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Aqua Stoli Shipping, LTD. v. Gardner Smith Pty LTD. United States Court of Appeals for the Second Circuit 460 F.3d 434 (Decided July 31, 2006)

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The Admiralty Practicum is published bi-annually by the Admiralty Law Society of St. John's University School of Law, to bring to the attention of practitioners and other interested persons the highlights of recent court decisions in the admiralty field. The case summaries presented herein may not discuss all issues addressed by the various courts. Therefore, readers are advised to consult the original case sources.

THE STANDARD OF VACATUR FOR RULE B MARITIME ATTACHMENTS WAS NOT MET

District Court was in error when it vacated Rule B Maritime Attachment because it applied a “needs-plus-balancing” test. A District Court may vacate a maritime attachment if defendant can show that (1) defendant is subject to suit in convenient adjacent jurisdiction; (2) plaintiff could obtain *in personam* jurisdiction over defendant in jurisdiction where plaintiff is located; or (3) plaintiff has already obtained sufficient security for potential judgment.

Aqua Stoli Shipping, LTD. v. Gardner Smith Pty LTD.
United States Court of Appeals for the Second Circuit
460 F.3d 434
(Decided July 31, 2006)

In April, 2005 Aqua Stoli Shipping Ltd. (“Aqua Stoli”) entered into charter with Gardner Smith Pty Ltd. (“Gardner Smith”) to carry cargo on the M/V Aqua Stoli. Gardner Smith refused to load the cargo, alleging the vessel was not seaworthy. Aqua Stoli disputed this rejection and, subsequently, began an arbitration proceeding.

Aqua Stoli requested that Gardner Smith voluntarily post security for its claim. When Gardner Smith refused to post such security, Aqua Stoli brought action in the Southern District of New York seeking an *ex parte* attachment order under Supplemental Rule B, which allows Aqua Stoli to attach any assets of Gardner Smith located within the district. Fed. R. Civ. P. Supp. Rule B(1)(a). Judge Jed S. Rakoff granted the attachment subject to Rule E(4)(f), which provides in pertinent part that “[defendant is] entitled to a prompt hearing at which plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules.” Fed. R. Civ. P. Supp. Rule E(4)(f).

The district court, following the Rule E(4)(f) hearing, held that a court could vacate an attachment – even a *prima facie* valid attachment – if: (1) plaintiff can not show that the

attachment was necessary to obtain *in personam* jurisdiction over the defendant; (2) plaintiff can not show that the attachment was necessary to secure payment of a potential judgment; (3) defendant can show that the attachment was sought simply to gain a tactical advantage; or (4) defendant can show that the prejudice to the defendant outweighed the benefit to the plaintiff. *Aqua Stoli Shipping, Ltd. v. Gardner Smith Pty, Ltd.*, 384 F. Supp. 2d 729 (S.D.N.Y. 2005). The second circuit refers to this rationale as a “needs-plus-balancing” test.

The district court, applying the needs-plus-balancing test, found that Gardner Smith was an on-going business with sufficient assets outside the district to satisfy any potential judgment. The court also found that the burden placed on Gardner Smith was greater than the benefit to Aqua Stoli because the interception of electronic fund transfers severely impaired Gardner Smith’s financial ability. The district court, therefore, vacated the attachment. *Id.* at 730. Aqua Stoli appealed.

The issue on appeal to the second circuit is whether the district court erred when it applied the needs-plus-balancing test to determine if an attachment should be vacated under Supplemental Rule E(4)(f). The Second Circuit reviewed *de novo* because the issue dealt with legal predicate for an exercise of discretion.

The Second Circuit looked to the history of the each rule. Prior to 1985, a defendant had no clear right to contest an attachment. Due Process concerns, however, led to the addition of subsection (4)(f) to Rule E in 1985. Subsection (4)(f) was modeled on Local Rule 12, which provided the attached party with an opportunity to contest the attachment. The Local Rules had been created by Eastern and Southern Districts on New York to fill gaps that existed in national rules. Unfortunately, the extent to which Local Rule 12 was adopted is unclear.

The Advisory Committee’s notes to Rule E(4)(f) explain only that the subsection was promulgated in order to provide post-deprivation hearing as required by Due Process. But, the notes do not speak as to standards of vacatur. Both parties in this case argue that the second circuit should look to pre-Rule E(4)(f) cases to determine the context under which subsection (4)(f) was promulgated and what the standards for vacatur are.

The second circuit found that these pre-Rule E(4)(f) cases, although non-binding, do not support Gardner Smith’s position. The courts in these cases generally limited their review to the textual requirements of the statutes providing for attachments. *D/S A/S Flint v. Sabre Shipping Corp.*, 228 F.Supp. 384 (E.D.N.Y. 1964); see also *Antco Shipping Co. v. Yukon Compania Naviera, S.A.*, 318 F.Supp. 626 (S.D.N.Y. 1970).

Gardner Smith’s reliance on *Integrated* to support the contention that district courts have inherent equitable authority to vacate attachment orders on grounds of unfairness to the attached party is misguided. In *Integrated*, the court refused to vacate an attachment because service of process on the Secretary of State in Albany was not the equivalent of accepting service in the Southern District. Noting potential for abuse, such as a plaintiff seeking an attachment in one district even though a normal *in personam* suit could be maintained in another district within the same state, the court stated that courts have an inherent authority to vacate such attachments. *Integrated Container Service, Inc. v. Starlines Container Shipping, Ltd.*, 476 F.Supp. 119 (S.D.N.Y. 1979).

The *Integrated* decision, however, supports a limited vacatur standard. According to the Second Circuit’s interpretation of *Integrated*, an attachment is precluded only if the court could exercise *in personam* jurisdiction and defendant could be found within the district. Critics have called this test “arbitrary” because it presumes defendant’s presence in the district vitiates plaintiff’s needs for security without accounting for the financial state of the defendant in that

district. Although this rule may be too broad, the second circuit believes that Congress chose a less determinate rule to ensure that attachments may be obtained with minimal amount of litigation.

It does not follow, however, that district courts are without any discretion to vacate attachments. As aforementioned, vacatur may be warranted in limited circumstances. For example, vacatur may also be appropriate when: (1) defendant is subject to suit in convenient adjacent jurisdiction; (2) plaintiff could obtain *in personam* jurisdiction over defendant in district where plaintiff is located; or (3) plaintiff has already obtained sufficient security for potential judgment, by attachment or otherwise. In the absence of any of these compelling reasons, vacatur is appropriate only when plaintiff fails to sustain burden of showing that he has satisfied requirements of Rules B and E.

For the foregoing reasons, the Second Circuit held that the district court was in error when it vacated the attachment. The Second Circuit remanded the case for further proceeding consistent with its decision.

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CHOICE OF FORUM OF JONES ACT SUIT NEED NOT BE PLACED IN COURT THAT GRANTED RELIEF TO SHIPOWNER UNDER LIMITED LIABILITY ACT, PROVIDED INJURED PARTY STIPULATES JONES ACT RECOVERY MAY NOT EXCEED AMOUNT FIXED IN LIMITED LIABILITY ACTION.

Sanchez, a seaman allegedly injured aboard Inland Dredging Company, LLC's vessel, sought to bring a Jones Act suit in the District Court in Galveston against Inland Dredging to recover damages for personal injury. However, Inland Dredging had petitioned to limit its liability to Sanchez in the District Court in Mississippi and obtained an injunction restraining and enjoining all claims and proceedings against Inland Dredging in any other court. Sanchez made a motion, which was denied by the Mississippi District Court, to dissolve this injunction, stipulating that he would not seek to execute a judgment of the Galveston Court in excess of the limits prescribed by the Mississippi Court. The Court of Appeals reversed the order appealed from, granted the motion, and dissolved the injunction, thereby preserving Sanchez's legally protected right to select his choice of forum.

Inland Dredging v. Sanchez
United States Court of Appeals for the 5th Circuit
468 F.3d 864
(Decided October 27, 2006)

The appellant, Ricardo Sanchez, alleged that he suffered personal injuries while employed as a seaman on the M/A MS. PAULA, a vessel owned by Inland Dredging Company,