

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

| | | |
|------------------------------------|---|--------------------|
| WEBPRO, INC., | : | JUNE TERM, 2001 |
| Plaintiff | : | |
| | : | |
| VS. | : | NO. 03362 |
| | : | |
| INTERNATIONAL LITHOGRAPHING, INC., | : | |
| a/k/a INTEROMNI | : | |
| Defendants | : | CONTROL NO. 070015 |

MEMORANDUM

BY: Patricia A. McInerney, J.

July 20, 2001

Presently before the Court is Taconic Direct Acquisition Corporation's ("Taconic's") Petition to Vacate Judgment and Dissolve the Writ of Execution as to Non-Judgment Debtor Property. Because the seizure of Taconic's property without a prior opportunity to respond and litigate the applicability of the foreign judgment to Taconic violates constitutional strictures, we are constrained to grant the petition.

I. Background

Plaintiff Webpro, Inc. ("Webpro") obtained a judgment in Illinois against defendant International Lithographing, Inc. a/k/a Interomni ("International Lithographing"). On June 27, 2001, pursuant to Pennsylvania's Uniform Enforcement of Foreign Judgment Act ("the UEFJA"), 42 Pa.C.S.A. § 4306, Webpro transferred the Illinois judgment to Pennsylvania. That same day, Webpro filed a praecipe under Pa.R.C.P. 3101 to issue a writ of execution. As was his ministerial duty, the Prothonotary of Philadelphia County duly issued the writ.

Although the writ was issued against International Lithographing, Webpro believed that Taconic and International Lithographing had operated such as to enable Webpro to pierce the corporate veil between the two corporations. To execute on Taconic's bank accounts, Webpro served the writ pursuant to Pa.R.C.P. 3108(4) on garnishee PNC Bank, N.A.

On July 2, 2001, Taconic filed an emergency petition for a temporary restraining order to vacate the judgment and dissolve the writ of execution as to non-judgment debtor property. The petition argued that the judgment should be vacated and the writ dissolved because the Illinois court had lacked personal jurisdiction over Taconic. After an ex parte hearing on the same day, this Court set aside the writ of execution freeing Taconic's assets so that Taconic could post a \$170,000 bond.¹ On July 5, 2001, this Court held a full hearing at which the parties agreed that the injunction would serve as the final injunction, at which both Taconic and International Lithographing appeared and were able to fully present their evidence and make arguments. During the hearing, Taconic also argued that Pennsylvania's garnishment procedure violated Fourteenth Amendment Due Process in this case. This Court agrees.

II. Discussion

The Federal Constitution's guarantee of Due Process attaches in state court proceedings where the state's procedures have enabled a private party to take another's property. Lugar v. Edmondson Oil Company, Inc., 457 U.S. 922 (1982); Allegheny Clarklift, Inc. v. Woodline Industries of Pennsylvania, Inc., 514 A.2d 606 (Pa. Super. Ct. 1986). Fourteenth Amendment Due Process controls "whenever the State has created a system whereby state officials will attach property on the ex parte application of one party to a private dispute." See Allegheny Clarklift,

¹ Taconic never posted the bond.

514 A.2d 609 (internal quotation marks and citation omitted). Since Webpro has utilized Pennsylvania’s procedure to garnish property, Webpro has converted into a state actor for the limited purpose of the garnishment. Fourteenth Amendment Due Process circumscribes Webpro’s ability to execute on Taconic’s property.

What procedures Due Process precisely requires in a given case remains less clear. In Matthews v. Eldredge, 424 U.S. 319 (1976), the federal Supreme Court enunciated a balancing test to identify the required procedure. The court should consider

[f]irst, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the [state’s] interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id., 424 U.S. at 335.

In Gulf Mortgage and Realty Investments v. Alten, 428 A.2d 978 (1981), a distinguished panel of the Superior Court² considered whether a foreign judgment may be enforced against a non-party to the original suit by way of Pennsylvania’s purely ministerial process of issuing writs of execution and garnishment. In Gulf Mortgage, Gulf Mortgage and Realty Investments (“Gulf”) obtained a judgment in Florida against three people, including one James E. Meneses. Gulf transferred the judgment to the Court of Common Pleas of Montgomery County, Pennsylvania. Gulf then praeciped a writ of execution, which it served on a bank as garnishee. The writ instructed the sheriff to attach “all cash. . . being held in the name of James E. Meneses, in the name of Anne Meneses, and in the names of James E. Meneses and Anne Meneses jointly,

² The panel consisted of Judges Hester, Spaeth, and Cavanaugh.

as though it were the property of James E. Meneses, pursuant to the Uniform Fraudulent Conveyance Act” Gulf Mortgage, 428 A.2d at 979. Anne Meneses was James E. Meneses’ wife. The creditors contended that James Meneses had fraudulently transferred the property. Id. The Superior Court determined that the seizure of Anne Meneses accounts without prior notice or hearing violated her Due Process rights. Similarly, in this case, Taconic’s accounts were seized without a prior notice or hearing.

Although research revealed no Pennsylvania case applying the Matthews test to the garnishment of a third party’s property under a foreign judgment, the federal courts sitting in Pennsylvania have repeatedly performed the analysis. Most recently, in National Stabilization Agreement of the Sheet Metal Industry Trust Fund v. Evans, 71 F.Supp.2d 427 (M.D.Pa. 1999), the United States District Court for the Middle District of Pennsylvania held that, as applied to a non-party’s property, Pennsylvania’s garnishment procedures were unconstitutional. In that case, in 1998 the plaintiff obtained a default judgment in the Eastern District of Virginia against a Ronald E. Evans t/a and d/b/a Evans Sheet Metal and Evans & Evans. Id., 71 F.Supp.2d at 429. The following year, the plaintiff transferred the judgment to the Middle District of Pennsylvania. Id. As permitted under Federal Rule of Civil Procedure 69, the plaintiff then used Pennsylvania’s procedures to garnish bank accounts held in the name of Robert E. Evans d/b/a Evans and Evans Sheet Metal. Id. Acknowledging the similarity in names (Ronald v. Robert, among others), the court determined that the attachment was inappropriate. Id. The court rejected the garnishment because the Pennsylvania procedures allowed for post-deprivation review only. Id., 71 F.Supp.2d at 430. The court suggested that the following procedural protections would satisfy Due Process:

An affidavit should be required clearly setting forth the factual basis for the conclusion that the garnishment defendants are alter egos of the judgment debtors. This affidavit should be presented to an official with competence to evaluate the claim and discretion to deny the writ. The writ should issue only if on its face probable cause exists for accepting its conclusion. Plaintiff should post bond to indemnify the defendant for a mistaken taking. Finally, an immediate post attachment hearing should take place where plaintiff would be required to prove the existence of an alter ego relationship.

Id., citing Strick Corp. v. Thai Teak Products Co., Ltd., 493 F.Supp. 1210, 1217 (E.D.Pa. 1980), accord ABC Sewer Cleaning Co. V. Foxco, Inc., 1990 WL 139391 (E.D.Pa. 1990); see also Fuentes v. Shevin, 407 U.S. 67 (1983) (holding that Pennsylvania's procedures permitting summary seizure of goods or chattels under a writ of replevin are unconstitutional) and Jonnet v. Dollar Savings Bank of the City of New York, 530 F.2d 1123 (3d Cir. 1976) (declaring Pennsylvania's then-existing foreign attachment statutes unconstitutional).

Taconic's Due Process rights have been violated.³ Accordingly, the writ of execution is set aside and dissolved.

BY THE COURT:

McINERNEY, J.

³ An existing, constitutionally acceptable method of piercing the corporate veil to reach Taconic's funds would be to sue on the foreign judgment. See 42 Pa.C.S. § 4306(e).



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| INTERNATIONAL LITHOGRAPHING, INC., a/k/a INTEROMNI | : | |
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ORDER

AND NOW, this 20th day of July, 2001, the Writ of Execution is hereby DISSOLVED and SET ASIDE.

BY THE COURT:

McINERNEY, J.