

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

GREAT AMERICAN INSURANCE COMPANY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
CHARLES H. STEPHENS, et al.	:	NO. 04-3642

**MEMORANDUM**

**Baylson, J.**

**August 11, 2006**

**I. Introduction**

Plaintiff Great American Insurance Company (“Plaintiff” or “GAIC”) filed this breach of contract action against Defendants Charles H. Stephens, Floy Stephens, Gary L. Bennett, and Kay Bennett (collectively, “Defendants”) on August 2, 2004. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 due to the diversity of citizenship of the parties, and venue is appropriate under 28 U.S.C. § 1391.

**II. Background and Procedural History**

This is an action concerning an indemnity contract between GAIC, the surety, and the Defendants, the indemnitors. The Court has previously explained the procedural history at length, and, for purposes of this Motion, will provide only a cursory review of the relevant proceedings. On September 27, 2005, the Court granted Plaintiff’s Motion for Summary Judgment. After supplemental discovery was permitted by the Court on the issue of attorneys’ fees and costs, the Court entered final judgment in this case in a Memorandum and Order dated June 29, 2006. The Court allowed Plaintiff to submit a request for amended judgment, calculating the interest due on the fees and costs as of June 29th, and Plaintiff filed a Motion to

Amend/Correct Final Judgment on July 7, 2006. Defendants subsequently filed a response in opposition, and on August 8, 2006, the Court granted Plaintiff's motion and ordered that the Final Judgment entered on June 29, 2006 be amended to include \$39,432.61 in interest on the attorneys' fees, consultants' fees, and expenses (Doc. No. 66).

Presently before the Court is Plaintiff's Motion for an Order Pursuant to 28 U.S.C. § 1963 Allowing the Registration of Judgment in Other Districts (Doc. No. 63) filed on July 24, 2006. Defendants Charles and Floy Stephens filed a response in opposition (Doc. No. 65) on August 7, 2006.<sup>1</sup> For the reasons that follow, the Court will grant Plaintiff's Motion and allow registration of the judgment in other districts.

### **III. Discussion**

In their opposition to the Motion, Defendants argue, inter alia, that Plaintiff's request is premature because the "good cause" requirement of 28 U.S.C. § 1963 applies only after the filing of an appeal.<sup>2</sup>

Section 1963 reads, in pertinent part, as follows:

A judgment in an action for the recovery of money or property entered in any . . . district court . . . may be registered by filing a certified copy of the judgment in

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<sup>1</sup> On March 17, 2006, the Court granted as unopposed Travis Kreiser's motion to withdraw as counsel for Gary and Kay Bennett. The Bennetts now appear in this matter pro se and to date have not filed any response to Plaintiff's pending motion for registration of the judgment in other districts. Although the response was filed only on behalf of the Stephenses, because judgment has been entered jointly and severally in this matter, the Court, as a matter of convenience, will refer to "Defendants" throughout this Memorandum.

<sup>2</sup> In their opposition brief, Defendants argue that Plaintiff's motion is premature because the final judgment previously entered was stayed by the Motion to Amend. Defs' Resp. at 4-6. Defendants also contend that 28 U.S.C. § 1963 does not allow the registration of non-final judgments and that since, due to a pending motion to amend, there is no final judgment in this case, the prerequisite for application of the statute does not exist. Id. at 6. Because Plaintiff's Motion to Amend/Correct the Judgment has been granted, Defendants' arguments on this front are moot and will not be considered by the Court.

any other district . . . when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. . . .

28 U.S.C. § 1963.

Defendants maintain that the statute and its legislative history as well as relevant case law require that the district court wait until the filing of an appeal or until the time for filing an appeal has expired before ordering registration of the judgment.<sup>3</sup> Defs' Resp. at 4. In support of their argument, Defendants cite Educational Employees Credit Union v. Mutual Guaranty Corp., 154 F.R.D. 233 (E.D. Mo. 1994), which held that "application of the 'Good Cause Shown' clause of . . . § 1963" is proper "only during the pendency of an appeal." Id. at 235.

Plaintiff asserts, however, that a pending appeal is not necessary for invocation of § 1963 and contends that case law from this Court supports its position. See Garden State Tanning, Inc. v. Mitchell Mfg. Group, Inc., 2000 WL 1201372 (E.D. Pa. Aug. 4, 2000). In Garden State, Magistrate Judge Hart cited approvingly a decision from the District of New Jersey which included a lengthy analysis of the legislative history of 28 U.S.C. § 1963. See id. at \*\*1–2 (discussing Associated Bus. Tel. Sys., Inc. v. Greater Capital Corp., 128 F.R.D. 63 (D.N.J. 1989)). Ultimately, Magistrate Judge Hart agreed with the holding in Associated Business Telephone Systems, writing, "Since the language of § 1963 does not limit the court's power to order registration in other districts to the time during which an appeal is pending . . . we will

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<sup>3</sup> On August 8, 2006, the Court granted Plaintiff's Motion to Amend/Correct Final Judgment, thereby commencing the time to file an appeal. See F.R. App. P. 4(a)(4)(A) ("If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion . . . (iv) to alter or amend the judgment under Rule 59."). As of the date of this Memorandum and Order, Defendants had not filed an appeal.

issue an order upon a showing of ‘good cause.’” Id. at \*2; see also Fidelity Bank v. Anania, 1991 WL 236208, at \*2 (E.D. Pa. Nov. 1, 1991) (“Under 28 U.S.C. § 1963, a judgment may be registered in another district ‘when ordered by the court for good cause,’ even before the time for appeal expires.”).

The Commentary to the 1988 Amendment of § 1963 states the key problems with the statute prior to its amendment:

[T]he difficulty with the pre-amendment § 1963 is that the literal application of its language about the appellate process being complete at home before registration is permitted abroad meant that during the appeal’s pendency there could be no registration elsewhere, and hence no acquisition of a lien elsewhere. This meant in turn that the judgment debtor was free to take advantage of the delay entailed by the appeal and remove his property from the other district, frustrating potential enforcement there even if his appeal did not succeed.

Siegel, Commentary on 1988 Revision, 28 U.S.C. § 1963 (West Supp. 1989). The Associated Business Telephone Systems court concluded that “It was against this background of the inequitable application of 28 U.S.C. § 1963 that Congress enacted the 1988 amendment” and noted that the legislative history to the 1988 amendment revealed that the intent of Congress was to prevent a debtor from hiding assets in a foreign jurisdiction. 128 F.R.D. at 66 & n.4. The Court finds that the legislative history of the statute and its 1988 amendment draw into sharp focus the difficulties which would result if Defendants’ position on the timing of registration were adopted.<sup>4</sup> Thus, the Court agrees with the conclusions of both Garden State and Associated Business Telephone Systems and finds that § 1963 does not prevent a district court from ordering

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<sup>4</sup> In consideration of the lengthy procedural history of this case and the significant delays which have ensued since summary judgment was granted in favor of Plaintiff on September 27, 2005, the Court is especially cognizant of the potential for frustration of enforcement of the judgment. The Court is simply mindful of the need for the efficient administration of justice and is not implying that Defendants in this case have any such malicious intentions.

registration in other districts before either an appeal has been filed or the time for filing an appeal has expired.<sup>5</sup> The Court will therefore issue an order permitting Plaintiff to register judgment upon a showing of “good cause.”

Good cause under § 1963 is satisfied by “a mere showing that the defendant has substantial property in the other district and insufficient [property] in the rendering district to satisfy the judgment.” Id. at 66 (quoting Siegel, Commentary on 1988 Revision, 28 U.S.C. § 1963 (West Supp. 1989)); see also Schreiber v. Kellogg, 839 F. Supp. 1157, 1162 (E.D. Pa. 1993) (“The good cause requirement may be satisfied if the judgment debtor has substantial property in a foreign district and insufficient property in the rendering district to satisfy the judgment.”); Fidelity Bank, 1991 WL 236208, at \*2 (“‘Good cause’ is satisfied where it is shown that the party against whom judgment was entered has assets in some other district and insufficient assets in the rendering district to satisfy the judgment.”).

In this case, Plaintiff’s counsel has submitted an affidavit detailing Defendants’ financial status both as discovered through independent research and as disclosed during settlement negotiations.<sup>6</sup> See Affidavit of Robert T. Carlton, Esq., July 24, 2006 at 1–3, Ex. G (hereinafter

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<sup>5</sup> The Garden State court also endeavored to distinguish the case upon which Defendants base their arguments, Educational Employees Credit Union. Although the court in Educational Employees Credit Union concluded that an order would be premature because § 1963 only applied during the pendency of the appeal, 154 F.R.D. at 235, the Garden State court found that the case was less than compelling because the precedent upon which it relied all involved cases seeking registration of a judgment during the pendency of an appeal. 2000 WL 1201372, at \*1. Much like Garden State, the instant case is one in which an appeal is not yet pending, the Court therefore reaches a similar conclusion and finds that the Educational Employees case is not compelling.

<sup>6</sup> In its Motion, Plaintiff notes that, pursuant to Rule 408 of the Federal Rules of Evidence, statements made during settlement negotiations are not admissible to prove liability but can be used for other purposes. Pl’s Br. at 2 n.1. Plaintiff argues, and the Court agrees, that evidence of Mr. Stephens’s interest in a fifty-acre parcel of land in Alabama is presented only to make a proper showing of “good cause” under § 1963 by establishing that Defendants have property and/or assets in some other

“Carlton Statement”). After a thorough review of the Carlton Statement, the Court concludes that the information supplied therein regarding Defendants’ lack of assets in this district as well as the property interests held in foreign districts is sufficient to make a “good cause” showing under 28 U.S.C. § 1963. The affidavit establishes that Defendants own property in various parts of Alabama, including Birmingham and Childersburg, as well as in Walton County, Florida. See Carlton Statement at ¶¶ 5–7, 11. In addition, the Carlton Statement shows, from both the reports of the real estate holdings of Defendants as well as various filings submitted to the Court in this case, that Defendants have no real estate or other interests in Pennsylvania. Id. at ¶¶ 7, 9–10. Defendants in their response did not dispute the accuracy of the information set forth in the Carlton Statement, and the Court therefore finds that Plaintiff has presented evidence that Defendants have substantial property and/or assets in Alabama and Florida, thus establishing “good cause.”

#### **IV. Conclusion**

For the reasons stated above, the Court will grant Plaintiff’s Motion for an Order Pursuant to 28 U.S.C. § 1963 Allowing the Registration of Judgment in Other Districts and will therefore allow Plaintiff to register the judgment in the Northern, Middle, and Southern Districts of Alabama, the Northern District of Florida, and in such other districts where Plaintiff determines that Defendants have real and/or personal property.

An appropriate Order follows.

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jurisdiction. Although no objection has as yet been raised by Defendants concerning the admissibility of contents of Exhibit G to the Carlton Statement, the Court holds that the presentation of information gained through settlement negotiations is proper under Rule 408. The Court will therefore consider the Carlton Statement in its “good cause” analysis.

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**ORDER**

AND NOW this 11th day of August, 2006, upon consideration of Plaintiff's Motion for an Order Pursuant to 28 U.S.C. § 1963 Allowing the Registration of Judgment in Other Districts (Doc. No. 63) and the response thereto, it is hereby ORDERED that Plaintiff's Motion is GRANTED and Plaintiff may register this Court's final judgment in the Northern, Middle, and Southern Districts of Alabama, the Northern District of Florida, and in such other districts where Plaintiff determines that Defendants have real and/or personal property. The Clerk shall close this case.

BY THE COURT:

s/ Michael M. Baylson  
Michael M. Baylson, U.S.D.J.