1978

Recent Decision, Prejudgment Attachment As a Means of Reaching Foreign Securities: Inter-Regional Financial Group, Inc. v. Hashemi

Judith L Ritter

RECENT DECISION

PREJUDGMENT ATTACHMENT AS A MEANS OF REACHING FOREIGN SECURITIES

Inter-Regional Financial Group, Inc. v. Hashemi

INTRODUCTION

Attachment has been called "an extraordinary prejudgment remedy which plaintiffs love and defendants abhor."[1] It provides a successful applicant with distinct procedural advantages. A litigant who persuades a court to seize his opponent's property before a full trial on the merits not only ensures payment of his claim upon judgment, but also alters the pretrial balance of power by depriving his opponent of the use of the property.[2]

Traditionally, courts have attached property only within state borders.[3] However, a recent decision of the U.S. Court of Appeals for the Second Circuit has sanctioned a potentially significant expansion of a court's attachment power. In *Inter-Regional Financial Group, Inc. v. Hashemi*,[4] the Second Circuit held that a Uniform Commercial Code provision[5] and Connecticut case law[6] authorized a district court injunction directing a Connecticut resident to bring securities from outside the country into Connecticut for purposes of attachment. Although the district court's interpretation of the U.C.C., upheld by the Second Circuit, may be questioned, *Hashemi* provides U.S. plaintiffs with a potentially valuable prejudgment remedy.

---

[1] Kheel, *New York's Amended Attachment Statute: A Prejudgment Remedy in Need of Further Revision*, 44 BROOKLYN L. R. 199, 200 (1978).

[2] *Id.* at 201.

[3] *See* Nederlandsche Handel-Maatschappij, N.V. v. Sentry Corp., 163 F. Supp. 800, 803 (E.D. Pa. 1958). *See generally* Overby v. Gordon, 177 U.S. 214 (1900). *But see* Fleming v. Gray Mfg. Co., 352 F. Supp. 724 (D. Conn. 1973).

[4] 562 F.2d 152 (2d Cir. 1977), *cert. denied*, 434 U.S. 1046 (1978).

[5] U.C.C. § 8-317.

[6] Fleming v. Gray Mfg. Co., 352 F. Supp. 724 (D. Conn. 1973).

THE DECISION

Inter-Regional Financial Group, Inc. (Inter-Regional) is a Delaware corporation. It brought suit in the United States District Court for the District of Connecticut against Cyrus Hashemi (Hashemi), an Iranian citizen with his usual place of abode in Connecticut.[7] Jurisdiction rested on diversity of citizenship.[8]

The action grew out of an alleged breach of an indemnity agreement.[9] Coronado Group, Ltd., a company of which Hashemi was then president, borrowed $250,000 from the Banque Scandinave en Suisse.[10] The loan was secured by an irrevocable letter of credit obtained from the First National Bank of St. Paul.[11] Inter-Regional agreed to reimburse First National for any payments made pursuant to the letter of credit.[12] In turn, Hashemi agreed to indemnify Inter-Regional for any payments it made to First National.[13] Eight months later, First National paid $250,000 to Banque Scandinave en Suisse under the letter of credit, and was reimbursed by Inter-Regional.[14] Inter-Regional's complaint alleged that it then unsuccessfully sought indemnity from Hashemi.[15]

With its complaint Inter-Regional filed an application for a prejudgment attachment of Hashemi's personal property including securities issued by foreign corporations[16] and held by Hashemi outside the United States.[17] After a hearing,[18] the district court found prob-

---

[7] Inter-Regional Financial Group, Inc. v. Hashemi, No. B-76-216 (D. Conn. Dec. 20, 1976).

[8] *See* Inter-Regional Financial Group, Inc. v. Hashemi, 562 F.2d 152, 153 (2d Cir. 1977), *cert. denied,* 434 U.S. 1046 (1978).

[9] *Id.* at 153.

[10] *Id.* Both plaintiff and defendant were shareholders of Coronado. Brief for Appellant at 4, Inter-Regional Financial Group, Inc. v. Hashemi, 562 F.2d 152 (2d Cir. 1977) [hereinafter cited as Brief for Appellant].

[11] 562 F.2d at 153.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 153-54.

[17] Petition for a Writ of Certiorari, app. F at 24a, Hashemi v. Inter-Regional Financial Group, Inc., 434 U.S. 1046 (1978).

[18] Under the Connecticut prejudgment remedy statute, the defendant has the right to a hearing on whether there is probable cause to sustain the validity of the plaintiff's claim. CONN. GEN. STAT. ANN. § 52-278d(a) (West Supp. 1978). In *Hashemi,* both sides had an opportunity to brief the issues. The defendant presented a number of affirmative defenses and counterclaims, but the court determined that these would not deprive plaintiff of its right to a prejudgment remedy. Inter-Regional Financial Group, Inc. v. Hashemi, No. B-76-216 (D. Conn. Oct. 28, 1976) (ruling on application for prejudgment remedy).

able cause that Inter-Regional would succeed on the merits.[19] Because Hashemi owned assets in Connecticut of only minimal value, the district court directed him to bring his foreign stock certificates into Connecticut to be attached.[20] Hashemi appealed this order to the U.S. Court of Appeals for the Second Circuit.

The principal issue on appeal was whether the district court had the authority to issue an injunction ordering foreign securities to be brought into the state for attachment.[21] The court of appeals affirmed the district court's order directing Hashemi to bring his foreign stock certificates into Connecticut to be attached, holding that this order met the requirements of Connecticut law.[22]

To justify the injunction, the court of appeals relied on section 8–317 of the Uniform Commercial Code, adopted by Connecticut, which governs the attachment of investment securities.[23] Under the statute, the officer making the attachment must actually seize the security. The section also empowers a court to issue injunctions enabling creditors to reach debtor's securities. The court of appeals reasoned that these provisions, read in light of the Connecticut case *Fleming v. Gray Manufacturing Co.*,[24] permitted the district court to

---

[19] 562 F.2d at 154.

[20] Inter-Regional Financial Group, Inc. v. Hashemi, B–76–216 (D. Conn. Oct. 28, 1976) (ruling on application for prejudgment remedy).

[21] 562 F.2d at 154.

[22] *See id.* at 155. Connecticut law controls because Rule 64 of the Federal Rules of Civil Procedure makes available to federal district courts all remedies providing for the seizure of property to secure a judgment that are provided by the law of the state in which the court is sitting. *See id.* at 154.

[23] The statute provides in relevant part:

> (1) No attachment of levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied at the source.
>
> (2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

CONN. GEN. STAT. ANN. § 42a–8–317 (West 1960). Both the district court and the court of appeals refer to U.C.C. § 8–317 rather than its codification in the Connecticut statute. The text of this article will maintain that format. Another Connecticut statute, CONN. GEN. STAT. ANN. § 52–289 (West 1960), authorizes the prejudgment attachment of corporate rights and shares. However, Connecticut courts have ruled that this provision applies only to the stock of corporations incorporated in Connecticut "under the now timeworn rationale that ownership in stock existed only at the situs of the corporation." 562 F.2d at 155 n.3. *See, e.g.*, Winslow v. Fletcher, 53 Conn. 390, 4 A. 250 (1886).

[24] 352 F. Supp. 724 (D. Conn. 1973).

order Hashemi to bring his stock certificates into Connecticut from outside the country.[25]

BACKGROUND

The power to attach a person's property is purely statutory.[26] State statutes often enumerate the grounds for permissible attachment. Among the most common grounds for prejudgment attachment[27] are a showing that the defendant will abscond, thereby defrauding his creditors or avoiding service of process,[28] or a showing that the defendant intends to transfer or otherwise dispose of his assets in order to avoid satisfying a judgment.[29] Connecticut law contains no such specific requirements. The Connecticut prejudgment remedy statute requires only that the plaintiff show probable cause that the court will eventually render judgment in his favor.[30] However, since the plaintiff in *Hashemi* sought an injunction along with the order of attachment, it had to show that it would suffer irreparable harm if the injunction did not issue.[31]

Attachment under section 8–317 of the U.C.C. is valid only if the securities are actually seized by an officer.[32] Thus, the district court coupled its attachment order with an injunction ordering Hashemi to bring the securities from outside the United States into Connecticut. In upholding that order on appeal, the court of appeals relied on the explicit language of section 8–317 of the U.C.C. Section 8–317(2) allows a court to render aid in attachment only "as is allowed at law or in equity."[33] The circuit court, citing *Fleming v. Gray Manufactur-*

[25] 562 F.2d at 154–55.

[26] Clime v. Gregor, 145 Conn. 74, 76, 138 A.2d 794, 795 (1958); A.D. Fletcher & Son v. Gordon, 219 Iowa 661, 663, 259 N.W. 204, 205 (1935).

[27] Until recently, it was quite common for a court to attach the property of a non-resident, over whom the court did not have personal jurisdiction, in order to establish quasi-in-rem jurisdiction. However, the Supreme Court, in Shaffer v. Heitner, 433 U.S. 186 (1977), modified this practice by holding that the standards for exercising *in rem* jurisdiction would now be the same as those governing *in personam* jurisdiction. Thus, under *Shaffer*, the defendant in a *quasi-in-rem* proceeding must have certain minimum contacts with the forum state. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945).

[28] *See, e.g.*, Salzman v. Robinson, 10 N.J. Misc. 51, 52, 157 A. 547, 548 (1931).

[29] *See, e.g.*, Carney v. Security Credit Corp., 172 La. 911, 135 So. 915 (1931).

[30] CONN. GEN. STAT. ANN. § 52–278d (West Supp. 1978). If a plaintiff seeks a prejudgment remedy without a hearing under this section, he must have other grounds, in addition to probable cause, to receive a judgment on which to base the attachment. *Id.* § 52–278e. Hashemi, received a hearing. *See* note 18 *supra.*

[31] 562 F.2d at 154. *See also* Fleming v. Gray Mfg. Co., 352 F. Supp. 724, 726 (D. Conn. 1973).

[32] *See* CONN. GEN. STAT. ANN. § 42a–8–317(1) (West 1960).

[33] *Id.* at 42a–8–317(2).

ing Co.,[34] held that existing principles of law and equity support the ruling.

In *Fleming*, the U.S. District Court for the District of Connecticut construed section 8–317 of the U.C.C. to authorize an injunction directing the defendants to bring certain corporate securities from outside the state into Connecticut where they could be attached before trial.[35] As in *Hashemi*, the court had *in personam* jurisdiction over the defendants.[36] The *Fleming* court duly noted that under section 8–317(2) it could proceed only "as is allowed at law or in equity."[37] It then cited *Hodes v. Hodes*, a case mentioned with approval in the official comments to section 8–317, where an Oregon court ordered that a security be transferred from a safe deposit box in the state of Washington back into Oregon.[38] The court in *Fleming* further noted that personal jurisdiction empowers it, "if justice and the reasonable demands of the situation warrant, [to] order the defendants to do or refrain from doing, certain acts in another state."[39]

In a much earlier case, one federal district court reached a conclusion contrary to that in *Hashemi* and *Fleming*. However, that court did not specifically consider the types of arguments advanced in these two cases. In *Nederlandsche Handel-Maatschappij, N.V. v. Sentry Corp.*,[40] the U.S. District Court for the Eastern District of Pennsylvania determined that U.C.C. § 8–317 would not permit the attachment of securities located outside of Pennsylvania. Consequently, the court denied the plaintiff's motion for an injunction directing the defendant to bring the certificates into the state.[41] The court in *Nederlandsche* based its decision on the traditional notion that courts can only attach property that lies within their jurisdiction.[42] However, the *Nederlandsche* court failed to distinguish between cases in which the court has in personam jurisdiction over the defendant, as in *Hashemi* and *Fleming*, and cases in which the attachment itself forms the basis

[34] 352 F. Supp. 724 (D. Conn. 1973).

[35] *Id.* at 725, 726. The court limited its order to securities that were directly owned by the defendants and excluded securities that were owned indirectly by one defendant through a subsidiary. The decision gives no indication that any of the securities were being held in a foreign country.

[36] *Id.* at 726.

[37] *Id.*

[38] *Id.* The security involved in Hodes was a security of an Oregon corporation. *See* notes 50–52 *infra* and accompanying text.

[39] 352 F. Supp. at 726. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 53 (1971).

[40] 163 F. Supp. 800 (E.D. Pa. 1958).

[41] *Id.* at 804.

[42] *See id.* at 803.

for asserting jurisdiction over a non-resident defendant.[43] In cases of the latter type, the court acquires quasi-in-rem jurisdiction and can render a judgment to the extent of the property's value.[44] *Nederlandsche*, therefore, does not expressly conflict with the rationale espoused in *Hashemi* and *Fleming* that personal jurisdiction empowers the court to order a party to do certain acts in another state.[45]

SECTION 8–317 ANALYZED

In *Hashemi* the Second Circuit approved one interpretation of section 8–317. The Connecticut district court construed section 8–317 to authorize the court's use of its equity power to aid the attachment of securities issued by a foreign corporation and held in a foreign country. However, the reception *Hashemi* will receive in other federal and state courts is difficult to forecast. Alternative interpretations of section 8–317 may prevail.

Although the district court in *Hashemi* chose to read section 8–317 broadly, the court expressed reservations about the result reached in the case. In a footnote to his ruling on Hashemi's motion for reargument, Judge Newman noted that:

> While this Court felt obliged to follow *Fleming* as the law of this District, were the question open, I would have questioned whether the Uniform Commercial Code provision relied on in *Fleming*, Conn. Gen. Stat. § 42a–8–317(2), was dispositive. That provision clearly permits a court with *in personam* jurisdiction over a defendant to require that defendant to bring his securities into the jurisdiction when the lawsuit seeks to determine ownership of the shares and perhaps other interests in the shares as well. But, it is far less certain whether that provision authorizes a prejudgment remedy to bring shares into the jurisdiction solely to secure a

---

[43] In its discussion of the attachment issue, the court does not mention that it has *in personam* jurisdiction over the defendant corporation, whose principal place of business was Philadelphia. Instead, the court erroneously describes *Nederlandsche* as a case involving foreign attachment. *Id.* at 803. Courts order foreign attachment when they have no personal jurisdiction over a party. The procedure entails the seizure of the property of a non-resident. *See* Falk & Co. v. S. Tex. Cotton Oil Co., 368 Pa. 199, 82 A.2d 27 (1951); 3 Penn. Legal Encyclopedia *Attachment* § 51 (1957) (cited by the court in *Nederlandsche*).

[44] Barber v. Morgan, 84 Conn. 618, 80 A. 791 (1911). *See* note 27 *supra*.

[45] *See* text accompanying note 39 *supra*.

> judgment yet to be entered in a suit unrelated to determining stock interests.[46]

Apparently, Judge Newman believed that the statute authorized injunctions in aid of the attachment of securities only when the securities are related to the underlying suit.

The fact that article 8 of the Uniform Commercial Code deals with investment securities and their transfer and sale supports this interpretation. This theory suggests that the drafters of the Code included section 8–317(2) to enable plaintiffs in a suit related to the sale or transfer of securities to bring the stock in dispute before the court.[47]

Another possible interpretation of U.C.C. section 8–317(2) is that the injunction provision enables a court only to order the attachment of shares of stock in domestic (in-state) corporations. Companies incorporated in the forum state do, of course, come under the jurisdiction of the courts of that state.[48] Shares of stock issued by those corporations and held within the state also fall subject to the court's jurisdiction.[49] However, such stock certificates are often held outside of the state. Since subsection 1 of section 8–317 stipulates that an actual seizure of the stock certificates must precede a valid attachment, subsection 2 gives courts the injunctive power to make that seizure possible by allowing a court to order that securities be brought back from a sister state.

The comment to section 8–317 cites *Hodes v. Hodes*[50] as an example of the proper implementation of this section. In that case, the court ordered the defendant to bring securities issued by Oregon corporations from Washington into Oregon.[51] *Hodes,* therefore, is consistent with the interpretation that the purpose of section 8–317 is to facilitate attachment of securities issued by domestic corporations.[52]

This interpretation finds additional support in section 8–317(1), which provides, "but a security which has been surrendered to the

---

[46] Inter-Regional Financial Group, Inc. v. Hashemi, No. B–76–216 (D. Conn. Apr. 12, 1977) (ruling on motion for reargument).

[47] *See* Brief for Appellant, *supra* note 10, at 14–15.

[48] Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 517 (1839).

[49] For purposes of attachment, the *situs* of shares of stock is the state of incorporation. *See* note 23 *supra*.

[50] 176 Or. 102, 155 P.2d 564 (1945).

[51] *Id.* at 105, 155 P.2d at 564.

[52] *See* Brief for Appellant, *supra* note 10, at 16.

issuer may be attached or levied at the source."[53] The issuer of a corporate security is ordinarily the corporation itself.[54] Therefore, a security surrendered to the issuer will be located at the issuer's source, its principal office or place of business. If that source is within a state's borders, an officer of a court of that state has the power to attach the security. This would appear to be the situation envisioned by the statute.

But if the source is outside the state's borders, the officer could not attach a surrendered security. For example, if an issuer's source is France, an officer of a Connecticut court would have no power to attach the surrendered securities. Accordingly, under this interpretation, section 8–317 applies only to securities issued by domestic corporations.

International Implications

In *Hashemi*, the U.S. District Court for the Southern District of Connecticut ordered the defendant to retrieve securities from abroad. The Second Circuit did not accord significance to the international character of this order. The court apparently reasoned that the foreign country in which the securities were held would not protest the transfer of those securities to the United States.[55]

The *Hashemi* decision thus provides litigants who must reach assets located in a foreign country with a significant procedural advantage. By attaching property before a full trial on the merits, a party can eliminate the added expense and delay that customarily accompany an attempt to execute an American judgment abroad.[56] Indeed, in some countries, recognition and enforcement of an American judgment may be denied altogether.[57]

The procedural advantage provided by *Hashemi* may be negated if the party ordered to retrieve securities from abroad challenges in a foreign court the propriety of the U.S. court's action.[58] Such a chal-

---

[53] CONN. GEN. STAT. ANN. § 42a–8–317(1) (West 1960).

[54] *See* U.C.C. § 8–201(1).

[55] Swiss law, for example, allows the fluid removal of securities owned by individual citizens. Interview with Alois Bohmer, Senior Legal Specialist in the European Law Division of the Law Library, Library of Congress, in Washington, D.C. (Aug. 28, 1978).

[56] It should be noted that Swiss law provides for the enforcement of foreign judgments through a special, partially summary proceeding. NUSSBAUM, AMERICAN-SWISS PRIVATE INTERNATIONAL LAW (Bilateral Studies in Private International Law No. 1) 54 (2d ed. 1958).

[57] *Id.*

[58] In certain cases, a challenge might be made on jurisdictional grounds. Under Swiss law, for example, service of process upon the defendant does not create jurisdiction, and a Swiss court

lenge would dissipate the advantage by forcing the party seeking attachment to appear at the foreign proceeding.

CONCLUSION

Inter-Regional Financial Group, Inc. v. Hashemi permitted a Connecticut court to attach securities issued by a foreign corporation and held in a foreign country. Although the decision might herald expansive new interpretations of a court's attachment power, several considerations limit the impact it is likely to have on international business.

Foreign individuals and businesses that establish minimum contacts in the United States sufficient to give an American court *in personam* jurisdiction over them[59] will often hold enough assets in the United States to eliminate the need for a court to reach overseas assets. Moreover, the court in *Hashemi* proceeded under U.C.C. § 8–317. That section is not a general attachment statute, but authorizes only the attachment of investment securities.

Finally, the court may have misconstrued section 8–317. The district court judge himself thought that section 8–317 applied only when the ownership of the securities to be attached was in issue. Alternatively, the language of section 8–317 suggests that it applies only to securities issued by domestic corporations. In light of its unusual factual situation and the compelling alternative interpretations of section 8–317, *Hashemi* faces a highly uncertain future.

Judith L. Ritter

---

may be reluctant to enforce an American attachment order where the court obtained jurisdiction by that means. *See id.*

[59] *See* Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945).