IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

BRESLER'S INDUSTRIES, INC. and BRESLER MALLS, INC.,	*	4-00-CV-90393
Plaintiffs,	*	
v.	*	
GEORGE D. BRACELIN and PENNEY L. BRACELIN,	*	MEMORANDUM OPINION AND ORDER
Defendant.	*	

I. Background

Before the Court is Defendant George D. Bracelin's motion to dismiss and his motion to discharge Plaintiff's, Bresler's Industries, Inc. ("Bresler's") and Bresler Malls, Inc. ("Bresler Malls"), attachment of his checking accounts. The Court held a hearing on these matters on September 19, 2000. At that hearing, Mr. Bracelin conceded that both Plaintiffs met the jurisdictional amount necessary for diversity jurisdiction and effectively withdrew his motion to dismiss based on the allegation the Plaintiffs did not meet the jurisdictional amount requirement. *See* 28 U.S.C. § 1332(a). Mr. Bracelin also submitted two affidavits in support of his motion to discharge the attachment at that hearing. The Court gave the parties until September 21, 2000 to supplement their pleadings pursuant to Mr. Bracelin's submission. Only Plaintiffs did so.

II. Discussion

Plaintiffs attached three checking accounts with Mr. Bracelin's name on them pursuant to IA Code § 693.3 (West 2000). The checking accounts, totaling $9,197.32, consisted of two accounts held jointly by Mr. Bracelin and his new wife, Jerolyn Bracelin ($253.36 and

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$8,921.15), and one account held jointly by Mr. Bracelin and his seventeen-year-old daughter, Stephanie Bracelin ($22.81). In support of the attachment, Plaintiffs stated as follows:

> (a) Defendant George Bracelin is about to remove permanently out of Polk County and has property therein not exempt from execution and the defendant refuses to pay or secure the plaintiff;
>
> (b) The defendant George Bracelin is about to remove permanently out of this state and refuses to pay or secure the debt due the plaintiff.

Pl.s' Verified Petition for Attachment ¶ 3. This language parallels sections (7) and (8) of IA Code § 639.3 (West 2000).

Mr. Bracelin contends that the attachment is improper. In support of his contention, Mr. Bracelin states that although he did move from Iowa to Tennessee, he did not intend on running away from any obligation he might have and that if he is found liable he can arrange or secure payment on the judgment. Mr. Bracelin also states that while he and Jerolyn Bracelin each had a right to withdraw from the accounts they held jointly, the account held jointly by Mr. Bracelin and Stephanie Bracelin was the sole property of Stephanie Bracelin. Finally, Mr. Bracelin points the Court to two cases: *Tyler v. Bowen*, 100 N.W. 505 (Iowa 1904) and *Ackley State Bank v. Thielke*, 920 F.2d 521 (8th Cir. 1990). In *Tyler*, the plaintiff appealed the jury instruction in a case in which the defendant sued the plaintiff for wrongful suing out of the attachment. *Tyler*, 100 N.W. at 505. The ground the plaintiff alleged for the suing out of the attachment was that the defendant was about to remove his property from the state with the intent and purpose to defraud his creditors. *Id.* The court held that the trial court erred by making the defendant "show not only that he was not about to remove from the state, but that he was not about to defraud his creditors, and that plaintiff had no reasonable ground to believe these allegations to be true." *Id.* at 505-506. In *Thielke*, the 8th Circuit held that Iowa law allowed a party "to establish the rights of joint tenants during their lifetime." *Thielke*, 920 F.2d at 524 (citing

Anderson v. Iowa Dep't of Human Services, 368 N.W.2d 104, 109 (Iowa 1985)).

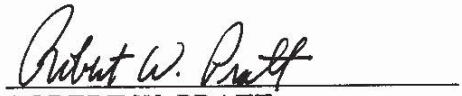
The evidence and arguments submitted by Mr. Bracelin fall short of demonstrating why the attachment should not remain in effect. First, in *Farmers National Bank of Webster City, IA v. Manke*, 500 N.W.2d 19, 20 (Iowa 1993), the Iowa Supreme Court held that only the legal sufficiency of the stated grounds for attachment may be challenged in seeking a discharge of attachment, and that any factual challenge must be made in an action on the bond under IA Code § 693.14. Mr. Bracelin's affidvait which states that he is not intending on running away from any obligation this lawsuit may impose is therefore irrelevant. Second, Plaintiffs correctly point out that in *Anderson*, the case cited in *Thielke*, 920 F.2d at 524, the court held that a tenant is rebuttably presumed to own equal shares in a joint bank account. *Anderson*, 368 N.W.2d at 109. The affidavit from Mr. Bracelin and his new wife, which states that Mr. Bracelin had no right in his daughter's account, is not sufficient to rebut that presumption. The attachment shall thus remain in effect.

III. Conclusion

Mr. Bracelin's motion to dismiss and his motion to discharge the attachment are **denied**.

IT IS SO ORDERED.

Dated this 3rd day of October, 2000.



ROBERT W. PRATT,
U.S. DISTRICT JUDGE