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Attachment and Garnishment of the Contents of Safe Deposit Boxes - Cartier, Ltd. V. Cammack

ATTACHMENT AND GARNISHMENT OF THE CONTENTS OF SAFE DEPOSIT BOXES

Cartier, Ltd. v. Cammack[1]

An attachment in the Superior Court of Baltimore City was laid in the hands of a local banking corporation, as garnishee, on original process against a non-resident debtor. The garnishee pleaded that it had in its hands only eighteen cents to the credit of the defendant, and also that the defendant had leased a safe deposit box in its vaults, but that the bank had no knowledge of its contents nor any proper way of determining what they were. Then upon petition by the plaintiffs the garnishee bank was required to show cause why an order should not be passed directing the sheriff to enter the safe deposit box and take possession of the contents, the garnishee filed a pleading acquiescing in whatever order the Court should make. It was held, that the contents of the safe deposit box are subject to garnishment and ordered, that the sheriff open it and take possession of all attachable property belonging to the defendant.

This appears to be the first time[2] any court of Maryland has been presented with the question of the attachability of the contents of a safe deposit box, but several other states have considered the question and most of them have ruled as the Maryland court did. As will be seen, it makes a difference if the creditor tries to reach the debtor's property by direct attachment or through the help of the bank as garnishee.

The subject has attracted the attention of many writers,[3] because a nice question of personal property law is presented when the contents of the box are attempted to be reached by garnishment. Are the contents of the box in the possession of the garnishee?[4] The familiar situation in which the patron has one key and the bank the other, both

[1] Daily Record, Dec. 2, 1952.

[2] In DeBearn v. Winans, 119 Md. 390, 86 A. 1044 (1913), the writ of attachment was laid in the hands of the debtor's surety, who in answer to interrogatories had described the securities of the debtor held by the surety in a safe deposit box. It was held that this was a sufficient attachment. The present discussion is concerned with an actual taking of possession under a writ of attachment directed either *in personam* to the bank as garnishee or *in rem* to the sheriff against the contents of a safe deposit box.

[3] 15 Banking L. J. 559 (1898); 21 Boston U. L. Rev. 528 (1941); 73 Law J. 443 (1932); 10 Mich. L. Rev. 651 (1912); 7 Va. L. Rev. 204 (1920); and others cited in the following notes.

[4] Md. Code (1951), Art. 9, Secs. 10, 15, 16 and 30, use the words "in the hands of", "in his possession or charge", "in his hands" and "in whose hands", respectively.

of which are required to release the lock, makes it difficult to say who has possession. Two states have ruled firmly against garnishment solely upon the ground that the contents of a safe deposit box are not "in the hands of" the bank.[5] This conclusion seems questionable in view of the fact that the bank can and does drill through the tumblers for the patron who has lost his key and for the bank itself when the patron is in arrears in payment for the use of the box.

Several courts have allowed garnishment on the ground that the bank has possession, without discussing the limitations on that possession which have concerned other courts.[6] The North Dakota court refused to consider the problem as involving possession of the contents but held that it was enough that the property inside the box belonged to the debtor.[7]

Usually the decisions in the attachment cases have been made on the basis of the legal relationship between bank and patron previously determined in suits to recover from the bank the value of property alleged to have been stolen from the box. When in this situation the court has declared the bank to be a lessor and has consequently refused recovery to a plaintiff patron, it has followed that declared relationship into the attachment cases and refused garnishment, for of course a lessor does not have possession of the leased premises.[8] However, the great weight of authority is that the transaction is a bailment for hire: the bailor patron can recover from the bailee bank, and attachment

[5] Medlyn v. Ananieff, 126 Conn. 169, 10 A. 2d 367 (1939), discussed in 3 U. Detroit L. J. 218-20 (1940), and People v. Mercantile Safe Deposit Company, 159 App. Div. 98, 143 N. Y. S. 849 (1913), where the court said that a safe deposit company had no more possession of or control over the securities contained in a safe deposit box than a landlord has over securities in a safe belonging to one of his tenants contained in the private office of the tenant. See other New York cases, *infra*, n. 16, where direct attachment was successful.

[6] Orchard & Wilhelm Co. v. North, 125 Neb. 723, 251 N. W. 895 (1933); Wineman v. Clover Farms Dairy, 168 Miss. 583, 151 So. 749 (1934), noted, 6 Miss. L. J. 438 (1934); Texlite, Inc. v. Liberty State Bank, 150 S. W. 2d 822 (Tex. Civ. App., 1941) (the box was empty); and Blanks v. Radford, 188 S. W. 2d 879 (Tex. Civ. App., 1945).

[7] O'Connor v. McManus, 71 N. D. 88, 299 N. W. 22, 24 (1941), where the court, saying, "It is inconceivable that the law would permit a judgment debtor to convert his assets into bonds and stocks and even currency, sequester them in a safety deposit box, and laugh at the sheriff . . ." refused to consider who had possession, and held that it is enough that the contents of the box belong to the debtor. It should be emphasized that the creditor was proceeding by garnishment.

[8] Dupont v. Moore, 86 N. H. 254, 166 A. 417 (1933); Tow v. Evans, 194 Ga. 160, 20 S. E. 2d 922 (1942); Wells v. Cole, 194 Minn. 275, 260 N. W. 520 (1935), noted, 19 Minn. L. Rev. 810 (1935), 3 U. Chicago L. Rev. 147 (1935), 21 Cornell L. Q. 325 (1936), and 21 Iowa L. Rev. 641 (1936).

through garnishment of the bank is lawful,[9] a creditor of a bailor having the legal right to terminate the bailment. A firm exception is Pennsylvania, which because of the wording of its attachment statute will not allow either direct attachment or garnishment,[10] although it long ago decided that the contents of a safe deposit box are held by the bank as bailee. The Illinois cases are inconclusive.[11] Michigan was listed by the Maryland court as having ruled against garnishment, but because of strong *dicta* in the Michigan opinion there would seem to be a great possibility that there will be an affirmative decision when a proper case is presented.[12]

The tendency of the more recent opinions is to follow broad principles rather than to base the holding on the status of the bank as bailee. The Maryland court declared:

> ". . . it is hardly in accord with justice that a non-resident or absconding debtor should, by the simple device of hiding property in a safe deposit box, be able to evade the claims of his creditors, when such property

[9] Trowbridge v. Spinning, 23 Wash. 48, 62 P. 125 (1900); Washington Loan & Trust Co. v. Susquehanna Coal Co., 26 App. D. C. 149 (1905); Tillinghast v. Johnson, 34 R. I. 136, 82 A. 788 (1912), noted, 10 Mich. L. Rev. 651 (1912); West Cache Sugar Co. v. Hendrickson, 56 Utah 327, 190 P. 946, 11 A. L. R. 216 (1920); Rabiste v. Southern, 300 Mo. 417, 254 S. W. 166 (1923); and Farmers' Savings Bank v. Roth, 195 Ia. 185, 191 N. W. 987 (1923).

[10] Trainer v. Saunders, 250 Pa. 451, 113 A. 681, 19 A. L. R. 861 (1921), although frequently cited in support of attachment, was an execution on *fi. fa.* The court has not deviated from its position taken in Gregg v. Hilson, 8 Phila. Rep. 91 (Pa., 1871), that the contents of a safe deposit box cannot be attached under the Pennsylvania statute, either directly or by garnishment. Pennsylvania is solicitous of its bankers; 70 U. Pa. L. Rev. 112 (1922), in discussing the Trainer case raised the question of the protection of the bailee bank's interest in the attached property and insisted that only the bailor's reversionary interest should be subjected to the creditor's demand. See the interesting decision in Williams v. Ricca, 324 Pa. 33, 187 A. 722 (1936), where attachment by garnishment was stopped upon a rule by the debtor upon the garnishee to show cause, but before the debtor could open the box, the creditor had a *fi. fa.* issued, and prevailed. The result depended on the wording of the statutes involved.

[11] National Safe Deposit Co. v. Stead, 250 Ill. 584, 95 N. E. 973 (1911), aff'd. 232 U. S. 58 (1914), was cited by the Maryland court in the instant case in support of its decision, but it merely upheld an Illinois statute requiring the sealing of safe deposit boxes for a limited time after the death of the patron. In Morris v. Beatty, 390 Ill. 568, 62 N. E. 2d 478 (1945), the court avoided ruling directly on the question, but because it held the garnishee not liable to creditors for allowing the debtor access to the box, possibly Illinois must be considered *contra*. See 4 John Marshall L. Q. 535 (1939). The Morris case is discussed in 23 Chicago-Kent L. Rev. 182 (1945), and 24, *ibid.*, 196 (1946), and also in 43 Mich. L. Rev. 792 (1945).

[12] First National Bank in Mt. Clemens v. Croman, 288 Mich. 370, 284 N. W. 912 (1939). The contents of the box were assumed to be garnishable on the basis of some of the cases herein cited, but the proceedings were defective because of the lack of a necessary party, *i.e.* — one of the box holders.

> is of a kind which, if outside the box or in the hands of proper garnishees, would clearly be subject to execution."[13]

The Court in passing mentioned that in Maryland the bank has been held to be a bailee[14] of the contents of a safe deposit box, and it is perhaps worthy of note that it is only when dealing with the familiar bailment situation that the courts have felt free to base their decisions on the high ground of abstract justice; this tendency has not been followed in any state that has held the bank to be a lessor of its boxes.

It has been strenuously argued[15] that it is manifestly unfair to place on the bank the duties and liabilities of a garnishee of property of which it knows nothing and with which in the regular course of events it would have nothing to do. Direct attachment of the debtor's property in the safe deposit box would not only relieve the bank of this unwanted responsibility but would also avoid the hazards to garnishment as outlined above. New York and Mississippi have ruled in favor of direct attachment.[16] That it has been so seldom attempted is probably a consequence of the necessity of serving interrogatories on the bank in the first place to discover what credits of the debtor are there available for attachment and of garnishing the bank to reach the debtor's account.[17] There seems to be no compelling reason why direct attachment should be unavailable to a creditor,[18] unless a court should find that it lacks power

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[13] Daily Record, Dec. 2, 1952.

[14] Security Storage Co. v. Martin, 144 Md. 536, 125 A. 449 (1924); Takoma Park Bank v. Abbott, 179 Md. 249, 19 A. 2d 169 (1941).

[15] 22 Yale L. J. 416 (1913).

[16] Carples v. Cumberland Coal & Iron Co., 240 N. Y. 187, 148 N. E. 185, 39 A. L. R. 1211 (1925), noted, 99 Cent. L. J. 40 (1926), which overrides a lower court decision *contra* in Stehli Silks Corp. v. Diamond, 122 Misc. Rep. 666, 204 N. Y. S. 542 (1924); the Carples case was followed in Central Savings Bank v. Neuville, 56 N. Y. S. 2d 743 (Sup. Ct. N. Y., 1945). Jackson State Nat. Bank v. Polk, 35 So. 2d 430 (Miss., 1948).

[17] Rhynhart, *Attachments in the People's Court of Baltimore City*, 14 Md. L. Rev. 235, 262 (1954), discusses attachment of the contents of a safe deposit box by garnishment and at 266 sets out a plea to be used by the garnishee bank in the case of a box with joint access by the debtor and another.

[18] In De Bearn v. De Bearn, 119 Md. 418, 84 A. 1049 (1913), a case that grew out of the same set of facts as in De Bearn v. Winans, *supra*, n. 2, 425, the court stated:

> ". . . of course the sheriff could not have broken into the vaults of the Safe Deposit Co. in order to levy on (the bonds)." Parenthetical material supplied.

This is pure *dictum*, and the court gave no reason for making this observation; furthermore, the court in the instant case ordered the sheriff to do this very breaking.

to direct its officer to open the box in the vaults of the bank or that the attachment statutes will not permit this remedy.

It must be remembered that attachment and procedures in aid thereof are purely statutory. Article 9 of Flack's 1951 Annotated Code of Maryland is the comprehensive authority for attachment in Maryland. In 1951, a new section of Article 11, Banks and Trust Companies, was enacted, which seems to permit attachment of the contents of safe deposit boxes.

> "No banking institution doing business in this State shall be required to recognize, or take any action with respect to, any claim to a deposit or to money or property in its hands or contained in a safe deposit box, adverse to the interests of any person, corporation or other legal entity, appearing on its records as entitled to receive from it such deposit, money or property or a part thereof, except that if there is served upon such banking institution a restraining order, injunction, attachment, garnishment, order to show cause, or other order, or decree, issued or entered by a court in this State in an action, to which the adverse claimant is a party, involving a claim to the whole or a part of such deposit, money, or property, then such institution may, or to the extent required thereby shall, impound and withhold all or any part of such deposit, money, or property subject to further order of the Court and without any liability on its part to anyone for so doing."[19]

This section seems to lay greater duties upon the bank than were laid upon it by the court in the instant case, where the order was issued to the sheriff to open the box and take custody of the contents subject to further order, even though the attachment had been laid in the hands of the bank as garnishee. It should be noted that the clause freeing the bank of liability "to anyone for so doing" may not be quite so broad as it seems. What if the patron has placed in his box the valuables of another? Will the bank be protected if it impounds them?

Does this section cover direct attachment? A writ of attachment commands the sheriff to seize the goods and keep them, whereas this statute seems to contemplate that the bank do these things if there is served upon it "an

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[19] Md. Code (1951), Art. 11, Sec. 103.

attachment". Possibly, with the convenience and practicality of garnishment, this question need not come up in Maryland, but if it does, it would seem to be necessary to decide if under the provisions of Article 9 rather than of the above section of Article 11.