

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0893, Louis D'Auria v. Joseph DeMauro & a., the court on December 6, 2005, issued the following order:

The plaintiff, Louis D'Auria, appeals the superior court order granting the motion of the intervenor, Annette B. DeMauro, to bring forward judgment to enjoin a sheriff's sale of property located in Rye. We affirm.

The plaintiff argues that the trial court erroneously found that his attachments had expired by operation of law under RSA 511:55, I (Supp. 2004). RSA 511:55, I, provides, in pertinent part, that "[r]eal or personal property attached shall be held until the expiration of 6 years from the time of rendering a judgment in the action in favor of the plaintiff on which he can take execution." The plaintiff asserts that, because he did not obtain a judgment upon which he could "take execution" against the Klaidonis Foundation until 1999, his writ of execution, obtained in March 2004, was timely. The intervenor counters that, because the plaintiff's attachments were based upon a January 1996 judgment he obtained against Joseph DeMauro, the March 2004 writ of execution was untimely. We agree with the intervenor.

Under the plain language of RSA 511:55, I, the judgment at issue is that upon which a plaintiff "can take execution." In an attachment proceeding, the judgment upon which a plaintiff "can take execution" is the judgment that gives rise to the attachment – the judgment that the attachment seeks to satisfy. See Manchester Federal Sav. &c. Ass'n v. Emery-Waterhouse, 102 N.H. 233, 237-38 (1959). Thus, for instance, in Remington Investments, Inc. v. Howard, 150 N.H. 653, 655 (2004), we held that the judgment that began the running of the six-year period was the judgment the plaintiff's attachment was intended to satisfy. In that case, the plaintiff obtained a judgment against the defendant on April 30, 1997. We held that the plaintiff therefore held its attachment from April 30, 1997, to April 30, 2003. Remington Invs., 150 N.H. at 655. Here, the judgment that gave rise to the plaintiff's attachment was the January 1996 judgment he obtained against Joseph DeMauro. The ex parte attachment the plaintiff obtained in April 1996 was intended to satisfy the monetary judgment he received in January 1996.

Under the plaintiff's construction of the statute, his attachment on the real property at issue would last longer than the six years the legislature intended. See id. As he asserted at oral argument, a new six-year period would begin whenever he brought a trustee action against an entity that was holding assets in

trust for Joseph DeMauro. This construction violates the legislature's intent "to limit the term of a real estate attachment to a period of six years" from the date of judgment. Id. Accordingly, we reject it.

We disagree with the plaintiff that the intervenor failed to properly raise the issue of the timeliness of his attachments before the trial court. The intervenor first raised the issue in her emergency motion and raised it again in her hearing memorandum. We determine that this was sufficient.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**