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**THE STATE OF NEW HAMPSHIRE
SUPREME COURT
2019 TERM**

CASE NO. 2019-0307

FORTUNE LAUREL, LLC

v.

HIGH LINER FOODS (USA), INCORPORATED, TRUSTEE, ET AL.

**APPEAL PURSUANT TO RULE 7 OF DECISION FROM
ROCKINGHAM COUNTY SUPERIOR COURT**

BRIEF OF APPELLEE, FORTUNE LAUREL, LLC

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QUESTIONS PRESENTED

1. The trial court issued an order that it had *quasi in rem* jurisdiction to maintain a prejudgment attachment against the property of a foreign defendant held by a trustee defendant located in New Hampshire, pending the adjudication of the underlying claims against the foreign defendant in another jurisdiction. Is that order a final decision of the superior court that supports a mandatory appeal by the non-trustee defendants under Supreme Court Rule 3 and 7? *See Order, Fortune Laurel, LLC v. High Liner Foods (USA), Incorporated, Trustee, et al.*, Case No. 2019-0307 (Sept. 13, 2019).
2. The plaintiff asserted a number of claims against Chinese corporate defendants, and it also obtained a trustee process attachment of funds that are held by a third-party, New Hampshire corporation to secure the judgment the plaintiff is likely to obtain against the Chinese corporate defendants. The trial court found that it did not have personal jurisdiction over the foreign defendants for the purpose deciding the claims on the merits, but it also found it had *quasi in rem* jurisdiction to maintain the trustee process attachment. Was it proper for the trial court to rule that it had jurisdiction to maintain

the prejudgment attachment of the foreign defendants' funds pending adjudication of the underlying case against the Chinese corporate defendants in Massachusetts? (App. at 7 & 30.)¹

STATEMENT OF THE CASE

This is an appeal of the Rockingham County Superior Court's orders finding that it had jurisdiction to maintain the trustee process attachment of funds being held in New Hampshire to secure a judgment being sought in another state. The Plaintiff, Fortune Laurel, LLC ("Fortune Laurel") is a Massachusetts limited liability company that acts as a broker/middleman for foreign companies that sell seafood to companies in the United States and Canada. (App. at 33.) Fortune Laurel filed a verified complaint for claims of breach of contract and violations of RSA 358-A against the Defendants, Yunnan New Ocean Aquatic Product Science and Technology Group Co., Ltd., Yunnan Ocean King Fisheries Co., Ltd., Yunnan Honghao Fisheries Co., Ltd., Yunnan Honghao Fisheries Co., Ltd., and U.S. Ocean Star Trade Co., Ltd. (collectively the "YOK Defendants") in the Rockingham County Superior Court on December 20, 2017 (App. 57-71.) At the same time, Fortune Laurel obtained an *ex parte* trustee process attachment by levying funds that High Liner Foods (USA), Incorporated ("High Liner USA") owes to the YOK Defendants (App. at 10-11.)

High Liner USA objected to the trustee process attachment, claiming that it did not owe any funds to the YOK Defendants and that the attachment was otherwise unlawful. (App. at 13.) One of the bases for the objection was that High Liner USA asserted that its Canadian parent

¹ Citations to the record are as follows:

"App" refers to the Appellants' Appendix filed contemporaneously with their brief.

company, High Liner Foods Inc. (“High Liner Canada”) was the entity that owed the YOK Defendants payment for fish that had been delivered to High Liner USA. (App. at 13.) The YOK Defendants also filed a motion to dismiss the action, asserting that the Rockingham County Superior Court did not have personal jurisdiction over the primary claims in this action. (App. at 32.)

On July 12, 2018 and September 28, 2018, the trial court held combined evidentiary hearings on the YOK Defendants’ motion to dismiss and High Liner USA’s objection to the trustee process attachment. (App. at 11.) Timothy Rorabeck, the Executive Vice President and Secretary of High Liner Foods Canada and High Liner Foods USA testified, along with Richard Xiao, the Manager of Fortune Laurel. (App. at 11.)

Following those evidentiary hearings, the trial court found High Liner USA chargeable as trustee of the YOK Defendants’ property in New Hampshire and that although the underlying claims against the YOK Defendants were dismissed because the trial court did not have personal jurisdiction over the YOK Defendants to address the merits of Fortune Laurel’s claims, the trial court could exercise *quasi in rem* jurisdiction to maintain the prejudgment attachment over the YOK Defendants’ property pending adjudication of the claims on the merits in Massachusetts. (App. at 10-30.) Fortune Laurel did not appeal the order dismissing the underlying claims against the YOK Defendants for lack of personal jurisdiction, but, instead, it filed a similar complaint against the YOK Defendants in Massachusetts and requested that the trial court maintain the trustee process attachment on the funds being held by High Liner USA to secure the

judgment it is likely to receive against the YOK Defendants in Massachusetts. (App. at 10-12.)

The trial court ruled that High Liner USA did have funds that were owed to the YOK Defendants that were subject to attachment and that it could exercise *quasi in rem* jurisdiction over those funds even though it lacked jurisdiction to decide the merits of underlying claims against the YOK Defendants in New Hampshire. (App. at 22 & 30.) High Liner USA then filed a motion to reconsider, which the trial court denied. (App. at 3-8.) High Liner USA did not appeal that order.

Instead, the YOK Defendants filed this appeal, and the only issue they challenge on appeal is whether it was reversible error for the trial court to exercise *quasi in rem* jurisdiction to maintain the prejudgment attachment on assets of the YOK Defendants that are located within the State of New Hampshire although it found it does not have personal jurisdiction to adjudicate the underlying claims, which Fortune Laurel is now litigating against the YOK Defendants in Massachusetts. This Court has also requested briefing on whether the trial court's decision to maintain the prejudgment attachment is a final decision that supports a mandatory appeal. *See* Order, Fortune Laurel, LLC v. High Liner Foods (USA), Incorporated, Trustee, et al., Case No. 2019-0307 (Sept. 13, 2019).

STATEMENT OF THE FACTS

The trial court made the following findings of fact after an evidentiary hearing held over the course of two days. (App. at 11.)² The

² The Appellants did not request a transcript of those hearings, so the Supreme Court will normally only review the determination of the trial court for errors of law. *Atwood v. Owens*, 142 N.H. 396, 396-97 (1997). Accordingly, the facts cited are as they were determined by the trial court's order.

trial court also considered affidavits that had been filed by each of the parties and exhibits presented at the hearings. (App. at 32.)³ High Liner USA is a New Hampshire corporation that is a wholly owned subsidiary of High Liner Canada. (App. at 10.) High Liner USA's headquarters is located in Portsmouth, NH, and it regularly receives shipments of tilapia from the YOK Defendants. (App. at 11 & 60, ¶ 6.) High Liner USA has been headquartered in New Hampshire since 2014. (App. at 33.) No formal written contract governs High Liner USA's orders of fish from the YOK Defendants. (App. at 11.) High Liner USA will generate an internal demand in the company's online system for the species, amount, and quality of fish that it wants. (App. at 11.) High Liner Canada has a procurement team that notifies sellers of High Liner USA's demand, and the YOK Defendants are one of the fish sellers that will respond to those online demands. (App. at 11.) The funds that Fortune Laurel has attached to secure the judgment it is pursuing against the YOK Defendants are monies that High Liner USA owe to the YOK Defendants for the purchase of tilapia. (App. at 16-22 & 61-66, ¶¶ 11-40.)

Fortune Laurel acted as a broker for the sale of tilapia from the YOK Defendants to High Liner USA from 2012 until September 2017, when the YOK Defendants breached its contract with Fortune Laurel and unilaterally terminated Fortune Laurel's brokerage services for these sales. (App. at 34 & 61-62, ¶¶ 11-18.) The YOK Defendants also failed to pay Fortune Laurel

³ To the extent that the YOK Defendants cite to affidavits of Jane Yu and Tim Rorabeck in support of different factual findings, the Supreme Court should disregard those assertions. Timothy Rorabeck and the manager of the Plaintiff, Richard Xiao, testified at the evidentiary hearings, so the trial court was able to make factual findings with the benefit of direct and cross-examination testimony that is not in the record before this Court. (App. at 11.)

commissions for services that it actually provided during 2017. (App. at 34 & 62, ¶16.) The YOK Defendants are required to pay Fortune Laurel 0.02 cents per pound of fish that High Liner USA purchases. (App. at 34 & 62, ¶13.) In addition to the claims arising out of the YOK Defendant's sale of fish to High Liner USA, the YOK Defendants also breached contracts with Fortune Laurel by providing fish for sale to Gorton's, Inc. in Massachusetts that was rejected due to quality control failures. (App. at 35 & 62-67, ¶¶19-49.)

The YOK Defendants purposefully availed themselves of the benefits of New Hampshire law by conducting business with a New Hampshire corporation. (App. at 29 & 60, ¶6.) Further, most of the interactions that Fortune Laurel had with High Liner USA and High Liner Canada to facilitate the YOK Defendants' sale of tilapia were through representatives located in Portsmouth, NH. (App. at 34.) Fortune Laurel also arranged at least two meetings between representatives of the YOK Defendants and High Liner USA, which took place in Portsmouth, NH. (App. at 34.)

High Liner USA took delivery of the tilapia that the YOK Defendants shipped to the United States, and it was also the entity that inspected the fish upon receipt. (App. at 3-4.) The YOK Defendants would then invoice High Liner USA in Portsmouth, NH for the fish. (App. at 4 & 12.) After taking delivery of the tilapia, High Liner USA would move the fish throughout the United States for further processing and to ultimately be sold to consumers. (App. at 4.) If at the time High Liner USA conducted quality control inspections, it was not satisfied with the goods, then High Liner USA would arrange for the return of the defective goods to the YOK

Defendants. (App. at 11.) Fortune Laurel provided brokerage services to facilitate these processes, and a large portion of the damages that it is seeking relate to the YOK Defendants' failure to pay for those services. (App. at 34, 62 ¶14, & 64 ¶30.)

High Liner Canada would pay the invoices that the YOK Defendants had directed to High Liner USA, but then High Liner USA would reimburse High Liner Canada for those costs. (App. at 4.) High Liner USA did not purchase anything from High Liner Canada, but to accomplish the reimbursement, High Liner Canada would generate an internal invoice to High Liner USA. (App. at 12.) There was at least a thirty (30) day delay between High Liner USA's receipt of the fish and payment being made to the YOK Defendants. (App. at 12.) The trial court found that based on those facts, regardless of the law that applied, High Liner USA was the buyer of the tilapia and was obligated to pay the YOK Defendants for the cost of those goods. (App. at 4.) It was also undisputed that at the time Fortune Laurel attached the funds held by High Liner USA, it had accepted tilapia that had not yet been paid for in an amount greater than the attachment that Fortune Laurel sought. (App. at 16.) The trial court concluded that High Liner USA held title to that fish at the time the attachment was made. (App. at 20.) If High Liner Canada had not paid the invoices for the fish that was sent to High Liner USA, the YOK Defendants could have sued High Liner USA in New Hampshire for payment. (App. at 21.)

Because the YOK Defendants are Chinese companies, it would be very difficult for Fortune Laurel to enforce and recover any judgment that it receives against the YOK Defendants. (App. at 26.) Thus, the maintenance

of this prejudgment attachment likely will provide the only avenue for Fortune Laurel to receive payment when it is successful in prosecuting its claims in Massachusetts. (App. at 26.) Further, the maintenance of the attachment only temporarily deprives the YOK Defendants from their property because the attachment will only last the duration of the Massachusetts lawsuit and Fortune Laurel's collection efforts, and the YOK Defendants are not "uniquely burdened by this limited litigation." (App. at 29.)

SUMMARY OF THE ARGUMENT

The superior court's determination that it has jurisdiction to maintain the prejudgment attachment in this case is not a final decision on the merits that supports the non-trustee defendants' mandatory appeal, even though the court did issue a final order on the chargeability of the trustee defendant.⁴ The YOK Defendants' appeal is interlocutory in nature because the trial court continues to exercise control over the attachment and will make future rulings as to the disposition of that attachment and the funds being held by the third-party, trustee defendant pending the outcome of the underlying case against the YOK Defendants in Massachusetts. Even though the claims against the YOK Defendants are no longer being litigated in New Hampshire, pursuant to the constitutional principles of Full Faith and Credit, the order on the prejudgment attachment should not be treated

⁴ Due to the nature of RSA 512, the trial court's ruling that the trustee defendant is chargeable following the evidentiary hearing on the merits is a final order on the merits, and neither High Liner USA nor Appellants have appealed the trial court's ruling that the High Liner USA is chargeable as a trustee defendant in this matter. Therefore, the trial court's ruling that High Liner USA is chargeable as a trustee is final; however, the trial court's determination that it has jurisdiction to maintain the attachment pending an adjudication of the underlying claims is interlocutory in nature for the reasons set forth herein.

differently than a case where the claims were being adjudicated within the State. Because the YOK Defendants, as the appealing party, have not made a request for interlocutory review, this appeal should be dismissed.

Even if the Court determines that it can review the YOK Defendants' appeal, the trial court's order to maintain the attachment should be affirmed. Because the YOK Defendants failed to request a transcript of the evidentiary hearings conducted in this case, the factual determinations made by the trial court should be accepted as supported by the record. Based on the pleadings, affidavits of the parties, and the testimony and exhibits presented at the evidentiary hearings, Fortune Laurel made a *prima facie* showing of jurisdictional facts that are sufficient for the trial court to exercise *quasi in rem* jurisdiction to maintain the attachment in this case. The attached funds are located in the State (and not by chance) and are related to Fortune Laurel's claims that the funds secure. Further, it is likely that there will not be any other avenue available for Fortune Laurel to satisfy the judgment that it is pursuing if the attachment is not maintained. Based on the facts of this case, the trial court's order that it can exercise *quasi in rem* jurisdiction over the attached funds should be affirmed.

STANDARD OF REVIEW

Although different standards can apply, "[t]he plaintiff need make only a *prima facie* showing of jurisdictional facts to defeat a defendant's motion to dismiss" for lack of personal jurisdiction. *Cont'l Biomass Indus. v. Envtl. Mach. Co.*, 152 N.H. 325, 327 (2005)(reviewing whether a court could exercise *in rem* or *quasi in rem* jurisdiction); *see also Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671, 674-78 (1st Cir. 1992) (explaining that a trial

court may choose to apply a standard other than a *prima facie* standard when an evidentiary hearing is held, which would require deferential review on appeal). When the trial court applies a *prima facie* evidence standard, the Supreme Court will review those findings *de novo*. *Id.* The facts are viewed in the light most favorable to the plaintiff's claims of jurisdiction, and the plaintiff's properly supported proffers are treated as true. *Fellows v. Colburn*, 162 N.H. 685, 690 (2011). The defendant's jurisdictional allegations are only considered if they are not contradicted. *Id.*

In this case, the trial court considered evidence that the plaintiff presented at evidentiary hearings in addition to the pleadings and affidavits presented. (App. at 11.) The trial court's factual findings were derived primarily from the evidence and testimony that was presented at those evidentiary hearings. (App. at 11.) It is the appealing party's burden to provide the Supreme Court with a sufficient record to determine what issues were raised before the trial court and to determine the issues the appellant raised on appeal. *Bean v. Read Oak Pr. Mgmt.*, 151 N.H. 248, 250 (2004). "Furthermore, absent a transcript of the hearing, [the Supreme Court] must assume that the evidence was sufficient to support the result reached by the trial court." *Id.* (citing *Atwood*, 142 N.H. at 396). Thus, because the YOK Defendants did not request a transcript, the Supreme Court "may review the superior court's order for errors of law only." *Atwood*, 124 N.H. at 397.

ARGUMENT

I. THE TRIAL COURT’S ORDER THAT IT HAS JURISDICTION TO MAINTAIN A PREJUDGMENT ATTACHMENT IS NOT A FINAL DECISION ON THE MERITS THAT SUPPORTS THE YOK DEFENDANTS’ MANDATORY APPEAL.

There has not been a final decision on the merits as to the trial court’s exercise of jurisdiction over the prejudgment attachment of funds held by High Liner USA because the trial court retains jurisdiction over the YOK Defendants’ funds following its determination to maintain the trustee process attachment pending a final adjudication of the underlying case on the merits. Thus, this appeal should be treated as interlocutory. *See Travelers Indem. Co. v. Abreem Corp.*, 122 N.H. 583, 584-85 (1982) (considering an interlocutory appeal of a trial court order that maintained an attachment when the trial court determined it had *quasi in rem* jurisdiction over the defendants). Although the dismissal of the causes of action that Fortune Laurel brought against the YOK Defendants may be a final decision, that decision was not appealed and is not at issue in this case.⁵ The prejudgment attachment is now being maintained to secure Fortune Laurel’s claims against the YOK Defendants that are being prosecuted in Massachusetts, and the New Hampshire trial court will take further action upon the conclusion of that case.

A “mandatory appeal” is an appeal of a “decision on the merits,” which is defined as an “order, verdict, opinion, decree, or sentence

⁵ Fortune Laurel chose to resolve its claims more expediently by filing in Massachusetts when it became clear that the YOK Defendants would not challenge personal jurisdiction in Massachusetts. *See App.* at 7.

following a hearing on the merits or trial on the merits.” Sup. Ct. R. 3. An “interlocutory appeal” is defined as “[a]ppellate review of rulings adverse to a party, before a final decision on the merits in a trial court.” Sup. Ct. R. 3. While mandatory appeals are accepted by the Supreme Court as a matter of right, so long as they are timely filed, an interlocutory appeal is only accepted in the Supreme Court’s discretion. Sup. Ct. R. 7 & 8. Further, the appellant is required to follow different procedures when requesting an interlocutory appeal as compared to filing a mandatory appeal. Sup. Ct. R. 7 & 8.

“Generally, when a trial court issues an order that does not conclude the proceedings before it, for example, by deciding some but not all issues in the proceedings [the Supreme Court will] consider any appeal from such an order to be interlocutory.” *Fox v. Town of Greenland*, 151 N.H. 600, 603 (2004) (internal citation omitted). Unlike *Fox*, where the trial court had remanded the case to the Zoning Board of Adjustment for a new hearing and had no issues remaining pending before it, *see id.* at 602-603, in this case, only a portion of the case is final. The trial court has stated that it will continue to have jurisdiction and will not conclude proceedings until the Massachusetts claims have been adjudicated. (App. at 30.) Thus, the proceedings before the trial court were not concluded. *Compare Jenkins v. G2S Constructors, Inc.*, 140 N.H. 219, 223 (1995) (finding that when a court issued an order on one issue in a case where the parties agreed to bifurcate the issues, it was not a final decision on the merits because the issues could not be completely severed), *with Germain v. Germain*, 137 N.H. 82 (1993)(deciding that an order issued after a hearing on the merits of a divorce and property division was a final decision on the merits when

the trial court and parties agreed to bifurcate the case and have a separate hearing to decide child custody and permanent support issues that were still pending).

To the extent that the YOK Defendants wished to seek review of the trial court's order on maintaining jurisdiction over the attachment at this time, it should have sought an interlocutory appeal. The Supreme Court has previously considered requests for appellate review of a trial court's order on a prejudgment attachment on interlocutory appeal. *See, e.g., Duke/Fluor Daniel v. Hawkeye Funding, Ltd., P'ship*, 150 N.H. 581 (2004) (considering an interlocutory appeal from the superior court that had determined the plaintiff was not entitled to a prejudgment attachment). Although the procedural posture of this case is unique because the primary claims against the YOK Defendants are now being prosecuted in Massachusetts rather than New Hampshire, that judgment will be able to be registered and will have the same effect in New Hampshire as if a New Hampshire Court were currently deciding the claims. *See* U.S. Const. art. IV, § 1. Thus, procedural matters impacting this prejudgment attachment should be considered similarly to one granted to secure a judgment being pursued in New Hampshire.

Similarly, the jurisdictional order on the prejudgment attachment should not be considered final only because there was a final order granted on the motion to dismiss the primary claims in this case. Final decisions on the merits can exist as to a portion of a case while other issues continue to be litigated. *See In re Estate of Heald*, 147 N.H. 280, 281 (2001). In *Estate of Heald*, the petitioner appealed a decision that removed him as executor and an order finding that he was not entitled to a trial by jury. *Id.* at 280-81.

On appeal from the superior court, the Court dismissed the appeal that challenged the removal of the petitioner as administrator because the appeal was untimely when it was not filed within thirty (30) days of the order of removal. *Id.* at 281. Although other matters were litigated in the case thereafter, they could be completely severed. *Id.*

As in *Estate of Heald*, final decisions on the merits have been issued, while other matters are not yet final. When the trial court issued the Order on Dismissal as to the claims that Fortune Laurel asserted against the YOK Defendants, there was a final decision on the merits; however, the separate issue of the court's maintenance of jurisdiction over the trustee process attachment continues to be separately litigated. There has not been a final decision on the merits of the claims that the prejudgment attachment exists to secure. The trial court found that the trustee is chargeable and the maintenance of the prejudgment attachment is appropriate to secure the claims that are currently pending in Massachusetts. The trial court continued to have the ability to review motions regarding the attachment and would take further action with respect to the attachment upon the conclusion of the Massachusetts litigation.

A prejudgment attachment can be maintained in a New Hampshire Court even when the claims that it secures are being litigated in another venue. *See Pine Gravel, Inc. v. Cianchette d/b/a Site Prep.*, 128 N.H. 460, 465 (1986) (recognizing that a mechanic's lien can be maintained although the claim that it secured was to be determined by arbitration rather than in the trial court). Thus, although the YOK Defendants seek to assert that the order dismissing the primary claims against the YOK Defendants also acts

as a final order as to the attachment, these issues are properly considered separately.

Although the YOK Defendants argue that it would be unfair to rule that this is not a mandatory appeal, such a finding would not have deprived them with an avenue to seek review. The YOK Defendants could have sought an interlocutory appeal. Providing the YOK Defendants with an avenue to receive a mandatory review of a prejudgment attachment actually would provide them a preferential avenue for review over attachments that are granted to secure judgments being sought within the state. Further, although the YOK Defendants argue they were at a disadvantage to challenge the attachment because they did not want to consent to the jurisdiction of New Hampshire Courts, they could have chosen to challenge the merits of the claim if they wished. The result of the dismissal of the claims in this case was only that they are being prosecuted in Massachusetts rather than New Hampshire.

The trial court continues to maintain jurisdiction over the attachment to determine whether the payment will be made. Further, while the trial court maintains jurisdiction over the attachment, it can consider whether an increase in the attachment is permitted. RSA 511-A:7. As in *Putnam Lumber Co. v. Eddie Nash & Sons*, this should be an interlocutory appeal because the trial court had not finally decided all of the issues before it. 141 N.H. 670 (1997). In *Putnam Lumber Co.*, a district court granted a motion to dismiss and then transferred the remaining issues to the superior court. *Id.* at 670-71. The Supreme Court determined that because not all of the issues had been decided in the district court, and other matters remained pending in the superior court, the appeal of the motion to dismiss was

interlocutory. *Id.* at 671. The primary claims in this case continue to be litigated, only now in Massachusetts, and the outcome of the prejudgment attachment depends on how those claims are resolved. Thus, as in *Putnam Lumber Co.*, the appealed order is not a final decision on the merits.

Further, there would not have been sufficient grounds to accept this appeal if it had been submitted on an interlocutory basis. There is no substantial or irreparable injury to the YOK Defendants as a result of the maintenance of the prejudgment attachment. If Fortune Laurel is not successful in the prosecution of its claims, then this trustee process attachment will be discharged, and the YOK Defendants' funds will be released. However, Fortune Laurel would face irreparable harm if the attachment is dissolved prior to an adjudication of its claims against the YOK Defendants on the merits. If Fortune Laurel is awarded a judgment but no longer has funds attached, the YOK Defendants are likely to change its procedures for selling tilapia to the High Liner Foods companies so that High Liner USA will not have title to goods for which it has not paid. Further, the outcome of the question of jurisdiction does not bear on the prosecution of the claims that Fortune Laurel is pursuing against the YOK Defendants. Because the trial court continued to have issues pending before it with regards to the resolution of the prejudgment attachment it maintained this case, the YOK Defendants should have requested an interlocutory appeal.

II. THE TRIAL COURT PROPERLY FOUND IT COULD EXERCISE QUASI IN REM JURISDICTION OVER THE FUNDS THAT FORTUNE LAUREL ATTACHED EVEN THOUGH IT COULD NOT EXERCISE PERSONAL JURISDICTION TO ADJUDICATE FORTUNE LAUREL'S CLAIMS AGAINST THE YOK DEFENDANTS.

The trial court properly determined that it can exercise *quasi in rem* jurisdiction over the YOK Defendant's funds located in New Hampshire, which Fortune Laurel has attached, even though it does not have personal jurisdiction over the claims that Fortune Laurel is pursuing against the YOK Defendants. When there is a connection between the property being attached and the underlying claims, which is true in this case, there are sufficient contacts for the Court to exercise *quasi in rem* jurisdiction to maintain a prejudgment attachment securing a judgment being pursued in another state.

Courts apply a two-part analysis to determine whether they may exercise personal jurisdiction over a defendant. *Staffing Network, Inc. v. Pietropaolo*, 145 N.H. 456, 457 (2000). New Hampshire's long-arm statute must permit the court to exercise jurisdiction, and the Federal Due Process Clause must also be satisfied. *Id.* at 457-58. The New Hampshire long-arm statute allows courts to exercise jurisdiction over:

Any person who is not an inhabitant of this state and who, in person or through an agent, transacts any business within this state, commits a tortious act within this state, or has the ownership, use, or possession of any real or personal property situated in this state submits himself, or his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from or growing out of the acts enumerated above.

RSA 510:4, I. The New Hampshire Supreme Court has interpreted RSA 510:4, I to grant New Hampshire Courts jurisdiction whenever the Federal Due Process Clause would permit it. *Staffing Network, Inc.*, 145 N.H. at 458. Thus, New Hampshire Courts can exercise jurisdiction over the funds that Fortune Laurel attached so long as the Federal Due Process Clause is satisfied.

The United States Supreme Court has recognized two types of *quasi in rem* jurisdiction. *Cont'l Biomass Indus. v. Envtl. Mach. Co.*, 152 N.H. 325, 328 (2005) (citing *Shaffer v. Heitner*, 433 U.S. 186, 199 n.17 (1977)).

In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him.

Shaffer, 433 U.S. at 199 n.17. In this case, Fortune Laurel is asserting the second type of *quasi in rem* jurisdiction because it has attached property belonging to the YOK Defendants within the state, but it is not claiming a right to the property other than as a method to obtain a payment of the judgment it is pursuing. Based on the specific facts of this case, the trial court found that it could exercise *quasi in rem* jurisdiction over the property that the YOK Defendants possess within the State. The minimum contacts test that is applied to determine whether *quasi in rem* jurisdiction can be exercised is usually the same as the test applied when *in personam* jurisdiction is being sought, which was first set forth in *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945). *Cont'l Biomass Indus. v. Envtl. Mach. Co.*, 152 N.H. 325, 329 (2005).

The minimum contacts test first expressed in *International Shoe Co.* has developed into a three-factor analysis, which requires the court to consider whether: “(1) the contacts relate to the cause of action; (2) the defendant has purposefully availed him or herself of the protections of New Hampshire law; and (3) it would be fair and reasonable to require the defendant to defend the suit in New Hampshire.” *Lyme Timber Co. v. DF Investors, LLC*, 150 N.H. 557, 560 (2004) (internal quotation omitted).

In its ruling on the maintenance of the trustee process attachment, the trial court applied a *prima facie* standard to the jurisdictional facts proffered by Fortune Laurel and considered them in light of the tripartite minimum contacts test. (App. at 28.) The facts relevant to this test are that the attachment amounts to a “temporary freeze” rather than a permanent deprivation of assets, (App. at 25-26); the presence of the attached money in New Hampshire is related to the underlying causes of action because one of Fortune Laurel’s breach of contract claims is related to services it provided the YOK Defendants, which led to High Liner USA’s obligation to pay the YOK Defendants the attached funds, (App. at 28-29); and the YOK Defendants continuously and purposefully availed themselves of New Hampshire law because they regularly do business with the New Hampshire trustee defendant and derive an economic benefit from that relationship. (App. at 29.) Further, it is fair and reasonable for the trial court to exercise a “limited form of jurisdiction” to maintain the attachment because the YOK Defendants “would not be uniquely burdened by this limited litigation;” New Hampshire has an interest in providing a United States Company an opportunity to enforce a judgment that will be obtained against a foreign company; and Fortune Laurel is not likely to be able to

obtain relief even after obtaining a judgment if the attachment is not maintained. (App. at 29.)

The United States Supreme Court has recognized that the analysis as to whether a court has *quasi in rem* jurisdiction to maintain an attachment is different than whether that court can maintain personal jurisdiction over the merits of the claims the attachment secures. The U.S. Supreme Court recognized that defendants should not be able to avoid paying a judgment by removing its property, so “a State in which property is located should have jurisdiction to attach that property, by use of proper procedures, as security for a judgment being sought in a forum where the litigation can be maintained consistently with *International Shoe*.” *Shaffer*, 433 U.S. at 210 (overruled by statute on other grounds). The trial court also applied the tripartite minimum contacts test in light of *Shaffer* and properly determined that it can exercise *quasi in rem* jurisdiction over the funds attached during the pendency of the prosecution of Fortune Laurel’s claims against the YOK Defendants in Massachusetts. (App. at 25-28.)

To the extent that the YOK Defendants appear to assert that the attachment should have been automatically dissolved pursuant to RSA 511:45, that issue was not raised before the trial court and was not included in the YOK Defendant’s notice of appeal. Thus, it cannot be considered on appeal. *See Gunderson v. Comm’r, N.H. Dep’t of Safety*, 167 N.H. 215, 217 (2014); *see also Lassonde v. Stanton*, 157 N.H. 582, 587 (2008) (“Appellate questions not presented in a notice of appeal are generally considered waived by this court.”) Following its order on the motion to dismiss the primary claims against the YOK Defendants, the superior court ordered that the attachment would remain in place to secure Fortune Laurel’s claims that

are being prosecuted against the YOK Defendants in Massachusetts. Thus, the attachment was not required to be dissolved pursuant to RSA 511:45.

A. New Hampshire Courts have previously permitted a prejudgment attachment to be maintained in this State while the claim that it secures is being litigated in another jurisdiction.

The New Hampshire Supreme Court previously has recognized that prejudgment attachments can be maintained while the primary claims are adjudicated elsewhere. In *Pine Gravel, Inc.*, the trial court dismissed breach of contract claims when the contract at issue contained an arbitration clause. 128 N.H. at 462. The plaintiff had also obtained an *ex parte* attachment on the defendant's New Hampshire real estate, and the trial court did not address the dissolution of that attachment when it dismissed the breach of contract claims. *Id.* On appeal, the Court affirmed the dismissal of the breach of contract claims, but it also determined that the mechanic's lien on the defendant's real property could be maintained while the arbitration proceeded. *Id.* at 465. As in *Pine Gravel, Inc.*, Fortune Laurel has requested a New Hampshire court to maintain a prejudgment attachment to secure a claim that was no longer being adjudicated in that court. Thus, the prejudgment trustee process attachment that Fortune Laurel obtained can be maintained while the claims that it secures are being pursued in Massachusetts so long as the trial court can exercise *quasi in rem* jurisdiction. *See also, Ford Constr. Corp. v. TWG Constr. Co.*, No. 03-C-236, 2004 N.H. Super. LEXIS 3 (N.H. Super. Ct. Feb. 10, 2004) (dismissing breach of contract claims filed in New Hampshire but staying the case to maintain a mechanic's lien attachment when a forum selection clause required the principal claims in the case to be heard in New York).

The New Hampshire Supreme Court has also previously considered whether *quasi in rem* jurisdiction may permit New Hampshire Courts to maintain an attachment although the claims that the attachment secured were being litigated in another jurisdiction. In *Travelers Indem. Co.*, a plaintiff filed suit against defendants in Massachusetts, alleging a breach of an indemnity. 122 N.H. at 584. The plaintiff obtained a pre-judgment attachment in Massachusetts on certain property there, but the real property was heavily mortgaged, so the plaintiff sought to attach property that the defendant owned in New Hampshire as additional security. *Id.* The Supreme Court considered whether New Hampshire had *quasi in rem* jurisdiction to allow the attachment and examined whether exercising jurisdiction would be reasonable in light of New Hampshire's interest in the litigation and whether there were sufficient minimum contacts in accord with the principals of *International Shoe*. *Id.* at 585. One of the defendants was registered to do business in the state, but had never actually done any business here, and all of the contacts related to the underlying claim occurred in Massachusetts. *Id.* Thus, the Court found the state did not have any interest in the claims. *Id.* The Court further found that in order for the state to have minimum contacts with the defendants, the property sought to be attached must be related to the plaintiff's cause of action. *Id.* Because there was no relation between the property attached and the underlying claims, the Court dissolved the attachment. *Id.*; see also *Pono v. Brock*, 119 N.H. 814, 817 (1979) (finding that there was not *quasi in rem* jurisdiction to prosecute claims against an out-of-state defendant in New Hampshire when the only contact with the State was the ability to attach an automobile insurance policy in New Hampshire).

Unlike in *Travelers Indem. Co.*, New Hampshire does have an interest in this litigation, and there is a relationship between the property being attached and the underlying claims. New Hampshire has an interest in the underlying litigation because the larger breach of contract claim that Fortune Laurel brought is related to the sale of tilapia to High Liner USA in Portsmouth, NH. Fortune Laurel's claims against the YOK Defendants that relate to the sale of fish to High Liner equals a minimum of \$107,505.28. *See App. at 64, ¶30.* That amount is not insignificant. The breach of contract claim that is related to fish sold to Gorton's, Inc. in Massachusetts is for a lesser amount of damages. *See App. at 64, ¶31 & 65, ¶31.* In *Travelers Indem., Co.*, the New Hampshire real estate that was attached had no relation to breach of indemnity action being pursued in Massachusetts, unlike the monies owed to the YOK Defendants, which are related to Fortune Laurel's brokerage of the sale of fish to High Liner USA on behalf of the YOK Defendants. In addition, while the defendant in *Travelers Indem., Co.* had not actually done business in New Hampshire, the YOK Defendants are still doing business within the State. As established at the hearing on this matter, the Parties met in New Hampshire at the Portsmouth, NH High Liner USA headquarters to discuss the sales, and much of Fortune Laurel's and the YOK Defendant's contact with High Liner USA occurred in the State, including quality control, receiving and storage, processing of raw materials, rejection back to the vendor, and payment authorizations. Even though the YOK Defendants had improperly cut Fortune Laurel out of the sales at the time of the attachment, those sales were made as a result of Fortune Laurel's services and the relationships it developed and processes that it had put into place in New Hampshire.

New Hampshire further has an interest in providing citizens of the United States with a way to enforce judgments of United States' Courts when a foreign court would not provide a means for recovery. The trial court recognized that Fortune Laurel's claim that it would be nearly impossible for an American judgment to be enforced in the People's Republic of China was true. (App. at 26.) Fortune Laurel is not aware of any other property that the YOK Defendants possess in the United States that it could use to satisfy a judgment. *Id.* Thus, it is reasonable for New Hampshire to exercise *quasi in rem* jurisdiction in this case because New Hampshire has an interest in providing Fortune Laurel, a citizen of the United States, with a way to enforce its judgment against Chinese Companies. Although New Hampshire will provide Full Faith and Credit to a Massachusetts judgment, the courts of the People's Republic of China will not.

Because the attached credits owed to the YOK Defendants for the sale of tilapia are related to Fortune Laurel's claims against the YOK Defendants and New Hampshire has an interest in the litigation, there are sufficient minimum contacts with the state to satisfy the Federal Due Process Clause.

B. The Due Process Clause permits a court to exercise *quasi in rem* jurisdiction over a prejudgment attachment to secure claims being litigated in another location even when does not have personal jurisdiction to adjudicate the underlying claims.

Although the specific facts of this case have not been previously considered by this Court, other states have recognized that it is proper for a court to assert *quasi in rem* jurisdiction to maintain an attachment when the

principal claims cannot be litigated in that jurisdiction. The Federal Due Process Clause does impose limits, but the exercise of *quasi in rem* jurisdiction is appropriate so long as the property is not in the state by chance and the state has contacts with the defendant other than the existence of the property within the state. In *Shaffer*, the United States Supreme Court recognized that although there were limits on *quasi in rem* jurisdiction, it is also important to be able to provide a litigant with a way to satisfy judgments when a court may not otherwise have personal jurisdiction over the defendant. 433 U.S. at 210.

The YOK Defendants argue that because the *International Shoe* test applies under both analyses, where the trial court has found it does not have personal jurisdiction over Fortune Laurel's claims against the YOK Defendants it cannot find *quasi in rem* jurisdiction over the attached funds. However, many courts in other jurisdictions have concluded that there are differences in the analysis under this test that may allow *quasi in rem* jurisdiction to be exercised even when the principal claims cannot be pursued against the defendants in that state. *See, e.g., Nat'l Union Fire Ins. Co. v. Kozeny*, 115 F.Supp.2d 1231, 1237-38 (D. Colo. 2000) (finding the court had *quasi in rem* jurisdiction to maintain an attachment over property that was located in Colorado in an attempt to conceal the assets and there were serious concerns about the plaintiff otherwise being able to collect on a judgment); *Sojitz Corp. v. Prithvi Information Solutions Ltd.*, 82 A.D.3d 89, 92-93 (Sup. Ct.N.Y. 1st Dep't 2011) (holding that a prejudgment attachment obtained to secure a judgment being pursued in international arbitration was appropriate when the debt attached was owed to the defendant by an entity domiciled in the state); *Banco Ambrosiano, S.P.A. v.*

Artoc Bank & Trust Ltd., 464 N.E.2d 432, 432 (N.Y. 1984)(finding “that the contacts among defendant, the forum and the litigation are sufficient to render this limited exercise of jurisdiction inoffensive to principles of due process” when the plaintiff asked the court to find it had *quasi in rem* jurisdiction over bank accounts that were the only contact the defendant had with the state and the money in the accounts related to the plaintiff’s claims). Although at least one court, in *American Refractories Co. v. Combustion Controls*, found that an attachment could not be maintained when the claims that it secured were prosecuted elsewhere, that finding was based on Missouri’s state statutory limits on prejudgment attachments permitted in that state, which are not applicable here, rather than the limits of the Federal Due Process Clause. 70 S.W.3d 660, 663-64 (Mo. App. S.D. 2002).

Many courts that have considered the *Shaffer* analysis as it applies to prejudgment attachments (sometimes referred to as the “security exception”) have determined that they may exercise *quasi in rem* jurisdiction over attached property even if they do not have personal jurisdiction over the prosecution of the principal claims. For instance, in *Barclays Bank, S.A. v. Tsakos*, a French plaintiff sought a prejudgment attachment on property that Greek defendants owned in the District of Columbia to secure a judgment that was being pursued in Europe. 543 A.2d 802, 803 (D.C. 1988). The Court of Appeals of The District Columbia determined that it could exercise *quasi in rem* jurisdiction to maintain the attachment while the principal claims were decided in Europe in part because the plaintiff alleged that there were no other available assets to satisfy any judgment, the defendants were likely to take steps to remove the

property so it could not be reached after judgment was entered, and the defendants had other contacts with the jurisdiction such as previously residing at the apartment that had been attached. *Id.* at 805-06. As in *Barclays Bank*, the trial court correctly found that it could maintain the attachment on the facts of this case in part because of the jeopardy to Fortune Laurel's right to recovery if the attachment is dissolved. The YOK Defendants and High Liner USA litigated the issue of whether High Liner USA had an obligation to pay the YOK Defendants and have likely taken steps to change the sales process so that High Liner USA will not be obligated to pay for future shipments. In this case, the application of the facts that Fortune Laurel proffered at the evidentiary hearing also satisfy the tripartite minim contacts test, App. at 26-30, so the trial court's exercise of *quasi in rem* jurisdiction is even stronger.

Similarly, in *Carolina Power & Light Co. v. Uranex*, a California Court granted the plaintiff an *ex parte* attachment of a debt owed to the French defendant because, once paid, the monies would easily be moved outside of the country. 451 F.Supp. 1044, 1045 (N.D. Cal. 1977). The underlying breach of contract claims were being heard in arbitration in New York, and the only contact California had to the claims was the attachment of an unrelated debt that a California Corporation owed to the defendant. *Id.* at 1045-46. In applying the *International Shoe* test as clarified in *Shaffer*, the court found that the U.S. Supreme Court "clearly acknowledges that there will be circumstances where, without some form of jurisdiction to attach property, courts would be powerless to protect a litigant from the concealment or evacuation of his opponents assets." *Id.* at 1048. The Court decided the notions of "fair play and substantial justice" required also

considering the jeopardy to the plaintiff's ultimate recovery in light of the limited nature of the jurisdiction sought. *Id.* In *Carolina Power & Light Co.*, there were no other assets to attach in the United States, there were unlikely to be other attachable assets brought into the country in the future, there was a connection between the business that the defendant was conducting and the jurisdiction where the asset was located, and the forum was not inconvenient for the defendant, so there was sufficient minimum contacts to maintain the attachment. *Id.* at 1048-49.

As in *Carolina Power & Light Co.*, if the attachment is not maintained in this case, it is extremely unlikely that Fortune Laurel will be able to collect on the judgment to be obtained in Massachusetts. The YOK Defendants assert, without support, that if Fortune Laurel is successful on its claims that it can enforce its judgment without any difficulty. The trial court found that Fortune Laurel "credibly argued" that the YOK Defendants did not have other assets available in the United States to satisfy a judgment and that it would be "extremely difficult to enforce a United States' civil judgment in the People's Republic of China." (App. at 26) (collecting legal authority). The YOK Defendants have already attempted to show that there is not any property in the United States that can be attached by alleging High Liner Canada, rather than High Liner USA, is the purchaser of the tilapia shipped to the United States. After litigating this issue, it is likely that the YOK Defendants will take steps to alter its practices so that its funds are not attachable in the United States. The YOK Defendants also assert that there are assets to satisfy a judgment in Massachusetts without making any allegations as to what assets those could be. Certainly, Fortune Laurel is not aware of any such assets. The YOK Defendants have traveled

to New Hampshire in connection with their business with High Liner USA and have regularly done business with a New Hampshire company. Quality assurance and other tasks connected with the sale of the tilapia also take place within the State. Thus, it would not be unreasonably inconvenient to the YOK Defendants for the attachment to be maintained here. As a result, as in *Carolina Power & Light Co.*, this Court should exercise *quasi in rem* jurisdiction over the property held by High Liner USA to maintain security for the judgment that Fortune Laurel is seeking in Massachusetts.

The facts of this case are unlike others where courts have not found minimum contacts existed because it was likely there would be sufficient available property to satisfy a judgment in the future. In *Cameco Industries, Inc. v. Mayatrac, S.A.*, the United States District Court for the District of Maryland considered whether *quasi in rem* jurisdiction could be exercised over a Guatemalan defendant's bank account in Maryland to secure a judgment being sought in a Louisiana court. 789 F.Supp. 200, 201-03 (D. Md. 1992). The court then applied the *International Shoe* test to the its finding that the defendant's "maintenance of the account was not at all fortuitous; it was voluntary, purposeful and directly related to its general business operations." *Id.* The contacts were not sufficient to establish general or specific jurisdiction, but the court found it did not offend traditional notions of fair play and substantial justice to hold that the money in the account was subject to *quasi in rem* jurisdiction to maintain the plaintiff's attachment. *Id.* at 203-04. However, the Maryland court determined that the state's prejudgment attachment procedure was not Constitutional because it permitted a seizure without a hearing, and it dissolved the attachment on those grounds. *Id.* at 204. The court

additionally found that there was no evidence that the defendant had attempted to remove assets from being attached or made any attempt to conceal the assets, which also weighed against maintaining the attachment. *Id.* at 204 n.5.

Although the Maryland court did not find the facts in *Cameco Industries* supported maintenance of the attachment, it likely would have found the attachment could have been maintained on the facts of this case. As in *Cameco Industries*, Fortune Laurel is seeking to attach property that the YOK Defendants voluntarily and purposefully directed to the State as part of the YOK Defendants' regular business operations. This contact was not fortuitous, but, rather, the YOK Defendants are conducting business within the State through regular contacts with a New Hampshire company. The facts of this case provide an even stronger basis for the trial court to exercise jurisdiction than in *Cameco Industries* because the attached property is related to Fortune Laurel's claims, which was not the case in *Cameco Industries*. Therefore, it does not offend the notions of fair play and substantial justice for this Court to exercise *quasi in rem* jurisdiction over the attached property. Further, in the case at bar, unlike *Cameco Industries*, a hearing on the appropriateness of the attachment was held, and the trial court found that there were circumstances that justified a temporary seizure of the funds because they could easily be removed and would leave the plaintiff without an opportunity to satisfy its judgment. The YOK Defendants have already supported an argument that High Liner USA did not possess any property belonging to the YOK Defendants, so unlike *Cameco Industries*, there should be a finding that an attempt to conceal the assets were made.

While the Full Faith and Credit Clause of the United States Constitution would typically be available to permit a successful plaintiff to satisfy a judgment against assets located in a state where the claims could not be litigated, that protection is not available to Fortune Laurel in this case. This is the type of unique circumstances that support the exercise of *quasi in rem* jurisdiction and a finding that *International Shoe* minimum contacts test is satisfied to maintain a prejudgment attachment even though the primary claims cannot be pursued in New Hampshire.

CONCLUSION AND REQUEST FOR RELIEF

The Court should dismiss this appeal because it is interlocutory in nature. If the Court determines that it can rule on the jurisdictional determination that the YOK Defendants appealed, the Court should affirm the trial court's finding that it can exercise *quasi in rem* jurisdiction to maintain the prejudgment attachment based on the facts of this case.

REQUEST FOR ORAL ARGUMENT

Fortune Laurel respectfully requests oral argument before the full Court. Oral argument will be made by Katherine E. Hedges, Esquire.

CERTIFICATION

Undersigned counsel certifies that in compliance with Sup. Ct. R.16(11), this brief contains 9,224 words.

Respectfully submitted,
Fortune Laurel, LLC

By and through its attorneys,
HAGE HODES, P.A.

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CERTIFICATE OF SERVICE

I, Katherine E. Hedges, Esq., certify that on this date a copy of this brief is being or has been served on all other parties or their counsel, in accordance with the rules of the Supreme Court, as follows: I am serving all counsel of record, who are registered e-filers through the court's electronic filing system, including: Emily Smith-Lee, Esq., Edward J. Sackman, Esq., Christina A. Ferrari, Esq., and William F. Gramer, Esq.

/s/ Katherine E. Hedges
Katherine E. Hedges, Esq.