

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

BAY CITIES NATIONAL BANK : MISCELLANEOUS ACTION
v. :
JOHN L. CIONCI :
v. :
FIRST UNION NATIONAL BANK, :
Garnishee :
and :
RICHARD GLICK, Intervenor : NO. 95-162

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 1998

Plaintiff Bay Cities National Bank obtained a judgment against the defendant John L. Cionci in the United States District Court for the Central District of California. On May 31, 1995, that judgment was registered in this court; the balance due is \$50,776.38.

Plaintiff served a Writ of Attachment upon garnishee First Union Bank, which duly responded by verifying that, at the time the writ was served, the defendant John L. Cionci and intervenor Richard S. Glick had a joint checking account with the garnishee with a total balance of \$8,146.23, and that, after the writ was served, an additional deposit of \$4,630.33 was made to the account; and that the total amount available for attachment against the defendant Cionci (one half of the checking account)

was \$6,288.28. Plaintiff therefore seeks judgment in that amount against the garnishee.

The co-owner of the account, Richard S. Glick, was permitted to intervene, and an evidentiary hearing was held on June 1, 1998, to explore intervenor's contention that all of the funds in the bank account belonged to intervenor, and were not in fact the property of the defendant Cionci.

The facts are undisputed. The defendant Cionci and the intervenor Glick are medical doctors, and were formerly engaged a joint medical practice. Their partnership was formed in 1986, and the bank account in question is the same account which they jointly maintained during the duration of their partnership. The defendant Cionci retired from active medical practice in 1988, and the partnership was then terminated. Cionci continued to serve as a consultant for a rehabilitation center in which both men had some involvement, but retired permanently and completely in 1991.

At or shortly after the time the partnership was dissolved, the balance in the checking account was reduced to zero (as was the customary practice of the partners at the end of each year). All funds deposited in the checking account since that date have been the property of the intervenor, Dr. Glick. All funds in the account at the time the Writ of Attachment was served, and all sums deposited thereafter, were and are the property of Dr. Glick. Dr. Cionci has never claimed, and does

not now assert, any interest in those funds.

Unfortunately, Dr. Glick never bothered to change the name of the account, or to execute a new signature card. (He knew that Dr. Cionci would never exercise his technical right to draw checks on the account, and he saw no need to fill out the necessary paperwork, which might have involved getting new checks printed).

It is true that the bank records establish, prima facie, that one half of the money in the account was the property of the defendant Cionci, American Oil Co. v. Falconer, 8 A.2d 418 (Pa. Super. Ct. 1939); but that presumption is rebuttable. I am satisfied that intervenor has met his burden of proving that the entire balance in the account belonged and belongs to intervenor, and not to the defendant.

This action will therefore be dismissed.

An Order follows.

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FIRST UNION NATIONAL BANK,	:	
Garnishee	:	
and	:	
RICHARD GLICK, Intervenor	:	NO. 95-162

ORDER

AND NOW, this day of July, 1998, IT IS ORDERED:

1. That the Writ of Attachment (garnishment) issued to First Union National Bank is DISSOLVED.

2. Garnishee First Union National Bank is authorized and directed to amend its records to show that checking account No. 20000455516858, heretofore entitled "Dr. Richard S. Glick and Dr. John L. Cionci" is the property of Dr. Richard S. Glick, and that Dr. John L. Cionci has no interest therein, and his authority to draw checks on that account is terminated.

3. This action is DISMISSED.

John P. Fullam, Sr. J.