

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
THE GOVERNOR AND COMPANY OF THE)	
BANK OF SCOTLAND)	
Plaintiff,)	
)	
v.)	C. A. No. 10-328-M
)	
BERNARD WASSERMAN, DAVID)	
WASSERMAN, AND RICHARD)	
WASSERMAN)	
Defendants.)	
_____)	

ORDER

The Plaintiff, the Governor and Company of the Bank of Scotland (“the Bank”), previously prevailed against the Defendants, Bernard Wasserman, Richard Wasserman, and David Wasserman (“the Wassermans”), in a suit for breach of contract and breach of guaranty. *Governor & Co. of Bank of Scotland v. Wasserman*, No. 10-328-M, 2013 WL 941104 (D.R.I. Mar. 5, 2013). Before the Court is the Bank’s Motion for Attachment (ECF No. 65.) Pursuant to Federal Rule of Civil Procedure 69(a)(1), the Bank moves for an order approving a post-judgment attachment against the Wassermans’ entire right, title, or interest in SREC Partners, II, LLC, the IW-MPS 2011 Trust, Richard Wasserman Trust, and the IW-MPS II 2011 Trust. (ECF No. 76 at 1.) The Wassermans filed an initial limited objection to the Bank’s motion asserting that because the assets the Bank seeks to attach are not within the jurisdiction of the State of Rhode Island, the motion is procedurally inappropriate. (ECF No. 71 at 1.) The Wassermans also filed a Supplemental Objection arguing the Bank must follow proper procedure in its post-judgment collection. (ECF No. 75 at 1-2.)

I. BACKGROUND

On August 4, 2010, the Bank filed a complaint against the Wassermans. (ECF No. 65 at 3.) On March 25, 2013, the Court entered judgment for the Bank for £11,061,775.19 together with post-judgment interest at the per-diem rate of £1,431.57 and legal fees and expenses. *Id.* The Bank made written demand for payment of judgment on the Wassermans' counsel, but the Bank did not receive any meaningful response. *Id.* at 4. The Bank then filed a Post-Judgment Motion for Temporary Restraining Order and for Preliminary Injunction. *Id.* Both parties agreed to a stipulated preliminary injunction, which the Court granted. *Id.* The Bank then served Silvertree Propco LLC, Starwood Capital Group LLC, and Starwood Hotels and Resorts Worldwide, Inc. with subpoenas for certain business records. *Id.*

On June 7, 2013, James E. Raved, an attorney for Starwood Capital Group, called Jeffrey E. Francis, an attorney for the Bank, in response to the subpoena and the Stipulated Preliminary Injunction. *Id.* Mr. Raved said the Wassermans had an interest in a joint venture that owed the Silvertree/Snowmass development in Colorado. *Id.* Mr. Raved informed the Banks' counsel that despite the injunction the Starwood Entities could direct its joint venture with the Wassermans to sell, transfer, or otherwise alienate its holdings and would then place any proceeds from the transaction into any interpleader action. *Id.* at 4-5. The Bank's Affidavit of Jeffrey E. Francis supports this conversation. (ECF No. 66.) The Wassermans have submitted nothing to dispute these factual allegations.

II. ANALYSIS

A. Rule 69

Rule 69(a) of the Federal Rules of Civil Procedure lays out the appropriate procedure for enforcing a monetary judgment in federal court. *See Aetna Cas. & Sur. Co. v. Markarian*, 114

F.3d 346, 349 (1st Cir. 1997). The procedure “must accord with the procedure of the state where the court is located.” Fed. R. Civ. P. 69. The applicable Rhode Island rule states: “[i]n any action ... where the plaintiff’s claim has been reduced to judgment, the defendant’s assets, including his or her personal estate, may be attached and be subjected to trustee process in the action in which the judgment has been entered.” R.I. Rules Civ. P. 69(e).

In addition to the R.I. Rules of Civil Procedure, R.I. statutory law applies. R.I. Gen. Laws § 10-5-2 states “[a] court having jurisdiction over a defendant or his or her assets, including his or her personal estate or real estate, may authorize a plaintiff to attach the defendant's assets, or any part thereof, after hearing on a motion to attach, notice of which has been given to the defendant as provided in this section.” R.I. Rules Civ. P. 4(m)(3) provides “[t]he motion shall be granted only upon a showing that there is a probability of a judgment being rendered in favor of the plaintiff and that there is a need for furnishing the plaintiff security in the amount sought for satisfaction of such judgment, together with interest and costs.”

The Bank claims it satisfied both requirements for a motion to attach as it already successfully obtained judgment against the Wassermans, so it clearly has a high likelihood of success. (ECF No. 65 at 6.) Additionally, the Bank contends it has a need for security in the amount sought as the litigation was prolonged, the judgment was large, and the Wassermans have failed to respond to the Bank’s demands for payment. *Id.* The Bank also claims the Wassermans have failed to respond to the Bank’s post-judgment requests for production of documents and interrogatories. (ECF No. 73 at 3.) The Wassermans agree the Bank has the right to seek execution pursuant to Rule 69 of the Federal Rules of Civil Procedure, but they contend in their limited objection that the Bank’s Motion for Attachment is an incorrect process

to attach or execute on the Wassermans' assets because it seeks to attach property not located within this jurisdiction. (ECF No. 71 at 1.)

Here, Rhode Island law governs the procedure because neither party claims any federal statute is applicable. *See Estates of Ungar ex rel. Strachman v. Palestinian Auth.*, 715 F. Supp. 2d 253, 259 (D.R.I. 2010). Since Rhode Island law governs the procedure, the Bank may attach the Wassermans' assets pursuant to Rule 69(e) of the Rhode Island Rules of Civil Procedure.

B. Jurisdiction of Assets

“A court having jurisdiction over a defendant may authorize a plaintiff to attach the defendant's assets after hearing” on a motion to attach. *Pbs., Inc., v. Long*, No. 89-1705, 1994 WL 931005, at *3 (R.I. Super. Dec. 5, 1994) (citing R.I. Gen. Laws § 10-5-2). If the Defendants are subject to the Court's jurisdiction, the Court has the authority to enter an order for attachment and it is immaterial whether the Defendants or their assets have ever even been “physically present” in Rhode Island. *Estates of Ungar ex rel. Strachman*, 715 F. Supp. 2d at 264. Overall, the Court has “broad power... to compel or prohibit actions by defendants who are subject to jurisdiction in this state.” *Id.* at 263; *see also Matarese v. Calise*, 111 R.I. 551, 305 (1973).

Here, the Wassermans contend Rule 69 of the Federal Rules of Civil Procedure makes clear that the Bank must make its motion in the state where the asset is located, and they argue all of the assets the Bank seeks to attach are located outside of Rhode Island. (ECF No. 71 at 1.) The Bank argues that even if the Wasserman's assets were located elsewhere, this would not shield their assets from attachment by this Court. (ECF No. 73 at 1.)

Since the Wassermans are subject to the Court's jurisdiction, the Court has jurisdiction over their assets. The Court has the authority to enter an order for attachment, and it does not matter if the assets of a person over whom it has jurisdiction are not present in Rhode Island.

C. Appropriate Procedure for Attachments

The Bank must follow the appropriate procedure as laid out by R.I. Rule of Civil Procedure 69. Because allowing a Plaintiff to seize certain interests outright may seriously disrupt an on-going business, limitations may be imposed on the remedy, but the mere potential for such problems “is no reason to bar” post judgment enforcement remedies. *Tilcon Capaldi, Inc. v. Feldman*, 249 F.3d 54, 61 (1st Cir. 2001). Additionally, “[w]here the creditor's interest has been adjudicated, and a favorable judgment entered, it is reasonable that the creditor's right to collect in the most effective way should be given great weight.” *Dionne v. Bouley*, 757 F.2d 1344, 1352 (1st Cir. 1985). Rule 69(a) of the Federal Rules of Civil Procedure instructs the Court to follow Rhode Island procedure for attachments. Rhode Island allows the Court to attach any of the Defendant’s assets, including the Defendant’s personal estate. R.I. Rules Civ. P. 69(e).

The Wassermans contend the assets in question contain restrictive covenants, and the Wassermans are concerned that the value of these interests be disposed in accordance with those covenants. (ECF No. 71 at 2.) The Bank claims the Wassermans’ concerns regarding compliance with the restrictive covenants are “irrelevant” because the attachment would necessarily be conducted in accordance with all legally enforceable covenants. (ECF No. 73 at 3.)

The Wassermans additionally argue that a creditor may only attach any asset that is not exempted by statutory provision R.I. Gen. Laws 9-28-1. (ECF No. 75 at 1.) The exemptions, the Wassermans argue, are determined by the state statutes where each defendant is a resident. *Id.* at 3. Therefore, they argue Rhode Island exemptions would apply to Richard Wasserman, Florida exemptions to Bernard Wasserman, and New York exemptions to David Wasserman. *Id.*

However, Rule 69 of the Federal Rules of Civil Procedure states the procedure used must be in accord only with the procedure of the state where the Court is located, so in this case, only Rhode Island statutory exemptions apply.

In this case, “[o]nce the attachment is made, removing the possibility that the debtor will secrete his assets, the debtor must receive and be notified of a timely opportunity to challenge any sequestration of his property which the law makes unattachable.” *Dionne*, 757 F.2d at 1352. Therefore, prior to sequestration of the property, the Bank must follow the appropriate procedure, set out in R.I. Rules of Procedure 69 and R.I. Gen. Laws 9-28-1. This procedure necessitates notice to the Defendants and a hearing on any claim for exemption. R.I. Rules Civ. P. 69(e).

III. CONCLUSION

The Court finds that there is a need to provide the Plaintiff security in the amount sought for satisfaction of the judgment. Therefore, the Bank’s Motion for Attachment (ECF No. 65) is GRANTED. The Bank shall submit the appropriate form(s) of order.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.
United States District Judge

August 1, 2013