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Summary of Rock Bay, LLC v. Dist. Ct., 129 Nev. Adv. Op. 21

Katelyn J. Cantu
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POST-JUDGMENT DISCOVERY OF NONPARTY ASSETS UNDER NRCP 69(a)

Summary

This is an original petition for a writ of prohibition challenging district court orders refusing to quash subpoenas as to Petitioners Rock Bay, LLC and Maybourne, a Nevada Corporation.

Disposition/Outcome

The Court granted Maybourne's petition but denied Rock Bay, LLC's. The discovery of a nonparty's assets under Nevada Rule of Civil Procedure 69(a)² is not permissible absent special circumstances, which include those circumstances in which the relationship between the judgment debtor and the nonparty raises reasonable suspicion as to the good faith of asset transfers between the two, or in which the nonparty is the alter ego of the judgment debtor.

Facts and Procedural History

This case arises out of Florida judgments in favor of Redwood Recovery Services, LLC, and Elevenhome Limited (the "Judgment Creditors"), against Jeffrey Kirsch and his various entities (the "Judgment Debtors"). After the parties reached a settlement agreement, Kirsch and the Judgment Debtors' in-house counsel created a new company, Rock Bay, LLC, which was in turn managed by their newly created corporation, Maybourne. Subsequently, a series of monetary transfers occurred between Rock Bay, LLC and the Judgment Debtors.

The Judgment Creditors served a subpoena on McNair & Associates, a Las Vegas accounting firm that performed accounting services for the Judgment Debtors and Petitioners, seeking all records related to Judgment Debtors and Petitioners. Petitioners moved to quash the subpoena on the ground that they were not parties to the underlying litigation. The district court denied the motion, finding that (1) the relationship between Rock Bay and the Judgment Debtors raised reasonable suspicion of good faith as to the asset transfers, and (2) there was a reasonable inference of a relationship between Maybourne and the Debtors.

The Judgment Creditors also subpoenaed Rock Bay's financial records from U.S. Bank. Rock Bay filed a motion to quash the U.S. Bank subpoena or, in the alternative, to limit the scope of discovery to the Debtor's assets. Rock Bay argued that the U.S. Bank subpoena sought highly sensitive financial information that was protected from disclosure. The district court denied the motion for the same reasons that it denied the motion to quash the McNair subpoena and declined to limit the scope of the subpoena because it found that disclosure would not harm Rock Bay. This petition for a writ of prohibition followed.

¹ By Katelyn J Cantu.

² NRCP 69(a) (2012).

Discussion

Justice Hardesty delivered the opinion of the court, sitting as a three-justice panel with Justices Pickering and Saitta, who concurred.

Discovery of Nonparty Assets

The Court first addressed the issue of when discovery of nonparty's assets is permissible under NRCP 69(a). NRCP 69(a) provides that "[i]n aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules." Since NRCP 69(a) is modeled after its federal counterpart, FRCP 69(a)(2), the Court looked to federal case law interpreting the federal statute.

Federal courts recognize that a judgment creditor generally may not inquire into the nonparties' own assets.³ However, because the purpose of post-judgment discovery is to locate the judgment debtor's assets, discovery of a nonparty's assets is permissible if it will lead to discovery of "hidden or concealed assets of the judgment debtor."⁴

Thus, the Court concluded that discovery of a nonparty's assets is permissible in certain limited circumstances. Specifically, these circumstances include a situation "where the relationship between the judgment debtor and the nonparty is sufficient to raise a reasonable doubt about the bona fides of the transfer of assets between them,"⁵ or where the nonparty is the alter ego of the judgment debtor.⁶

Denials of the Motions to Quash

Next, the Court addressed whether there were certain limited circumstances present in Petitioners' case to support the district court's denial of the motions to quash the subpoenas.

The McNair Subpoena

With respect to the McNair subpoena, the Court noted that the district court's conclusion that the relationship between Rock Bay and the Judgment debtors raised suspicion as to the good faith of the asset transfers was supported by sufficient evidence. Specifically, (1) Kirsch reserved the name for Rock Bay in Nevada, (2) money had been transferred between Rock Bay's and the Judgment Debtors' bank accounts, (3) Rock Bay was voluntarily dissolved shortly after the Judgment Creditors registered their judgment in Nevada, (4) Rock Bay was registered as doing business under the name of one of the Judgment Debtor entities, (5) the Judgment Debtors' in-house counsel signed Rock Bay's operating agreement, and (6) Kirsch signed the form listing Maybourne as the managing member of Rock Bay. Accordingly, the Court held that the district court did not exceed its authority over Rock Bay such that a writ of prohibition was warranted as to the McNair subpoena.

³ See *Caisson Corp. v. County West Bldg. Corp.*, 62 F.R.D. 331, 334 (E.D. Pa. 1974).

⁴ *Id.*

⁵ *Magnaleasing, Inc. v. Staten Island Mall*, 76 F.R.D. 559, 562 (S.D.N.Y. 1977).

⁶ *Falicia v. Advanced Tenant Servs., Inc.*, 235 F.R.D. 5, 9 (D.D.C. 2006).

However, there was no evidence that Maybourne ever held or transferred assets with the Judgment Debtors, and the Judgment Creditors never argued or established that Maybourne was the Judgment Debtors' alter ego. Thus the Court held that the district court improperly declined to quash the McNair subpoena as to Maybourne.

The U.S. Bank Subpoena

With respect to the U.S. Bank subpoena, the Court analyzed Rock Bay's argument that the Judgment Creditors impermissibility sought to acquire highly confidential and private financial information. In post-judgment discovery, courts have recognized that a nonparty's privacy interests "must be balanced against the need of the judgment creditor" for the requested information.⁷ The need of a judgment creditor to examine a nonparty's financial records outweighs the nonparty's privacy interest where there are reasonable doubts as to the good faith of the transfer of assets between the nonparty and the judgment debtor, and the judgment creditor is not a competitor of the nonparty.⁸ Disclosure of a nonparty's bank records may be appropriate when there is a "reasonable belief that inspection of the bank records by the [judgment creditor] could lead to the discovery of concealed assets of the judgment debtors."⁹

Here, such a reasonable belief existed. Additionally, because the Judgment Creditors are not competitors of Rock Bay and the requested financial records are relevant and pertain to financial account activity that occurred throughout the underlying litigation, the Court found that no privacy interest would be impacted in a way sufficient to overcome the judgment creditors' interest in discovering any concealed assets. Accordingly, the Court held that the district court did not exceed its authority when it declined to quash the U.S. Bank subpoena.

Conclusion

The Court GRANTED the petition as to Maybourne and DENIED the petition as to Rock Bay.

⁷ Blaw Knox Corp. v. AMR Indus., Inc., 130 F.R.D. 400, 403 (E.D. Wis. 1990).

⁸ Falicia, 235 F.R.D. at 9-10

⁹ *Id.* at 10 (alternation in original).