Volume 9 | Issue 2 Article 14

1964

Equity - Preliminary Injunction - Federal Court Will Not Enjoin Transfer of Taxpayer's Deposit in New York Bank's Branch Office Located Outside United States Where Court Did Not Have Personal Jurisdiction over Taxpayer

Robert M. Schwarts

contended, the state wishes to see successful businesses, why should the courts interfere?

The court upheld the restriction here, but it seems that it did so by faulty logic and improper application of the old rules. Thus, while the case may indicate the court's desire to validate such restrictions, it is submitted that a better means should have been used: the old rules should have been directly overruled or declared inapplicable.

Michael A. Macchiaroli

EQUITY—PRELIMINARY INJUNCTION—FEDERAL COURT WILL NOT ENJOIN TRANSFER OF TAXPAYER'S DEPOSIT IN NEW YORK BANK'S BRANCH OFFICE LOCATED OUTSIDE UNITED STATES WHERE COURT DID NOT HAVE PERSONAL JURISDICTION OVER TAXPAYER.

United States v. First Nat'l City Bank (2d Cir. 1963)

The United States moved for a preliminary injunction in an action involving the income tax liability of a foreign corporation. The complaint named as defendants the delinquent taxpayer, and various banks which were holders of sums for the account of or to the credit of the taxpayer. The complaint demanded that the district court adjudge the taxpayer indebted to the government, find a valid lien existing in favor of the plaintiff on all property or rights to property belonging to the taxpayer, and enjoin the other defendants from in any way transferring or disposing of such property. There was no personal jurisdiction over the foreign taxpayer. The district court granted a preliminary injunction enjoining defendants from transferring or disposing of any property or rights to property held for the taxpayer, whether or not located within the United States.[1] Defendant, First National Bank of New York (hereinafter referred to as Citibank) appealed from the order as it applied to property or rights to property that it held in branch banks outside the United States. Citibank contended that the district court was without jurisdiction to issue a preliminary injunction affecting foreign deposits, since the property was outside the jurisdiction. The Court of Appeals[2] *held* that since the taxpayer's deposit in Citibank's branch was collectible only outside the

1. United States v. Omar, S.A., 210 F. Supp. 773 (S.D.N.Y. 1962).

2. The majority opinion was written by Circuit Judge Moore, joined by Circuit Judge Friendly. Circuit Judge Hays dissented. Affirmed on rehearing.

United States, the foreign deposits were beyond the district court's equity jurisdiction. *United States v. First Nat'l City Bank,* 321 F.2d 14 (2d Cir. 1963).

The enforcement provisions of the Internal Revenue Code of 1954 equip the federal government with several methods of collection from a delinquent taxpayer. At the time assessment is made, a lien arises upon all of the taxpayer's property and rights to property.[3] This lien may be enforced by levying on the property,[4] or by filing an action in the district court to enforce the lien.[5] The effect of the federal taxing statutes is to create a garnishment in which the service of notice provided by statute substitutes for court process which occurs in the ordinary garnishment proceedings.[6] Under the statutes[7] providing for the district court's enforcement of an income tax lien, an action quasi in rem[8] is permissible against named defendants.[9] In an action involving a tax lien, the nature of defendant's right against his debtor must be determined by state law.[10] In the present action, the government attempted to assert a lien on the funds of Citibank which included the taxpayer's deposits in Citibank's branch in Uruguay. Thus the court was faced with the problem of whether accounts in a foreign branch bank are subject to an injunction by process on the principal bank.

Although a branch bank is generally considered the agent of the principal bank, for certain limited purposes branch banks are considered separate entities.[11] The doctrine that branch banks are separate entities received its impetus from an early English decision.[12] That court held that a parent English bank was not subject to garnishment when the debtor had deposits only with branches in Africa. The court reasoned that since the depositor could only be repaid at the branch bank, the debt existed only in Africa, and the property was not within the English jurisdiction. A line of New York decisions has reached a similar conclusion respecting

3. INT. REV. CODE OF 1954, § 6322.
4. INT. REV. CODE OF 1954, § 6331(a).
5. INT. REV. CODE OF 1954, §§ 7402(a), 7403(a).
6. INT. REV. CODE OF 1954, §§ 6321, 6322, 6332(a, b); §§ 6331(a), 6332(b), 7402(a), 7403(a); see United States v. Eiland, 223 F.2d 118 (4th Cir. 1955).
7. INT. REV. CODE OF 1954, §§7402(a), 7403(a).
8. See Harris v. Balk, 198 U.S. 215, 25 S.Ct. 625 (1905), which defined the manner in which a state could constitutionally provide for process where a debt was owed to a resident or nonresident by a resident or nonresident: (1) Personal service must be obtained on the debtor of the defendant within the forum, (2) the situs of the debt is where the debtor may be found, and (3) the defendant could have sued the debtor in the state rendering the judgment.
9. United States v. Balanovski, 236 F.2d 298 (2d Cir. 1956), *cert. denied,* 352 U.S. 968, 77 S.Ct. 357 (1957).
10. See United States v. Bess, 357 U.S. 51, 55, 78 S.Ct. 1054, 1057 (1958), which held that the tax lien statute ". . . creates no property rights but merely attaches consequences federally defined, to rights created under state law. . . ."
11. "A branch bank is not, of course, separately incorporated. Only one certificate of incorporation is filed and only one corporation is brought forth into the business world. Nothing appears more clear. Yet the notion has been extant for over a century that for limited purposes a branch bank is a distinct business entity." Fordham, *Branch Banks as Separate Entities,* 31 COLUM. L. REV. 975, 979 (1931).
12. Richardson v. Richardson & Nat'l Bank of India, Ltd., [1927] 137 L.T.R. (n.s.) 492, 163 L.T. 450.

the effect of local attachment on branch banks.[13] In *Chrzanowska v. Corn Exchange Bank*,[14] the court decided that in certain limited situations, different branches, even in the same city, ". . . were separate and distinct from one another as from any other bank."[15] This separate entity concept was affirmed in a subsequent case[16] and has since become deeply imbedded in New York substantive law. In 1931, the New York court was presented with a case with facts similar to those of the present case.[17] The court concluded that a non-resident defendant's deposit in a Puerto Rican branch had its situs in Puerto Rico, and could not be reached by an attachment proceeding in New York. The court stated: ". . . a branch bank being separately indebted to its depositor, the existing obligation lies primarily between such branch bank and its depositor and therefore the debt is located in the country of the branch bank, not where the principal bank is located."[18] A recent New York decision[19] further substantiated the separate entity doctrine on the policy theory that no branch could safely pay a check drawn by its depositor without first conferring with all other branches and the main office. The notification of attachment to every branch would place an intolerable burden upon banking and commerce, particularly where the branches were numerous[20] and in distant corners of the globe.[21]

The decision of the Circuit Court in the present case extends the doctrine to apply in an injunction proceeding where there is no formal attachment. The government apparently argued that while there was no jurisdiction over the funds situated in Uruguay, there was personal jurisdiction over Citibank which had the power to order their branch bank to withhold funds from the taxpayer. The government sought to accomplish by injunction what it could not otherwise accomplish by lien in the absence of jurisdiction over the property.

In rejecting this contention the court broadened the policy considerations previously used to support the doctrine, placing emphasis on the undesirability of recognizing foreign injunctions on American branch banks in similar circumstances. The court sought to avoid this possibility with its potential to cripple the effectiveness of the banking system—the same consideration which engendered the separate entity doctrine. As the law presently appears, an American court could readily refuse to enforce a foreign injunction because of the local policy that the separate entity

13. See Comment, *Garnishment of Branch Banks*, 56 MICH. L. REV. 90 (1957).
14. 173 App. Div. 285, 159 N.Y. Supp. 385 (1916).
15. *Id.* at 291, 159 N.Y. Supp. at 388.
16. Pan-American Bank & Trust Co. v. National City Bank, 6 F.2d 762 (2d Cir. 1925).
17. Bluebird Undergarment Corp. v. Gomez, 139 Misc. 742, 249 N.Y. Supp. 319 (1931).
18. *Id.* at 744, 249 N.Y. Supp. at 321-22.
19. Cronan v. Schilling, 100 N.Y.S.2d 474 (Sup. Ct. N.Y. County), *aff'd*, 282 App. Div. 940, 126 N.Y.S.2d 192 (1950).
20. Cronan v. Schilling, *supra* note 19, at 476.
21. Newtown Jackson Co. v. Animashaun, 148 N.Y.S.2d 66 (Sup. Ct. Nassau County 1955).

doctrine establishes.[22] Although in most recent cases foreign decrees are being upheld,[23] a real necessity of safeguarding American citizens or institutions is sufficient to override the compelling comity reasons inducing the enforcement of a foreign decree.[24] In the instant case, if the separate entity doctrine is not applied, the local policy that justifies ignoring the foreign decree ceases, thereby clogging national banking channels with foreign injunctions. As the court stated: "The untoward difficulties . . . that such a doctrine would produce militate against giving it support here."[25]

The dissenting opinion of Judge Hays inferred that the majority may have decided the case on another issue.[26] The dissenter implied that the *ratio* of the case was that the preliminary injunction could not issue since the government had not shown a reasonable probability of reaching the defendant's property in the final adjudication. The time and case honored condition for granting a preliminary injunction requires that plaintiff's ultimate success in the pending action be reasonably probable.[27] Here, the court had neither personal nor quasi in rem jurisdiction over the ultimate defendant.[28] Although normally the substantive issues in the case are examined to determine reasonable probability, the requirement applies with equal force to the issue of probable jurisdiction.[29] The issue raised by the dissent may have uncovered one basis for the decision. However, in view

22. American courts have refused to enforce judgments rendered in foreign countries when these judgments were contra to local policy. See De Brimont v. Penniman, 7 Fed. Cas. 309 (No. 3715) (C.C.N.Y. 1873), in which enforcement of a decree by a French court for support of a son-in-law was refused; Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N.Y. 369, 189 N.E. 456 (1934), in which the court refused to enforce a Russian confiscation decree on grounds of policy.

23. EHRENZWEIG, CONFLICT OF LAWS, § 45 (1962).

24. See Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783, 798 (1950).

25. United States v. First Nat'l City Bank, 321 F.2d 14, 24 (2d Cir. 1963).

26. "The present issue as to property of the taxpayer which is held by appellant's foreign branches is not, as the majority believes, whether that property can be reached in the pending proceeding." *Id.* at 26.

27. Hall Signal Co. v. General Ry. Signal Co., 153 Fed. 907 (2d Cir. 1907); Yonkers Raceway, Inc. v. Standardbred Owner's Ass'n, 153 F. Supp. 552 (S.D.N.Y. 1957); Nadya, Inc. v. Majestic Metal Specialties, Inc., 127 F. Supp. 467 (S.D.N.Y. 1954); Village of Owego v. Tioga County Agricultural Soc'y, 152 Misc. 544, 273 N.Y. Supp. 828 (1934); Adams Co. v. Buchanan, 42 S.D. 548, 176 N.W. 512 (1920); *cf.*, Bernstein v. Herren, 136 F. Supp. 493 (S.D.N.Y. 1956); Clifton Park Manor, Section One, Inc. v. Mason, 137 F. Supp. 324 (D. Del. 1955); Acme Fast Freight, Inc. v. United States, 135 F. Supp. 823 (D. Del. 1955); Davis Electronics Co. v. Channel Master Corp., 116 F. Supp. 919 (S.D.N.Y. 1953); Miller v. Rudolph Wurlitzer Co., 48 F. Supp. 772 (W.D.N.Y. 1942); Halsey, Stuart & Co. v. Public Serv. Comm'n, 212 Wisc. 184, 248 N.W. 458 (1933), in which a preliminary injunction was issued only where complainant satisfied the court with reasonable certainty of his ultimate success on final hearing.

These rules are based on the premise that since a preliminary injunction is an order made upon some right or principle upon which a final decree depends, the courts will not grant the injunction unless plaintiff has shown the court an opportunity to succeed in the final adjudication. Consolidated Film Indus., Inc. v. Johnson, 21 Del. Ch. 417, 192 Atl. 603 (1937).

28. Hanson v. Denkla, 357 U.S. 235, 78 S.Ct. 1228 (1950).

29. A recent case has stated: ". . . substantial probability that the court will find a basis for federal jurisdiction, like the probability of a plaintiff's success on the merits, is a crucial element necessary to justify the issuance of an injunction *pendente lite*." A. H. Bull S.S. Co. v. National Marine Eng'r Beneficial Ass'n, 250 F.2d 332, 337 (2d Cir. 1957).