

Can a Creditor Attach, Levy and Execute Upon a Liquor License?

In recent discussions with two different lenders, I and one my clients were told by those lenders that a security interest cannot be taken in a liquor license. I thought those lenders were incorrect and decided to research the law on this matter. As a result of my legal research into statutory and case law, I am of the opinion that a security interest can be taken in a liquor license and that a security interest, if formed and perfected properly, can be used to levy and execute upon that liquor license.

Prior to a 1987 amendment to the Pennsylvania Liquor Code (the "Code"), Pennsylvania courts had consistently held that because a liquor license is considered a privilege bestowed upon the licensee by the Commonwealth of Pennsylvania, it is not property and thus not subject to a security interest, attachment, levy or execution. However, in 1987, the Code was amended to add a provision stating that as between third parties a liquor license is to be considered personal property. As such, a security interest can be taken by a third party in a liquor license and if formed and perfected properly, the secured creditor can levy and execute upon the liquor license. Upon successful execution of the liquor license, however, the secured creditor can only transfer the liquor license to a qualified third party, subject to the approval of the PLCB -- just like any other transfer of a liquor license.

One must proceed with caution, however, because the most recent Pennsylvania Supreme Court decision directly on point was decided before the 1987 amendment and as such held that a liquor license is not subject to attachment, levy and execution. In 1984, the Pennsylvania Supreme Court held that a judgment creditor could not attach, levy and execute upon a liquor license because a liquor license was not a property interest and as such was not subject to attachment, levy and execution. *1412 Spruce, Inc. v. Commonwealth, Pennsylvania Liquor Control Bd.*, 504 Pa. 394, 474 A.2d 280, 1984 Pa. LEXIS 248 (1984). One must proceed with caution because although I believe the 1987 amendment to the Code can be used to argue successfully for the overturning of the *1412 Spruce, Inc.* decision, there is always a risk that a court could conclude otherwise. Because there is a conflict between the most recent Pennsylvania Supreme Court decision and the Code as amended, one is well advised to seek legal counsel concerning this matter.

Please note this article is intended for general informational purposes only and is not intended to provide legal advice. Do not act upon any of the contents of this article. Facts and situations in all cases are different. Court decisions, statutes, regulations and any and all laws are subject to change and to various interpretations by parties, attorneys and courts. For more information concerning how the contents of this article may affect you and your liquor license, please contact me at 1-877-LAW-2555.

By:

Marc A. Scaringi
Attorney-At-Law