IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CARMEN M. SIBULO and FE M. SIBULO, Plaintiffs, v. CARMENCITA ABAD, Defendant.	**CIVIL ACTION NO. 00-0394D** **ORDER DENYING DEFENDANT'S MOTION TO DISSOLVE PREJUDGMENT WRIT OF ATTACHMENT**

I. INTRODUCTION

THIS MATTER came before the court on January 29, 2002, in Courtroom 205A on Defendant's renewed Motion to Dissolve a Prejudgment Writ of Attachment issued pursuant to 7 CMC §§ 4201, 4202. Mark B. Hanson, Esq. and Bruce Berline, Esq. appeared on behalf of Carmencita Abad ("Defendant"). Eric Smith, Esq. and Linn H. Asper, Esq. appeared on behalf of Carmen M. Sibulo and Fe M. Sibulo ("Plaintiffs"). The Court, having reviewed the documents on file and having heard the arguments of counsels, now renders its decision.

II. BACKGROUND

On September 14, 2000, Plaintiffs filed a Complaint against Defendant for failure to repay loans of more than $21,000. On the same date, Plaintiffs filed an *ex parte* application for a Request for a Writ of Attachment ("Writ") made pursuant to 7 CMC §§ 4201 and 4202, on Defendant's $11,000 settlement in Civil Action Nos. 99-036 and 99-037, *Equal Employment Opportunity Commission v. Sako Corporation*, a case which was heard in the U.S. District Court for Northern Mariana Islands. On September 15, 2000, Presiding Judge Manibusan granted Plaintiffs' *ex parte* application for a Writ.

On September 28, 2000, Plaintiffs applied for an Order to Serve Defendant by Publication averring that Defendant had left the Commonwealth and had moved to California. On October 2, 2000, Judge Bellas granted leave for Plaintiffs to serve Defendant by publication. On November 17, 2000, Plaintiffs filed proofs of service that Defendant was served with the Summons and Complaint by mail at her California address, and by publication, in the local papers, respectively. On December 12, 2000, the clerk entered Defendant's default. At the request of Plaintiffs, a default judgment hearing originally set for January 10, 2001, was continued to January 29, 2001.

On January 15, 2001, the case was assigned to this Court, and Defendant, through newly retained counsels, Bruce Berline, Esq. and Mark Hanson, Esq., filed a Motion to Quash Service and a Motion to Dissolve the Writ. Plaintiffs filed their Opposition to the Motions on January 22, 2001. Defendant's Reply to Plaintiffs' opposition to the motions was filed on January 24, 2001. A hearing on Defendant's motions was calendared on January 29, 2001, to be heard along with Plaintiffs' motion for a default judgment. At the January 29, 2001, hearing, the court heard arguments from both parties on all three motions and took the matters under advisement. From the bench, the court noted that Plaintiffs had not complied with service of the summons and complaint on the Office of the Attorney General as required by 7 CMC §§ 1102, 1104.

On January 31, 2001, Plaintiffs complied with the service requirement under 7 CMC § 1104(b). Defendant's attorneys Bruce Berline, Esq. and Mark Hanson, Esq., were also served with the Summons and Complaint. On February 20, 2001, Defendant filed her Answer to the Complaint. On May 21, 2001, Plaintiffs withdrew their motion for a default judgment. On December 28, 2001, Defendant filed a Renewed Motion to Dissolve the Writ. On January 14, 2002, Plaintiffs filed their Opposition to Defendant's Renewed Motion to Dissolve the Writ. On January 21, 2002, Defendant filed her Reply to Plaintiffs' Opposition to the motion. A hearing on Defendant's renewed motion was heard on January 28, 2002.

At the January 28, 2002, hearing, the court granted the Commonwealth Government's application to appear as *amicus curiae*. As of January 28, the only pending issue before the court was Defendant's Renewed Motion to Dissolve the Writ.

III. ISSUE

Whether to grant Defendant's Motion to Dissolve a Prejudgment Writ of Attachment on grounds that 7 CMC §§ 4201 and 4202, as applied, violate Defendant's right to due process**.**

IV. ANALYSIS

The Commonwealth's attachment statute provides that "[w]rits of attachment may be issued only by the court for special cause shown supported by statement under oath." *See* 7 CMC § 4201(a).[1] Section 4202 of Title 7, which provides for the release and modification of writs issued under 4 CMC § 4201(a), reads:

> The court, upon application of either party or of its own motion, may make and, from time to time, modify such orders as it deems just for the release of property from attachment or for its sale if perishable or if the owner of the property shall so request, and for the safekeeping of the proceeds of the sale.

7 CMC § 4202. The writ of attachment statute, 7 CMC §§ 4201, 4202, originates from the Trust Territory Code, 8 TTC §§ 51, 52.[2]

The issue raised on Defendant's motion turns on the question of whether the procedure in 7 CMC §§ 4201, 4202 affords Defendant with sufficient process to allow Plaintiff to seek governmental intervention to deprive Defendant of her property. A review of the U.S Supreme Court cases reflects the numerous variations this type of remedy can entail. *See Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969); *see also Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406

---

[1] The text of 7 CMC § 4201 reads:

§ 4201 Writ of Attachment

(a) Writs of attachment may be issued only by the court for special cause shown supported by statement under oath. Such writs when so issued shall authorize and require the Director of Public Safety, any police officer, or other person named in it, to attach and safely keep so much of the personal property of the person against whom the writ is issued as will be sufficient to satisfy the demand set forth in the action, including interest and costs. The Director of Public Safety, police officer, or other person named in the writ shall not attach any personal property which is exempt from attachment, nor any kinds or types of personal property which the court may specify in the writ.

(b) Debts payable to the defendant may be similarly attached by special order issued by the court, which shall exempt from the attachment so much of any salary or wages as the court deems necessary for the support of the person against whom the order is issued or his or her dependents.

[2] *See* Public Law 3-90 (Dec. 23, 1983) (eff. Jan. 1, 1984). The Commonwealth adopted the Trust Territory provision regarding writs of attachments with only minor revisions. *See also* Public Law 3C-51 (Sept. 22, 1970) for the original Trust Territory Code provision.

(1974); *N. Georgia Fishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).[3]

A recent U.S. Supreme Court case that addresses the issue of the constitutionality of prejudgment attachment statutes is *Connecticut v. Doehr*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991). In *Doehr*, the U.S. Supreme Court addressed the issue of whether a Connecticut statute that authorizes prejudgment attachment of real estate without prior notice or hearing, without a showing of exigent circumstances, and without a requirement that the person seeking attachment post a bond, satisfies the Due Process Clause of the Fourteenth Amendment. *Id.* at 4, 111 S. Ct. at 2109, 115 L. Ed. 2d at 9. The Supreme Court held that it did not. *Id.*

In *Doehr*, the Petitioner Di Giovanni ("Petitioner") applied to the Connecticut Superior Court for an attachment in the amount of $75,000 on Respondent Doehr's ("Respondent") home in Meriden, Connecticut. *Id.* at 5, 111 S. Ct. at 2109, 115 L. Ed. 2d at 9. Petitioner took this step in conjunction with a civil action for assault and battery against Respondent. *Id.* The civil action did not involve Respondent's home nor did Petitioner have a pre-existing interest in Respondent's home. *Id.* As required by statute, Petitioner submitted an affidavit, with five one-sentence paragraphs, in support of his application for prejudgment attachment.[4] *See Doehr*, 501 U.S. at 6, 111 S. Ct. at 2110, 115 L. Ed. 2d at 10.

---

[3] In *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969), the Court struck down a Wisconsin statute that permitted a creditor to effect prejudgment garnishment of wages without notice and prior hearing to the wage earner. In *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972), the Court likewise found a due process violation in state replevin provisions that permitted vendors to have goods seized through *ex parte* application to a court clerk and the posting of a bond. Conversely, the Court upheld a Louisiana *ex parte* procedure allowing a lienholder to have disputed goods sequestered. The Court in *Mitchell*, however, carefully noted that *Fuentes* was decided against "a factual and legal background sufficiently different . . . that it does not require the invalidation of the Louisiana sequestration statute." *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 615, 94 S. Ct. 1895, 1904, 40 L. Ed. 2d 406, 418 (1974). Those differences included Louisiana's provision of an immediate postdeprivation hearing, along with the option of damages; the requirement that a judge, rather than a clerk determine that there is a clear showing of entitlement to the writ; the necessity for a detailed affidavit; and an emphasis on the lienholder's interest in preventing waste or alienation of the encumbered property. *Id.* at 615-618, 94 S. Ct. at 1904-05, 40 L. Ed. 2d at 418-19. In *N. Georgia Fishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975), the Court again invalidated an *ex parte* garnishment statute that not only failed to provide for notice and prior hearing but also failed to require a bond, a detailed affidavit setting out the claim, the determination of a neutral magistrate, or a prompt postdeprivation hearing. *Id.* at 606-08, 95 S. Ct. at 722-23, 42 L. Ed. 2d at 757-58.

[4] Petitioner's affidavit stated that the facts set forth in the complaint were true and that: "I was willfully, wantonly and maliciously assaulted by the defendant, Brian K. Doehr"; that "said assault and battery broke my left wrist and further caused an ecchymosis to my right eye, as well as other injuries"; and that "I have further expended sums of money for medical care and treatment." The affidavit concluded with the statement, "[i]n my opinion, the foregoing facts

The Court found that the Connecticut statute authorizes prejudgment attachment of real estate without affording prior notice or the opportunity for a prior hearing to the individual whose property is subject to the attachment.[5] Moreover, the statute did not require the plaintiff to post a bond to insure the payment of damages that the defendant may suffer should the attachment prove wrongfully issued or the claims prove unsuccessful. *Id.* In determining the constitutionality of the Connecticut attachment statute, the Court in *Doehr*, applied the *Mathews*[6] three part test.[7] The Court determined that the relevant inquiry requires consideration of the following: (1) the private interest that will be affected by the prejudgment measure; (2) an examination of the risk of erroneous deprivation through the procedures under attack and the probable value of additional or alternative safeguards; and (3) the interest of the party seeking the prejudgment remedy. *See Doehr,* 501 U.S. at 11, 111 S. Ct. at 2112, 115 L. Ed. 2d at 13.

In applying the first prong of the test, the *Doehr* Court ruled that an attachment affects a significant interest in real property even though the attachment of that interest did not amount to a complete, permanent

---

are sufficient to show that there is probable cause that judgment will be rendered for the plaintiff." *See Connecticut v. Doehr*, 501 US. 1, 6-7, 111 S. Ct. 2105, 2110-11, 115 L. Ed. 2d 1, 10-11 (1991).

[5] The Connecticut prejudgment attachment statute, Conn. Gen. Stat. § 52-278e (1991), provides in pertinent part that:

> The court or a judge of the court may allow the pre-judgment remedy to be issued by an attorney without a hearing as provided in sections 52-278c and 52-278d upon verification by oath of the plaintiff or of some competent affiant, that there is probable cause to sustain the validity of the plaintiff's claims and (1) that the pre-judgment remedy requested is for an attachment of real property . . . .

See Doehr, 501 U.S. at 5, 111 S. Ct. at 2109, 115 L. Ed. 2d at 10.

[6] In *Mathews*, a person whose social security disability benefits had been terminated brought an action challenging the constitutional validity of the administrative procedures established by the Secretary of Health, Education and Welfare for assessing whether there exists a continuing disability. *See Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The U.S. Supreme Court in *Mathews* drew upon the prejudgment attachment remedy decisions to determine what process is due when the government itself seeks to effect a deprivation on its own initiative. *Id.* at 334, 96 S. Ct. at 902, 47 L. Ed. 2d at 33. The Court concluded that an evidentiary hearing is not required prior to termination of disability benefits, and that the present administrative procedures for such termination fully comport with due process. *Id.* at 349, 96 S. Ct. at 910, 47 L. Ed. 2d at 42. The Court noted that "[t]his is especially so where, as here, the prescribed procedures not only provide the claimant with an effective process for asserting his claim prior to any administrative action, but also assure a right to an evidentiary hearing, as well as to subsequent judicial review, before the denial of his claim becomes final." *Id.* at 349, 96 S. Ct. at 909-10, 47 L. Ed. 2d at 41.

[7] The U.S. Supreme Court's analysis resulted in a three part test considering: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substantial safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See Mathews*, 424 U.S. at 335, 96 S. Ct. at 903, 47 L. Ed. 2d at 33.

deprivation of the property. *Id.* at 11-12, 111 S. Ct. at 2112-13, 115 L. Ed. 2d at 14. With respect to the second prong, the Court struck down the application of the Connecticut statute to tortfeasors because it found the risk of an erroneous deprivation to be substantial. *Id.* at 12-14, 111 S. Ct. at 2113-14, 115 L. Ed. 2d at 14-15. The low standard of proof required in the affidavit of probable cause combined with the inability of a court to predict with precision the outcome of an intentional tort case with all of its complex variables outweighed the procedural safeguards provided by the post-deprivation hearing. *Id.* at 14-15, 111 S. Ct. at 2114-15, 115 L. Ed. 2d at 15-16. Applying the last prong of the test, the Court found that the plaintiff had no existing interest in the defendant's real property when he sought the attachment. His only interest in attaching the property was to ensure the availability of assets to satisfy his judgment if he prevailed on the merits of his tort action. *Id.* at 16, 111 S. Ct. at 2115, 115 L. Ed. 2d at 16. As such, the Court determined that the Connecticut statute, as applied to the case, violates due process by authorizing prejudgment attachment without prior notice and a hearing. *Id.* at 4, 111 S. Ct. at 2109, 115 L. Ed. 2d at 9.

In the case at bar, Defendant contends that the Commonwealth's attachment statute, 7 CMC §§ 4201 and 4202, violates due process. Specifically, Defendant argues that: (1) the prejudgment writ of attachment affects Defendant's private interest; (2) Plaintiffs' affidavit is constitutionally insufficient and denies Defendant's due process of law; (3) there was no pre-deprivation hearing prior to the issuance of the writ of attachment (nor has there been a post-deprivation evidentiary hearing) to determine the probable merits of Plaintiffs' claims against Defendant; and (4) there are no exigent circumstances here that warrant an attachment.

Plaintiffs, on the other hand, argue that Defendant places too much reliance on *Doehr* and argue that the facts of *Doehr* are distinguishable from the case at bar. Plaintiffs argue that the property attached in this case is $11,000 in cash as opposed to the property in *Doehr*, which was real property. As such, no harm will occur to Defendant from that attachment except for losing interest in the attached funds, which can be awarded to Defendant if she prevails on the merits of the case. Second, Plaintiffs argue that the imminent dispersal of the cash, as part of the federal consent decree, was the "special cause" referred to in 7 CMC § 4201 that justified the pre-judgment attachment. Finally, Plaintiffs contend that Defendant's comment that there was no post-deprivation hearing is due to the fact that Defendant failed to request for

such a hearing under 7 CMC § 4202. The Court agrees with Plaintiffs.

Here, Plaintiffs filed an application for an *ex parte* writ of prejudgment attachment, which included an affidavit signed by Plaintiffs' attorney. *See Pls.' Application for Ex Parte Writ of Prejudgment Attachment* (Sept. 14, 2000) ("Application").[8] Plaintiffs' reasons for requesting a writ of prejudgment attachment included the fact that Defendant resided in California, Defendant had no other property within the Commonwealth other than the settlement from the consent decree, and that there was a threat of imminent disbursement of settlement funds to Defendant. Based on the application and affidavit, the court issued a Writ of Pre-Judgment attachment, attaching the said sum of $11,000.

In determining whether a statute violates the Due Process Clause of the Fourteenth Amendment, this Court begins with the "truism that 'due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *See Doehr*, 501 U.S. at 10, 111 S. Ct. at 2112, 115 L. Ed. 2d at 13 (*quoting Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18, 33 (1976)). The Court therefore declines to accept Defendant's invitation to determine whether the Commonwealth's attachment statute, 7 CMC §§ 4201, 4202, is, on its face, unconstitutional. The Court will determine only whether the statute is unconstitutional as applied to Defendant in this case. *See Doehr*, 501 U. S. at 4, 111 S. Ct. at 2109, 115 L. Ed. 2d at 9 (holding that "as applied to this case [Connecticut's prejudgment attachment statute] does not [satisfy the Due Process Clause]").

---

[8] The Application stated, in pertinent part, that:

> 1. Plaintiffs have filed [a] Civil Action against Defendant for the recovery of money loan by Plaintiffs to Defendant between 1994 and 1999.
>
> 2. Defendant is the real party interest in Civil Action 99-037, U.S. District Court for the Northern Mariana Islands, *EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. SAKO CORPORATION*.
>
> 3. Civil Action 99-037 and consolidated Civil Action 99-036 have recently been settled. Part of the settlement calls for Sako Corporation to pay the sum of $11,000.00 to Defendant by September 15, 2001.
>
> . . . .
>
> 5. As alleged in Complainants' complaint, Defendant is a national of the Republic of the Philippine Islands who currently resides in California. Defendant has no known real or personal property or other assets in the Commonwealth except for the aforementioned litigation settlement.
>
> 6. Upon information and belief, Defendant has no present intention of returning to the CNMI.
>
> 7. If the Sako Corporation settlement is disbursed to Defendant outside the Commonwealth, Complainants will lose their opportunity to obtain satisfaction of a judgment in this action.
>
> 8. An Ex Parte Writ of Prejudgment Attachment is necessary in this case because of the imminence of disbursement of the Sako Corporation settlement funds to Defendant.

See Application at ¶¶ 1-8.

Applying the first prong of the *Doehr* test, the Court finds that the same property interests that were threatened by the application of Connecticut's prejudgment attachment statute to intentional tortfeasors in *Doehr* are not present in the case at bar. Here, the property attached was $11,000, which came from Defendant's settlement funds pursuant to a federal consent decree rather than Defendant's home, as in *Doehr*. Unlike Doehr, who suffered a threat that attachment of his home would cloud his title or affect his ability to sell his property, Defendant here only suffers from an inability to utilize the funds pending the outcome of the litigation and a threat of permanently losing the settlement funds. *See Doehr*, 501 U.S. at 11, 111 S. Ct. at 2113, 115 L. Ed. 2d at 14 (holding that attachment ordinarily clouds title; impairs the ability to sell or otherwise alienate the property; taints credit rating; reduces the chance of obtaining a home equity loan or additional mortgage; and can even place an existing mortgage in technical default). Thus, the analysis of the first prong set forth in *Doehr* fails to support Defendant's position.

In applying the second prong of the test, the Court finds that the application of the Commonwealth's attachment statute would not create a substantial risk of erroneous deprivation. In determining that the submission of an affidavit of probable cause to a judge did not satisfy the Due Process Clause, the *Doehr* Court noted that this procedure did not protect the defendant against the uncertainties that are associated with intentional tort cases: "[u]nlike determining *the existence of a debt or delinquent payments*, the issue does not concern 'ordinarily uncomplicated matters that lend themselves to documentary proof.'" *See Doehr*, 501 U.S. at 14, 111 S. Ct. at 2114, 115 L. Ed. 2d at 15 (emphasis added). Later in the opinion, the Court emphasized that "disputes between debtors and creditors more readily lend themselves to accurate *ex parte* assessments of the merits. Tort actions, like the assault and battery at issue [in *Doehr*], do not." *Id.* at 17, 111 S. Ct. at 2115, 115 L. Ed. 2d at 17.

The facts in the present case fall into the category of cases the *Doehr* Court sought to distinguish from intentional tort cases. Here, Plaintiffs allegedly engaged in a creditor-debtor relationship. In the complaint, Plaintiffs alleged that they loaned more than $21,000 to Defendant, which Defendant promised to repay Plaintiffs. Plaintiffs' further allege that Defendant failed to repay any amount of the loans extended to her.

The Commonwealth attachment statute does not require a plaintiff to post a security bond to insure the payment of damages that a defendant may suffer if the attachment is later found to be wrongly issued

or the claim proves to be unsuccessful. The majority in *Doehr*, however, did not reach the issue of whether due process requires the plaintiff to post a bond or other security in addition to requiring a hearing or showing of some exigency. *See Doehr*, 501 U.S. at 18, 111 S. Ct. at 2116, 115 L. Ed. 2d at 18. The statute also does not require a plaintiff to establish probable cause of success on the merits. The *Doehr* Court, however, concluded that such an inquiry does not reduce the risk of erroneous deprivation.[9] Moreover, unlike the statute in *Doehr*, the Commonwealth attachment statute provides a higher standard of review based on the restriction that a judge may issue a writ only with a showing of "special cause." *See* 7 CMC § 4201. Although the statute does not define what is "special cause," Plaintiffs contend that the special cause, in this case, is the imminent treat of disbursement of the settlement funds to Defendant who is a non-resident of the Commonwealth and who resides outside the Commonwealth. Moreover, the Court in *Doeh*r noted that such an allegation constitutes exigent circumstance. *Id.* at 16, 111 S. Ct. at 2115, 115 L. Ed. 2d at 16-17.

The Commonwealth attachment statute does require the plaintiff to submit an affidavit, i.e. statement under oath, showing "special cause" sufficient to warrant a writ of prejudgment attachment. *See* 7 CMC § 4201. The statute provides only that a judge may issue a writ of prejudgment attachment. *Id.* The statute also provides for notice to be given to the defendant after the attachment, informing the defendant that he or she has the right to request that the attachment be vacated or modified, i.e., a post-deprivation hearing. *See* 7 CMC §§ 4201, 4202.

Accordingly, the facts of the Plaintiffs' complaint are easily documented, and, in the absence of a substantial risk of erroneous deprivation, the Court finds that the procedural safeguards of 7 CMC §§ 4201, 4202 are similar to those in the statute that was upheld in *Mitchell*, 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974). The Court, therefore, finds that the second prong of the *Doehr* test is satisfied.

The third prong of the *Doehr* test examines the interests of the plaintiff. In *Doehr*, the Court found

---

[9] *See Doehr*, 501 U.S. at 13-14, 111 S. Ct. at 2114, 115 L. Ed. 2d at 15 ("Permitting a court to authorize attachment merely because the plaintiff believes that defendant is liable, or because the plaintiff can make out a facially valid complaint, would permit the deprivation of the defendant's property when the claim would fail to convince a jury, when it rested on factual allegations that were sufficient to state a cause of action but which the defendant would dispute, or in the case of a mere good - faith standard, even when the complaint failed to state a claim upon which relief could be granted. The potential for unwarranted attachment in these situations is self-evident and too great to satisfy the requirements of due process absent any countervailing consideration.").

that the plaintiff had no existing interest in the [tortfeasor's] real estate when he sought the attachment. His only interest in attaching the property was to ensure the availability of assets to satisfy his judgment if he prevailed on the merits of his tort claim. *See Doehr*, 501 U.S. at 16, 111 S. Ct. at 2115, 115 L. Ed. 2d at 16-17. In concluding that the plaintiff's interests were too minimal to supply consideration for attachment, the *Doehr* Court, noted that "there was no allegation that Doehr was about to transfer or encumber his real estate or take any other action during the pendency of the action that would render his real estate unavailable to satisfy a judgment." *Id*. The Court further noted that "[o]ur cases have recognized such a properly supported claim would be an exigent circumstance permitting postponing any notice or hearing until after the attachment is effected." *Id.* (*citing Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 609; 94 S. Ct. 1895, 1901, 40 L. Ed. 2d 406, 414 (1974); *Fuentes v. Shevin*, 407 U.S. 67, 90-92, 92 S. Ct. 1983, 1999-2000, 32 L. Ed. 2d 556, 576-77 (1972); *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 339, 89 S. Ct. 1820, 1821, 23 L. Ed. 2d 349, 352 (1969)).

Unlike the plaintiff in *Doehr*, Plaintiffs in the case at bar have a substantial existing interest in the $11,000 fund, as Defendant resides in California and has no other assets in the Commonwealth. As such, the facts in the present case are distinguishable from the facts in *Doehr* because Plaintiffs did allege in their application for writ of attachment that "[a]n Ex Parte Writ of Prejudgment Attachment is necessary in this case because of the imminence of disbursement of the Sako Corporation settlement funds to Defendant." *See* Application at ¶ 7. Thus, the Court finds that exigent circumstance existed in this case to warrant a writ of prejudgment attachment without prior notice and hearing. *See Doehr*, 501 U.S. at 18, 111 S. Ct. at 2116, 115 L. Ed. 2d at 18 (stating that "the [attachment] procedures of almost all the States confirm our view that the Connecticut provision before us, by failing to provide a preattachment hearing without at least requiring a showing of some exigent circumstance, clearly falls short of the demands of due process").

V. CONCLUSION

The Court having applied the test set forth in *Doehr*, finds that the Commonwealth attachment statute at 7 CMC §§ 4201, 4202, as applied to the facts of this case, does not violate due process and, therefore, was properly issued. Based on the foregoing reasons, the Court hereby **DENIES** Defendant's motion to dissolve the writ of attachment of September 15, 2000.

SO ORDERED this 27 th day of August 2002.

/s/ Virginia S. Sablan-Onerheim
VIRGINIA S. SABLAN-ONERHEIM, Associate Judge