

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2009

(Argued: July 14, 2010 Decided: September 16, 2010)

Docket No. 09-4564-cv

- - - - -x

INDIA STEAMSHIP COMPANY LIMITED,

Plaintiff-Appellant,

- v. -

KOBIL PETROLEUM LIMITED,

Defendants-Appellees.

- - - - -x

Before: JACOBS, Chief Judge, WESLEY and CHIN,
 Circuit Judges.

Plaintiff appeals from an October 20, 2009 order of the United States District Court for the Southern District of New York (Berman, J.), vacating a Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture Actions B attachment in light of Shipping Corp. of India v. Jaldhi Overseas Pte Ltd., 585 F.3d 58 (2d Cir. 2009). **AFFIRMED.**

JEREMY J.O. HARWOOD, of counsel,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26
27
28
29

30
31
32
33
34

35

1 Blank Rome LLP, New York, NY,
2 for Plaintiff-Appellant.

3
4 FRANCIS H. McNAMARA, of counsel,
5 Cardillo & Corbett, New York,
6 NY, for Defendants-Appellees.

7
8 PER CURIAM:

9 In anticipation of arbitration, plaintiff India
10 Steamship Company Limited ("ISC") attached \$1,653,168
11 belonging to defendant Kobil Petroleum Limited ("Kobil"),
12 pursuant to Rule B of the Supplemental Rules for Admiralty
13 or Maritime Claims and Asset Forfeiture Actions ("Rule B"),
14 as the funds passed briefly through New York en route from
15 one foreign Kobil account to another. Kobil entered a
16 general appearance, and the attached funds were transferred
17 by consent order to the Southern District Clerk. Following
18 this Court's decision in Shipping Corp. of India v. Jaldhi
19 Overseas Pte Ltd., 585 F.3d 58 (2d Cir. 2009), the United
20 States District Court for the Southern District of New York
21 (Berman, J.) ordered the funds released to Kobil. ISC
22 appeals the release order. We affirm, holding that neither
23 Kobil's general appearance nor its consent to the funds'
24 transfer waived objection to the attachment.

1 an electronic funds transfer.¹ Kobil entered a general
2 appearance, and consented to the funds' transfer to an
3 interest-bearing account in the Southern District's
4 registry.

5 Following this Court's decision in Jaldhi, the district
6 court on October 20, 2009 ordered the attached funds
7 released. This appeal timely followed.

8

9

II

10 ISC argues that Kobil waived objection to the
11 attachment [1] by entering a general appearance and,
12 alternatively, [2] by consenting to the funds' transfer.
13 Neither argument is persuasive.

14 Kobil concedes that its general appearance conferred on
15 the district court jurisdiction that is general and in
16 personam. Kobil therefore waived objection to jurisdiction
17 over its person, asserted broadly. But the appearance did
18 not waive Kobil's objection to the attachment order or
19 render the order valid. This is so even though attachment
20 provided the basis for jurisdiction over Kobil at the

¹ For an explanation of electronic funds transfers, see generally Jaldhi, 585 F.3d at 60 n.1.

1 outset. Jurisdiction over a person is conceptually distinct
2 from jurisdiction over the person's property--though (as in
3 the case of quasi in rem jurisdiction) the issues sometimes
4 overlap. To attach property, a court will have jurisdiction
5 over the property in question and the remedial authority to
6 order attachment, regardless of the court's jurisdiction in
7 personam over the property owner. See, e.g., United States
8 v. First Nat'l City Bank, 321 F.2d 14, 18-19 (2d Cir. 1963)
9 (observing that statutorily authorized tax lien can be
10 enforced only against property within the jurisdiction of
11 the court), aff'd per curiam on reh'g in banc, 325 F.2d 1020
12 (2d Cir. 1964), rev'd on other grounds, 379 U.S. 378 (1965);
13 Restatement (Second) of Judgments § 8 & cmt.a ("[Attachment
14 jurisdiction] is based on the fact that the property is
15 within the territorial limits of the state in which the
16 court is located."). The validity of an attachment order
17 therefore is not settled by a court's attainment of in
18 personam jurisdiction over the property owner. Consent to
19 one does not imply or effect consent to the other.

20 Kobil consented to the funds' transfer to the Southern
21 District registry so that the funds would accrue interest
22 during the pendency of this action. Its consent did not

1 purport to waive objection to the attachment, nor should it
2 effect forfeiture of objection by operation of law. Cf.
3 Cricket S.S. Co. v. Parry, 263 F. 523 (2d Cir. 1920)
4 (holding that a defendant who "releas[es] his property from
5 an illegal attachment [by posting a bond] does not waive a
6 good objection to jurisdiction over his person, if it be
7 reserved"). A party need not choose between challenging an
8 attachment and protecting the value of the attached assets.

9 * * *

10 For the foregoing reasons, we affirm the district
11 court's October 20, 2009 release order.