

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KNAUF FIBER GLASS GMBH : CIVIL ACTION
 :
v. :
 :
REFRACTORY AND INSULATION SUPPLY :
CORP. d/b/a RISCO, and :
PNC BANK, N.A., as garnishee : NO. 99-5741

MEMORANDUM AND ORDER

HUTTON, J.

December 1, 2000

Presently before this Court are Brief of Plaintiff, Knauf Fiber Glass GMBH, in Opposition to the Claim for Exemption Filed by Defendant (Docket No. 23), Defendant's letter brief and the arguments of counsel heard at a hearing on September 20, 2000.

I. BACKGROUND

On November 17, 1999, Plaintiff filed a complaint against Defendant asserting breach of contract and unjust enrichment. Plaintiff requested judgment in the amount of past due accounts receivable together with interest and costs. Approximately three months after Plaintiff filed this complaint, Defendant sold most of its assets for the sum of \$1,062,115.00 to Multi-Glass International Corporation. On March 14, 2000, a stipulated Order for judgment was entered for Plaintiff against Defendant for \$788,746.13.

On May 12, 2000, Plaintiff filed a praecipe for writ of execution and a writ of execution against Defendant and against PNC Bank, N.A., as garnishee. In addition, Plaintiff served interrogatories on Defendant. Next, Defendant filed the claim for exemption at issue in the instant matter on June 27, 2000. On June 28, 2000, upon consideration of the praecipe for judgment upon admission of the garnishee, PNC Bank, N.A., the clerk of the court entered a judgment in favor of Plaintiff against garnishee in the amount of \$37,669.03.

At a hearing on September 20, 2000, the Court requested the parties brief the issue whether Defendant had standing to assert a claim for exemption over property which it does not own.

II. LEGAL STANDARD

Cases have established that the irreducible constitutional minimum of standing contains three elements. See *Lujan v. Defenders of Wildlife, et al.*, 504 U.S. 555, 560 (1992). "First, the plaintiff must have suffered an injury in fact--an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical" See *id.* (citations and internal quotation marks omitted). The Supreme Court has stated that, by particularized, it means that the injury must affect the plaintiff in a personal and individual way. See *id.* at 560 n.1. "Second, there must be a causal connection between the injury and the

conduct complained of--the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.'" See id. at 560-61. "Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" See id. at 561. In addition, the party invoking federal jurisdiction bears the burden of establishing these elements. See id.

III. ANALYSIS

Here, on June 27, 2000, Defendant filed a claim for exemption of property which had been attached by writ of execution. Defendant claims an exemption of property in the possession of PNC Bank, N.A., as garnishee.¹ At a hearing on September 20, 2000, the Court ordered the parties to brief the issue whether Defendant had standing to assert the claim for exemption detailed above. Defendant, as the party claiming the exemption, bears the burden of establishing the elements of standing. See Lujan, 504 U.S. at 561.

In its Claim for Exemption (Docket No. 13), Defendant claims an exemption from attachment "[f]rom my property which is in the possession of a third party." See Defendant's Claim for Exemption.

¹ Apparently, without notice of claim for exemption, the Clerk of the Court granted Plaintiff's praecipe for judgment upon admission of the garnishee, PNC Bank, N.A. on June 28, 2000. The Clerk entered a judgment against garnishee in the amount of \$37,669.03. At oral argument on September 20, 2000, the parties agreed that Plaintiff would not negotiate the check and that Plaintiff's counsel would hold the check in escrow. See Transcript at 6.

Defendant, however, further on states that "monies in the account. [sic] are not the property of RISCO. Certain account receivables were sold to Multiglass and the account was sic used to cash the checks only. The receivables and the cash that was [sic] obtained from those receivables is [sic] not the property of RISCO." See id. Also, in its letter brief, Defendant acknowledges that it is not the owner of the monies contained in the bank account. Furthermore, Defendant maintains that although RISCO is not the owner of the monies contained in the bank account, RISCO does have a contractual obligation in accordance with the sale and assignment of accounts receivable to disburse the funds to the owner, Multi-Glass, Inc.² In addition, Defendant asserts that, if RISCO fails to abide by that contractual agreement, Multi-Glass would sue RISCO for the accounts receivable owed to Multi-Glass which are contained in the bank account attached by Plaintiff. Based on these facts, Plaintiff claims to have standing to claim an exemption to Plaintiff's claim of property.

Here, Defendant did not suffer an invasion of a legally protected interest which is concrete and particularized and actual or imminent. Defendant argues that, although it does not own the funds in the PNC Bank account, it will suffer injury if this Court

² The assertion by Defendant that Multi-Glass is the owner of the accounts receivable contradicts the "Asset Purchase Agreement" between RISCO and Multi-Glass because that agreement explicitly excludes "accounts receivable . . . described on Exhibit 1.3." See Asset Purchase Agreement, ¶ 1.3. Exhibit 1.3 states that the PNC Bank account is excluded. See id. Exhibit 1.3(a).

declines to exempt this property because the funds in the account are owned by Multi-Glass. Defendant contends that it is contractually bound to disburse those funds to Multi-Glass and if it fails to do so, Multi-Glass would sue them. Because the property is owned by Multi-Glass, failure to grant an exemption to judgment against Defendant would injure Multi-Glass, rather than Defendant. To the extent that Defendant claims injury to them is "actual, concrete and eminent [sic]," the Court disagrees because claiming Multi-Glass "would sue" Defendant is speculative, conjectural and hypothetical. Defendant has presented no evidence that demonstrates any imminent injury to them, other than a bald assertion that Multi-Glass would sue them and the allegation that they would be injured. Therefore, Defendant fails to establish an injury in fact and thus has no standing to maintain a claim for exemption.

An appropriate Order follows.

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O R D E R

AND NOW, this 1st day of December, 2000, upon consideration of Brief of Plaintiff, Knauf Fiber Glass GMBH, in Opposition to the Claim for Exemption Filed by Defendant (Docket No. 23), Defendant's letter brief and the arguments of counsel heard at a hearing on September 20, 2000, IT IS HEREBY ORDERED that Defendant's claim for exemption is **DENIED**.

IT IS FURTHER ORDERED that the judgment entered against PNC Bank, N.A. ("PNC") as garnishee and in favor of Knauf Fiber Glass GMBH, shall be and is effective as of June 28, 2000, that being the original date the Clerk entered the judgment, and

IT IS FURTHER ORDERED that since Plaintiff has been in possession of a check in the amount of \$37,519.03 from PNC from on or about July 6, 2000, but has voluntarily not negotiated the check until this Court has had an opportunity to resolve the validity of the Claim for Exemption, that, in the event the check has become stale such that it either cannot be negotiated by Plaintiff or will not be honored by PNC, PNC shall, upon written notice that the

check is stale and upon receipt of the check, properly forward to counsel for Plaintiff a replacement check in the amount of \$37,519.03.

BY THE COURT:

HERBERT J. HUTTON, J.