

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

BRIAN W. JONES, ASSIGNEE OF KEY  
LIME HOLDINGS LLC.

Appellant

v.

DAVID GIALANELLA, FIRST NATIONAL  
BANK

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1229 WDA 2013

Appeal from the Order Entered June 28, 2013  
In the Court of Common Pleas of Allegheny County  
Civil Division at No(s): GD-08-005181

BEFORE: GANTMAN, P.J., FORD ELLIOTT, P.J.E. and OLSON, J.

MEMORANDUM BY OLSON, J.:

**FILED JULY 16, 2014**

Appellant, Brian W. Jones, assignee of Key Lime Holdings LLC, appeals *pro se* from the order entered on June 28, 2013.<sup>1</sup> We are constrained to vacate and remand.

The esteemed trial court ably summarized the underlying facts and procedural posture of this case. We quote from the trial court's opinion in part:

On or about March 12, 2008, a judgment was entered in favor of Key Lime Holdings LLC and against [Appellee,] David Gialanella [(hereinafter "Mr. Gialanella"), in the principal amount of \$2,391.00]. On January 14, 2013, said

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<sup>1</sup> We note that Appellant represented himself throughout all of the underlying proceedings.

judgment was [assigned] to [Appellant]. On that same day, [Appellant] [] issued a writ of execution naming [Appellee,] First National Bank [(hereinafter "FNB")], as garnishee. The Sheriff of Allegheny County served FNB with the writ of execution and interrogatories on January 15, 2013.

. . .

On [January 15, 2013,] FNB responded to [Appellant] by letter, stating that [Mr. Gialanella's] account balance was below the statutory exemption amount [of \$300.00, as provided in 42 Pa.C.S.A. § 8123,<sup>2</sup>] leaving no funds for garnishment. [**See also** Pa.R.C.P. 3111.1(3).<sup>3</sup>] The letter

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<sup>2</sup> In relevant part, 42 Pa.C.S.A. § 8123 provides:

In addition to any other property specifically exempted by this subchapter, property of the judgment debtor (including bank notes, money, securities, real property, judgments or other indebtedness due the judgment debtor) to the value of \$300[.00] shall be exempt from attachment or execution on a judgment. Within such time as may be prescribed by general rules the judgment debtor may claim the exemption in kind and may designate the specific items of property to which the exemption provided by this section shall be applicable unless the designated property is not capable of appropriate division, or the judgment debtor may claim the exemption in cash out of the proceeds of the sale.

42 Pa.C.S.A. § 8123(a).

<sup>3</sup> Pennsylvania Rule of Civil Procedure 3111.1(3) states:

In the absence of a court order, service of the writ upon a bank or other financial institution as garnishee shall not attach . . . the funds on deposit, not including any otherwise exempt funds, that do not exceed the amount of the general monetary exemption under 42 Pa.C.S.A. § 8123. The plaintiff shall have the right to file an objection if the plaintiff believes that the defendant has exhausted the statutory exemption.

*(Footnote Continued Next Page)*

also notified [Appellant] that if he required FNB to file [f]ormal [a]nswers to the [i]nterrogatories, the bank would require additional notification.<sup>[4]</sup>

Trial Court Opinion, 9/3/13, at 1-2 and 3-4.

On May 8, 2013, Appellant filed a self-titled "Motion to Direct Garnishee to File Additional and More Specific Answers to Interrogatories and Motion for Summary Judgment" (hereinafter "Appellant's Motion"). Within this motion, Appellant claimed that, after FNB was served with the writ of execution, Mr. Gialanella's bank account, at times, exceeded the \$300.00 statutory exemption threshold. Further, Appellant averred that, even after Mr. Gialanella's bank account exceeded the \$300.00 threshold, FNB still permitted Mr. Gialanella to withdraw funds from his bank account. Appellant's Motion, 5/8/13, at 2.

As proof of these averments, Appellant attached to his motion three of Mr. Gialanella's FNB checking account statements. The checking account statements revealed that, in the months after FNB was served with the writ of execution, Mr. Gialanella continuously deposited money into his FNB checking account and FNB continuously allowed Mr. Gialanella to withdraw money from that account. Appellant's Motion, 5/8/13, at "Exhibit B." The

*(Footnote Continued)* \_\_\_\_\_

Pa.R.C.P. 3111.1(3).

<sup>4</sup> ***But see*** Pa.R.C.P. 3145(a) ("[t]he procedure between the plaintiff and the garnishee shall, as far as practicable, **be the same as though the interrogatories were a complaint** and the answer of the garnishee were an answer in a civil action") (emphasis added).

account statements also declared that, on January 16, 2013 (or, one day after FNB was served with the writ of execution), Mr. Gialanella's FNB checking account had a balance of \$615.19 and that, on March 15, 2013, Mr. Gialanella's FNB checking account had a balance of \$310.78. *Id.*

Within Appellant's motion, Appellant claimed that, by allowing Mr. Gialanella to withdraw funds from his account after the account exceeded the \$300.00 statutory exemption amount, FNB violated "the mandate and injunctive orders of the writ of execution which enjoin the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant or otherwise disposing thereof."<sup>5</sup> Appellant's Motion, 5/8/13, at 2 (internal quotations omitted); *see also* Pa.R.C.P. 3111(d). Appellant thus requested that the trial court enter judgment against FNB "for the value of the property of [Mr. Gialanella] found to be in

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<sup>5</sup> Throughout these proceedings, Appellant has claimed that FNB violated the injunction when it allowed Mr. Gialanella to withdraw funds from his account after Mr. Gialanella's account balance exceeded the \$300.00 statutory exemption amount. We note that Appellant never filed an objection with the trial court, wherein Appellant might have asserted his "belie[f] that [Mr. Gialanella] ha[d] exhausted the statutory exemption . . . under 42 Pa.C.S.A. § 8123." *See* Pa.R.C.P. 3111.1(3) ("[i]n the absence of a court order, service of the writ upon a bank or other financial institution as garnishee shall not attach . . . the funds on deposit . . . that do not exceed the amount of the general monetary exemption under 42 Pa.C.S.A. § 8123. **The plaintiff shall have the right to file an objection if the plaintiff believes that the defendant has exhausted the statutory exemption**") (emphasis added).

the possession of [FNB].” Appellant’s Motion, 5/8/13, at 8; **see also** Pa.R.C.P. 3147.

On May 13, 2013, FNB filed an answer and new matter to Appellant’s interrogatories.<sup>6, 7</sup> Within the “answer” portion of FNB’s filing, FNB raised the defense of exemption of property.<sup>8</sup> Specifically, FNB averred: on January 15, 2013 (when FNB was served with the writ of execution), Mr. Gialanella’s bank account “had a balance of approximately \$269.00, which was subject to the [] \$300.00 general monetary exemption under [42 Pa.C.S.A. § 8123 and Pa.R.C.P. 3111.1(3)], and [FNB’s] attorneys[’] fees and costs of \$175.00”<sup>9</sup> and on May 13, 2013 (when FNB filed its answer to Appellant’s interrogatories), Mr. Gialanella’s bank account balance was “approximately \$237.00, which is subject to the [] \$300.00 general

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<sup>6</sup> Prior to FNB’s answer and new matter, Appellant had not filed a *praecipe* to enter judgment with the prothonotary. **See** Pa.R.C.P. 3146.

<sup>7</sup> We note that, although FNB titled its filing “Answer and New Matter,” FNB did not endorse its filing with either a notice to plead or a “notice to answer.” As such, Appellant was not required to file a reply to FNB’s purported new matter. **See** Pa.R.C.P. 1026(a).

<sup>8</sup> **But see** Pa.R.C.P. 3145(b) (“[t]he garnishee in the answer **under ‘new matter’** may include . . . the defenses of the immunity or exemption of property”).

<sup>9</sup> **But see** Pa.R.C.P. 3140(d) (“[w]here funds in an account are not attached as a result of Rule 3111.1, **the garnishee shall not assess any fee** against exempt funds contained in any account held by the garnishee”) (emphasis added).

monetary exemption under [42 Pa.C.S.A. § 8123 and Pa.R.C.P. 3111.1(3)], and [FNB's] attorneys['] fees and costs of \$175.00."<sup>10</sup> FNB's Answer and New Matter, 5/13/13, at ¶ 1. As such, FNB requested that the trial court discontinue Appellant's garnishment action against FNB. ***Id.***

After FNB filed its answer and new matter, Appellant re-filed his "Motion to Direct Garnishee to File Additional and More Specific Answers to Interrogatories and Motion for Summary Judgment." Thereafter, on May 20, 2013, the trial court issued a rule to show cause upon FNB, as to why Appellant was not entitled to relief.<sup>11</sup> Following briefing, the trial court entered an order on June 28, 2013, which dissolved the rule and discontinued Appellant's garnishment action against FNB.<sup>12</sup> Trial Court Order, 6/28/13, at 1.

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<sup>10</sup> ***But see supra*** \*5 n.9.

<sup>11</sup> ***But see*** Pa.R.C.P. 3145(a) ("[t]he procedure between the plaintiff and the garnishee shall, as far as practicable, **be the same as though the interrogatories were a complaint** and the answer of the garnishee were an answer in a civil action") (emphasis added); ***see also*** Pa.R.C.P. 206.1(a) ("[a]s used in this chapter, 'petition' means[:] (1) an application to strike and/or open a default judgment or a judgment of non pros, and (2) any other application which is designated by local rule, numbered Local Rule 206.1(a), to be governed by Rule 206.1 *et seq.*"); Allegheny County Civil Court Rule 206.4 note ("[t]his court **has not** promulgated a local rule, numbered Local Rule 206.1(a)(2), which provides for any other application to be governed by Rule 206.1 *et seq.*") (emphasis added).

<sup>12</sup> Appellant has raised no issue with the procedure that was followed in this case.

Appellant filed a timely notice of appeal and Appellant now raises the following claims to this Court:

[1.] Was [FNB] bound by the mandate and injunctive orders of the writ of execution not to pay any debt to, or for the account of, [Mr. Gialanella], until further order of the court or until the discontinuance or termination of the attachment?

[2.] Was [FNB] required to attach all funds of [Mr. Gialanella], once they exceeded the amount of the statutory exemption [] of \$300.00 under [42 Pa.C.S.A. § 8123(a)], according to the express language of [Pa.R.C.P.] 3111(b) which states, “[s]ervice of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee’s possession at the time of service”?

[3.] Was [Appellant] entitled to a judgment against [FNB] for the value of the property attachable under the rules and found to be in its possession, not to exceed the value of the judgment, under [Pa.R.C.P.] 3145 and [Pa.R.C.P.] 3146?

Appellant’s Brief at 2.

In the case at bar, the trial court essentially entered summary judgment against Appellant, and in favor of FNB. We note:

Our scope of review of a trial court’s order granting or denying summary judgment is plenary, and our standard of review is clear: the trial court’s order will be reversed only where it is established that the court committed an error of law or abused its discretion.

Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a

matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

**Englert v. Fazio Mech. Serv.'s, Inc.**, 932 A.2d 122, 124 (Pa. Super. 2007) (internal citations omitted).

Appellant's first two claims on appeal are identical, thus we will consider these claims as one.<sup>13</sup> Within these claims, Appellant contends that the trial court erred when it entered summary judgment against him, as he came forward with evidence that FNB violated "the mandate and injunctive orders of the writ of execution" by allowing Mr. Gialanella to withdraw funds from Mr. Gialanella's account, after the account exceeded the \$300.00 statutory exemption threshold. Appellant's Brief at 5-7. We agree.

Garnishment is a proceeding by which a judgment creditor may "collect[] his debt out of property of the [judgment] debtor [that is] in the hands of a third party, and may be used to determine whether the garnishee owes a debt to the judgment debtor, or has property of the judgment debtor." **Garden State Standardbred Sales Co. v. Seese**, 611 A.2d

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<sup>13</sup> We note that Appellant has waived his third numbered claim on appeal, as Appellant failed to include the claim within the argument section of his brief. **In re Jacobs**, 936 A.2d 1156, 1167 (Pa. Super. 2007) (issue listed in statement of questions involved on appeal section was waived where appellant failed to address the issue in the argument section of the brief); **Commonwealth v. Jackson**, 431 A.2d 944, 945 n.1 (Pa. 1981) ("[t]he 'Argument' must separately address each claim presented. Pa.R.A.P. 2119(a). Failure to do so waives consideration of the claim").



1239, 1241 (Pa. Super. 1992) (internal quotations and citations omitted).

In relevant part, our Rules of Civil Procedure define a “garnishee” as follows:

Any person may be a garnishee and shall be deemed to have possession of property of the defendant if the person . . . has property of the defendant in his or her custody, possession or control.

Pa.R.C.P. 3101(b)(2). Under Pennsylvania law, a garnishee “is required to exercise a high degree of care in protecting the rights of the other parties until a legal result has been regularly reached.” ***Korman Commercial Prop.’s, Inc. v. Furniture.com***, 81 A.3d 97, 102 (Pa. Super. 2013) (internal quotations and citations omitted).

Here, it is undisputed that FNB is a garnishee, as FNB admitted that it “has property of [Mr. Gialanella] in [its] custody, possession or control.” Pa.R.C.P. 3101(b)(2); FNB’s Answer and New Matter, 5/13/13, at ¶ 1. The only issue on appeal is whether there exists a genuine issue of material fact that FNB violated “the mandate and injunctive orders of the writ of execution” when it allowed Mr. Gialanella to withdraw funds from his account, after the account exceeded the \$300.00 statutory exemption threshold.

In Pennsylvania, a judgment creditor may enforce a judgment by filing a writ of execution with the appropriate prothonotary. Pa.R.C.P. 3102 and 3103. Service of the writ of execution upon a garnishee then has a number of effects. As is relevant to the case at bar, Pennsylvania Rule of Civil Procedure 3111 declares:

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee's possession at the time of service.

. . .

(d) Service of the writ upon the garnishee shall also subject the garnishee to the mandate and injunctive orders of the writ restraining the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

Pa.R.C.P. 3111(b) and (d).

Rule 3111(b) thus provides for both the immediate **and the continuing** attachment of the debtor's property following service of the writ. Such a rule has long been the law of Pennsylvania. **See Sheetz v. Hobensack**, 20 Pa. 412 (Pa. 1853) (dating Pennsylvania's practice of continuing attachment to "the custom of London," as well as to "the Act of 1705"). Certainly, in the case of attachment execution,<sup>14</sup> both Rule 3111(b)

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<sup>14</sup> Attachment execution is to be distinguished from the (now defunct) process of foreign attachment. As we have explained, in an attachment execution (such as in the case at bar), "judgment is obtained against the defendant **before** the writ is issued against the garnishee." **Gen. Maint. Eng'rs, Inc. v. Pac. Vegetable Oil Corp.**, 104 A.2d 505, 507 (Pa. Super. 1954) (*en banc*) (emphasis in original). On the other hand, in the case of a foreign attachment, "the judgment [was] obtained against [a nonresident] (*Footnote Continued Next Page*)

and precedent from our appellate courts declare that – following service of the writ – the rule of continuing attachment applies **even if the garnishee holds no property** belonging to the judgment debtor at the time the writ was served. Pa.R.C.P. 3111(b) (“[s]ervice of the writ upon the garnishee . . . shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee’s possession thereafter until judgment against the garnishee **even though no such property of the defendant was in the garnishee’s possession at the time of service**”) (emphasis added); *Fleming v. Quaid*, 201 A.2d 252, 255 (Pa. Super. 1964) (“[e]ven if, when the writ is served, the garnishee holds no property

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defendant **after** the writ [was] issued.” *Id.* (emphasis in original). With respect to the rule of continuing attachment, our Supreme Court held:

Distinction must be made between attachment executions and foreign attachments. In the former there need not be a res in the hands of the garnishee at the time the attachment is served, and monies or property subsequently acquired by the garnishee may become bound by the attachment. In the latter, [i]f the garnishee has property in his hands belonging to the defendant at the time the writ of foreign attachment is served, the attachment is good and binds money and property subsequently received by the garnishee; but if when the writ is served the garnishee has nothing belonging or owing to the defendant, the attachment is fruitless and a nullity.

*Atkins v. Canadian SKF Co.*, 45 A.2d 28, 30 (Pa. 1946) (internal quotations and citations omitted).

belonging to the judgment debtor, the attachment will bind any of his property which may later come into the garnishee's hands prior to judgment against him"); ***Atkins v. Canadian SKF Co.***, 45 A.2d 28, 30 (Pa. 1946) (in the case of an attachment execution, "there need not be a res in the hands of the garnishee at the time the attachment is served, and monies or property subsequently acquired by the garnishee may become bound by the attachment"); ***Sheetz***, 20 Pa. at \*2 (citing the following "custom of London" as the law of Pennsylvania: "if A. attaches the money or goods of M. in the hands of R., and if R. has no money or goods in his hands belonging to M., at the time when the attachment shall be made; and it shall happen that six months after R. shall become indebted to M., or have goods in his hands belonging to M., the plaintiff A., by virtue of the attachment made as aforesaid, shall recover the money or goods he shall prove came to the hands of R., **after the attachment made.** The general issue upon all attachments being whether R., who is called the garnishee, at the time of the attachment made, **or at any time after**, had any money or goods of M. in his hands") (emphasis in original).

In the case at bar, FNB answered Appellant's interrogatories and averred that, on January 15, 2013 (when FNB was served with the writ of execution), Mr. Gialanella's bank account "had a balance of approximately \$269.00." FNB's Answer and New Matter, 5/13/13, at ¶ 1. If true, under Pennsylvania Rule of Civil Procedure 3111.1(3), service of the writ of

execution upon FNB would not have immediately attached the \$269.00 that Mr. Gialanella had on deposit at FNB. Again, Rule 3111.1(3) provides:

In the absence of a court order, service of the writ upon a bank or other financial institution as garnishee **shall not attach . . . the funds on deposit**, not including any otherwise exempt funds, **that do not exceed the amount of the general monetary exemption under 42 Pa.C.S.A. § 8123**. The plaintiff shall have the right to file an objection if the plaintiff believes that the defendant has exhausted the statutory exemption.

Pa.R.C.P. 3111.1(3) (emphasis added).

As noted above, “the amount of the general monetary exemption under 42 Pa.C.S.A. § 8123” is \$300.00. 42 Pa.C.S.A. § 8123. Therefore, if – on the day the writ was served – Mr. Gialanella had \$269.00 on deposit at FNB, Rule 3111.1(3) would act to exempt Mr. Gialanella’s \$269.00 from immediate attachment.

However, even though FNB held no attachable property belonging to Mr. Gialanella when the writ was served, service of the writ acted to bind any of Mr. Gialanella’s attachable property “which [came] into [FNB’s] possession thereafter until judgment against [FNB].” Pa.R.C.P. 3111(b). In this case, Appellant came forward with evidence that – on **the day after** the writ was served upon FNB – Mr. Gialanella’s bank account balance was \$615.19. Appellant’s Motion, 5/17/13, at “Exhibit B.” Viewing this evidence in the light most favorable to Appellant, it was at this point that Mr. Gialanella’s funds were no longer exempt from attachment, as Mr. Gialanella’s “funds on deposit” with FNB exceeded the \$300.00 statutory

exemption threshold. **See** Pa.R.C.P. 3111.1(3). Therefore, using the language of Rule 3111(b), it was at this point that Mr. Gialanella's FNB account funds became "property of the defendant **which may be attached under these rules.**" Pa.R.C.P. 3111(b) (emphasis added).

For property to be attached under Rule 3111(b), the rule also requires that the property be in "the garnishee's possession." **Id.** On appeal, FNB seems to claim that it did not "possess" Mr. Gialanella's otherwise attachable property, as it would be "impractical . . . [for] a financial institution to continually monitor account(s) on a daily basis [to determine] until if and when the balance exceeds the general monetary exemption of [\$300.00]." FNB's Brief at 7. We sympathize with FNB as it does seem that an undue burden is placed on a financial institution to continually monitor accounts once the institution is served with a writ of execution. However, FNB cites to no law and we have been unable to find any after an exhaustive search that supports the proposition that the financial institution is relieved of any obligation to attach property that comes into its possession that exceeds the monetary exemption. Indeed, the law holds to the contrary. In accordance with our Supreme Court's opinion in **Witco Corp. v. Herzog Brothers Trucking, Inc.**, 863 A.2d 443 (Pa. 2004), we must conclude that FNB "possessed" the funds in Mr. Gialanella's account. Further, viewing the evidence in the light most favorable to Appellant, we are constrained to conclude that – after Mr. Gialanella's bank account balance surpassed the \$300.00 statutory exemption threshold – FNB "possessed" Mr. Gialanella's

attachable property and at that time, FNB had the obligation to attach the funds in the bank account.

In **Witco**, our Supreme Court accepted three certified issues for review from the United States Court of Appeals for the Third Circuit. One of the issues was:

whether a drawee bank obtains “possession” of any property, as defined by Pa.R.C.P. 3101, of a customer who physically provides the drawee bank’s teller with cash and checks, in exchange for the issuance of a bank cashier’s check, when those funds are never deposited into the customer’s account at the drawee bank.

**Witco**, 863 A.2d at 444.

In **Witco**, the Witco Corporation (hereinafter “Witco”) obtained a default judgment against Herzog Brothers Trucking, Inc. (hereinafter “Herzog Brothers”), in the United States District Court for the Western District of Pennsylvania, for approximately \$500,000.00. **Witco**, 863 A.2d at 444. Witco then served a writ of execution and interrogatories upon National City Bank (hereinafter “National City”), as a potential garnishee. National City answered the interrogatories and admitted that it “held and had frozen \$1,379.52 in a checking account belonging to Herzog Brothers.” **Id.**

During the course of the garnishment proceeding, Witco discovered that – after National City was served with the writ of execution – Herzog Brothers “purchased at least 131 cashiers’ checks from [National City], using personal checks and cash.” **Id.** According to the Supreme Court:

As to each purchase of a cashier's check, [the president of Herzog Brothers] presented his personal checks or cash to [National City] at the teller windows whereupon [National City] would issue "official checks" drawn on [National City] and payable to various designees specified by [Herzog Brothers]. The aggregate value of these checks exceeds \$6,000,000[.00]. During the same time period, [National City] made [14] payments to itself totaling \$22,718.86 from funds presented to [National City's] tellers by [Herzog Brothers] in the form of personal checks or cash.

**Id.** at 444-445. The Supreme Court also noted that, in its dealings with Hertzog Brothers, National City waived an internal policy that "required [] all funds used for the issuance of 'official checks' in an amount in excess of \$3,000[.00] first be deposited into an account at [National City]." **Id.** at 445.

After discovering this information, Witco filed a motion to compel payment by National City. **Id.** According to Witco – when Herzog Brothers physically tendered the personal checks and cash to National City – National City "possessed" Herzog Brothers' property, as that term is used in Pennsylvania Rule of Civil Procedure 3101(b). Therefore, according to Witco, National City had a duty as garnishee to hold the funds for Witco. **Id.** As noted above, Rule 3101(b) defines the term "garnishee" under our Rules of Civil Procedure and declares:

Any person may be a garnishee and shall be deemed to have possession of property of the defendant if the person . . . has property of the defendant in his or her custody, possession or control.



Pa.R.C.P. 3101(b)(2). Further, as is true of Rule 3111, Rule 3101(b) is included in the chapter concerning “Enforcement of Money Judgments for the Payment of Money.” **See** Pa.R.C.P. 3101–3159.

National City filed a motion for summary judgment and claimed that it never “possessed” Herzog Brothers’ property. **Witco**, 863 A.2d at 445. Therefore, according to National City, it was not liable to Witco for disposing of Herzog Brothers’ property. The district court agreed with National City and entered summary judgment in National City’s favor. The Pennsylvania Supreme Court summarized the district court’s reasoning as follows:

the district court likened the transactions to any sales transaction where the purchaser tenders full payment at the time of the sale. Because [Herzog Brothers] never deposited [the] cash or personal checks in [National City] as part of the cashier’s check purchases, the court found as a matter of law that [National City] never came into possession of Herzog Brothers’ property.

**Id.**

Witco appealed the district court’s order to the Third Circuit, and the Third Circuit certified certain questions of law for resolution by the Pennsylvania Supreme Court. One of these questions was whether National City had “possession” of Herzog Brothers’ property, under Rule 3101, even though the funds were never deposited into an account at the bank. **Id.**

Our Supreme Court held that the term “possession” must be construed in accordance with its plain meaning and that, under this “plain language

approach,” National City indeed had possession of Herzog Brothers’ property. *Id.* at 446. The Supreme Court in *Witco* explained:

Rule 3101(b) unambiguously provides that a garnishee is deemed to be in possession of property of the defendant if the garnishee “has property of the defendant in his or her custody, possession or control.” Black’s Law Dictionary (8th Ed. 2004) defines possession as: “The fact of having or holding property in one’s power; the exercise of dominion over property.” Here, when Herzog Brothers purchased 131 cashiers’ checks from [National City], [National City] came into physical possession of the personal checks and cash proffered by [Herzog Brothers]. [National City] then had the power to control Herzog Brothers’ access to those funds and the manner in which the funds were disbursed. Indeed, pursuant to its ordinary business policies, [National City] had the power to hold the checks [Herzog Brothers] presented until it determined that sufficient funds existed in the banks upon which the checks were drawn before making the funds available to Herzog Brothers. In addition, [National City’s] internal policy provided that funds for a cashier’s check in excess of \$3,000[.00] were to be deposited into an account with [National City] prior to issuance of the cashier’s check. That [National City] chose in the case of this particular customer/judgment debtor not to follow its usual practices, and thereby declined to hold the checks or require that the funds be deposited in a Herzog Brothers’ account, does not negate that [National City] had those powers over the funds – powers which derived from the fact that they were in possession of the funds, if only for a brief time. Thus, applying the common and approved definition of the term “possession,” we conclude that [National City] was in possession of the checks and cash once [Herzog Brothers] handed them over to [National City’s] tellers, for purposes of Rule 3101(b), notwithstanding that Herzog [Brothers] did not formally deposit the funds into Herzog Brothers’ account with [National City].

*Id.* at 446-447 (internal footnote omitted).

Viewing the record in the light most favorable to Appellant, the facts at bar present an even stronger case for possession than were present in **Witco**. Indeed, in **Witco**, the Supreme Court held that the bank came into possession of a judgment debtor's property under Rule 3101(b), when the judgment debtor handed property to the bank's tellers in exchange for cashiers' checks. Thus, in **Witco**, the Supreme Court held that the bank was a garnishee that possessed the judgment debtor's property, even though the transaction between the bank and the judgment debtor was brief and transitory and even though the judgment debtor did not deposit the funds into its bank account. **Id.** In the case at bar, by contrast, Mr. Gialanella **actually deposited the money** into his FNB checking account; and, when Mr. Gialanella deposited the money into his FNB checking account, FNB was able to exercise dominion over Mr. Gialanella's funds. Thus, "applying the common and approved definition of the term 'possession,'" we conclude, consistent with **Witco**, that – when Mr. Gialanella's FNB checking account surpassed the \$300.00 statutory exemption threshold – FNB "possessed" Mr. Gialanella's attachable property. **Id.**

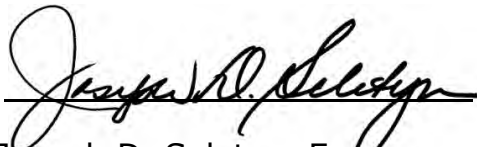
Viewing the record in the light most favorable to Appellant, since FNB possessed Mr. Gialanella's attached property, FNB was "subject . . . to the mandate and injunctive orders of the writ [of execution] restraining [FNB] from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further

order of the court or discontinuance or termination of the attachment.” Pa.R.C.P. 3111(d). Since Appellant proffered evidence that FNB violated the mandate and injunctive orders to which it was subject, the trial court erred in granting summary judgment to FNB. We must therefore vacate the trial court’s order and remand for further proceedings.

Order vacated, case remanded, jurisdiction relinquished.

Gantman, P.J. concurs in result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/16/2014