

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

T & H BAIL BONDS, INC.,)	
<i>et al.</i> ,)	
)	
Plaintiffs (Judgment Creditor),)	Superior Court
)	C.A. No. N14J-01-761 (BVM)
)	
)	Court of Chancery,
)	Judgment No. 55343439
PREFERRED INVESTMENT)	
SERVICES, INC.,)	
and EDWIN SWAN)	
)	
Defendant (Judgment Debtor).)	
)	

Submitted: December 10, 2015
Decided: January 4, 2016

ORDER

Before the Court is a letter dated December 10, 2015, from counsel for Preferred Investment Services, Inc., (PISI or Judgment Debtor) renewing its request that this Court quash the *fieri facias* writs of attachment filed by T & H Bail Bonds, *et al.*, (Judgment Creditor) and served upon various bail bond agents whose cash bails were financed by PISI. Having reviewed all of the prior pleadings and exhibits in this matter, the Court holds as follows:

(1) The history of the underlying litigation in this matter has been previously detailed and need not be repeated here. For additional background, see the Court's September 1, 2015 Order in this matter, holding that Judgment Creditor could not attach bail proceeds held by the Prothonotary after exoneration of the bail conditions.¹

(2) On December 10, 2015, in further attempt to execute on the original Court of Chancery judgment, Judgment Creditor filed fourteen different *feri facias* writs of attachment.² All of these writs (except one) were directed to various bail bond agents whose cash bails were allegedly financed by PISI. Presumably, each of these bail agents may have in his or her possession proceeds from cash bails not yet remitted to, and therefore property of, PISI. The remaining writ was directed against Preferred Tax Services, Inc., a company also owned by Judgment Debtor Edwin Swan, to which he has pleaded *nulla bona*.³

¹ D.I. #124.

² D.I. #140 – 152.

³ D.I. #153.

(3) A *fiery facias* writ of attachment is governed by 10 *Del. C.* §5031.⁴ The purpose of this writ is to execute upon a judgment debtor's property that is not in his physical possession, but in that of another.⁵ As explained:

“[The] execution process requires the sheriff to attach the defendant by all his goods and chattels, rights and credits, lands and tenements in whose hands or possession, soever, the same may be found. Thus, when the property attached is not to be physically seized, but is in the possession or control of another, or if the thing to be attached is not such property as is susceptible of seizure, such as rights and credits, the sheriff must summon the person who has the goods, chattels, rights, credits, money or effects of the defendant in his possession, who is termed the garnishee, to appear at the court to which the writ is returnable, and declare what property of the defendant he has in his hands. Significantly, the writ of attachment *fi. fa.* is not served upon the defendant, but upon the garnishee.”⁶

(4) In its December 10, 2015 letter, PISI moved this Court to quash the writs of attachments served on the various bail agents “on the grounds that those agents held the funds in trust.” PISI’s letter references the arguments it originally made in this regard in its July 2, 2014, Motion to Quash. Judgment Creditor, in his July 14, 2014 Response, argued that no such fiduciary relationship exists and that

⁴ Title 10 *Del. C.* § 5031: “The plaintiff in any judgment in a court of record, or any person for him lawfully authorized, may cause an attachment, as well as any other execution, to be issued thereon, containing an order for the summoning of garnishees, to be proceeded upon and returned as in cases of foreign attachment. The attachment, condemnation, or judgment thereof, shall be pleadable in bar by the garnishee in any action against him at the suit of the defendant in an attachment....”

⁵ 2 *V. Woolley*, Practice in Civil Actions and Proceedings in the Law Courts of the State of Delaware § 1152 (1906).

⁶ *Wilmington Trust v. Barron*, 470 A.2d 257, 262-263 (Del. 1983) (internal citations omitted).

the attachments are proper.⁷ Judgment Creditor argued that the relationship between the bail agents and PISI was that of a financier, not a fiduciary. Judgment Creditor noted that the financing agreements were governed by contract and that the bail agents lacked the authority to alter the nature of the relationship.⁸

(5) In its July 2, 2014 motion, PISI conceded that “[Judgment Creditor] may attach any premiums or income that is due to PISI, but the majority of the funds referenced in [the] attachments are not subject to attachment under Delaware law.” It is unclear to the Court the nature of the distinction PISI is attempting to draw. The Court’s understanding of the business relationship between PISI and the bail agents (based on prior pleadings and hearings in this matter⁹) is that in exchange for a set fee paid by the bail agent, PISI would supply the necessary cash (in the form of cashier’s checks) to the bail agent who then actually posted the money with the court as bond. Upon exoneration of the bail conditions, the money was then picked-up by the agent from the court and returned to PISI. If the bail was forfeited for some reason, the loss was shared equally between the agent and

⁷ See D.I. #6, Judgment Creditor’s Response, at ¶ 6 – 9.

⁸ In support of its positions, Judgment Creditor cites to a Complaint PISI previously filed in the Superior Court in an unrelated case against Fast Bail Bonds, L.L.C., a company whose cash bails it had also financed. In the Complaint, PISI cited to the finance contract language that “Fast Bail agreed that all Bail Cash would remain the sole property of PISI.” See Judgment Creditor’s Response at Footnote 10.

⁹ See also Judgment Creditor’s Response, July 14, 2014 at ¶ 3 – 4.

PISI.¹⁰ Exactly what would constitute “premiums or income” in this relationship was left unexplained by PISI.

(6) PISI states that “[a]lthough corporations are subject to attachment ... banks, trust companies, savings institutions and loan associations are not subject to attachment.”¹¹ Based upon this assertion, PISI seeks to avoid attachment of any refunded bail proceeds (cash bail in the hands of the agent but not yet returned to PISI) and argues that the money is actually only held by the bail agents for PISI “in trust” as a fiduciary. PISI cites no facts to support this argument. Rather, PISI merely assert that the bail agents and PISI “share a common interest” and are “bound by contract to act in the interest of PISI... .”¹²

(7) Delaware law regarding what constitutes a fiduciary relationship is well defined. The Delaware Supreme Court has explained that “the concept of a fiduciary relationship, which derives from the law of trusts, is more aptly applied in legal relationships where the interests of the fiduciary and the beneficiary incline toward a common goal in which the fiduciary is *required* to pursue solely in the

¹⁰ See also *Preferred Investment Services, Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992 (Del.Ch. July 24, 2013); *aff'd Preferred Inv. Services, Inc. v. T & H Bail Bond, Inc.*, 2015 WL 258527 (Del. January 21, 2015).

¹¹ PISI Motion to Quash, July 2, 2014, at ¶5.

¹² *Id.*

interests of the beneficiary of the property.”¹³ A fiduciary relationship exists only where the goals of the parties are “perfectly aligned.”¹⁴ Furthermore, the Delaware Supreme Court has warned that “it is vitally important that the exacting standards of fiduciary duties not be extended to quotidian commercial relationships.”¹⁵

(8) PISI cites *Stasch v. Underwater Works, Inc.*, 158 A.2d 809 (Del. Super. 1960) in support of its position that no attachable interest in the bail proceeds exists. PISI offered the following parenthetical explanation for *Stasch*: “(holding that property in possession of a judgment debtor that is owned by another is not subject to attachment).”¹⁶ While that statement is legally correct, it is inapplicable to the facts here. In *Stasch*, the Superior Court granted the judgment debtor defendant’s motion to quash a writ of attachment for a foreign debt. Plaintiff judgment creditor sought to attach property then being salvaged by defendant under a contract with the United States Government. The terms of the contract stated that title to the recovered items did not vest until the work was completed. At the time the writ was filed work was still on-going, thus the terms of the

¹³ See *Crosse v. BCBSD, Inc.*, 836 A.2d 492, 495 (Del. 2003) (quoting *Corrado Bros. v. Twin City Fire Ins. Co.*, 562 A.2d 1188, 1193 (Del. 1989)) (emphasis added).

¹⁴ *Id.*

¹⁵ *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 901 A.2d 106, 113-114 (Del. 2006) (internal quotations omitted).

¹⁶ *Id.*

contract had yet to be completed. Therefore, the court in *Stasch* held “that the salvage material ... could not have been levied upon by a Writ of Foreign Attachment for the reason that no attachable interest therein had [yet] vested in the defendant as of the date of attachment.”¹⁷

(9) The facts before the Court in this case are distinguishable from *Stasch*. In this case, the bail proceeds in question, if any such still exist, are in the possession of a third-party garnishee, not judgment debtor who has possession but no legal title—as was the case in *Stasch*. Once the bail agents retrieved the bail proceeds from the court, their only duty was to then return it to PISI in accordance with their agreement. PISI retained legal title to the bail money despite it being temporarily in the hands of the bail agent. As PISI conceded in its motion, a “fieri facias attachment is valid when the garnishee has funds in his hands belonging to the [judgment] debtor for which the [judgment] debtor could bring suit.”¹⁸ In this case, if the bail agents, as putative garnishees, failed to return the money upon exoneration, PISI could then bring suit to force the bail agents to return the money based on a breach of contract claim, or the like. Thus, the exonerated bail money, while property of PISI, is in the hands of another—the very scenario the garnishment statute was intended to address.

¹⁷ *Stasch*, 158 A.2d at 814 (emphasis added).

¹⁸ Judgment Debtor’s Motion to Quash, July 2, 2014 at ¶ 2 (quoting *K-M Auto Supply, Inc. v. Reno*, 236 A.2d 706 (del. 1967) (internal quotations omitted); *Woolley on Delaware Practice*, Vol. II § 1179 (1906).

(10) The record before the Court shows that the interests of the parties, while similar, is not “perfect aligned.” There is nothing to suggest that the bail agents are able to alter the terms upon which the money is used or have any discretion as to what can be done with the money once given to them. PISI has failed to adduce facts sufficient to show that the relationship it had with the various bail agents is fiduciary in nature and that the bail agents are acting as trustees for any unreturned bail proceeds. Aside from an agreed upon allocation of loss, the relationship between PISI and the bail agents was, simply put, nothing more than a loan—a “quotidian commercial relationship” to put it in Supreme Court parlance.

(11) For the reasons stated herein, PISI’s Motion to Quash is DENIED.

/s/ Bradley V. Manning
BRADLEY V. MANNING,
Commissioner

oc: Prothonotary