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COURT OF APPEALS

STATE OF NEW YORK

VERIZON NEW ENGLAND, INC.,

Appellant,

-against-

No. 70

TRANSCOM ENHANCED SERVICES, INC.,

Respondent.

20 Eagle Street
Albany, New York 12207
March 20, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 70, Verizon
2 New England v. Transcom.

3 Counselor.

4 MR. WEIGEL: Good afternoon, Your Honors.
5 Robert Weigel from Gibson, Dunn & Crutcher for the
6 petitioner.

7 CHIEF JUDGE LIPPMAN: Okay. Would you like
8 any rebuttal time, counselor?

9 MR. WEIGEL: I would, Your Honor. May I
10 reserve three minutes of the time - - -

11 CHIEF JUDGE LIPPMAN: Three minutes. You
12 have it. Go ahead.

13 MR. WEIGEL: Thank you. This case involves
14 obviously the CPLR. I think the facts are largely
15 uncontested. The judgment debtor had a contractual
16 relationship with the garnishee, Transcom, for a
17 period of years. On April - - -

18 CHIEF JUDGE LIPPMAN: What's the
19 significance of the oral modification of the
20 agreement, you know, that - - - that they had? What
21 - - - how does this work?

22 MR. WEIGEL: The significance of it? Your
23 Honor, I don't think it has any particular legal
24 significance for - - -

25 CHIEF JUDGE LIPPMAN: It doesn't matter

1 whether the - - - when the - - - whether something is
2 due immediately? It doesn't matter that it's
3 contingent upon their deciding to do this and to, in
4 advance, you know - - -

5 MR. WEIGEL: Your Honor - - -

6 CHIEF JUDGE LIPPMAN: - - - decide and pay?
7 Doesn't that change the equation a little bit - - -

8 MR. WEIGEL: Well - - -

9 CHIEF JUDGE LIPPMAN: - - - or does it?

10 MR. WEIGEL: - - - I don't believe it does,
11 Your Honor.

12 CHIEF JUDGE LIPPMAN: Why not?

13 MR. WEIGEL: The whole concept of
14 contingency is something that applies to 5201 - - -

15 CHIEF JUDGE LIPPMAN: How does it - - -

16 MR. WEIGEL: - - - (a) - - -

17 CHIEF JUDGE LIPPMAN: Yes. How does it
18 affect - - -

19 MR. WEIGEL: - - - which is debts.

20 CHIEF JUDGE LIPPMAN: - - - debt and
21 property, debt and property?

22 MR. WEIGEL: This court, in ABKCO - - -

23 CHIEF JUDGE LIPPMAN: Yeah.

24 MR. WEIGEL: - - - made it clear that the
25 dif - - - distinction between property and debt is

1 really not significant.

2 JUDGE READ: Is ABKCO the closest case, do
3 you think, to your situation?

4 MR. WEIGEL: I do, and it's been cited.
5 Obviously, any case that involves judgment
6 enforcement is - - - ABKCO is the touchstone, the
7 seminal case. Your - - - this court discussed it in
8 - - -

9 JUDGE GRAFFEO: Was there more - - -

10 MR. WEIGEL: - - - Hotel 71.

11 JUDGE GRAFFEO: Was there more certainty in
12 ABKCO than there is here? I mean, did they expect
13 that the Beatles album was certainly going to sell so
14 there was some certainty that there was going to be
15 proceeds?

16 MR. WEIGEL: It was a movie, Your Honor.

17 JUDGE GRAFFEO: I'm sorry. The movie that
18 was - - -

19 MR. WEIGEL: No, that's quite all right.
20 But the court expressly said that it was impossible
21 to predict - - - in the opinion itself, it says it's
22 impossible to predict whether there would be any
23 proceeds at all as a result of that movie. That's in
24 the - - - that's in the Court of Appeals decision.

25 Here, on the other hand, you had a routine

1 contract that had been in place for years. On April
2 1st, 2009, they recorded on their books a payable to
3 the judgment debtor of 240,000 dollars.

4 JUDGE SMITH: But the - - - but the finding
5 below is though it's recorded as a payable, it wasn't
6 a payable.

7 MR. WEIGEL: Well, the fi - - - no one
8 disputes it was put on their books as a payable, and
9 certainly no one would put on their books something
10 that they didn't expect to be paid.

11 JUDGE SMITH: Well, actually, it wasn't - -
12 - as I understand, it wasn't just on the - - -
13 strictly on the book; it was on internal records. He
14 said, if I was going to prepare a financial
15 statement, I would not have treated that as a
16 payable.

17 MR. WEIGEL: Absolutely, he did say that,
18 Your Honor. But no one would put on their internal
19 records something they didn't expect, and that
20 240,000 dollars had been paid regularly up to that
21 point and was paid regularly after that point.

22 JUDGE SMITH: Suppose - - - suppose the - -
23 - the garnishee here had done what you say they were
24 supposed to do, pay you the money instead of paying
25 it to the - - - to the judgment debtor, suppose the -

1 - - the first - - - the first payment that they made
2 to the judgment debtor had gone to you instead. They
3 wouldn't be - - - the judgment debtor would stop
4 giving them telephone service, wouldn't they?

5 MR. WEIGEL: I'm not sure that's true, Your
6 Honor. They were - - - they had a longstanding
7 relationship here that was quite profitable, and they
8 were - - -

9 JUDGE SMITH: Well, it's not profitable if
10 you're not getting paid.

11 MR. WEIGEL: Well, not getting paid is not
12 the same thing as not getting consideration because
13 obviously the money was being restrained in the first
14 instance. That's all we're talking about here is a
15 5222 retraining notice. They had to hold the money
16 if there was some question about - - - then we had to
17 go do something to get it, either you send a sheriff
18 or do a turnover proceeding or what have you.

19 The underlying judgment was on appeal at
20 that point in time, so there was no - - - they
21 obviously thought - - - the judgment debtor thought
22 they had some chance of winning. So why would they
23 blow up a profitable arrangement with a longstanding
24 customer? Just out of spite to make sure my client
25 doesn't get it? Your Honor's question presupposes

1 that a judgment debtor gets no benefit from getting
2 his judgment paid.

3 JUDGE SMITH: Okay. Let me - - - let me
4 ask you a different question. Suppose, I'm very - -
5 - suppose that you had this contract and suppose the
6 finding we had was the parties orally agreed to
7 completely abrogate the contract and just have a - -
8 - have a week-by-week relationship with no - - - no
9 binding commitments on either side, then there's - -
10 - there's clearly no property to collect, right?

11 MR. WEIGEL: 5201(b) says that future
12 interest - - -

13 JUDGE SMITH: Well, let's see - - - but in
14 my hypothetical, am I right, there'd be no property
15 to collect?

16 MR. WEIGEL: I don't - - -

17 JUDGE SMITH: You don't think so.

18 MR. WEIGEL: - - - believe so, Your Honor,
19 because under - - - there was in existence at the
20 time - - - no one disputes, even under their analysis
21 - - - a seven-day contract. They'd accepted services
22 for seven days. They'd written a check which was
23 posted but obviously not cleared at the time they got
24 the restraining notice because you can't mail a check
25 on the 1st and get it cleared on the 2nd. So they

1 were already in the middle of a contract, and what
2 this court has said about - - -

3 JUDGE SMITH: You mean - - - you mean, even
4 if there was no - - - even if the only contract was
5 the check, that's still - - - the check is a written
6 promise and, therefore, a contract? Is that your
7 theory?

8 MR. WEIGEL: Well, there's that, and then
9 there was a contract that they were going to do
10 business for seven days, at least under their
11 analysis, right, that every seven days they - - - in
12 your hypothetical - - -

13 JUDGE SMITH: Well, as I understand it - -
14 -

15 MR. WEIGEL: - - - every seven days they'd
16 renew.

17 JUDGE SMITH: As I understand it, there was
18 a seven-day relationship, but the obligation ran from
19 the judgment debtor to the garnishee, not the other
20 way around.

21 MR. WEIGEL: Well, there were - - -
22 obviously, there were contract - - - there was a
23 contract. There were different obligations. If you
24 look at it in the record, there were indemnification
25 obligations. There were obligations to pay sales

1 tax. There was a contractual relationship between
2 two parties. One element of it is when the payment
3 was supposed to be made. And what ABKCO says is that
4 even if you strike at the moment - - - at the moment
5 you strike it that there - - - it turns out that the
6 judgment debtor owes money to the other guy - - -

7 CHIEF JUDGE LIPPMAN: Counselor, before - -

8 -

9 MR. WEIGEL: - - - it's still property.

10 Yes, Your Honor.

11 CHIEF JUDGE LIPPMAN: - - - your time's up,
12 define "debt" and define "property" in the context of
13 what we're dealing with from your perspective.

14 MR. WEIGEL: Property is any - - - any
15 right that - - - that the judgment debtor has, the
16 bundle of rights, according to ABKCO - - -

17 CHIEF JUDGE LIPPMAN: The bundle of rights,
18 right.

19 MR. WEIGEL: - - - that they have in a
20 contract. It can be a future interest. It can be
21 unvested. This 5201 specifically says that a
22 property right can be vested or not and it's still
23 property under 5201(b), and that's what ABKCO says
24 and - - -

25 JUDGE GRAFFEO: So you think that's your

1 stronger argument is under subdivision (b), not (a)?

2 MR. WEIGEL: This is - - -

3 JUDGE GRAFFEO: You think property is a - -

4 -

5 MR. WEIGEL: This is clearly - - -

6 JUDGE GRAFFEO: - - - stronger argument

7 than debt?

8 MR. WEIGEL: This is clearly, in my view, a
9 property case, Your Honor, in the sense that there
10 was a contractual relationship, just like in ABKCO.
11 In that contractual relationship, the bundle of
12 rights that the judgment debtor had vis-a-vis them,
13 which ultimately led to them - - - they were
14 providing services; they got paid. And no matter how
15 cleverly you write the contract, it still was
16 property.

17 JUDGE SMITH: Even if you - - - if I may
18 indulge for one more question.

19 MR. WEIGEL: Certainly, Your Honor.

20 JUDGE SMITH: Assume you're right, you've
21 got property; is the property assignable? Isn't it -
22 - - don't you need the consent of the garnishee to
23 assign it?

24 MR. WEIGEL: Contracts are routinely
25 assignable, Your Honor, and this was assi - - - this

1 was - - -

2 JUDGE SMITH: But this - - - this says, it
3 may not be assigned without the consent of the other
4 party which shall not be unreasonably withheld.

5 MR. WEIGEL: Right. And as the Oppenheimer
6 case said, which was affirmed, and I think Professor
7 Siegel makes reference to it, the parties can't
8 really contract around a valid enforcement device.
9 This contract was assigned - - - in fact, the payment
10 was going to an affiliate of the debtor - - - of the
11 judgment debtor, and therefore, it could be and was
12 attached with the - - - with the restraining order.

13 CHIEF JUDGE LIPPMAN: Okay, counselor.

14 MR. WEIGEL: Thank you, Your Honor.

15 CHIEF JUDGE LIPPMAN: You'll have your
16 rebuttal.

17 MR. CARTER: Good afternoon, Your Honors.
18 I'm - - - may it please the Court, I am Hunter Carter
19 with Arent Fox in New York. We represent Transcom
20 Enhanced Services.

21 CHIEF JUDGE LIPPMAN: Counselor, let me ask
22 you a question. Is this a property case?

23 MR. CARTER: That is how it has been
24 brought, and that is why it should fail. There is no
25 property - - -

1 CHIEF JUDGE LIPPMAN: Why? Tell us.

2 MR. CARTER: - - - and there is no right.

3 CHIEF JUDGE LIPPMAN: Well, how - - - why
4 is there no property? How do you define property?

5 MR. CARTER: Judge Lippman, the question
6 you just asked deserves a somewhat better answer.
7 Property - - - to have a property interest, you have
8 to have a property right; you have to have a claim on
9 something and here, the judgment debtor has no claim
10 on anything. It never has a claim on our client to
11 either order services or pay for services that
12 haven't already been paid for.

13 JUDGE PIGOTT: Did you collude to provide -
14 - - prevent Verizon from collecting on its debt?

15 MR. CARTER: Oh, absolutely not.

16 JUDGE PIGOTT: Okay.

17 MR. CARTER: Not only is there no evidence
18 of that, there's no - - -

19 JUDGE PIGOTT: I didn't - - - I didn't say
20 there was, but I'm just saying you've got a written
21 contract that everyone testifies is not valid, that,
22 oh, it's orally changed and this - - - every place
23 it's orally changed is to hurt Verizon.

24 MR. CARTER: No, that's incorrect, Your
25 Honor. This is one of many contracts our client has

1 with other vendors, as the record establishes.

2 JUDGE PIGOTT: I understand that, but what
3 - - - my point is that you're making this argument
4 that because you're pre-paying, they can't get their
5 money, when your contract doesn't provide for that.

6 MR. CARTER: What - - - what the record
7 establishes is the contract is amended because of the
8 poor quality of service, of customer service, and of
9 coverage.

10 JUDGE PIGOTT: Yeah, you got all this poor
11 service and that's why you continue to pay this - - -
12 this - - - this subcontractor of yours all of this
13 money. It would seem to me that your argument would
14 make a whole lot more sense if you had a responsible
15 vendor that you were - - - that you were working
16 with. These people have a multimillion dollar
17 judgment against them, and you're saying, well, we
18 only pre-paid because we think they're irresponsible,
19 we think they're - - - they're financially wobbly,
20 and so we're going to continue to pay this to the
21 detriment of Verizon. I just don't understand it.

22 MR. CARTER: I'd be happy to explain.
23 That's a post hoc fallacy. This agreement was
24 modified because of problems in the relationship that
25 may be the same kinds of problems that gave rise to

1 Verizon's agreement but long before.

2 JUDGE PIGOTT: But didn't the contract say
3 it can only be modified in writing?

4 MR. CARTER: I'm sorry, sir?

5 JUDGE PIGOTT: Didn't the contract say it
6 could only be modified in writing?

7 MR. CARTER: Yes, but under Massachusetts
8 law, that's not true. Under Massachusetts law, it
9 can be modified orally, and that's what the
10 uncontested evidence establishes.

11 JUDGE GRAFFEO: Why is the payment date so
12 determinative here?

13 MR. CARTER: The payment date is
14 determinative because what they've moved to, the
15 modification, is to an agreement where the ordering
16 of service is made by payment. They feed it out in
17 little itty bits at a time because this is a very
18 unstable, unreliable company. However, they provide
19 lower-cost service. So our client is struck with a
20 choice: order this service - - -

21 JUDGE GRAFFEO: So - - -

22 MR. CARTER: - - - but don't get too
23 committed to them.

24 JUDGE GRAFFEO: So if they paid after the
25 service, it would be property?

1 MR. CARTER: If they paid after the
2 service, there would be a claim on them for a
3 payment; it would be either debt or a property. But
4 that's the reverse. That's exactly what the
5 situation is here. They paid to order the service
6 and - - -

7 JUDGE SMITH: I'm - - - I'm puzzled. Maybe
8 I don't quite understand. Why would you - - - if you
9 don't trust your counterparty, why would you insist
10 on paying in advance? Why wouldn't you wait until
11 you had the - - - what you're buying before you pay
12 for it?

13 MR. CARTER: Very easy to answer. They
14 only pay for a week at a time, and they only pay
15 because they're the cheapest service. It has nothing
16 to do with trust. Here's a week's worth of payment,
17 I don't have to trust you; I'm not out more than one
18 week.

19 JUDGE PIGOTT: No, but you can pay them on
20 Monday. You can say, you provide this service from
21 Tuesday until next Monday and we'll pay you for that
22 and then we'll continue to do that because we want to
23 make sure you provide it. The way your argument's
24 going, at some point you're going to give them - - -
25 how much do you pay them a week?

1 MR. CARTER: I think it's 61,500 dollars.

2 JUDGE PIGOTT: Right, and you're going to
3 be out 61,500 dollars because they're going to take
4 that money and leave.

5 MR. CARTER: Right. That - - -

6 JUDGE PIGOTT: And you're willing to take
7 that - - - you're willing to take that risk - - -
8 you're telling the Court that you've made an oral
9 agreement with this person that you're going to
10 forward this money to them in anticipation of service
11 for what you consider to be an unreliable,
12 financially unstable company rather than say do the -
13 - - do the - - - provide the service and a week later
14 we'll pay you.

15 MR. CARTER: Well, let's not exaggerate the
16 record. The most that they're ever exposed for is
17 61,000 dollars.

18 JUDGE PIGOTT: Right.

19 MR. CARTER: And while they have problems
20 on the one hand, on the other hand they have the
21 lowest-cost service to complete these voice-over
22 Internet calls. So our client struck what really was
23 the most prudent business decision, never be out more
24 than 61,000 dollars.

25 JUDGE GRAFFEO: Why can't we - - -

1 JUDGE RIVERA: But - - - but is that
2 because you - - - your client believed that if they
3 said do the service and then I'll pay you, they
4 wouldn't get the service, because otherwise I don't
5 understand that argument.

6 MR. CARTER: I'm sorry. Could I hear that
7 one more time?

8 JUDGE RIVERA: I don't understand your
9 argument unless what you're also saying is if they
10 had tried to negotiate the contract that way, that
11 the serv - - - they would refuse to provide the
12 service, that they needed the money up front or they
13 needed the check in the mail before they would start
14 the service.

15 MR. CARTER: Well, this goes to Judge
16 Smith's first question of my colleague here which is
17 why they modified it. The contract that was modified
18 provided for paying a whole month in advance - - -

19 JUDGE RIVERA: Yep.

20 MR. CARTER: - - - in two installments and
21 being exposed for the whole month - - -

22 JUDGE RIVERA: Right.

23 MR. CARTER: - - - in advance. That wasn't
24 acceptable to our client. They improved on that
25 situation by paying for no more than a week in

1 advance and being able to flip a switch and be done
2 and have to move on, not have any further obligation.

3 JUDGE RIVERA: Then perhaps I'm not being
4 clear. I understand that. My question is, that only
5 would make sense to me if - - - if you're saying you
6 could not negotiate the contract so that the service
7 would be pay - - - would be done before the payment.
8 Otherwise, one month, one week, you're still out
9 money. It's not making sense to me. You could have
10 negotiated the other way also: do the one month and
11 then I'll pay you.

12 MR. CARTER: It's an interesting question.
13 The record doesn't answer it.

14 JUDGE RIVERA: Okay. Thank you.

15 MR. CARTER: Very well. So I would request
16 that the court affirm the First Department.

17 CHIEF JUDGE LIPPMAN: Okay. Thank you,
18 counselor.

19 Counselor - - -

20 MR. WEIGEL: Thank you, Your Honor.

21 CHIEF JUDGE LIPPMAN: - - - does it make
22 sense to you, what they did was a business
23 arrangement?

24 MR. WEIGEL: No, no, it does not - - -

25 CHIEF JUDGE LIPPMAN: Why not?

1 MR. WEIGEL: - - - Your Honor.

2 CHIEF JUDGE LIPPMAN: Why not? Why isn't
3 this a prudent business decision on their part?

4 MR. WEIGEL: Why isn't it a prudent deci -
5 - -

6 CHIEF JUDGE LIPPMAN: Yeah.

7 MR. WEIGEL: They continued to pay for
8 months after they knew that the judgment debtor owed
9 fifty-seven million dollars to Verizon.

10 JUDGE PIGOTT: But if I understand Mr.
11 Carter's argument, it's not that - - - they didn't do
12 that just because you had a big judgment then they
13 were trying to collude with GNAPS to - - - to prevent
14 that, that they were protecting themselves long
15 before your judgment arrived. And now, as it
16 happens, this is what they're doing, for good or ill.
17 And it - - - and is that the - - - is that the real -
18 - - I mean, if they're colluding, he admits that he's
19 going to have to pay you the money. But if they're
20 not, if they're just making a business decision of
21 that nature, aren't they right?

22 MR. WEIGEL: No, they're not right.

23 JUDGE PIGOTT: All right.

24 MR. WEIGEL: This court has long held - - -
25 if you look at the statute, the 5201(b), if you look

1 at 5205 and 5222, the concept of wages to be earned
2 in the future for an individual, they are clearly - -
3 - you can - - -

4 JUDGE PIGOTT: So there's no clock there.
5 I mean, it's - - - it's - - - it's what is is, and so
6 when you - - - when you issue your restraining order,
7 there - - - they have to not pay GNAPS until what,
8 the judgment's paid?

9 MR. WEIGEL: Yes. I mean - - -

10 JUDGE PIGOTT: The whole month - - -

11 MR. WEIGEL: - - - the statute says two
12 times - - - if you withhold two times the amount of
13 the judgment, then you're safe.

14 JUDGE PIGOTT: And your judgment was for?

15 MR. WEIGEL: Fifty-seven million dollars.

16 JUDGE PIGOTT: So they had to hold back
17 about 114 million?

18 MR. WEIGEL: I think we would have taken
19 less, Your Honor. But they have an option, too.
20 They could go to the court - - - 5240 allows them to
21 go to the court and say, we have a problem here. But
22 they didn't do that. They never objected to our
23 restr - - - to our information subpoena. They held
24 on to it. They didn't respond to it. They waited
25 until the judgment debtor filed a motion.

1 JUDGE SMITH: Are you - - - are you
2 claiming that there was collusion to defeat
3 enforcement of the judgment?

4 MR. WEIGEL: I'm not saying there was
5 collusion, Your Honor. I'm saying that they put
6 themselves at risk and they should bear that risk.

7 JUDGE SMITH: Okay. But you're not
8 disputing that the relationship between Transcom and
9 GNAPS, whatever it is, was - - - was arm's length?

10 MR. WEIGEL: They - - - so far as I know,
11 they were independent parties obviously, but why
12 somebody would continue to pay in the face of a
13 restraining notice without going to the court and
14 saying, can I do this, particularly in that - - -

15 JUDGE SMITH: Well, I suppose, but a
16 possible reason is they didn't think they'd get the
17 telephone service so they didn't pay for it.

18 MR. WEIGEL: Well, but, Your Honor, again,
19 it presupposes the size of the judgment. Suppose my
20 judgment was 100,000 dollars. The CPLR has the same
21 provisions. If they could have satisfied my judgment
22 by withholding 200,000 dollars - - - you can't make
23 the rule based upon what the judgment debtor is going
24 to do. You can't let the judgment debtor control - -
25 -

1 JUDGE PIGOTT: What would or could have
2 happened under 5240?

3 MR. WEIGEL: They could have gone to the
4 court. They could have asked the court, either we
5 have some issue here or there could have been some
6 stipulation. The money could have put it - - - been
7 put in escrow because the appeal was pending.

8 JUDGE PIGOTT: Well, I mean, can the court
9 order them to - - - to - - - to do what? I mean, it
10 - - -

11 MR. WEIGEL: The court has the full powers
12 of equity to do whatever is just in terms under 5240.

13 CHIEF JUDGE LIPPMAN: But, counselor, they
14 wanted to get the service. Wasn't - - - wasn't - - -
15 from their perspective, wasn't it an intelligent
16 thing to do, to pay, get the service, pay, get the
17 service, whatever it is, a week at a time? Why would
18 that not be in their interest, you know, and make
19 total business sense?

20 MR. WEIGEL: Well, any time you have a - -
21 - unless you're going to rule that any time you have
22 a longstanding contract or that a contract that
23 requires some effort on the part of the judgment
24 debtor, which was expressly what this Court in
25 Supreme Merchandise said is not the law, you're going

1 to have this issue. The before or the after, whether
2 they pay on Monday or Friday, is sort of academic.

3 JUDGE SMITH: Well, apart from your reading
4 of Supreme Merchandise, what's wrong with a rule that
5 says it's not property if the contract right is - - -
6 is of such a nature that the judgment debtor can
7 effectively prevent the - - - prevent the contingency
8 from happening? Because that wasn't true in ABKCO.
9 The contingency was beyond the judgment debtor's
10 control.

11 MR. WEIGEL: Well, first of all, the
12 statute doesn't provide that. The statute says that
13 if you vest - - -

14 JUDGE SMITH: Well, the statute just says
15 debt and property, and we're sort of trying to figure
16 out what it means.

17 MR. WEIGEL: But it also says - - - yes, of
18 course, Your Honor. But it says vested or not. So
19 something that's not vested means there's a
20 contingency. And this Court has long held, with
21 wages, for example, if the employee doesn't - - - if
22 you garnish somebody's wages, that's an at-will
23 relationship. They could not show up the next day
24 and decide I'm not going to show up for work.

25 JUDGE SMITH: But isn't - - - I mean, I'm -

1 - - I - - - I'm just going to display my ignorance,
2 but isn't wage garnishment governed by special
3 statutes and you can't take a hundred percent of it
4 and - - - although it's missing a lot of details?

5 MR. WEIGEL: Well, 5205 says that personal
6 property - - - there - - - it exempts personal
7 property that constitutes the wages of - - - or the
8 income from personal services. Ninety percent of
9 that is expressly exempted from property that you can
10 go after. But it is personal property, and if you
11 read how it's defined in there under "income", it is
12 personal property.

13 JUDGE SMITH: So you're saying if there
14 were no special statute, a hundred percent of the
15 wages would be - - - you - - - you could - - - you
16 could attach the - - - the employee's right to earn
17 wages as property even though he - - - even before he
18 does the work?

19 MR. WEIGEL: Yes, and that was a concern
20 because that 5222, if you look at it, has a provision
21 in there that expressly prohibits you from serving a
22 restraining notice on an employer when the purpose is
23 to attach wages that have either been earned or wages
24 to be earned. And that language, that to-be-earned
25 language would be complete surplage (sic) if those

1 wages to be earned were not otherwise property that
2 could be attached.

3 CHIEF JUDGE LIPPMAN: Okay, counselor.
4 Thank you.

5 MR. WEIGEL: Thank you, Your Honor.

6 CHIEF JUDGE LIPPMAN: Thank you, both.
7 Appreciate it.

8 (Court is adjourned)

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript of proceedings in the Court of Appeals of Verizon New England, Inc. v. Transcom Enhanced Services, Inc., No. 70 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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