

Umpqua Bank v. Raymond James Financial Services, Inc.
No. 65706-2-I (Linked with No. 65401-2-I)

Cox, J. (Concurring) — I concur with the analysis and result of the lead opinion. I write separately to emphasize another reason why the superior court judge acted well within her discretion by setting aside the judgment awarding the garnished funds to Umpqua.

Basic to any garnishment proceeding is the principle that due process requires notice and an opportunity to be heard before anyone may be deprived of a significant interest in property.¹ Here, it is undisputed that Umpqua knew, prior to obtaining its judgment against Raymond James, that there was a competing claim to the roughly \$410,000 in garnished funds by the holder of an alleged prior security interest in those funds. While Umpqua did not know the name of the putative secured creditor, it conceded at oral argument before this court that it took no steps to determine the identity of that creditor before obtaining its judgment awarding it the garnished funds. Moreover, it appears that Umpqua did not inform the superior court judge who entered the judgment that the court commissioner previously ordered that notice be given before entry of any judgment on the garnished funds.

The record reflects that Frontier Bank, the putative secured creditor, likely had notice that funds in which it claimed a security interest had been garnished shortly after Umpqua garnished them. But it is absolutely clear that Frontier had no notice and no opportunity to be heard before the superior court judge entered judgment in favor of Umpqua.

We need not, and do not, decide whether the court commissioner's order requiring Umpqua to provide notice prior to entry of judgment on the answer of Raymond James, the garnishee, was correct. Umpqua chose to ignore the notice requirement of that order. Instead, the bank proceeded to the superior court judge and obtained the judgment to the garnished funds without any prior notice to either Frontier or Raymond James. This placed the superior court in the position of unknowingly entering a judgment without allowing Frontier, a party with an alleged interest in the funds, any notice or opportunity to be heard.

Despite Umpqua's arguments to the contrary, the superior court judge was well within her discretion to set aside this judgment because of the "irregularity in obtaining" it, as CR 60(b) provides. In reaching this conclusion, we do not decide the validity,

¹ *N. Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 605-06, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975); *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 342, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969).

priority, or extent of Frontier's claimed security interest in the garnished funds. Those issues are not before us. Moreover, we have no reason to conclude that Umpqua acted in bad faith in this case. It is sufficient to conclude that the failure to provide both notice and an opportunity to be heard to a creditor with an alleged prior security interest in the garnished funds is an additional reason supporting the superior court judge's proper exercise of discretion in setting aside this judgment.

For this additional reason, I concur.

Cox, J.