

Date signed December 09, 2009




JAMES F. SCHNEIDER
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

In re: *

RAYMOND G. GRAUER, JR., * Case No. 03-58769-JS

Debtor * Chapter 7

* * * * *

BOB COLTON ENTER., INC., *

Plaintiff *

v. * Adv. Proc. No. 03-08172

RAYMOND G. GRAUER, JR., *

Defendant *

* * * * *

**MEMORANDUM OPINION OVERRULING OBJECTION OF JUDGMENT
DEBTOR TO WRIT OF GARNISHMENT AND ALLOWING EXEMPTION**

Before the court is the objection of the judgment debtor/defendant, Raymond G. Grauer, Jr., to the writ of garnishment of the plaintiff's assignee, the Litigation

Enforcement Group. For the reasons stated, the objection will be overruled but the debtor's exemption of a portion of wages from attachment will be allowed.

FINDINGS OF FACT

1. On May 27, 2003, the debtor, Raymond G. Grauer, Jr. ("Grauer") filed the instant Chapter 7 bankruptcy petition in this court. On August 13, 2003, the plaintiff, Bob Colton Enterprises, Inc. filed the instant adversary proceeding against the debtor to determine the dischargeability of a debt. On December 17, 2003, this court entered judgment by default against the debtor in the amount of \$341,233. On May 4, 2004, a final decree was entered in the bankruptcy case and the case was closed.

2. On July 10, 2007, the plaintiff assigned its rights in the judgment to the Litigation Enforcement Group ("Group").

3. On July 16, 2009, at the request of Group, the clerk of this court issued a writ of garnishment of wages against Grauer's employer, Matrix42/USA Inc. ("Matrix42"). All of the necessary information on the writ was present and accurate except that the debtor's first name was noted incorrectly as "Robert G. Grauer, Jr.," instead of "Raymond G. Grauer, Jr."

4. On August 3, 2009, debtor's counsel sent a letter to the garnishee by facsimile transmission that requested the release of funds because the writ had been

issued using an incorrect first name of the debtor. The garnishee did not respond to the request.

5. After discovering the mistaken name on the writ, on August 5, 2009, Group obtained an amended writ from the clerk that corrected the name of the debtor. On August 7, 2009, Group transmitted the amended writ by facsimile to Matrix42 and to debtor's counsel.

6. On August 14, 2009, debtor's counsel filed an amended answer and objection to the amended writ.

7. The debtor asserted that his wages have been unlawfully withheld by the garnishee because the writ was issued in the wrong name. Alternatively, the debtor contends that assuming the writ was proper, only 25% of the total amount garnished of \$18,689.28 is subject to attachment, because he is entitled to exempt 75% of the total amount garnished, pursuant to the Maryland wage exemption statute, Md. Comm. Law Code § 15-601.1.¹

¹Section 15-601.1 of the Maryland Commercial Law Code provides, as follows:

§ 15-601.1. Exemptions.

(a) In this section, "disposable wages" means the part of wages that remain after deduction of any amount required to be withheld by law.

(b) The following are exempt from attachment:

CONCLUSIONS OF LAW

1. The bankruptcy court has subject matter jurisdiction to enforce its own nondischargeable judgments even after the underlying bankruptcy case has been closed. *See* the opinion of this Court in *Marshall & Ilsley Trust Co. v. Morton M. Lapidus (In re Transcolor Corp.)*, 2007 WL 2916408 (Bankr. D. Md. 2007), where it is stated that:

(1) Except as provided in item (2) of this subsection, the greater of:

(i) The product of \$145 multiplied by the number of weeks in which the wages due were earned; or

(ii) 75 percent of the disposable wages due;

(2) In Caroline, Kent, Queen Anne's, and Worcester counties, for each workweek, the greater of:

(i) 75 percent of the disposable wages due; or

(ii) 30 times the federal minimum hourly wages under the Fair Labor Standards Act [FN1] in effect at the time the wages are due; and

(3) Any medical insurance payment deducted from an employee's wages by the employer.

(c) The amount subject to attachment shall be calculated per pay period.

Md. Comm. Law Code § 15-601.1.

In appropriate cases, a bankruptcy court that enters a federal judgment in a core proceeding, over which it has undoubted subject matter jurisdiction, may also execute and enforce the judgment to the point of execution and collection. . . .

A bankruptcy judgment is a federal judgment that is not inferior to any other judgment entered by any other federal court. As adjuncts of the district courts, bankruptcy courts have the same inherent powers as any other federal courts to enforce their judgments. Judgments entered by bankruptcy courts have “the same effect as district court judgment when properly registered.” *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253, 259 (4th Cir.2001).

In appropriate cases, a bankruptcy court has limited subject matter jurisdiction to enforce a bankruptcy judgment that has been assigned to a third party because it is a federal judgment that can be enforced during the life of the judgment. Supplementary bankruptcy jurisdiction may even exist to enforce the judgment after the underlying bankruptcy case is closed in the absence of jurisdiction in the state courts to do so. *See Osteoimplant Technology, Inc. v. Rathe Productions, Inc.*, 107 Md. App. 114, 666 A.2d 1310 (1995), *cert. denied*, 341 Md. 648, 672 A.2d 623 (1996). (judgment debtor that moved in state court to vacate, alter or amend judgment must apply to the federal district court in which the judgment was entered.). . .

Bankruptcy courts may issue garnishments on final judgments entered in core proceedings. Federal Rule of Bankruptcy Procedure 7069 makes Federal Rule of Civil Procedure 69² applicable to bankruptcy

²Federal Rule of Civil Procedure 69 provides, as follows:

Rule 69. Execution.

(a) In General.

(1) Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The

proceedings, and because bankruptcy proceedings are referred to bankruptcy courts by [Title 28,] Section 157, bankruptcy courts may employ the provisions of F. R. B. P. 7069 in the enforcement of their own judgments. *See NVLand, Inc. v. Vogel (In re Ocean Downs Racing Ass'n., Inc.)*, 164 B.R. 249, 254 (Bankr. D. Md. 1993) (Federal Rule of Bankruptcy Procedure 7069 makes applicable to bankruptcy proceedings the same postjudgment procedures followed in the U.S. district courts.).

Transcolor, 2007 WL 2916408 at *16-17. (Citations omitted.)

2. The instant adversary proceeding in which the nondischargeable judgment was entered against the debtor/defendant was a core proceeding brought by the original plaintiff pursuant to Section 523 of the U.S. Bankruptcy Code.

procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person--including the judgment debtor--as provided in these rules or by the procedure of the state where the court is located.

(b) Against Certain Public Officers. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.

F. R. Civ. P. 69.

3. The debtor's allegation that his former employer, Matrix42, wrongfully withheld the debtor's severance pay was premised on the following grounds: (1) that the first writ was improper because it was issued using the debtor's incorrect name;³ and (2) because the first writ did not provide a proper basis to withhold the debtor's income, the withholding of funds that were already in the hands of the garnishee at the time the second writ was issued was also improper and therefore the funds should be returned, citing *Parkville Federal Savings Bank v. Maryland National Bank*, 343 Md. 412, 681 A.2d 521 (1996).

4. The decision in the *Parkville* case is distinguishable from the present case. In *Parkville*, a judgment creditor sued a garnishee bank for failing to withhold assets of certain judgment debtors because the names of the debtors were not listed on the writ.⁴ *Id.* The court in *Parkville* determined that the judgment creditor and not the garnishee bore the risk when a writ did not properly identify a judgment debtor. *Id.* at 526.

³This argument was mooted by the issuance of the amended writ two days after debtor's counsel demanded the return of the severance pay to the debtor. Since the hearing, his counsel has admitted having failed to notice that the amended writ was issued using the debtor's correct name.

⁴*Parkville* stands for the dual propositions that a garnishee is bound by the terms of the writ but that a garnishee will be liable if its misinterprets an ambiguous writ and releases assets to the judgment debtor that should have been attached.

5. In the present case there is no dispute between the judgment creditor and the garnishee on whether the garnishee's interpretation of the first writ was correct. Matrix42's interpretation of the judgment debtor identified in the writ was correct, because Grauer was in fact the judgment debtor indebted to Group. It was clear to Matrix42 that the writ naming "Robert G. Grauer, Jr.," intended to name "Raymond G. Grauer, Jr." Had Matrix42 released the garnished funds to Grauer, it could have incurred liability to Group.⁵ Matrix42's interpretation of the initial writ was confirmed when the second, corrected writ was sent on August 7, 2009. Therefore, even though the first writ used an incorrect first name for Grauer, the garnishee's withholding of wages was proper.

6. However, the debtor's assertion is correct that he may exempt 75% of the total attached amount of \$18,689.28. *See Bank of America v. Stine*, 379 Md. 76, 839 A.2d 727, 729 (2003) ("CL §15-601.1(b) exempts from attachment 75% of the debtor's disposable wages."). This Court has held that the garnishment exemption of §15-601 applies in bankruptcy, "because a purpose of both bankruptcy exemptions and garnishment exemptions is to enable the debtor to provide for his or her family." *In*

⁵"[I]f the banking institution erroneously interprets an ambiguous writ of garnishment as not covering a party that turns out to be covered by the writ, and hence does not impound that party's assets, the bank could be liable to the judgment creditor. *Parkville*, 681 A.2d at 526 (citing *Int'l. Bedding Co. v. Terminal Warehouse Co.*, 146 Md. 479, 126 A. 902, 906 (1924)).

re Smith, 23 B.R. 708, 709 (Bankr. D. Md. 1982). The debtor's unpaid severance pay represents disposable wages pursuant to Section 15-601, and therefore only 25% of that amount may be attached and the remainder must be remitted to the debtor.

For the foregoing reasons, the objection of the judgment debtor to the writ of garnishment will be OVERRULED, except that the garnishee shall remit to the judgment debtor 75% of the garnished funds, namely \$14,016.96.

ORDER ACCORDINGLY.

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