

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Terranova v. Avco Financial Services of Barre, Inc.

396 F. Supp. 1402 (D. Vt. 1975) · No. Civ. A. No. 74-283 · Decided June 24, 1975

SUMMARY

The United States District Court for the District of Vermont held that Vermont’s procedures permitting prejudgment attachment of a resident’s real estate without prior notice, a hearing, or judicial participation violated the Due Process Clause of the Fourteenth Amendment. The court enjoined prospective enforcement of the challenged procedures as to the parties, while limiting the judgment so as not to call prior Vermont real estate attachments into question.

CASE DETAILS

COURT	United States District Court for the District of Vermont
WRITING FOR THE COURT	Oakes, Circuit Judge; Holden, District Judge; Coffrin, District Judge
JURISDICTION	Vermont
DECIDED	June 24, 1975
DOCKET	Civ. A. No. 74-283
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought a class action seeking declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and 42 U.S.C. § 1983, challenging the constitutionality of Vermont’s prejudgment real-estate attachment procedures. A three-judge federal court considered the stipulated facts and entered an injunction against prospective enforcement of the challenged procedures.
STANDARD OF REVIEW	The court reviewed the challenged attachment procedures de novo for compliance with the Due Process Clause of the Fourteenth Amendment.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority subject to subsequent appellate and Supreme Court treatment.
PARTIES	Robert C. Terranova, Laurie Terranova v. Avco Financial Services of Barre, Inc., Chandler, Sheriff of Addison County, DeWitt, Deputy Sheriff, other defendants

TOPICS

procedural due process

civil procedure

injunctions

declaratory judgment

real estate

PRACTICE AREAS

constitutional law

civil procedure

civil rights

real estate

remedies

QUESTIONS PRESENTED

1. Whether Vermont Rule of Civil Procedure 4.1 and 12 V.S.A. §§ 3291–3292 violated the Fourteenth Amendment's Due Process Clause by permitting prejudgment attachment of an in-state resident's real estate without prior notice, a hearing, or judicial participation.
2. Whether the challenged real-estate attachment procedures should be enjoined prospectively.

HOLDINGS

1. Except in extraordinary situations, prejudgment attachment of real estate belonging to an in-state resident may occur only after notice to the owner and a hearing before a judicial officer at which the plaintiff establishes a reasonable likelihood of recovering a judgment, including interest and costs, at least equal to the amount of the attachment, subject to available insurance or bond.
2. The judgment enjoining the challenged procedures is limited to the parties and to prospective enforcement and does not place the validity of prior Vermont real-estate attachments in question.

KEY QUOTATIONS

“the prejudgment attachment of real estate belonging to an in-state resident may be effected only after notice to the owner and a hearing, presided over by a judicial officer, at which hearing it must be determined that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance or bond shown by the defendant to be available to satisfy the judgment.” (396 F. Supp. at 1407)

“This diminution of the landowner's rights in his property which can be dissolved only by the landowner's expending time and money in a judicial forum in our view constitutes a significant property deprivation.” (396 F. Supp. at 1407)

FACTUAL BACKGROUND

The Terranovas owned Vermont real property valued at approximately \$13,000 and subject to a mortgage balance of approximately \$7,800. AVCO alleged that the Terranovas owed \$1,629 on a promissory note and, under Vermont Rule of Civil Procedure 4.1, prepared and filed a writ attaching the real estate when it commenced suit. The attachment occurred without notice to the Terranovas, an opportunity to be heard, or prior judicial review of the probable validity of AVCO's claim, and the attachment impaired the property's marketability and mortgageability.

PROCEDURAL HISTORY

AVCO commenced a Vermont state-court action against the Terranovas and attached their real estate without prior notice, a hearing, or judicial review of the underlying claim. The Terranovas then filed this federal

constitutional action on behalf of themselves and similarly situated persons. Because the action sought to enjoin a statewide state statute, a three-judge court was convened.

DISPOSITION

other

CASES CITED

- North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975)
- Mitchell v. W. T. Grant Co., 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974)
- Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972)
- Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)
- Bay State Harness Horse Racing and Breeding Association, Inc. v. PPG Industries, Inc., 365 F. Supp. 1299 (D. Mass. 1973)
- Gunter v. Merchants Warren National Bank, 360 F. Supp. 1085 (D. Me. 1973)
- Clement v. Four North State Street Corp., 360 F. Supp. 933 (D.N.H. 1973)
- Central Security National Bank v. Royal Homes, Inc., 371 F. Supp. 476 (E.D. Mich. 1974)
- Hutchinson v. Bank of North Carolina, 392 F. Supp. 888 (M.D.N.C. 1975)
- Jonnet v. Dollar Savings Bank of the City of New York, 392 F. Supp. 1385 (W.D. Pa. 1975)
- Long v. Levinson, 374 F. Supp. 615 (S.D. Iowa 1974)