UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GLEN HARRIS, individually, and P.P.A as guardian for K.H., a minor child, Plaintiffs	:	
V.	:	DOCKET NO. 3:08CV1644(RNC)
JOHNMICHAEL O'HARE, ANTHONY PIA and CITY OF HARTFORD, Defendants	:	SEPTEMBER 7, 2016

PLAINTIFFS' MEMORANDUM IN SUPPORT OF APPLICATION FOR PREJUDGMENT REMEDY

Introduction

The plaintiffs submit the following memorandum in support of their motion for a prejudgment remedy against the defendant City of Hartford, following remand by the Second Circuit Court of Appeals, directing a partial judgment against the individually named defendants and in favor of the plaintiffs on their fourth amendment illegal entry claim. Subsequently, Judge Chatigny stated during a status conference following remand, that in addition to a hearing in damages on the 42 U.S.C. § 1983 illegal entry count, all remaining claims will be retried. A new jury is scheduled to be empaneled on September 13, 2016 and will be instructed that the defendants' entry into the plaintiffs' fenced curtilage was unconstitutional and unlawful as a matter of law, and that this law was clearly established at the time of the intrusion in 2006. Moreover, Judge Chatigny intends to instruct the jury that the defendants are liable for any proven damages they find were proximately caused by the defendants' unlawful conduct.

The defendant city is named in a separate count alleging statutory indemnification pursuant to Conn. Gen. Stat. §§ 7-101a and 7-465. On various occasions in both pleadings and on the record, the defendants assured the Court and stipulated that the officers would be indemnified for any resultant judgment. Plaintiffs filed an application for prejudgment remedy against defendants O'Hare and Pia on July 7, 2015. The hearing on that application took place on June 30, 2016, and as of this date there has been no decision. On September 6, 2016, assistant corporation counsel Nathalie Feola-Guerrari represented to Magistrate Judge Martinez and the undersigned

counsel in a telephone conference that as of August 25, 2016, the City of Hartford no longer has insurance that will cover any damages resulting from this case, nor does the city have an obligation to pay any judgment in this case. A prejudgment remedy against the defendant city is warranted due to the substantial risk that the defendant City of Hartford may now seek to avoid its obligation to pay a just debt and/or pay any monetary judgment to the plaintiffs. Moreover, the defendant city should be precluded from throwing these officers under the proverbial bus, either as a trial or negotiation tactic, after eight years of litigation.

Standard for Prejudgment Remedy

Rule 64 of the Federal Rules of Civil Procedure provides for attachments and "other corresponding or equivalent remedies" as an interim process "to secure satisfaction of the potential judgment" if that remedy "is available . . . under the law of the state where the court is located . . .." Connecticut General Statutes §52-278a *et seq*. applies to this action. *Everspeed Enters. Ltd. v. Skaarup Shipping Int'l*, 754 F.Supp. 2d 395, 401 (D. Conn. 2010). Conn. Gen. Stat. § 52-278d(a) states, "[i]f the court, upon consideration of the facts before it and taking into account any defenses, counterclaims or . . . claims of adequate insurance, finds that the plaintiff has shown probable cause that such a judgment will be rendered in the matter in the plaintiff's favor in the amount of the prejudgment remedy sought and finds that a prejudgment remedy securing the judgment should be granted, the prejudgment remedy applied for shall be granted as requested or as modified by the court . . ."

> [P]rejudgment remedy proceedings are not involved with the adjudication of the merits of the action brought by the plaintiff or with the progress or result of that adjudication. They are only concerned with whether and to what extent the plaintiff is entitled to have property of the defendant held in the custody of the law pending adjudication of the merits of that action.

Marlin Broad., LLC v. Law Office of Kent Avery, LLC, 101 Conn. App. 638, 646 (2007). "Proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence." (Internal quotation marks omitted.) *Kosiorek v. Smigelski*, 112 Conn. App. 315, 319, *cert. denied*, 291 Conn. 903 (2009); *see also 36 DeForest Avenue, LLC v. Creadore*, 99 Conn. App. 690, 698, *cert. denied*, 282 Conn. 905 (2007) (stating that the burden of proof at a probable

cause hearing is a low one).

Municipal property is subject to attachment like any other corporation pursuant to Conn. Gen. Stat. § 52-279. *Kevalis v. Cook*, No. UWYCV034002528S, 2006 WL 1148821 (Conn. Super. Ct. Apr. 11, 2006). In his decision in *Kevalis*, Judge (now Justice) Eveleigh, listed several reasons why municipal property is subject to attachment. First, the statute on its face allows for attachment of corporate assets. "The text of Section 52-279 is broad and all inclusive" and "does not exclude municipal property from attachment." *Id.* at *5. Second, "It would certainly be harsh to tell the plaintiffs that although they were allowed to achieve a verdict, they have no means by which to protect that verdict by way of an attachment." *Id*. at *6.

The court in *Kevalis* relied in part on *Bray v. Wallingford*, 20 Conn. 416, 417-18 (1850), in which the Connecticut Supreme Court held that "a town is a corporation, and a corporation is a person within the meaning of the foreign attachment statute." The *Bray* court reasoned that "the general principles of justice and equity, which require that the particular species of property owned by a person, which consists of debts due to him, should equally with his other property, be rendered available to his creditors, and which induced the legislature to make them so, obviously apply as fully to debts due to him from municipal or territorial, as from other corporations, or from natural persons." *Id.* at 419. Relying on that decision, Judge Eveleigh opined in *Kevalis* that "if a town may be subject to foreign attachment for monies which it owed to others, it certainly follows that it may be attached for monies that it may owe [to a plaintiff]." *Kevalis* at *5.

The court in *Kevalis* also cited *Seymour v. Over-River School District,* 53 Conn. 502 (1885), which held that even the salary of a public school teacher is not exempt from foreign attachment. In *Seymour*, the court reasoned, "in this state the policy of the law has been to compel every man to pay its foundation in principles of justice, and before any class of persons can be declared exempt from its operation, reasons therefore of greater weight than those which support the policy must be shown." *Seymour* at 509-10.

Lastly, Judge Eveleigh wrote that Section 52-279 was enacted in 1949 – at which time the common law of Connecticut allowed a town to be garnished for ordinary debts due from the town. The common law stated that "no exceptions should exist

unless found in cogent reasons of public policy." *Id.* Thus, "since the garnishment of town assets is far more intrusive on the business of a town than the recording of a lien on town property," it is clear based on historical precedent that a municipality is subject to attachment like any other corporation who seeks to shirk its financial obligations.

Facts and Argument

The plaintiffs will dispense with a summary of the allegations because of the court's familiarity with the case and prior memorandums. As far as necessary proof is concerned, the plaintiffs emphasize that on one of their civil rights claims, the Second Circuit established as a matter of law that the plaintiffs have prevailed, and that no defense to it exists. The Court of Appeals stated:

> In 2008, when the shooting took place, it was clearly established that police officers need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home. It was similarly settled doctrine that probable cause for belief that certain articles subject to seizure are in a dwelling cannot of itself justify a search without a warrant.

After the Court of Appeals concluded that no exigent circumstances existed, it made the pronouncement that any "reasonable officer therefore should have known that it was unlawful to invade Plaintiffs' curtilage under the circumstances." At the last trial, the defendants admitted they neither sought nor possessed a search warrant. Tr. 612-13. Pia expressly testified: "We did not need one." Tr. 274.

Therefore, proof that the defendants violated clearly established constitutional rights is not just beyond what is necessary for probable cause, but constitutes *res judicata*. The plaintiffs submit that judgment on that count also is sufficient to show there is probable cause for the remainder of the plaintiffs' claims. Particularly disconcerting is the City of Hartford's recent position that it may not have the funds to indemnify the individual defendants, and the fact that the assistant corporation counsel stated during a September 6, 2016 teleconference with Magistrate Judge Martinez that the city's insurance will not cover any monetary damages resulting from this case, nor does the city believe it has any statutory obligation to indemnify defendants Pia and O'Hare, despite years of stipulations and statements to the contrary.

The defendants previously represented, both in writing and in court, that an

attachment on the officers' assets should be limited to a potential award of punitive damages, because the city would indemnify the rest of the judgment. Doc. 180 filed April 1, 2016. It has now become clear that the city defendants intend to renege on a promise to the Court, which the plaintiffs have relied on to their detriment. Indeed, it now appears that the defendants may be deceiving the Court through their outlandish u-turn in trial strategy. Attachment of municipal property and assets is the only way that the plaintiffs can ensure that they will receive just compensation. Therefore, the plaintiffs seek attachment of city property and/or assets for any potential award, including costs and attorney's fees. Just because the defendant city thinks it can walk away from its legal obligations, does not mean this Court should believe its counsel. Indeed, its newly formed position is at odds with the plain language of indemnification statutes.

Conclusion

For the foregoing reasons, the plaintiffs request that the court enter a prejudgment remedy for a sufficient amount to satisfy a judgment. Because the City of Hartford has now suggested to this Court that it will not indemnify the officers at all, despite the statutory mandate in Conn. Gen. Stat. §§ 7-101a and 7-465, and because the municipality's insurance allegedly will no longer cover any judgment resulting from this case, the plaintiffs ask that the Court enter an order that will be sufficient to cover the entire amount of any debt, including damages, costs and attorney's fees, pursuant to 42 U.S.C. § 1988. *Plaintiffs request oral argument*.

THE PLAINTIFFS, GLENN HARRIS, ET AL.

By: */s/ Jon L. Schoenhorn*

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CERTIFICATION

I hereby certify that on the above date, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Jon L. Schoenhorn
Jon L. Schoenhorn