 31.017, which allows prejudgment attachment without notice or a hearing under exigent circumstances, deprived it of property without due process of law. We disagree.

NRS Chapter 31

Under NRS 31.010, a plaintiff may petition the district court for a writ of attachment as security for a potential judgment and the defendant may avoid attachment by posting a bond. NRS 31.013 requires that as a general rule, the defendant be given notice and an opportunity for a hearing before the district court grants a writ of attachment.

If the plaintiff's application meets the technical pleading requirements, the district court must order the defendant to show cause why the writ of attachment should not be granted.[3] The order must set the date and time for hearing, establish the means of service upon the defendant, and inform the defendant of his right to challenge the attachment.[4] The district court will then conduct a hearing on the order to

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[1]U.S. Const. amend V; see also Nev. Const. art. 1, § 8, cl. 5.

[2]U.S. Const. amend XIV § 1.

[3]NRS 31.024.

[4]Id.

show cause. The court "shall consider all affidavits, testimony and other evidence presented and shall make a determination of the probable validity of the plaintiff's underlying claim."[5] If the court determines that the claim is "probably valid," the writ of attachment shall issue.[6]

NRS 31.017 provides for the issuance of a writ of attachment without pre-deprivation notice in particular situations. Most relevant to this case, attachment is available without notice and hearing where the plaintiff believes that the defendant is about to dispose of or conceal money or property so that the defendant's remaining assets are insufficient to satisfy the plaintiff's claim.[7] If one of the enumerated grounds for ex parte attachment exists, the district court shall order a writ of attachment without notice if the plaintiff's affidavit or supplemental evidence meets the technical pleading requirements and the district court finds one or more grounds for attachment without notice from the affidavit or supplemental evidence.[8]

Before the writ of attachment will issue, the plaintiff must post a bond with the district court in an amount equal to or greater than the amount claimed or the value of the property to be attached.[9] The plaintiff must also provide at least two sureties to guarantee payment of

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[5]NRS 31.026.

[6]Id.

[7]NRS 31.017(5).

[8]NRS 31.022.

[9]NRS 31.030(1).

defendant's costs, damages, and attorney fees if the plaintiff's claim is dismissed or if the defendant prevails.[10]

Though the defendant does not receive a pre-deprivation hearing under NRS 31.017, he does have the opportunity to challenge the attachment at any time after it takes effect. The defendant whose property has been attached may move the district court for discharge of the writ on three grounds: "(a) That the writ was improperly or improvidently issued[;] (b) That the property levied upon is exempt from execution or necessary and required by the defendant for the support and maintenance of himself and the members of his family[; or] (c) That the levy is excessive."[11] The writ "shall be discharged" if the defendant proves any of the above grounds.[12] Finally, the plaintiff must forfeit the bond posted under NRS 31.030(1) if the plaintiff's underlying claim is dismissed or if the defendant recovers a judgment against the plaintiff.[13]

The constitutionality of prejudgment attachment statutes

The United States Supreme Court has long recognized a creditor's right to secure attachment of the debtor's property in order to ensure payment upon successful litigation.[14] That right, however, is not unlimited. The Court has also recognized that "even the temporary or

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[10]Id.

[11]NRS 31.200(1).

[12]NRS 31.200(2). However, even if the writ is discharged as being improperly granted, the property may remain attached if the district court issues a new writ of attachment. NRS 31.220.

[13]NRS 31.170.

[14]See Coffin Brothers v. Bennett, 277 U.S. 29, 31 (1928).

partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection."[15]

The rule that prejudgment writs of attachment are subject to due process requirements does not clarify this court's inquiry.[16] The Supreme Court decided three major cases regarding prejudgment attachment and due process between 1969 and 1974. Those cases vary in result, but, when read together, provide a consistent rule: due process requires that the defendant receive notice and the opportunity for a hearing before attachment is granted unless exigent circumstances justify an ex parte attachment procedure.

In Sniadach v. Family Finance Corp., the Court invalidated a Wisconsin wage garnishment statute that allowed the alleged debtor's wages to be garnished based upon the creditor's ex parte representations to a court clerk.[17] Under that statute, the alleged debtor received neither notice nor an opportunity to challenge the garnishment until a trial on the merits.[18] The Court held that the statute violated due process because the alleged debtor was deprived of the use of his garnished wages without notice or a hearing. The Court noted that within the context of due process, "the right to be heard 'has little reality or worth unless one is

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[15]Connecticut v. Doehr, 501 U.S. 1, 12 (1991).

[16]"Due process of law guarantees 'no particular form of procedure; it protects substantial rights.'" Mitchell v. W.T. Grant Co., 416 U.S. 600, 610 (1974) (quoting NLRB v. Mackay Co., 304 U.S. 333, 351 (1938)).

[17]395 U.S. 337 (1969).

[18]Id. at 339.

informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or consent.'"[19]

In Fuentes v. Shevin, the Court invalidated Florida and Pennsylvania replevin statutes that allowed attachment based on alleged creditors' ex parte representations.[20] The Florida statute allowed creditors to submit a "fill in the blanks" form to the clerk of the small claims court. Based upon this form, the clerk issued a writ of replevin which the sheriff then served upon the alleged debtor.[21] The Florida statute did not require a showing of exigent circumstances and the debtor had no opportunity to challenge the writ until a trial on the merits.[22] Similarly, the Pennsylvania statute allowed ex parte attachment based on allegations made to a court clerk.[23]

The Court held that both statutes violated due process because debtors were denied notice and the opportunity to challenge the writ's validity in a hearing conducted "at a meaningful time and in a meaningful manner."[24] The Fuentes Court noted that a hearing satisfies due process only if provided "before the deprivation at issue takes effect."[25]

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[19]Id. at 339-40 (quoting Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950)).

[20]407 U.S. 67 (1972).

[21]Id. at 70-71.

[22]Id. at 74.

[23]Id. at 76.

[24]Id. at 80 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

[25]Id. at 82.

This "root requirement" can be overcome only if extraordinary circumstances justify postponing the hearing until after the property has been attached.[26]

In Mitchell v. W.T. Grant Co., the Supreme Court upheld a Louisiana sequestration statute that allowed ex parte attachment upon a judge's approval of the creditor's affidavit demonstrating an ownership interest in the property.[27] The statute also provided for a post-deprivation hearing and required the creditor to post a bond. The Court upheld the statute, in part, because the opportunity for a hearing was not denied altogether; it was merely postponed. "'Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.'"[28]

The Mitchell Court distinguished Sniadach because "Sniadach involved the prejudgment garnishment of wages—'a specialized type of property presenting distinct problems in our economic system.'"[29] The

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[26]Id. at 89-90.

[27]416 U.S. 600 (1974).

[28]Id. at 611 (quoting Phillips v. Commissioner, 283 U.S. 589, 596-97 (1931)). In this case, LVFFHB was not given a hearing to challenge the writ of attachment. However, the court did consider LVFFHB's motion to dissolve the writ of attachment under NRS 31.200. Furthermore, LVFFHB was given two hearings on its summary judgment motion, which was little more than a reconstruction of its motion to dissolve the writ.

[29]Mitchell, 416 U.S. at 614 (quoting Sniadach, 395 U.S. at 340).

Court also distinguished Fuentes, which invalidated both the Florida and Pennsylvania replevin statutes, as being factually and legally distinct.[30]

Unlike either Sniadach or Fuentes, Mitchell involved an ex parte hearing to determine the existence of both a contract and the debt arising thereunder. "These are extraordinarily uncomplicated matters that lend themselves to documentary proof; and we think it comports with due process to permit the initial seizure on sworn ex parte documents, followed by the early opportunity to put the creditor to his proof."[31] Accordingly, the Court upheld the Louisiana statute.

NRS 31.017 is constitutional on its face and as applied to this case

"This court reviews the constitutionality of statutes de novo."[32] In reviewing a statute's constitutionality, this court "'begins with the presumption of constitutional validity.'"[33] This presumption places the burden on the challenger to "'make[ ] a clear showing that the statute is unconstitutional.'"[34] LVFFHB contends that NRS 31.017 is unconstitutional because it does not meet the due process requirements laid out by the United States Supreme Court. We disagree.

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[30]Id. at 615.

[31]Id. at 609.

[32]Sanders v. State, 119 Nev. 135, 138, 67 P.3d 323, 326 (2003).

[33]Allen v. State, Pub. Emp. Ret. Bd., 100 Nev. 130, 133, 676 P.2d 792, 794 (1984) (quoting List v. Whisler, 99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983)).

[34]Id. at 133-34, 676 P.2d at 794 (quoting List, 99 Nev. at 137-38, 660 P.2d at 106).

Though NRS 31.017 must satisfy due process requirements, that fact alone does not require the district court to grant a pre-deprivation hearing in every case. Rather, the constitutionality of NRS 31.017 should be considered using the three-step inquiry laid out in the Supreme Court's Connecticut v. Doehr opinion: (1) how will the attachment affect the defendant's interest; (2) what is the risk of erroneous deprivation; and (3) what is the plaintiff's interest in securing ex parte prejudgment attachment?[35]

The effect of prejudgment attachment on LVFFHB's interest

The district court issued a writ of attachment on October 24, 2000. The writ ordered attachment in the amount of $20,699.27 upon Ahern's posting of a $25,000 bond. Ahern filed a $25,000 surety from the Old Republic Surety Company on October 26, 2000. The writ was executed on October 30, 2000. Pursuant to the writ, the elisor attached $20,699.27 in cash and deposited the funds with the court for resolution of the case.

LVFFHB argued below that Davis is solely responsible for the debt. It further argued that the ex parte attachment allowed Ahern to use the court's resources to commandeer more than $20,000 from its operating budget. LVFFHB's arguments below rested on its assertion that Ahern had lied in its affidavits and had used attachment to secure funds it was not entitled to in order to force a settlement.

The attachment of LVFFHB's property unquestionably affects its interest therein. However, this case is not analogous to Sniadach where the United States Supreme Court held that the prejudgment

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[35]501 U.S. 1, 11 (1991).

attachment of the alleged debtor's wages "may impose tremendous hardship on wage earners with families to support."[36] Rather, the attachment in this case deprived a corporation of a portion of its event proceeds until resolution of a contract dispute. LVFFHB concedes that despite the attachment, it has continued its operations and remains a viable, ongoing business. Accordingly, we conclude that LVFFHB's lost interest is not sufficient to constitute a due process violation.

Risk of erroneous deprivation

LVFFHB contends that the United States Supreme Court requires that a plaintiff show a substantial likelihood of success on the merits before ex parte prejudgment attachment may issue. We disagree.

Ahern's application for a writ of attachment required the district court only to find the existence of a debt. The United States Supreme Court has held that, when uncomplicated matters are involved, pre-deprivation notice is not required if exigent circumstances exist and the defendant has an opportunity to challenge the attachment within a reasonable time.[37] NRS 31.200 provides, and LVFFHB took advantage of, the opportunity to challenge an ex parte attachment at any time between attachment and trial. Accordingly, we conclude that the attachment posed no risk of erroneous deprivation.

Ahern's interest in seeking prejudgment attachment

The United States Supreme Court has recognized that "extraordinary" or exigent circumstances may justify postponing

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[36]Sniadach, 395 U.S. at 340.

[37]Fuentes v. Shevin, 407 U.S. 67, 89-90 (1972).

defendant's notice until after the property has been attached.[38] The Court has further recognized that such postponement is justified when the plaintiff alleges in good faith that the defendant is about to transfer or encumber his property in order to avoid paying the judgment.[39]

NRS 31.017(5) authorizes ex parte attachment "[w]here the defendant is about to give, assign, hypothecate, pledge, dispose of or conceal his money or property or any part thereof and the defendant's money or property remaining in this state or that remaining unconcealed will be insufficient to satisfy plaintiff's claim." Ahern moved for ex parte attachment on grounds that LVFFHB's sole function is to orchestrate an annual Halloween party, that LVFFHB had refused to pay its debt for two years, and upon information and belief that LVFFHB would, upon notice of the suit, divert any profits received from its parties so as to make them impossible to find and execute upon.

In support of this allegation, Ahern submitted the affidavit of Michael Little, Credit Manager for Ahern Rentals. Little's affidavit stated that LVFFHB had failed to pay for equipment rented in 1998. Little then testified that after Ahern demanded payment, Davis acknowledged the debt and signed a personal stipulated confession of judgment in favor of Ahern. After recording the confession of judgment, Ahern conducted an asset search on Davis. That search revealed that Davis was unemployed, had no bank account, owned no property, had bad credit, and was under IRS investigation.

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[38]Id. at 90.

[39]Doehr, 501 U.S. at 16.

Little testified that following the asset search, Ahern became concerned that it would be unable to collect on its debt by conventional methods. Little then learned that LVFFHB was hosting an event at the Tropicana Resort and Casino on October 31, 2000, and that LVFFHB was selling tickets for $40 in advance and $50 at the door. Based on the asset search and the information then available to it, Ahern believed that attachment of the proceeds from the 2000 event was its only avenue for collecting on the debt owed.

Under NRS 31.017, the district court may, in its discretion, grant an ex parte writ of attachment when such attachment is justified. We will not interfere with a district court's discretionary action absent an abuse of that discretion.[40] Here, Ahern presented evidence that LVFFHB had failed to pay for services rendered and that both LVFFHB and its directors had questionable financial viability. We conclude that the district court did not abuse its discretion by granting an ex parte writ of attachment under these circumstances.

A genuine issue of material fact remains as to LVFFHB's liability for the debt

LVFFHB claims that the district court erred in denying its summary judgment motion. "NRAP 3A(b) designates the judgments and orders from which an appeal may be taken, and where no statutory authority to appeal is granted, no right exists."[41] Initially, we note that the district court's denial of summary judgment is not appealable under

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[40]See, e.g., Desert Fireplaces Plus, Inc. v. Dist. Ct., 120 Nev. ___, ___, 97 P.3d 607, 609 (2004).

[41]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984).

NRAP 3A(b). This court may, however, consider the issue as though it was an application for writ of mandamus.[42] Nevertheless, even if we treated LVFFHB's appeal as an application for writ of mandamus, such application would be denied because LVFFHB's claims are without merit.

"Summary judgment is appropriate where no genuine issue of material fact remains for trial and one party is entitled to judgment as a matter of law."[43] This court reviews orders regarding summary judgment de novo.[44]

Ahern argues that LVFFHB is liable for the unpaid contract. In support of this argument, Ahern submitted the following evidence: Little's affidavit states that the debt was owed and that LVFFHB's former president acknowledged the debt, but declared bankruptcy before the debt could be paid. Batteria, a former employee of Signature Events who served as the liaison between LVFFHB and Ahern Rentals, also provided an affidavit stating that LVFFHB was responsible to pay the contract. In support of these affidavits, Ahern submitted a copy of the alleged rental invoice, a copy of the alleged contract, and Davis' confession of judgment stating his liability for the debt.

LVFFHB argues that it is not responsible for the debt. In support of that argument, LVFFHB submitted the affidavit of Kerry Schatz, current president of LVFFHB, stating that the contract was

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[42]See, e.g., Dzack v. Marshall, 80 Nev. 345, 348, 393 P.2d 610, 611 (1964).

[43]Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994).

[44]See Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

between Ahern Rentals and Signature Events. Schatz acknowledged that Davis "stood behind" the contract in his individual capacity, but claimed that LVFFHB had never obligated itself to the contract. Schatz also stated that Davis is no longer associated with LVFFHB. Aside from Schatz's affidavit, LVFFHB's argument rests on its repeated allegation below that Ahern manufactured evidence to justify a writ of attachment.

We conclude that these allegations demonstrate genuine issues of material fact regarding LVFFHB's liability for the debt. Ahern argues that the facts and documents clearly show that LVFFHB is liable. LVFFHB argues that Ahern's evidence is manufactured. Both parties presented affidavits at summary judgment supporting their positions. None of the affidavits were so obviously false as to require the district court to weigh the credibility of the evidence and grant summary judgment.[45] The credibility decision "is reserved for the trial."[46] Because LVFFHB's liability for the debt presents a genuine issue of material fact for trial, the district court did not err in refusing to dissolve the writ of attachment through summary judgment.

CONCLUSION

We conclude that NRS 31.017 is constitutional both on its face and as applied to this case. The Nevada prejudgment attachment statutes do not deprive persons of their property without due process of law.

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[45]Hidden Wells Ranch v. Strip Realty, 83 Nev. 143, 145, 425 P.2d 599, 601 (1967).

[46]Id.

Accordingly, the district court did not abuse its discretion by granting an ex parte writ of attachment in this case. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.
Becker

Rose, J.
Rose

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Nersesian & Sankiewicz
Dixon, Truman & Fisher
Clark County Clerk

HARDESTY, J., with whom MAUPIN, J., agrees, concurring in part and dissenting in part:

I concur with the majority that NRS 31.017 is constitutional and that unjust enrichment, as a theory of liability, will support a party's request for prejudgment writ of attachment. However, I must respectfully dissent from the majority's conclusion that the district court properly granted the prejudgment writ of attachment in this case. There was no evidence presented to the district court to show concealment or improper disposition of assets by LVFFHB.

When the language of a statute is expressly clear and unambiguous, the apparent intent must be given effect, as there is no room for construction.[1] NRS 31.017 unambiguously states that a district court "may order the writ of attachment issued without notice to the defendant only in the following cases."[2] While the district court is given discretion to order ex parte prejudgment writs of attachment, that discretion is limited.[3]

Ahern relied on NRS 31.017(5) to secure the prejudgment writ of attachment. NRS 31.017(5) permits consideration of a prejudgment writ of attachment "[w]here the defendant is about to give, assign, hypothecate, pledge, dispose of or conceal his money or property or any part thereof and the defendant's money or property remaining in this State or that remaining unconcealed will be insufficient to satisfy the plaintiff's claim." Affidavits may be used to show the facts necessary to

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[1]Metz v. Metz, 120 Nev. ____, ____, 101 P.3d 779, 783 (2004).

[2](Emphasis added).

[3]NRS 31.017.

grant a prejudgment writ of attachment, but those affidavits must adhere to strict statutory requirements.[4] NRS 31.020(1)(c) requires an affiant to "[d]escribe in reasonable and clear detail all the facts which show the existence of any one of the grounds for an attachment without notice to the defendant."

The affidavit of Michael Little, upon which the district court relied in granting the ex parte writ of attachment, addresses the financial instability of Jeffrey M. Davis, not LVFFHB. At the time, Davis was the president and principal of LVFFHB. As the majority states, Davis indicated to Ahern that he intended to declare bankruptcy and leave the state, not LVFFHB.[5]

No facts have ever been presented to the district court to show that LVFFHB was financially unstable, or was concealing, transferring, or about to conceal or transfer their assets as required by NRS 31.017(5). Therefore, the district court abused its discretion in granting and maintaining the writ of attachment.

_____, J.
Hardesty

I concur:

_____, J.
Maupin

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[4]NRS 31.020.

[5](Emphasis added.)