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Minnesota Court of Appeals Determines Websites and Domain Names are Property Subject to Garnishment under Minnesota Law

In a case of first impression in Minnesota the Court of Appeals ruled, February 2, 2015, that both Internet domain names and copyright protected material in websites are property subject to garnishment under Minn. Stat. § 571.73, subd. 3 (Property Attachable by Garnishment). [*Sprinkler Warehouse, Inc. v. Systematic Rain, Inc. d/b/a GPLAWN.com, et al.*]

To collect on a $156,000 default judgment against Systematic Rain, Sprinkler Warehouse served a garnishment summons on the CEO of Systematic Rain who responded that he had no non-earnings property of Systematic Rain to garnish. Sprinkler Warehouse filed an objection arguing that Systematic Rain's website and domain name were property under the CEO's control and subject to garnishment.

The district court held in favor of Systematic Rain that the website and domain name did not constitute property subject to garnishment under the statute.

On appeal the Minnesota Court of Appeals identified four questions to be answered:

1. Is a registered domain name subject to garnishment?
2. Is a website subject to garnishment?
3. What is the appropriate procedure for garnishment of a website and domain name?
4. What factual determinations must be made by the district court on remand?

The Court of Appeals concluded that a domain name was property as an "asset with measurable value" (citing its unpublished 2009 opinion in *Schwartz v. Viacom, Inc.*) and that a domain holder has "well-defined interests" including the right to buy and sell a domain name and exercise a legitimate claim of exclusivity. Such property was garnishable, the court's opinion continued, under the "clear and unambiguous" language of Minn. Stat. § 571.73, subd. 3 that applies to "all" nonexempt property, whether intangible or tangible, of "any kind."

Continued...

The Court concluded further that "The elements that make up a website - the source documents, multimedia content, and the scripts that operate interactive website features - constitute property to the extent that they are copyright protected material which have "the attributes of personal property, including the owner's 'right to exclude others from using his property'" citing *eBay, Inc. v. MercExchange, LLC* [547 U.S. 388, 392 (2006)]. As with domain names, the court noted the unambiguous language of the statute in its applicability to "all property" made the copyright protected material that comprises a website subject to garnishment under the statute.

The court's opinion continued that the appropriate method for a judgment creditor to reach the value of a website and domain name is for the court to compel the garnishee to transfer the website and domain name to a receiver for sale. "The sale by a receiver allows the value of the website and domain name to be applied against the judgment debt, while eliminating the temptation for judgment creditors to misuse the garnishment statute." (As, for example, acquiring the domain and website but not applying either to satisfaction of the judgment.)

In addressing the final question of court action on remand, the Court of Appeals noted four determinations to be made: (1) that Systematic Rain was the owner of the property at issue; (2) whether the CEO of Systematic Rain was the proper garnishee by virtue of his possession or control of the website and domain name; (3) whether Systematic Rain had made any fraudulent transfers of the website and domain name; and (4) whether there are portions of the website that cannot be garnished – as, for example with content licensed from a third party which retains ownership.

U.S. Small Business Administration (SBA) Publishes Call for Proposals for Early Stage Investment Companies

On January 12 the SBA published (80 Federal Register, No. 7) a call for proposals from early stage fund managers to submit materials for consideration for licensing as an Early Stage Small Business Investment Company. The intent is to engage experienced fund managers in investing in small, early stage companies that would not routinely have access to credit and capital. The SBA defines an early stage small business as one that has never achieved positive cash flow from operations in any fiscal year before the year of investment.

Early Stage SBICs can request SBA guaranteed debenture leverage of up to one hundred percent of their regulatory capital to a maximum of $50 million. At least fifty percent of an Early Stage SBIC's investment dollars must be made in early stage small businesses.

The actual license application process is by invitation from SBA after review of materials submitted and an interview with fund principals and has the following deadlines:

February 27, 2015, submission of Management Assessment Questionnaire

April 20, 2015 – May 01, 2015 , interview period

"Green Light " decision inviting formal application – May 07, 2015

Application deadline- June 05, 2015 for funds seeking a license in 2015

Application deadline – within one year of "Green Light Letter" for funds not seeking a 2015 license

Note: the call for proposals is explicit that "An Early Stage SBIC applicant must have signed capital commitments for at least $20 million in regulatory capital prior to filing its license application.

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