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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2181CV02271

CARLOS DEMARIA, JR.

vs.

DORCHESTER PUBLICATIONS, LLC, et. al¹

**ORDER REGARDING PLAINTIFF'S MOTION TO ATTACH REAL ESTATE AND
FOR A PRELIMINARY INJUNCTION AGAINST DEFENDANTS MATTHEW
PHILBIN AND JOSHUA RESNEK (Papers # 81 and 82)**

After hearing on June 26, 2023, at which counsel for Plaintiff and Defendants were present, and following careful review of the pleadings and each party's submissions in this matter, this court makes the following findings in accordance with Mass. R. Civ. P. 4. 1.

On the record currently before the court, Plaintiff, Carlos DeMaria, Jr., has demonstrated a likelihood that he will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance shown by Defendants to be available to satisfy the judgment.² The Court therefore approves real estate attachments in the amount of \$850,000.

¹ Joshua Resnek, Sergio Cornelio, Matthew Philbin, and Andrew Philbin, Sr.

² As of this date, a separate declaratory judgment action brought by Utica National Insurance Company ("Utica") against Dorchester Publications, LLC, Matthew Philbin, Joshua Resnek, and others, disclaiming coverage under an insurance policy issued by Utica to Dorchester Publications, LLC, is pending. See *Utica Nat'l Ins. Co. v. Dorchester Publications, LLC, et. al*, No. 2381CV00270. In that suit, Utica claims, among other things, that coverage is not afforded the Dorchester Publication Defendants under the policy because Defendants' conduct was allegedly committed intentionally, purposefully, fraudulently, maliciously, and/or knowingly so as to harm DeMaria (and another). This Court's present order and findings do not affect the rights of the parties in the pending declaratory judgment action. Rather, on the current record, the court cannot conclude that the contested liability coverage will be available to satisfy a judgment should DeMaria prevail on his conspiracy to defame and defamation claims against Defendants.

The motion for real estate attachment against properties owned by Matthew Philbin and Joshua Resnek is hereby **ALLOWED**.

Accordingly, it is hereby **ORDERED** that Writs of Attachment in the amount of \$850,000 shall issue against the following properties:

- (1) 67 Chelsea Street, Everett, Massachusetts, which is described in the deed dated July 24, 2023, recorded with the Middlesex South Registry of Deeds at Book 81804, Page 58, and owned by Matthew Philbin; and
- (2) 229 Ocean Street, Lynn, Massachusetts, which is recorded with the South Essex South Registry of Deeds at Book 20098, Page 61, and owned and held by Joshua Resnek and his wife held as tenants by the entirety, subject to a Declaration of Homestead.³

Plaintiff's motion for a preliminary injunction seeking to enjoin and restrain Defendants Philbin and Resnek from from selling, transferring, conveying, assigning, dissipating, or encumbering the above-described properties is **DENIED** without prejudice.⁴

The Court's previous order dated May 18, 2023, titled "Preservation Of Status Quo Pending Hearing On Plaintiff Carlo DeMaria, Jr.'s Motions for (1) Real Estate Attachments On Defendants Matthew Philbin's and Joshua Resnek's Properties; And (2) A Preliminary Injunction Against Defendants Matthew Philbin And Joshua Resnek Prohibiting Them From Further Transfers Of Properties And Interests In Entities And Trusts," will automatically expire

³ Property held in tenancy by the entirety can be attached even while it remains the principal residence of a non-debtor spouse. See *Peebles v. Minnis*, 402 Mass. 282 (1988). G.L. c. 209, § 1 protects a non-debtor spouse's principal residence from "seizure or execution," not attachment. Property subject to a homestead exemption is exempt from attachment up to the exemption amount, G.L. c. 188, § 3(b), which, in the case of a declared homestead exemption, is \$500,000. G.L. c. 188, §§ 1, 3(a).

⁴ At the hearing on June 26, 2023, the court indicated that it would be inclined to issue a preliminary injunction provided that the parties could agree on the specific parcels of properties subject to the court's injunctive order. The parties have represented they are unable to arrive at such an agreement. The court finds an injunction is unnecessary in this case given the issuance of writs of attachment.

effective midnight, August 16, 2023.

BY ORDER OF THE COURT

William F. Bloomer

William F. Bloomer
Associate Justice - Superior Court
August 9, 2023