



By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

NIRANJAN MALLICK,)	CIVIL CASE NO. 09-0523
)	
Plaintiff,)	
)	
v.)	ORDER DENYING DEFENDANT’S
)	MOTION TO QUASH WRIT OF
SAIPAN HWA RANG CORPORATION)	EXECUTION BECAUSE 7 CMC § 4210
dba HONEYMOON HOTEL, and CHA)	EXEMPTIONS DO NOT APPLY TO
YUNG SOON,)	BUSINESS ENTITIES
)	
Defendants.)	

THIS MATTER came before the Court on July 9, 2013 at 1:30 p.m. in courtroom 220 upon the motion of Defendant to quash the writ of execution granted by this Court on April 12, 2012. Joe Hill appeared on behalf of Plaintiff Niranjan Mallick. Joshua Berger appeared on behalf of Defendants Saipan Hwa Rang Corporation (SHRC) and Cha Yung Soon. Based on a careful review of the filings, oral argument and applicable law the motion to quash the writ of execution is denied.

PROCEDURAL HISTORY

On December 21, 2009, Niranjan Mallick (“Plaintiff”) brought suit in this Court against Defendants Saipan Hwa Rang Corporation dba Honeymoon Hotel and Cha Yung Soon to enforce an administrative order of the Department of Labor. The Department of Labor’s administrative order was issued in 2007 and was based on a claim filed by Plaintiff in 2001. The Department of

1 Labor awarded damages of \$7,660.84 for unpaid wages and overtime, and \$55.00 for illegal
2 deductions to Plaintiff.

3 On December 24, 2010 Plaintiff filed a motion for summary judgment, and on November 7,
4 2012, this Court granted summary judgment to enforce the Department of Labor's Administrative
5 Order (\$7,715.84 in damages) and awarded post-judgment interest pursuant to statute.

6 On March 12, 2013 this Court denied pre-judgment interest and granted \$3,970.00 in
7 attorney's fees and \$386.12 in litigation costs to Plaintiff. On March 22, 2013 this Court entered a
8 judgment in favor of the Plaintiff for a total amount of \$12,317.39, including attorney's fees and
9 costs.

10 On April 11, 2013, Plaintiff filed a request for immediate issuance of a writ of execution,
11 and on April 12, 2013, this Court issued the requested writ of execution.

12 On May 1, 2013, Saipan Hwa Rang Corporation filed a motion to quash the writ of
13 execution, and on May 2, 2013 this Court issued an order staying the writ of execution and setting
14 this matter for hearing.

15 DISCUSSION

16 At issue in this case is whether the due process rights of a judgment debtor corporation were
17 violated when a writ of execution was issued post-judgment without additional notice to the
18 judgment debtor and without an opportunity to be heard to oppose the writ. Plaintiff, the judgment
19 creditor, argues that there was no due process violation as the judgment debtor already had its day
20 in court. Plaintiff argues that no further notice or hearing is required before the judgment creditor
21 can reach the judgment debtor's property to satisfy the judgment.

22 A. THE ONLY DEFENDANT IN THIS MATTER IS SAIPAN HWA RANG CORPORATION

23 Both an individual and a corporation are listed as defendants in this matter. However, the
24 individual is deceased and her estate was fully distributed before this claim was filed. *In re Estate*

1 of *Cha*, Civ. No. 08-0103 (NMI Super. Ct. Oct. 9, 2008) (Unpublished) (Order and Final Judgment
2 of Distribution). Furthermore, this Court’s Order of November 7, 2012, orders Defendants to pay
3 damages pursuant to the Administrative Order issued by the Department of Labor on February 23,
4 2007. *Mallick v. Saipan Swa Rang Corp.*, Civ. No. 09-0253 (NMI Super. Ct. Nov. 7, 2012) (Order
5 Granting in Part Plaintiff’s Motion for Summary Judgment at 9, 10). That Administrative Order
6 lists SHRC as the only respondent. Compl. Ex. B. Thus, the Court only considers the due process
7 rights of defendant corporation.

8 B. EX PARTE WRIT OF EXECUTION

9 SHRC challenges the statutory framework underlying the writ of execution issued on April
10 12, 2013 as unconstitutional. Specifically, SHRC argues that a writ of execution may not be
11 requested ex parte and then immediately issued by the court without violating SHRC’s right to due
12 process under the Fourteenth Amendment of the U.S. Constitution. SHRC argues that 7 CMC
13 §§ 4101 and 4203 are plainly unconstitutional. 7 CMC § 4101 reads, “The process to enforce a
14 judgment for the payment of money may be a writ of execution . . . as provided in chapter 2 of this
15 division (commencing with 7 CMC § 4201).” 7 CMC § 4203 states, “The court, at the request of
16 the party recovering any civil judgment in the court for the payment of money, shall issue a writ of
17 execution against the personal property of the party against whom the judgment has been rendered,
18 except as provided in 7 CMC § 4210.” Finally, 7 CMC § 4210 describes property that is exempt
19 from execution. As a preliminary matter, this Court finds that the plaintiff’s request for a writ of
20 execution followed the relevant statutory requirements.

21 The Commonwealth Supreme Court has not addressed the due process requirements, if any,
22 when a creditor seeks to avail itself of post-judgment remedies. In *Endicott-Johnson Corp. v.*
23 *Encyclopedia Press, Inc.*, 266 U.S. 285 (1924), the U.S. Supreme Court held that due process did
24 not require additional notice and an opportunity to be heard before the issuance of a writ of

1 garnishment. The Court reasoned that the debtor, by having its day in court concerning the
2 underlying judgment, had already been put on notice that garnishment would follow the judgment.
3 *Id.* at 288. The U.S. Supreme Court has declined to hear additional cases addressing the application
4 of the Fourteenth Amendment to post-judgment remedies. *See, e.g., Hanner v. DeMarcus, cert.*
5 *granted*, 389 U.S. 926, *cert. dismissed as improvidently granted*, 390 U.S. 736, *reh'g denied*, 392
6 U.S. 917 (1968); *and Brown v. Liberty Loan Corp.*, 539 F.2d 1355 (5th Cir. 1976), *cert. denied*,
7 420 U.S. 949 (1977).

8 In the years since *Endicott* was decided in 1926, the U.S. Supreme Court has addressed
9 many other types of due process challenges and has articulated a balancing of interests test that is
10 now applied to all Fourteenth Amendment procedural claims. *See J.G. Sablan Rock Quarry, Inc. v.*
11 *Dep't of Public Lands*, 2012 MP 2, ¶ 19 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).
12 Many lower courts have applied this balancing test to cases in which judgment debtors challenged
13 the constitutionality of post-judgment execution, garnishment or attachment. *See, e.g., Brown*, 539
14 F.2d at 1363-1367; *Lind v. Midland Funding, LLC*, 688 F.3d 401, 407 (8th Cir. 2012); *and Tift v.*
15 *Snohomish County*, 764 F. Supp. 2d 1247, 1254 (W.D. Wash. 2011).

16 When considering whether the procedure offered complies with the requirements of the due
17 process clause of the Fourteenth Amendment, courts consider and weigh three interests, and engage
18 in a fact-specific analysis. *J.G. Sablan Rock Quarry, Inc.*, 2012 MP 2, ¶ 19. First, we consider “the
19 private interest that will be affected by the official action.” *Id.* Second, we look to “the risk of an
20 erroneous deprivation of such interest through the procedures used, and the probable value, if any,
21 of additional or substitute procedural safeguards.” *Id.* Finally, we consider “the Government’s
22 interest, including the function involved and the fiscal and administrative burdens that the
23 additional or substitute procedural requirement would entail.” *Id.*

24

1 The private interests affected by the writ of execution include the judgment creditor’s
2 interest in satisfying his judgment as quickly as possible. The longer the collection process, the
3 lower the value of his ultimate recovery. Additionally, delay in the creditor’s satisfaction gives the
4 judgment debtor time to dispose of or transfer assets that could be used to satisfy the judgment.

5 A judgment debtor has an interest in protecting from seizure property that is exempt under 7
6 CMC § 4210. SHRC argues that some of its property may be exempt from execution under 7 CMC
7 § 4210(b). 7 CMC § 4210 states in relevant part:

8 “The following described property is exempt from attachment and
9 execution:

10

11 (b) Necessities for Trade or Occupation. All tools, implements,
12 utensils, two work animals, and equipment necessary to enable the
13 person against whom the attachment or execution is issued to carry on
14 his or her usual occupation.”

15 There are no previously decided Commonwealth cases that speak to whether the legislature
16 intended this exemption to apply to the property of business entities. However, the Commonwealth
17 Supreme Court recently considered the nature of 7 CMC § 4210 and described the section as a
18 “homestead exemption.” *Aurelio v. Camacho*, 2012 MP 21, ¶ 19. In *Aurelio v. Camacho*, the
19 CNMI Supreme Court highlights that the intent of the legislature in drafting 7 CMC § 4210 is to
20 prevent debtors from becoming “dependent on public benefits” and “wards of the state” by allowing
21 the debtor to retain property that is necessary to “make a living.” *Id.* Corporations are legal
22 entities that, when distressed, do not become “dependent on public benefits.” Similarly,
23 corporations do not “make a living.” Looking to the plain language of the statute, the exemption
24 applies to any “person against whom the execution is issued.” The pronouns “his” and “her”
are used in the subsection to describe the person to which the exemption applies, not “its” as would

1 be expected for a business entity. See *Century Ins. Co. v. Guerrero*, 2009 MP 16 ¶ 20 (“A basic
2 principle of statutory construction is that language must be given its plain meaning.” (quoting
3 *Estate of Faisao v. Tenorio*, 4 NMI 260, 265 (1995))).

4 Defendant cites no persuasive legal authority indicating that business entities are protected
5 by statutory exemptions similar to the exemptions stated in 7 CMC § 4210. Supporting the view
6 that business entities are not protected by exemptions, Plaintiff cites to *Neely v. Century Finance*
7 *Company of Arizona*, 606 F. Supp. 1453, 1456 (D. Ariz. 1985). In *Neely*, the District Court found
8 that “[i]n any situation where no exemption could possibly apply, the holding of *Endicott-Johnson*
9 must be applied and the procedure upheld under due process analysis as no further due process is
10 required.” *Id.* at 1461. The *Neely* court went on to find that, because exemptions do not apply to
11 the assets of business entities, the existing Arizona procedure would satisfy due process concerning
12 business assets. *Id.* at 1461-62. All cases cited by Defendant questioning the validity of *Endicott*
13 and questioning the constitutionality of post-judgment procedure involved judgment debtors who
14 are natural people, to whom exemptions protecting survival and livelihood definitely apply. See
15 *Betts v. Tom*, 431 F. Supp. 1369 (D. Haw. 1977); *Kochi v. Commonwealth Super. Ct.*, Civ. No.
16 02-0054 (D. N. Mar. I. Nov. 13, 2003) (Stipulated Final Judgment); *Hicks v. Cadle Co.*, 809 F.
17 Supp. 742 (N.D. Ohio 2011); *Hutchinson v. Cox*, 784 F. Supp. 1339 (S.D. Ohio 1992); and *Aacen v.*
18 *San Juan County Sheriff’s Dep’t*, 944 F.2d 691 (10th Cir. 1991).

19 SHRC suggests that the Court should consider the corporation’s ability to remain in
20 business as the equivalent of a natural person’s ability to maintain the tools of his or her trade in
21 order to survive and create a livelihood. In effect, SHRC is asking the court to allow the owner of
22 the corporation to claim the corporation’s existence as the tools of his trade. The Court finds this
23 position inconsistent with the Commonwealth’s statutes governing corporate existence, which
24 provide for the separation of the corporation’s owners from the corporation. This legal separation is

1 what allows the corporation's owners to be insulated from the corporation's liabilities. *See* 4 CMC
2 § 4353(b). Contrary to SHRC's assertion that corporate existence should be protected in the face of
3 a judgment, 4 CMC § 4622(c) allows for judicial dissolution of a corporation where a creditor
4 brings a proceeding that establishes "[t]he creditor's claim has been reduced to judgment, the
5 execution on the judgment returned unsatisfied, and the corporation is insolvent."

6 If a shareholder were allowed to claim that he is legally separate from the corporate entity
7 for the purposes of satisfying the corporation's debt, but legally unified with the corporation for the
8 purpose of claiming that the corporation's property is exempt from execution, then creditors would
9 be unable to satisfy judgments against corporate debtors. Accordingly, the Court finds that it was
10 the intent of the legislature to protect the interests of natural persons by offering the exemptions
11 found in 7 CMC § 4210 and that there is no indication that the legislature intended the exemptions
12 found in 7 CMC § 4210 to protect the existence of business entities. Imposing such a requirement
13 would be inconsistent with 4 CMC § 4622(c). As such, where the judgment debtor is a business
14 entity, the exemptions of 7 CMC § 4210 do not apply. Because there is a valid judgment in place,
15 and because the exemptions do not apply to SHRC, the Plaintiff's interests in satisfaction of the
16 judgment outweigh SHRC's interest in continued use and possession of its property.

17 Thus, there is no risk of erroneous seizure because no exemptions apply to SHRC's
18 property. Additional procedural safeguards would not decrease risk of erroneous seizure, and
19 would only delay the satisfaction of Plaintiff's judgment.

20 Finally, the government's interests in this case include providing inexpensive and expedient
21 methods for the enforcement of judgments; ensuring that exempt property is not seized; and
22 promoting the efficient use of judicial resources. There is no potentially exempt property at issue in
23 this case, so additional hearings will only serve to further expend judicial resources in overseeing
24 the satisfaction of a judgment it has already ordered.

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This Court finds, after balancing the interests at hand, that the Defendant’s procedural rights were not violated by the Plaintiff’s ex parte request for a writ of execution and this Court’s issuance of the writ. The Court’s analysis relies heavily on the fact that the Defendant in this case is a corporation to which the exemptions found in 7 CMC § 4210 do not apply. In cases where the judgment debtor is a natural person who may have exempt property, such a writ would likely violate due process without some additional level of notice and an opportunity to be heard concerning the exemptions.

Pursuant to the above analysis, the Defendant’s motion is **DENIED**.
IT IS SO ORDERED this 1st day of August, 2013.

/s/
Joseph N. Camacho, Associate Judge