

Stansell v. Revolutionary Armed Forces of Colombia (FARC)

M.D. Fla.

149 F. Supp. 3d 1337 (M.D. Fla. 2015) · 2015-07-22

ORDER

RICHARD A. LAZZARA, UNITED STATES DISTRICT JUDGE

THIS CAUSE comes before the Court on the issue of whether Florida's garnishment statutes, see Chapter 77, Florida Statutes, have extraterritorial effect. This issue came to light in the Answer of Garnishee Deutsche Bank Trust Company *1338 Americas to the Writ of Garnishment (Dkt. 1017) and the Amended Answer of Garnishee the Bank of New York Mellon to the Writ of Execution/Garnishment Relating to Grupo Arosffan Empre Participa-coes and Ovias Trading, S.A. (Dkt. 1015). These Answers responded to writs of garnishment that were directed to bank accounts established to hold the proceeds of ■ wire transfers that were blocked by the Garnishee Banks pursuant to sanctions regulations issued by the Office of Foreign Assets Control of the United States Treasury Department. The blocked wire transfers are all held at bank branches in the State of New York.

Plaintiffs are judgment creditors of the Revolutionary Armed Forces of Columbia ("the FARC") (Dkt. 233). On February 17, 2015, this Court found that certain entities were agents or instrumentalities of the FARC and that any accounts that were owned by such entities and blocked pursuant to sanctions regulations directed at specially designated global terrorists ("SDGT"), 31 C.F.R. §§ 594.310- et seq. (the "SDGT Sanctions") were subject to execution and garnishment under Section 201(a) of the Terrorism Risk Insurance Act of 2002 ("the TRIA"), 18 U.S.C. § 2331 et seq. (Dkt. 900). Subsequent to that determination, the Plaintiffs, acting in accord with Federal Rule of Civil Procedure 69(a)(1),^[1] served writs of garnishment issued pursuant to Florida's garnishment statutes on numerous non-parties seeking to attach such blocked funds, resulting in part in the filing of the aforementioned Answer and Amended Answer.

To this Court's knowledge, these two pleadings marked the first occasion that any party or non-party raised the issue of the Court's extraterritorial jurisdiction during the extensive post-judgment garnishment litigation history of this case. Nor, to the Court's knowledge, was this issue raised within the context of the two appeals considered by the Eleventh Circuit Court of Appeals in this case.^[2] Therefore, after reviewing the cases cited in the Answer and Amended Answer, and after engaging in independent research; the Court determined that the jurisdictional issue was of such a substantive nature that it must first be resolved before any additional writs would be entered seeking to garnish funds located in accounts outside the territory of the State of Florida (Dkt. 1019). The Court also declined to enter any TRIA turnover judgments respecting those types of funds until the jurisdictional issue was resolved. (Id.) Accordingly, the Court directed briefing by the Plaintiffs and all garnishees who are currently subject to writs of garnishment issued by this Court with respect to funds held in accounts located outside the State of Florida, as well as those parties who are contesting garnishment proceedings with regard to those funds, on the specific issue of whether this Court has jurisdiction to issue a writ of garnishment pursuant to Florida's garnishment statutes seeking to garnish funds held in bank accounts outside the territorial limits of the State of Florida. (Id.)

In response, the Court received memo-randa on the issue from Plaintiffs (Dkt. 1029), Garnishee Standard Chartered Bank (Dkt. 1035), Garnishee Deutsche Bank Trust Company Americas (Dkt. *1339 1036), Garnishee Commerzbank AG, New York Branch (Dkt. 1039), Garnishee The Bank of New York Mellon (Dkt. 1041), Garnishee JPMorgan Chase Bank, N.A. (Dkt. 1042), and Claimants Kassim Taji-deen, Grupo Arosffan Empreendimentos E Participacoes Sari, and Olvas Trading, S.A. (Dkt. 1044).^[3] The blocked funds that are the subject of these memoranda are all located in bank accounts in the State of New York. Additionally, since the time the Court issued its order directing these responses, Claimant Grupo Arosfran Em-preendimentos E Participacoes Sari filed a Motion to Dissolve Writ of Garnishment and Memorandum of Law, raising the argument that this Court lacks jurisdiction over blocked assets being held at a New York bank branch (Dkt. 1030), to which Plaintiffs filed a response in opposition (Dkt. 1033). The Court then stayed all proceedings in this case pending resolution of the substantive jurisdictional issue (Dkt. 1047), following which Claimant Golfrate Holdings (Angola) LDA filed a Motion to Dissolve Writ of Garnishment and Memorandum of Law, also raising the argument that this Court lacks jurisdiction over blocked assets held at a bank branch located in the State of New York (Dkt. 1052), to which Plaintiffs responded in opposition (Dkt. 1055).

Having now had the opportunity to consider carefully, all of these submissions, as well as engaging in its own independent research, the Court concludes that it lacks subject matter jurisdiction to garnish any funds in any bank accounts located outside the State of Florida. All of the funds at issue in the motions, memoranda, and writs now before the Court are held outside the State of Florida and, thus, are beyond the reach of a Florida writ of garnishment. As one court has observed, a garnishment proceeding “is not an action in personam, nor is it, strictly speaking, a proceeding in rem. Partaking of the nature of both, it is frequently classified as a proceeding quasi in rem.” *U.S. Rubber Co. v. Poage*, 297 F.2d 670, 673 (5th Cir.1962)^[4] (citations omitted).^[5] Because of the dual nature of a garnishment proceeding, courts sitting in this state have held that a court presiding over a writ of garnishment must not only have personal jurisdiction over the garnishee, but also jurisdiction over the property or “res”. that is the subject of the writ of garnishment. See *APR Energy, LLC v. Pakistan Power Resources, LLC*, 2009 WL 425975, at * 2 (M.D.Fla.2009); see also, *Harris v. City of Sarasota*, 132 Fla. 568, 181 So. 366, 369 (1938) (holding that “an action quasi in rem requires a seizure of property within the jurisdiction of the court or its equivalent.”); *Dewind v. JP Morgan Chase & Co.*, 2011 WL 6755918, at *2 (N.D.Ga.2011) (holding that in a quasi in rem action a district court does not have jurisdiction over the res when that property is not physically within the same state, as the court) (citing *Hanson v. Denckla*, 357 U.S. 235, 249, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). While personal jurisdiction may be waived, “in rem jurisdiction is a very special type of necessary judicial subject matter jurisdiction” under Florida law— one that cannot be waived. *Center Capital *1340 Corp. v. Gulfstream Crane, LLC*, 2009 WL 4909430, at *7 (S.D.Fla.2009) (internal quotation marks and citations omitted) (holding that “a party cannot waive in rem jurisdiction under Florida law, and a court proceeding pursuant to in rem jurisdiction must actually possess in rem jurisdiction over the property that is the subject of the matter”).

In keeping with these jurisdictional rules, the only two decisions to address the question that was posed by this Court have held that where, as here, a plaintiff serves a writ of garnishment seeking to attach bank accounts located outside the state of Florida, the court lacks jurisdiction over the property and the writ must be dissolved. *APR Energy*, 2009 WL 425975, at * 2 (dissolving writ of garnishment); *Skulas v. Loiselle*, 2010 WL 1790439, at *3 (S.D.Fla.2010) (dissolving a garnishment writ upon finding that “because the bank account at issue [wa]s located in Pennsylvania, the Court [did] not have jurisdiction

over it”), report and recommendation adopted, 2010 WL 1790433 (S.D.Fla.2010).^[6] As just noted, in APR Energy, the court confronted precisely the jurisdictional issue before this Court and dissolved a writ of garnishment which sought, like the writs here, to garnish a bank account located outside the state. The court reasoned that dissolution of the writ was required because the court lacked “jurisdiction over the property to be garnished, in this case, the bank account.” 2009 WL 425975, at *2. In Skulas, the court relied on APR Energy’s reasoning and reached exactly the same result, dissolving a writ of garnishment directed at an out-of-state account and reasoning that, “because the bank account at issue is located in Pennsylvania, the Court does not have jurisdiction over it and the instant Writ of Garnishment should be dissolved.” 2010 WL 1790439, at *3.

Although Plaintiffs criticize APR Energy and Skulas as “wrongly decided” (Dkt. 1029, p. 13), neither decision has been overruled, and both are consistent with the Florida garnishment statutes and the rules of construction that apply in interpreting them. “Florida law requires garnishment statutes to be strictly construed.” *Bernal v. All American Inv. Realty, Inc.*, 2009 WL 586010, at *4 (S.D.Fla.2009) (citing *Gigliotti Contracting N., Inc. v. Traffic Control Prods. of N. Florida, Inc.*, 788 So.2d 1013, 1016 (Fla.Dist.Ct.App.2001)); accord, *Williams v. Espirito Santo Bank of Florida*, 656 So.2d 212, 213 (Fla.Dist.Ct.App.1995) (“It is fundamental that garnishment statutes must be strictly construed.”). Here, nothing in the language of the Florida garnishment statutes suggests that they were intended to have extraterritorial application. Interpreting a garnishment statute to apply to bank accounts located outside the state despite the absence of any explicit statutory language to that effect would violate this principle of strict construction. Cf. *GM Gold & Diamonds, LP*, 489 F.Supp.2d 725, 728-29 (S.D.Tex.2007) (“The statutes are silent on the issue of extraterritoriality, and the court should not infer any such unexpressed intent on behalf of the legislature. As Texas courts have suggested, and other state courts have held, the remedy of attachment has a well-defined territorial limit, and the court sees no reason to depart from this approach.”).^[7]

***1341** The Court agrees with the Garnishees’ memoranda that- nothing in the language or structure of the Florida garnishment statutes demonstrates that they were intended to apply to bank accounts located outside the state of Florida. Although Plaintiffs assert that there is a “tidal wave of authority” (see Dkt. 1029, p.14) supporting their position, none of the authorities they cite is on point. Plaintiffs rely on three cases (one -from the Eleventh Circuit and two from the “former Fifth Circuit”) to argue that this Court does have jurisdiction over accounts held outside of Florida where there is an “interface” between, in rem and in personam jurisdiction. See *United States v. One Lear Jet Aircraft*, 836 F.2d 1571 (11th Cir.1988); *Inland Credit Corp. v. M/T Bow Egret*, 552 F.2d 1148 (5th Cir.1977); *Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel* 569 F.2d 330 (5th Cir.1978). However,- these cases are distinguishable in several respects, most particularly that they are each admiralty cases and were not decided in the context - of & garnishment proceeding. In each of the former Fifth Circuit cases, the Court found that it had jurisdiction because a party that had consented to the in personam jurisdiction of the Court was either a claimant to the res in question or was the plaintiff that had consented to the jurisdiction of the court. *Treasure Salvors*, 569 F.2d at 335 (party was not a neutral stakeholder, but was a claimant to the res in question); *Inland Credit*, 552 F.2d at 1152 (party resisting appellate jurisdiction was plaintiff in district court and filed suit both in rem and in personam). In contrast, here, all of the Garnishees are disinterested stakeholders only. They do not claim any right to the funds in question, have not themselves invoked the jurisdiction of this Court, and have not- filed any claims seeking affirmative relief.

The “interface” between in rem and in personam jurisdiction that is required pursuant to the cases advanced by Plaintiff simply is not present here. In each of those cases, the plaintiff had asserted both in personam claims against the defendant, as well as in rem claims against a property. 1 *One Lear Jet Aircraft*, 836 F.2d 1571; *Inland Credit*, 552 F.2d 1148; *Treasure Salvors*, 569 F.2d at 334-35. Here, Plaintiffs assert no in personam claims — that is, they do not allege any cause of action personally that is unrelated to the res. In fact, one of the cases relied on by Plaintiffs to establish jurisdiction held that the Florida court did “not have in personam jurisdiction over the parties because the action was solely in rem.” *One Lear Jet*, 836 F.2d at 1577. There is no “interface” between in rem and in personam jurisdiction here. Therefore, despite Plaintiffs contention that “numerous” cases support the Court’s possession of in rem jurisdiction over accounts outside of Florida, the reality is that only two cases are directly on point — *APE Energy, LLC and Skulas*— and both compel the conclusion that no in rem jurisdiction exists over blocked accounts that are outside the State of Florida, even assuming this court has personal jurisdiction over the banks. See also *Wirt Franklin Petroleum Corp. v. Gruen*, 139 F.2d 659, 660 (5th Cir.1944) (stating that “[g]arnishment is in the nature of a proceeding in rem, as to which the situs of the res is generally determinative for purposes of jurisdiction.”) (footnote omitted).

Furthermore, *APR Energy, LLC and Skulas* are consistent with two recent Florida appellate decisions. In *Sargeant v. Al-Saleh*, 137 So.3d 432, 434 (Fla.Dist.Ct.App.2014), the court accepted the debtors’ argument “that Chapter 56, Florida Statutes, does not apply extraterritorially and that in order, to execute the judgment against their foreign assets the creditor must proceed under the laws of the foreign jurisdiction where the stock certificates are held” and rejected the creditor’s argument “that the trial court had authority to compel the turnover of the stock certificates by virtue of its in personam jurisdiction over the debtors.” ■ The court, in line with the debtors’ argument, observed that “Florida courts do not have in rem or quasi in rem jurisdiction over foreign property.” 137 So.3d at 434 (citations omitted). Relying on *Sargeant*, the court in *Burns v. State Dep’t of Legal Affairs*, 147 So.3d 95, 97 (Fla.Dist.Ct.App.2014) held that, the trial court in a forfeiture proceeding lacked subject matter jurisdiction over bank accounts located in foreign jurisdictions. Thus, these two cases fortify this Court’s jurisdictional conclusion that under Florida law it lacks subject matter jurisdiction to issue writs of garnishment, seeking to garnish funds held in bank accounts in jurisdictions outside the territorial limits of the State of Florida.

Finally, contrary to the, Plaintiffs’ argument, the Court finds no conflict between the TRIA and interpreting the- Florida garnishment statutes to extend only to property within the state, because such an interpretation does not prevent judgment creditors from attaching blocked assets of terrorist parties to satisfy judgments in terrorism cases — the object of the TRIA. Such assets will continue to be available to judgment creditors, provided that enforcement proceedings are commenced in the correct jurisdiction. Plaintiffs may seek to attach the blocked accounts, without any jurisdictional objection, by registering their judgment in the district where the property is located pursuant to 28 U.S.C. § 1963 and thereafter by commencing garnishment proceedings, as other similarly situated judgment creditors have done. See *Hausler v. Republic of Cuba*, Case No. 09-22108-CIV-AJ, Agreed Order (S.D.Fla. Oct. 14, 2009) (Dkt. 25) (transferring judgment enforcement proceeding to Southern District of New York by agreement) see also, *Doe v. Ejercito de Liberacion Nacional*, 92 F.Supp.3d 1 (D.P.R.2015) (proceeding in garnishment against funds-- held in a Puerto - Rico bank based on judgment entered in part against the FARC by the United States District Court for the Southern District of Florida, but-registered in the United States District Court for the District of Puerto Rico). In light of the foregoing, all garnishees who are currently

subject to writs of garnishment issued by this Court with respect to funds held in accounts outside the State of Florida, as well as those parties who are contesting garnishment proceedings with respect to those same type of funds, are entitled to have those writs of garnishment dissolved.

ACCORDINGLY, in light of the Court's lack of subject matter jurisdiction to issue writs of garnishment with respect to funds held in bank accounts outside the State of Florida, it is now ORDERED AND ADJUDGED:

1., Claimant Grupo Arosfron Empreendimentos e Participações S.A.'s Motion to Dissolve Writ of Garnishment (Dkt. 1030) is GRANTED. The Writ of Garnishment issued with respect to Deutsche Bank Trust Company Americas (Dkt. 980) is DISSOLVED for lack of jurisdiction.

2. Claimant Golffate -Holdings (Angola) LDA's Motion to Dissolve Writ of Garnishment (Dkt. 1052) is GRANTED. The Writ of Garnishment issued with respect to Commerzbank AG (Dkt. 1000) is DISSOLVED for lack of jurisdiction.

3. The Writ of Garnishment issued with respect to AHLI United Bank UK PLC (Dkt. 902) is DISSOLVED sua sponte for lack of jurisdiction.

4.. The Writ of Garnishment issued with respect to BNP Paribas Dubai (Dkt. 903) is DISSOLVED sua sponte for lack of jurisdiction.

5. The Writ of Garnishment issued with respect to BNP Paribas New York Branch (Dkt. 904) is DISSOLVED sua sponte for lack of jurisdiction.

***1343** 6. The Writ of Garnishment issued with respect to BNP Paribas RCC, Inc., as Agent for BNP Paribas New York Branch (Dkt. 905) is DISSOLVED sua sponte for lack of jurisdiction.

7. The Writ of Garnishment issued with respect to JP Morgan Chase & Co. (Dkt. 906) is DISSOLVED sua sponte for lack of jurisdiction.

8. The Writ of Garnishment issued with respect to The Bank of New York Mellon Corporation (Dkt. 907) is DISSOLVED sua sponte for lack of jurisdiction.

9. The Writ of Garnishment issued with respect to Deutsche Bank Trust Company Americas (Dkt. 909) is DISSOLVED sua sponte for lack of jurisdiction.-

10. The Writ of Garnishment issued with respect to HSBC Bank USA, N.A. (Dkt. 910) is DISSOLVED sua sponte for lack of jurisdiction. . ,

11. The Writ of Garnishment issued with respect to HSBC Bank USA, N.A. (Dkt. 911) is DISSOLVED sua sponte for lack of jurisdiction.

12. The Writ of Garnishment issued with respect to JPMorgan Chase Bank (Dkt. 914) is DISSOLVED sua sponte for lack of jurisdiction.

13. The Writ of Garnishment issued with respect to Standard Chartered Bank (Dkt. 915) is DISSOLVED sua sponte for lack of jurisdiction.

14. The Writ of Garnishment issued with respect to The Bank of New York Mellon (Dkt. 930) is DISSOLVED sua sponte for lack of jurisdiction;

15. The Writ of Garnishment issued with respect to JP Morgan Chase Bank (Dkt. 934) is DISSOLVED sua sponte for lack of jurisdiction.

16. The Writ of Garnishment issued with respect to JP Morgan Chase Bank (Dkt. 935) is DISSOLVED sua sponte for lack of jurisdiction.

17. The Writ of Garnishment issued with respect to JP Morgan Chase Bank (Dkt. 936) ;is DISSOLVED sua sponte for lack of jurisdiction. .

18. The. Writ of Garnishment issued with respect to Commerzbank AG (Dkt. 1001) is DISSOLVED for lack of jurisdiction.

19. Plaintiffs'. Motions for TRIA Turnover Judgments (Dkts. 983, 984, 991, 992, and 993) are all DENIED AS MOOT inasmuch as they relate to Writs that, have now been dissolved due to the Court's lack of subject matter jurisdiction.

20. Claimants Kassim Tajideen, Grupo Arosffan Empreendimentos E Participa-coes SARL, and Ovias Trading, S.A.'s Motion to Dissolve Writs of Garnishment (Dkt. 961), which is based on arguments other than lack of subject matter jurisdiction, is DENIED AS MOOT inasmuch as the corresponding Writs have now been dissolved above due to. the Court's lack of jurisdiction.

DONE AND ORDERED at Tampa, Florida, on July 22, 2015.

Footnotes

1 This rule governs the enforcement of a money judgment by way of execution and provides in pertinent part that "[t]he procedure on execution — and in proceedings supplementary to and in aid of judgment or execution — must accord with the procedure of the state where the court is located, ..."

2 See *Stansell v. Revolutionary Armed Forces of Colombia*, 704 F.3d 910 (11th Cir.2013) and *Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713 (11th Cir.2014).

3 Claimants' response seeks to supplement their pending Motion to Dissolve Writs of Garnishment and Memorandum of Law (Dkt, 961) with the additional argument that Florida's garnishment statutes have no extraterritorial effect.

4 In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decision of the Fifth Circuit issued prior to October 1, 1981.

5 See also *GM Gold & Diamonds, LP v. Fabrege Co., Inc.*, 489 F.Supp.2d 725, 727 (S.D.Tex.2007) (noting that attachment orders may reach only as far as'the court's in rem jurisdiction).

6 See also *Baker v. Bennett*, 644 So.2d 901, 903 (Ala. 1994) ("Assets not within the jurisdiction of a court issuing a garnishment and not capable of being levied on cannot be reached by the garnishment.").

7 See also, e.g., *In re Curtina Int'l*, 15 B.R. 993, 998 (Bankr.S.D.N.Y.1981) (holding that the attachment statute, which did not expressly reach property beyond territorial limits of state, would not be construed to apply to property outside state).