

TERRUM

Attachment of Assets from Third
Stranger Parties.

By Julio Vargas

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Here is the case of an airline that entered in serious and general default of its obligations to the extent that instead of seeking relief through restructuring or bankruptcy proceedings, the workers entered in strike labor proceedings and simply "close the curtain" and cease operations.

Derived from an alleged right stated in Mexican labor laws, when filing for strike and in order to protect and guaranty salaries and labor obligations, the law entitles the workers to attach assets of the employer. Needless to clarify that it refers to assets owned by the employer and not applicable to assets that belong to third strange parties to the labor conflict.

In general terms when a debtor is sued on a debt, the creditor is entitled in some cases to attach the debtor's property, obviously not alien property. However, in some cases, assets belonging to third stranger parties to the debtor, for whatever reason end up being seized.

So, under these facts, meaning the case were the seized assets belong to a different person or entity than that one being sued, most laws in different matters such as commercial, civil, bankruptcy, labor, etc., they all contemplate legal procedures so the stranger party can exercise its ownership rights and file an incident or the specific procedure referred thereto depending on the matter, to recover and save its estate.

However, those available procedures or remedies present several complications such as the opportunity to file the remedy, lack of complete knowledge of the alien case, actual knowledge that your asset has been attached since the debtors usually do not bother to notify the owner. Furthermore, those procedures involve lengthy litigation cases to obtain from the same authority a reversal judgment recognizing ownership of the stranger party and therefore orders to recover your property.

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There is in Mexico, however another legal approach to such conflict that offers the possibility of a possible shorter court case, by actually filing a constitutional lawsuit before federal courts.

Mexican constitution protects the human right that states that nobody can be deprived of their freedom, ownership, possessions or rights, but only through trial in which it its heard in the competent court of law and complying with due process.

So, when somebody is affected by an incompetent authority order to attach your assets derived from a case in which you are not a party, that is, a third stranger party to the case, constitutes materially, an

act against the constitutional right since your assets and property rights are being affected without you haven't been heard in a court of law.

The constitutional trial is called Juicio de Amparo, and the applicable law is the Amparo law, and it is basically a lawsuit against the responsible authorities, so in these cases the amparo plaintiff or claimant becomes the affected person or entity in its property; the defendant is the responsible authority that issued the order or act to attach the assets, the counterparty affected by the ruling of this amparo is a third interested party.

Once the amparo cases were served, the responsible labor authorities responded and argue at length to support their actions, being one of their core defenses that according to the applicable labor laws the amparo plaintiff must have previously appear in such labor procedures to fight to recover and liberate its aircraft, so the amparo should be dismissed. This defense was also supported by the unions as a third interested party in the amparo lawsuit.

The reasoning, according to the responsible labor court behind this defense is because one requirement to file an amparo constitutional lawsuit is to comply with the legal Definitiveness Principle, which states that you can only file an amparo lawsuit in any matter after exhausting any other legal procedure available by which the act can be modified, revoked or reversed. Therefore and since the labor law, as mentioned, does in fact contemplate a legal remedy available for the strange party to attempt to recover its assets, and such stranger did not previously appear in such labor proceedings, therefore the amparo should be dismissed. This argument was also supported evidently by the labor unions.

Such defense was finally dismissed by the amparo tribunal. Although the labor law does in fact provide an incidental procedure through which the affected strange party may appear in such proceedings to defend its ownership rights, which is not mandatory, in order for that to happen, the stranger party must be legally served in accordance with due process, without service of process it will be illegal to continue. Even in the event that the responsible labor authority attempts to comply with due process by serving process to the stranger party, such service will be deemed as illegal since stranger party means that it is not a party in such labor proceeding which, legal wise, impedes the authority to serve process to a strange party.

In fact, the labor responsible authority and the labor unions missed, that in cases where the amparo plaintiff is an authentic and complete stranger to the labor proceedings that affects its assets, it is not required to exhaust any other proceedings by which the claimed act can be modified, nullified, reversed or revoked, and it is fully entitled to file an amparo lawsuit to reverse the alleged illegal attachment and liberate its affected assets.

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Firstly, the amparo law specifically states that an amparo lawsuit may be filed against authority acts inside or outside of court procedures that affect strange persons or entities to those court proceedings, but after exhausting any other procedure by which the authority act may be modified or nullified. Furthermore, authentic strangers not being part of the procedure are excused from exhausting any other available procedure.

The rationale, according to court precedents, considered that stranger parties to the trial can only be considered as such, those who have not been notified with due service of process and haven't appeared in a legal procedure that affects its interests, because the consequence of such situation is the inability to be heard to defend its rights, this means that the legal figure named third stranger party to a lawsuit was constructed with the very specific objective to give meaning to the amparo lawsuit that consists on the defense of the constitutional human right, to be heard in a court of law before being deprived of its assets.

In the case of study, the high tribunal also considered that in a third stranger party amparo lawsuit, one of the effects of granting the amparo relief, is to vindicate its affected ownership right through the illegal attachment of its assets derived from a case in which it is not a party.

Finally, the Collegiate Tribunal determined that the amparo claimant, proved complete ownership of the aircraft, proved the existence of the labor proceedings where the attachment of its assets was ordered, proved to be an authentic third party stranger to such labor case, proved that it had never been served and cannot be served in order to appear to such labor proceedings to defend its property and ownership rights.

With all those findings, the Collegiate Tribunal granted the amparo relief and declared void the alleged attachment of all aircraft specified in the amparo lawsuit, freeing them.

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Julio is a partner and heads the litigation group. His expertise in financial litigation gives him a unique understanding of the delicate matters surrounding the intricate matters involving contractual default and insolvency. Mr. Vargas has over 25 years of experience in financial litigation, heading the legal practice of a major Mexican bank before joining Sierra LATAM.

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