

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI-DADE DIVISION

IN RE

PREMIUM SALES CORPORATION,  
et al.,

Debtors.

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CASE NO. 93-12253-BKC-AJC  
93-12254-BKC-AJC  
93-13486-BKC-AJC

CHAPTER 11  
(Substantively Consolidated)

HARLEY S. TROPIN, as the Chapter 11  
Trustee for the Estates of Premium Sales  
Corporation and Plaza Trading Corporation,  
and the designated corporate representative  
of Windsor Wholesale Corporation,

Plaintiff,

vs.

DENNIS FARBER, STACEY MORRIS FARBER,  
et al.

Defendants.

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ADV. NO. 93-1462-BKC-AJC-A

**ORDER DENYING MOTION TO DISSOLVE WRITS OF GARNISHMENT  
AND FOR RELATED RELIEF BASED ON SUBJECT MATTER JURISDICTION**

This cause came on before the Court at a hearing held on June 13, 2007, at 10:30 a.m.  
upon the *Motion to Dissolve Writs of Garnishment and Execution and Order Compelling Return*

*of Garnished Funds Due To 1) Lack of Subject Matter Jurisdiction; and 2) Passing of the Statute of Limitations (C.P.#289), as supplemented by the Supplement to Motion to Dissolve Writs of Garnishment and Execution and Order Compelling Return of Garnished Funds Due to 1) Lack of Subject Matter Jurisdiction; and 2) Passing of the Statute of Limitations (C.P.#295) (the “Motion”)* filed by Defendants Dennis and Stacy Farber (the “Farbers”). The Court has considered the Motion, the *Response Of Torrent Acquisition Company, LLC To Defendants’ Motion To Dissolve Writs Of Garnishments (C.P.#301)* filed by respondent Torrent Acquisition Company, LLC (the “Judgment Creditor”), the record in this case, and argument of counsel.

In the Motion, the Farbers seek on alternate bases the dissolution of certain writs of garnishment relating to the judgments entered in the above-styled adversary proceeding. Through the entry of this Order, the Court resolves one such basis, i.e., the Farbers’ argument that this Court lacks subject matter jurisdiction to enforce its own judgments.

#### Background

1. On December 28, 1993, Harley Tropin, as Court-appointed Chapter 11 trustee of Premium Sales Corporation and its affiliates in a case styled In re Premium Sales Corporation et al., Debtors, Case No. 93-12253-AJC, (“Mr. Tropin”) commenced the above-styled adversary proceeding against the Farbers and others. In his complaint, Mr. Tropin alleged that the Farbers were participants in a notorious local Ponzi scheme and thereby received improper payments and other transfers of hundreds of thousands of dollars.

2. Rather than litigating the claims to conclusion, the Farbers settled these claims against them by entering into a settlement agreement with Mr. Tropin. Under the settlement agreement, the Farbers agreed to the entry of two final judgments against them totaling \$200,000. The settlement agreement specified that (a) “The Final Judgments shall each bear

interest at the rate of 10% per annum, compounded annually;” (b) Mr. Tropin had the right to assign his rights under the settlement agreement and final judgments; and (c) that the final judgments were non-dischargeable.

3. Pursuant to the settlement, on July 6, 1995, this Court entered two final judgments against the Farbers, which judgments were expressly determined to be non-dischargeable. The first final judgment was entered against the Farbers, jointly and severally, in the principal amount of \$50,000 (the “\$50,000 Tropin Judgment”). The second judgment was entered against Dennis Farber in the principal amount of \$150,000 (the “\$150,000 Tropin Judgment”). These two judgments are collectively referred to as the “Judgments.”

4. It is undisputed that, during the almost twelve (12) year period since this Court entered the Judgments, the Farbers have failed to make any payments towards the Judgments.

5. The Farbers have filed personal bankruptcy cases on 3 occasions, In re Farber, Case No. 95-22769-BKC-PGH; In re Farber, Case No. 00-24087-BKC-RBR; and In re Farber, Case No. 05-29972-BKC-RBR, but the Judgments expressly state they are non-dischargeable and the Farbers’ agreed not to seek to discharge them through bankruptcy.

6. Mr. Tropin has assigned the Tropin Judgments to the Judgment Creditor, as this Court recognized in connection with another recent garnishment dispute.<sup>1</sup>

7. On April 20, 2007, Judgment Creditor filed motions requesting that this Court authorize the Clerk to issue writs of continuing garnishment to the employer of Dennis Farber

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<sup>1</sup> On November 13, 2006, Judgment Creditor obtained and served a writ of garnishment upon Wachovia Bank. (C.P.#242&243). Wachovia filed an answer stating that it held \$5,771.56 of funds belonging to the Farbers. (C.P.#245). Dennis Farber responded by asserting a claim that the Wachovia funds constituted wages that were exempt from collection by virtue of Mr. Farber’s alleged status as head of the household. (C.P.#248). After conducting a contested evidentiary hearing, this Court entered an *Order Denying Claim Of Exemption Of Dennis Farber As To Garnished Funds, And Directing Payment To Garnishor* (C.P.#256) rejecting Mr. Farber’s claim of exemption and directing the garnished funds to be paid to the Judgment Creditor.

(THD At-Home Services, an affiliate of The Home Depot) and to Keller Williams Realty, whom the Trustee believed to be the employer of Stacy Farber. The Court granted these motions, and the Judgment Creditor obtained from the Clerk and served upon those companies continuing writs of garnishment.

8. On May 27, 2007, the Farbers filed the Motion currently before the Court. In the Motion, the Farbers request that the Court dissolve the writs of continuing garnishments based on, among other arguments, this Court's alleged lack of subject matter jurisdiction to enforce the Judgments through garnishment.

9. After the Judgment Creditor filed a response, the Court conducted a hearing to consider the Motion. During the course of the hearing, the Court decided first to address the Farbers' argument regarding subject matter jurisdiction. The Court continued the hearing as it related to other issues raised by the Motion.

#### Analysis

10. Among the jurisdictional grants to district courts is 28 U.S.C. § 1334(b), which provides in part that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11." Pursuant to 28 U.S.C. § 157(a), a district court is authorized to refer such proceedings to a bankruptcy court within the judicial district. The United States District Court for the Southern District of Florida has exercised its authority to refer all bankruptcy proceedings to the United States Bankruptcy Court for the Southern District of Florida. See S.D. Fla. L.R. 87.2

11. In this case, the Farbers do not dispute that this Court possessed jurisdiction under the foregoing authority to adjudicate the above-styled adversary proceeding against the Farbers that resulted in the Judgments.

12. The crux of the Farbers' argument is that this Court somehow "lost" jurisdiction over its Judgments once the original plaintiff conveyed his interest to a third party, i.e., the Judgment Creditor. This argument relies primarily on the assumption that a bankruptcy court's jurisdiction to enforce its own judgment only exists to the extent that such enforcement continues to somehow benefit or impact the bankruptcy estate. However, the Farbers' position, if adopted, would have a significant adverse impact on the administration of bankruptcy estates. Their position fails to take into consideration the fact that prospective purchasers of bankruptcy court judgments positively consider the ready availability of the bankruptcy court to facilitate post-judgment collection efforts. If the Court were to adopt the Farbers' unduly restrictive interpretation of bankruptcy court jurisdiction, this would almost certainly cause bankruptcy trustees to realize less value for creditors in connection with the sale of judgments.

13. The Farbers' argument that the bankruptcy court lacks the inherent authority to enforce its own judgment is equally unpersuasive. The United States Supreme Court has recognized that a federal court may exercise ancillary jurisdiction "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 380 (1994); see Eagerton v. Valuations, Inc., 698 F.2d 1115, 1118 n. 9 (11<sup>th</sup> Cir. 1983) ("Ancillary jurisdiction may be properly exercised to protect a judgment of a court through enforcement."). In Peacock v. Thomas, 516 U.S. 349 (1996), the Supreme Court elaborated as follows:

We have reserved the use of ancillary jurisdiction in subsequent proceedings for the exercise of a federal court's inherent power to enforce its judgments. Without jurisdiction to enforce a judgment entered by a federal court, "the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution." Riggs v. Johnson County, 6 Wall. 166, 187, 18 L.Ed. 768 (1868). In defining that power, we have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments –

including attachment, mandamus, **garnishment**, and the prejudgment avoidance of fraudulent conveyances.

Id. at 356 (emphasis added). Through other language in the opinion, the Court in Peacock implicitly recognized that ancillary jurisdiction extends to collection remedies available under Rule 69(a) of the Federal Rules of Civil Procedure, which include garnishment. IFC Interconsult, AG v. Safeguard Int’l Partners, LLC, 438 F.3d 298 (3d Cir. 2006) (interpreting Peacock to hold that ancillary enforcement jurisdiction extends to garnishment actions).

14. Numerous courts have recognized that, like district courts, bankruptcy courts also possess inherent ancillary jurisdiction to enforce judgments that were entered pursuant to other jurisdictional grants. See, e.g., Wellington Apartment, LLC v. Clotworthy (In re Wellington Apartment, LLC), 353 B.R. 465 (Bankr. E.D. Va. 2006); McCowan v. Fraley (In re McCowan), 296 B.R. 1, 4 (9<sup>th</sup> Cir. BAP 2003) (“where a proceeding is brought to execute on a judgment entered by the bankruptcy court, the proceeding is a continuation of the original proceeding, and jurisdiction depends on whether the original proceeding was within the bankruptcy court’s jurisdiction.”); In re Premier Sports Tours, 283 B.R. 601 (Bankr. M.D. Fla. 2002); American Freight System, Inc. v. Temperature Systems, Inc. (In re American Freight System, Inc.), 173 B.R. 739 (Bankr. D. Kan. 1993).

15. The decisions cited by the Farbers do not provide persuasive contrary authority. They primarily rely on Edwards v. Sieger (In re Sieger), 200 B.R. 636 (Bankr. N.D. Ind. 1996) and the few decisions that have followed it. *But see* Wellington Apartment, LLC v. Clotworthy (In re Wellington Apartment, LLC), 353 B.R. 465 (Bankr. E.D. Va. 2006). However, the Farbers’ reliance on Sieger, as well as on A.M.S. Printing Corp. v. Wernick (In re Wernick), 242 B.R. 194 (Bankr. S.D. Fla. 1999) and In re Miller 248 B.R. 198 (Bankr. M.D. Fla. 2000), is misplaced because none of those cases expressly considered the existence of ancillary

jurisdiction. See In re McCowan, 296 B.R. 1 at 5 (distinguishing Sieger and Wernick because “[n]either decision considered the concept of ancillary jurisdiction.”). Furthermore, each of these cases and Hoc, Inc. v. McAllister (In re McAllister), 216 B.R. 957 (Bankr. N.D. Ala. 1998), also cited by the Farbers, is factually distinguishable because each involved an underlying dischargeability determination. The Farbers’ reliance on Miller v. Conte (In re Import & Mini Car Parts, Ltd.), 203 B.R. 124 (N.D. Ind. 1996), is also misplaced because it involved a fraudulent conveyance, which, unlike garnishment, is well-recognized as exceeding the boundaries of ancillary enforcement jurisdiction.

16. For the foregoing reasons, this Court holds that it possesses ancillary jurisdiction in this case to enforce the Judgments that were entered in the proper exercise of this Court’s bankruptcy jurisdiction. It is therefore

ORDERED as follows:

(A) the Farbers’ Motion is DENIED insofar as it challenges the subject matter jurisdiction of this Court to enforce the Judgments; and

(B) this Court will conduct a hearing on July 12, 2007, at 10:30 a.m. to consider the remaining issues raised in the Motion, as well as the Judgment Creditor’s pending motion to compel the Farbers to respond to post-judgment discovery.

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Copies furnished to:

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Attorney Stern is directed to immediately serve copies of this order upon all interested parties and file a certificate of service.