

STATE OF MICHIGAN

IN THE 13TH CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PETER F. SCHLENZKA and
JULIE LANGHORNE,

Plaintiffs,

v

File No. 03-22655-PZ
HON. PHILIP E. RODGERS, JR.

FOUNTAIN PAJOT,
a foreign corporation,

Defendant.

Peter B. Worden, Jr. (P41899)
Attorney for Plaintiffs

DECISION AND ORDER GRANTING PLAINTIFFS'
MOTION FOR ORDER RESTRAINING TRANSFER OF MONEY

Plaintiffs obtained a judgment in the Superior Court of California against Defendant Fountaine Pajot for \$3,253,734.45 on February 26, 2003. The amount of the judgment remains unsatisfied, and including interest and costs, is \$3,307,899.87 as of July 2, 2003, with interest accruing at a rate of \$381.01 per day.

A certified copy of the judgment was filed with this Court, together with the requisite Affidavit and Notice of Entry. The California judgment is entitled to full faith and credit and may be enforced by this Court. MCL 691.1173.

Defendant Fountaine Pajot is a yacht manufacturer. Bay Breeze Yacht Charters ("Bay Breeze") is one of its dealers. Plaintiffs have previously served writs of garnishment upon Bay Breeze, which has responded by indicating that it has no current indebtedness to Defendant Fountaine Pajot.

Plaintiffs filed a Motion for Order Restraining Transfer of Money or, in the Alternative, Issuance of Subpoena for Examination under Oath of Third Party. Bay Breeze filed a response. On July 21, 2003 the Court heard the oral arguments of counsel and took the matter under

advisement. The Court now issues this written decision and order and, for the reasons stated herein, grants the Plaintiffs' motion.

First, Plaintiffs rely upon the Supplementary Proceedings chapter of the Revised Judicature Act. MCL 600.6101, *et seq.* MCL 600.6104 provides in pertinent part as follows:

After judgment for money has been rendered in an action in any court of this state, the judge may, on motion in that action or in a subsequent proceeding:

* * *

(2) Prevent the transfer of any property, money, or things in action, or the payment or delivery thereof to the judgment debtor;

* * *

and

* * *

(5) Make any order as within his discretion seems appropriate in regard to carrying out the full intent and purpose of these provisions to subject any nonexempt assets of any judgment debtor to the satisfaction of any judgment against the judgment debtor.

The court may permit the proceedings under this chapter to be taken although execution may not issue and other proceedings may not be taken for the enforcement of the judgment. It is not necessary that execution be returned unsatisfied before proceedings under this chapter are commenced.

Alternatively, Plaintiffs rely upon MCL 600.6110 which provides in pertinent part as follows:

Upon an affidavit, showing to the satisfaction of the judge that any person has money or property of the judgment debtor, or is indebted to him, the judge may issue a subpoena requiring the judgment debtor or the person or both to appear at a specified time and place, and be examined on oath, and to produce for examination any books, papers, or records in his or its possession or control which have or may contain information concerning the property or income of the debtor.

Plaintiffs request that the Court issue a subpoena and restrain any transfer or other disposition of, or interference with, any property belonging to the judgment debtor, pursuant to MCL 600.6119.

Defendant responds that Michigan courts have rejected the proposition that a garnishee can be prospectively enjoined; granting Plaintiffs' motion would effectively prohibit a purchaser from acquiring his or her boat; and Plaintiffs are not entitled to a duces tecum examination. Plaintiffs' motion presents a question of first impression.

A court has a basic responsibility to enforce its own orders and has considerable discretion in choosing the means to be employed. *Butler v Butler*, 356 Mich 607, 618; 97 NW2d 67 (1959). The Supplemental Proceedings chapter of the Revised Judicature Act is in addition to and does not effect affect enforcement of judgments or proceedings supplementary thereto, by any other methods now or hereafter provided by law.

Therefore, the fact that the Plaintiffs have previously served writs of garnishment upon Bay Breeze does not preclude the Plaintiffs from seeking an order pursuant to MCL 600.6104 to “prevent the transfer of any property, money, or things in action, or the payment or delivery thereof to the judgment debtor” or an order which in the Court’s discretion “seems appropriate in regard to carrying out the full intent and purpose of these provisions to subject any nonexempt assets of any judgment debtor to the satisfaction of any judgment against the judgment debtor.”

As an authorized dealer of Fountaine Pajot boats, Bay Breeze may reasonably be expected to come into possession of property or money that it knows or has reason to believe belongs to or is due to Fountaine Pajot.¹ Bay Breeze should be and hereby is ordered not to transfer any property or money or make any payment or delivery thereof to Fountaine Pajot except upon the further order of this Court.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 8/5/03

pc: Mark R. Dancer and Michael J. Daray

¹ The Defendant has a very limited number of U.S. dealers for its luxury boats. While injunctive orders of this type may inhibit the Defendant’s ability to do business in this country, it is only because the Defendant has a debt it has refused to pay. Nor is the procedure countenanced herein akin to “papering” every bank in the country. Bay Breeze is an authorized dealer and should be expected to come into funds owed to the Defendant.

Attorneys for Garnishee Bay Breeze Yacht Charter