

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**FAMILY TRUST SERVICES, LLC; )  
STEVEN REIGLE; REGAL HOMES )  
CO; and BILLY GREGORY, on behalf )  
of themselves and those similarly )  
situated, )**

**Plaintiffs,**

**VS.**

**REO HOLDINGS, LLC; CHARLES E. )  
WALKER; JON PAUL JOHNSON; )  
JULIE COONE; NATIONWIDE )  
INVESTMENTS, LLC; and MERDAN )  
IBRAHIM, )**

**Defendants.**

*NY*  
**NO. 15-780-BC**

2016 FEB 29 PM 3:07  
DAVIDSON COUNTY  
CLERK OF COURT  
N.C.B.M.

**MEMORANDUM AND ORDER: (1) GRANTING PLAINTIFFS'  
MOTION FOR PREJUDGMENT ATTACHMENT AND  
(2) DENYING DEFENDANT WALKER'S MOTION  
TO RELEASE REAL ESTATE**

This lawsuit was filed by an LLC, a corporation and three individuals who are the assignees or purchasers of properties at delinquent tax sales. The Plaintiffs bring this lawsuit on behalf of themselves, and seek class certification as to others similarly situated, to permanently injoin and recover damages from the Defendants.

The Plaintiffs allege in this lawsuit that the Defendants over a period of years have operated a criminal enterprise in buying and/or redeeming real property sold at delinquent tax sales in Tennessee. The lawsuit accuses the Defendants of forging notary signatures;

committing perjury about the authenticity of real property documents; and aiding, abetting and/or committing fraud as to chain of title to real property.

The Plaintiffs have asserted 13 causes of action in their Third Amended Complaint:

- Violation of the Racketeer Influenced and Corrupt Organizations act
- Defamation of title
- Fraud
- Relief from judgment
- Liability pursuant to Tennessee Code § 66-22-113
- Trespass and ejection
- Unfair competition
- Unjust enrichment
- Intentional interference with advantageous business relations
- Malicious prosecution
- Theft of the right of redemption
- Civil conspiracy

At the outset of this lawsuit on July 24, 2015, the Court issued a preliminary injunction to “monitor” Defendants’ real estate filings and transactions. Oversight and restrictions were applied to the Defendants’ property transactions such as requiring a “wet,” color coded notary seal and obtaining leave of Court to withdraw redemption funds from a Tennessee Court or Clerk and Master or to transfer or encumber certain specified real property. The rationale for this remedy was, on the one hand, the Court found clear, un rebutted evidence of forgeries of signatures and notary seals on ten instruments on five property transactions the Defendants were involved in in redeeming property in the space of a year and a half. Nevertheless, at the time there were only two Plaintiffs and their standing/claims of harm were only in the formative stages. Also, even though there was clear

evidence of forgeries, there were competing affidavits of Defendants that they were unaware and were not involved in the forgeries and were recipients of the forged documents.

Now, back before the Court, seeking leave from the July 24, 2015 temporary injunction is Defendant Charles E. Walker, an owner of Defendant REO and an attorney. He seeks an order releasing 37 properties from the injunction. These properties were not acquired by the means in issue in this case—a tax sale or redemption. The properties were acquired by Defendant Walker personally over the years. Defendant Walker's motivation is that the cloud of the injunction be removed from the properties so Defendant Walker can be positioned to readily sell them in Nashville's current robust market:

Walker seeks this relief because a number of his rental properties have leases that have expired or will expire soon. Given the robust state of Nashville's real estate market, Walker would like to market some or all of these properties in the near future.

None of the properties at issue is implicated in the scheme alleged in the Complaint, as the parties have previously acknowledged. The Court has now on three (3) occasions approved sales of these properties and never denied one, such that the process has become essentially perfunctory at this point. On the other hand, the approval process being done in a piecemeal fashion poses potential timing issues that can inhibit the marketability of a property and result in the loss of a sale. The specter of needing "court approval," which must be plainly highlighted in any offer for sale, impairs the marketability of the property. Keeping these properties under the monitoring injunction is unduly prejudicial to Walker, of no benefit to the plaintiffs, and is wasteful of the time and resources of the Court and the parties.

As per this Court's August 5, 2015 Order Altering and Amending July 30, 2015 Order, Defendant Walker requests the properties listed in Exhibit A be released from the injunction, such that they may be marketed and sole

without Court approval. The subject properties, as reflected in the attached exhibits, are owned solely by Walker, were not acquired in a tax sale or tax sale redemption . . . .

*Motion to Release Real Estate Owned by Charles Walker*, November 3, 2015, at 2.

Plaintiffs not only oppose release of Defendant Walker's properties from the July 24, 2015 injunction, but they have filed their own motion seeking heightened pretrial protection stepped up from the regulatory and monitoring provisions of the July 24, 2015 injunction. The Plaintiffs seek a prejudgment attachment of the 37 properties Defendant Walker seeks for this Court to release from the injunction. According to the estimate of one of the members of the Plaintiff LLC, Mr. McEachron, who is a realtor, the total estimated value of 37 properties is \$2.18 million.

The Plaintiffs' case has changed. More Plaintiffs have been added who have clear standing as purchasers at delinquent tax sales where Defendants and forged instruments were involved. Also, Plaintiffs have submitted in support of the motion for prejudgment attachment, three more events of Defendants' fraud. One of those events is that Defendant Walker has created a new corporation who registered to purchase property at a delinquent tax sale. A new corporation could elude this lawsuit and Court regulation.

Prejudgment attachment of a party's property is one of the greatest reaches of power of a civil court. The ambit of prejudgment attachment is that before a party can complete discovery and defend in a full trial on the merits, and before the defendant has been found

liable and a judgment entered, a court is empowered by attachment to encumber the party's assets. For these reasons, there are statutory requirements which must be met before the power can be exercised.

After studying and researching the law and considering argument of Counsel, and applying that to the facts of this case, the Court concludes that the essential elements required under Tennessee Code Annotated section 29-6-101(6) for prejudgment attachment are present in this case.

It is therefore ORDERED that, upon the Plaintiffs posting a \$200,000 bond, their November 20, 2015 Motion for Prejudgment Attachment is granted with respect to the properties listed in Exhibit A to Defendant's November 13, 2015 *Motion to Release Real Estate Owned by Charles Walker*.

The facts, law and reasoning on which this decision is based are provided below.

#### **Applicable Statute**

Plaintiffs cite to Tennessee Code Annotated section 29-6-101(6) as authority for their prejudgment attachment motion. It provides as follows:

#### **§ 29-6-101. Grounds**

Any person having a debt or demand due at the commencement of an action, or a plaintiff after action for any cause has been brought, and either before or after judgment, may sue out an attachment at law or in equity, against the property of a debtor or defendant, in the following cases:

\* \* \*

(6) Where the debtor or defendant has fraudulently disposed of, or is about fraudulently to dispose of, the property . . . .

**Statutory Scope**

The Court's initial question was the scope of "the property" of the defendant, referred to above in section 29-6-101(6), which could be attached.

That is, the Court inquired whether property unrelated to the events and claims of the lawsuit could be attached. Plaintiffs' February 16, 2016 supplemental authorities of *Orlowski v. Bates*, Case No. 2:11-CV-01396, United District Court for the Western District of Tennessee (October 20, 2015); *Caldwell v. Canada Trace, Inc.*, 2004 WL 1459418 (Tenn. App. 2004); *A.G. Campbell & Co., Inc. v. Chemical Separations Corp.*, 29 B.R. 240 (Bankr. E.D. Tenn. 1983) provide the answer: if the requisites of the statute are satisfied, property not the subject of the lawsuit may be attached. As explicitly stated in legal encyclopedia terms, "However an attachment, and not an injunction, is the appropriate remedy for securing a potential judgment with property that is not the subject of the action." 6 AM. JUR. 2D, *Attachments and Garnishments* § 7 (Feb. 2016 Update).

From its research and the additional briefing of Counsel, the Court sees that the justification for the breadth of the remedy is not to merely secure for judgment property involved in the lawsuit but the broader function of providing "the plaintiff with security up to the amount of the claim." 7 C.J.S. *Attachment* § 150 (Updated December 2015). The safeguard to the defendant is not, as initially thought by the Court, limiting the scope of the

attachment to property related to the lawsuit. The safeguard to the defendant is other features of the statutory scheme. These safeguards consist of demonstrating (1) under oath, (2) the strict statutory grounds, asserted in this case, of section 29-6-101(6) fraudulent disposition of property, (3) upon notice and hearing, (4) accompanied by the posting of an adequate bond. See *McLaughlin v. Weathers*, 170 F.3d 577 (6th Cir. 1999); *Orlowski v. Bates*, 2016 WL 447725 (slip copy W.D. Tenn. 2016). See also 6 AM. JUR. 2D, *Attachments and Garnishments* §§ 4, 204, 525.

The record in this case establishes that these safeguards, built into the statutory requisites, have been fulfilled.

#### **Facts of Section 29-6-101(6) Fraudulent Disposition of Property**

The Court finds that there is sufficient evidence in the record that Defendant Walker is about to fraudulently dispose of property as per section 29-6-101(6).

First, even prior to these motions, the Court had made the findings, which it incorporates herein, from the July 24, 2015 temporary injunction at page 4, of clear, un rebutted evidence that there were signatures and notary seals on at least 10 instruments (quitclaim deeds, affidavits of heirship and assignments of lien) which were forged on 5 property transactions involving REO and its principals, Defendants Walker and Johnson. The five notaries, whose names and seals appeared on property documents, had filed declarations that these were forgeries. Additionally, the forgeries involved different notaries

in different states, properties in various locations in Tennessee, with various grantors. The only common element in all the forgeries was that all of these various transactions involved Defendants REO, Walker and Johnson. Further, it was clear and unadulterated in the record as to the facts of this high number of undisputed forgeries reoccurring with the same entity and individuals in the space of a year and one-half.

Now, added to the foregoing previous findings from the preliminary injunction are the following events asserted by Plaintiffs in support of attachment. After the July 24, 2015 Temporary Injunction was entered, Defendant Walker conceded in a September 22, 2015 deposition that eleven days prior he had formed a new LLC which registered to bid on properties at a tax sale in Montgomery County. The Court finds that this new LLC could elude the regulation and monitoring the Court provided for in the July 24, 2015 Injunction.

There are also two other circumstances, whose description is quoted (in the interest of time), from Plaintiffs' November 20, 2015 Motion:

5. Second, during the course of Mr. Walker's deposition and that of defendant Jon Paul Johnson, these witnesses repeatedly committed perjury by failing to admit their role in the forgery schemes outlined in the Second Amended Complaint and instead attempted to divert responsibility for such conduct to Kevin Watts, deceased, and Jose Lorenzo, whom no one can find. The depositions, and the documents provided in connection therewith, revealed not a single document (electronic, physical or otherwise) to connect Kevin Watts with any transaction involving REO Holdings, LLC or the other defendants. Similarly, the defendants were unable to provide any evidence to corroborate their story that "Jose Lorenzo" was involved in any of the transactions in issue, or, that such a person even exists. The defendants produced no written communications between themselves and Mr. Lorenzo, but rather claimed that all such communications were by telephone. Defendants were, however, unable to provide Mr. Lorenzo's telephone number



or any documentation of any kind evidencing any such calls. When pressed, Mr. Johnson testified that he only spoke with Mr. Lorenzo on a prepaid phone that he purchased somewhere near Nolensville Road. He claims he "lost" the phone when he accidentally left it in a rental car in Chattanooga. The stories proffered by these defendants wholly lack credibility and point to an ongoing scheme to conceal their criminal conduct.

6. Third, on November 13, 2015, in a related proceeding, Chancellor McCoy found Mr. Walker to have been deceitful, dishonest, and to have engaged in fraud with respect to the property located at 6016 Lenox Avenue in Nashville, Tennessee. *See* Transcript at 32. That Court granted a Motion to Strike REO Holdings, LLC's attempted redemption of that property, announced that a transcript of the hearing would be provided to the Board of Professional Responsibility so that it could take appropriate disciplinary action against Mr. Walker, and disqualified Mr. Walker from appearing in any further proceedings in Chancery Court Part Two pending the Board of Professional Responsibility's disposition of the matter.

The previous findings from the July 24, 2015 Temporary Injunction and the three other circumstances asserted by the Plaintiffs establish the grounds of section 29-6-101(6) for prejudgment attachment.

### **Declaration, Notice, Hearing**

The requirement/safeguard of Tennessee Code Annotated section 29-6-113 of verified proof has been satisfied by the Plaintiffs' filing of the February 16, 2016 Declaration of Darrell McEachron, and notice and a hearing has been provided to Defendant Walker.

## **Bond**

The Court concludes that Tennessee Code Annotated section 29-6-116(4) is the applicable statute regarding the bond to be posted in this case. It is bolded below:

### **§ 29-6-116. Bonds (officers and fiduciaries); amount**

The bond to be required before issuance of the writ shall be in penalty as follows:

(1) When the amount of the claim is less than the value of the property sought to be attached, a bond in a penalty equal to the asserted amount of the plaintiff's or complainant's debt or lien plus an additional sum which in the opinion of the issuing officer will be sufficient to cover the probable cost of litigation and all damages that may be sustained by reason of the wrongful suing out of the writ;

(2) When the amount of such debt, or lien of the plaintiff or complainant shall be greater than the value of the property sought to be attached, the penalty shall be equal to the estimated value of such property plus an additional sum which in the opinion of the issuing officer will be sufficient to cover such costs and damages;

(3) When the claim is for unliquidated damages, the penalty shall be equal to the value of the personal property to be attached plus such sum as will be sufficient to cover such costs and damages; or

**(4) When the property to be attached is real estate, the issuing officer shall only require a bond in penalty sufficient to cover all such costs and damages as same may be estimated by the issuing officer.**

Sections 29-6-115 and 116(4) inform the Court that in evaluating a bond in this case the criteria are costs and damages the Defendant may sustain if there is "wrongful suing out of the attachment" and that where real estate is to be attached "only . . . a bond in penalty

sufficient to cover all such costs and damages as same may be estimated by the issuing officer.”

The follow-up slip opinion in *Orlowski v. Bates*, 2015 WL 6159494 \*11 provides an example of the application of this statute:

Tenn. Code Ann. § 29-60-116 provides guidance on the amount of the bond to be required. This section provides that “[w]hen the property to be attached is real estate, the issuing officer shall only require a bond in penalty sufficient to cover all such costs and damages as same may be estimated by the issuing officer.” Tenn. Code Ann. § 29-6-116. Rather than require the Receiver and Plaintiffs to execute a bond payable to Defendants, who have failed to make mortgage payments, insurance payments, and payments to the alarm company, and to pay taxes, the Court has required the Receiver and Plaintiffs to cover these costs directly. The personal property subject to the attachment is found in improvements located on the real property or is intimately associated with use and function of the real property as a farm; therefore, a separate attachment for the equipment and other movable property is not required. Nevertheless, the Receiver and Plaintiffs’ previously executed bond of \$100,000 in conjunction with the Temporary Restraining Order is sufficient surety to protect Defendants. Accordingly, the Receiver and Plaintiffs have fully complied with the requirements of Tenn. Code Ann. § 29-6-115.

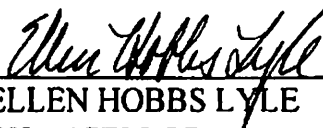
Other considerations regarding the section 29-6-116(4) bond in this case are that a prejudgment attachment does not affect the title. 6 AM. JUR. *Attachment and Garnishment* § 448. The effect of an attachment is to create a lien or encumbrance. *Id.* at § 443. Thus, if the attachment is being wrongfully obtained by Plaintiffs, the Defendant is not being divested of title. He is deprived of unencumbered title and selective timing in marketing the properties.

Other relevant matters of record are that in excess of \$500,000 in compensatory damages is sought by Plaintiffs as a judgment, as well as in excess of \$2 million in punitive

damages and attorneys fees. Also, the 37 properties to be attached have been valued by a realtor at \$2.18 million.

From these facts and considerations, the Court concludes that a \$200,000 bond is sufficient to secure the costs and damages referred to in section 29-6-116(4).

The Court has also been guided, in setting the bond herein, by the overall function of the remedy of attachment, "It is the optimal function of the remedy of attachment to provide the plaintiff with security up to the amount of the claim at a cost that does not render the remedy prohibitive while still affording to the defendant an undertaking in an amount that will adequately satisfy any damages for wrongful attachment." 7 C.J.S. *Attachment* § 150 (Updated December 2015).

  
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ELLEN HOBBS LYLE  
CHANCELLOR  
TENNESSEE BUSINESS COURT  
PILOT PROJECT

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