

DOCKET NO.: FST-CV-15-5014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	JUDICIAL DISTRICT OF
)	STAMFORD/NORWALK
Plaintiff,)	
)	
v.)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC,)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,)	
WILLIAM P. LOFTUS)	
)	JUNE 30, 2016
Defendants.)	

PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS DEFENDANTS’ APPLICATION FOR PREJUDGMENT REMEDY

I. INTRODUCTION

Plaintiff, William A. Lomas (“Lomas”) submits this Memorandum of Law in Support of His Motion to Dismiss Defendants’ Application for Prejudgment Remedy (Dkt. No. 154.00) (the “PJR Application”). Defendants have not yet filed the purported set-offs or counterclaims on which they base their application – a clear prerequisite to filing an application pursuant to Conn. Gen. Stat. § 52-278i. Thus, this Court does not have subject-matter jurisdiction to entertain the Application and it must be dismissed.

II. RELEVANT FACTUAL BACKGROUND

Lomas commenced this action in June 2015, seeking to recover in excess of \$4 Million due to him per the terms of the limited liability company agreement (the “Agreement”) governing his withdrawal from the defendant, Partner Wealth Management, LLC. The gravamen

of Lomas' complaint, as amended, is that the Defendants have intentionally, wrongfully and willfully withheld this money in breach of their contractual and fiduciary obligations.¹

At the time Lomas commenced this action, he also sought a prejudgment remedy against the Defendants. Dkt. No. 100.31. The Court scheduled a hearing for September 21, 2015, to adjudicate Lomas' application. At that time, Defendants did not raise any set-offs, counterclaims or defenses. Instead, they chose to voluntarily settle Lomas' PJR application. That settlement had two parts: (1) a series of direct payments to Lomas to resolve the undisputed portions of Lomas' claims; and (2) the establishment of an escrow account with monthly payments to it to secure any judgment in his favor with respect to the disputed portion of his claims. The settlement terms were read into the record by Defendants' counsel, all parties stated their agreement on the record, and it became an Order of this Court that same day. Dkt. No. 121.00.

On June 3, 2016, more than eight months after Lomas' PJR application was resolved, Defendants filed the pending PJR Application. Dkt. No. 154.00. The Defendants seek to attach Lomas' personal property and assets in the amount of \$1,029,000.00. *See* PJR Application, p. 16. The PJR Application states that it was filed pursuant to Conn. Gen. Stat. §§ 52-278 *et seq.*, but does not cite to a specific provision of the statutory scheme. *See* PJR Application, p. 1. The sole basis for the PJR Application is that Defendants' "Counterclaim Complaint *will plead* a count for the breach of the non-solicitation covenants by Lomas." *See* PJR Application, p. 13 (emphasis added.) Attached to the PJR Application is a document stamped "draft", which is unsigned and unfiled. *See* PJR Application, Exhibit A. There is no dispute that it has never been filed with this Court, and it is not of record.

¹ Defendants moved to strike certain of the allegations of Lomas' Amended Complaint (Dkt. No. 137.00). The motion has been fully briefed and has been argued to the Court. A ruling is pending.

III. THIS COURT LACKS SUBJECT-MATTER JURISDICTION OVER DEFENDANTS' PJR APPLICATION

“The Superior Court lacks subject matter jurisdiction if it has no competence to entertain the action before it.” *Meinket v. Levinson*, 193 Conn. 110, 115, 474 A.2d 454 (1984). “Once the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented... and the court must fully resolve it before proceeding further with the case.” *Castro v. Viera*, 207 Conn. 420, 429, 541 A.2d 1216 (1988). “A determination regarding a trial court’s subject matter jurisdiction is a question of law.” *Cardi Materials Corp. v. Connecticut Landscaping Bruzzi Corp.*, 77 Conn. App. 578, 581, 823 A.2d 1271 (2003).

“Since 1973, the authority for pretrial property attachment has been spelled out in General Statutes Section 52-278a through 52-278n.” *Ledgebrook Condominium Assn., Inc. v. Lusk Corp.*, 172 Conn. 577, 582-83, 376 A.2d 60 (1977). “Because the right to a PJR is founded and regulated by statute, the law mandates strict compliance with the authorizing statute.” *Id.* Pursuant to General Statutes §§ 52-278a *et seq.*, the trial court has statutory authority to hear and grant applications for prejudgment remedies. However, where the moving party fails to comply with the requirements of the prejudgment remedy statute, the trial court does not have jurisdiction to issue an order granting the prejudgment remedy. *See Lauf v. James*, 33 Conn. App. 223, 228, 635 A.2d 300 (1993) (reversing trial court’s order granting a prejudgment remedy where plaintiff failed to comply with the requirements of General Statutes § 52-278c.)

General Statutes § 52-278i unquestionably governs the PJR Application. It provides:

Any defendant in any civil action, ***upon filing a set-off or counterclaim containing a claim for money damages***, may, at any time during the pendency of such action, apply in writing to the court before which such action is pending, or when such court is not in session, to any judge thereof, for an order for a prejudgment remedy against the estate of the party of parties against whom such claim has been made. Such application shall be substantially in the form provided by subsection (b) of section 52-278c, adapted accordingly.

(Emphasis added.) Without § 52-278i, the remedy Defendants seek does not exist and the Court does not have power to issue the relief sought. *See E.J. Hansen Elevator, Inc. v. Stoll*, 167 Conn. 623, 628, 356 A.2d 893 (1975) (stating “the remedy of attaching and securing a [party’s] property to satisfy a judgment which the [moving party] may recover is unknown to the common law and is founded on and regulated by our statutory law.”) Conn. General Statutes § 52-278i’s mandate that defendants are permitted to seek a prejudgment remedy only “*upon filing a set-off or counterclaim*” is clear. Here, Defendants have failed to comply with that requirement before filing the PJR Application. Since no set-off or counterclaim has been filed, this Court does not have jurisdiction to entertain the PJR Application and it must be dismissed.

IV. CONCLUSION

For the foregoing reasons, Plaintiff William A. Lomas respectfully requests that this Court dismiss Defendants’ Application for a Prejudgment Remedy for lack of subject matter jurisdiction.

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CERTIFICATE OF SERVICE

This is to certify that on June 30, 2016, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

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