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GARNISHING JOINT ACCOUNTS—RECENT DEVELOPMENTS

The Minnesota Supreme Court's decision in *Enright v. Lehman*, 735 N.W.2d 326 (Minn. 2007), created considerable uncertainty among financial institutions and their counsel about the proper way to respond to garnishment summons affecting joint accounts held by the financial institution. In Enright the Court determined that the Minnesota Multi-Party Account Act prevented a creditor from garnishing a joint account where there was uncontested evidence demonstrating that the entire account balance was contributed by the non-debtor joint owner. In the wake of Enright, financial institutions were left to ponder how to determine the respective contributions of the joint owners to the account.

The recent decision of the *Minnesota Supreme Court in Savig v. First National Bank of Omaha and Messerli & Kramer, P.A.*, No. A09-1221 (Minn. April 22, 2010), clarifies the obligations of a depository institution in response to a garnishment summons affecting a joint account. In Savig the judgment creditor garnished a deposit account in which the debtor and her non-debtor husband were joint tenants. Pursuant to the garnishment, and after no response by the debtor or her husband, the bank paid the funds in the accounts to the creditor's attorney. The debtor and her husband sued the judgment creditor and its attorneys in U.S. Federal District Court asserting, among other things, that a joint account cannot be garnished and that the burden was on the creditor to prove that the funds belong to the debtor. The U.S. District Court certified those issues to the Minnesota Supreme Court for a ruling.

Relying upon the Multi-Party Account Act (Minn. Stat. § 524.6-203(a)) and the Minnesota garnishment statutes, the Minnesota Supreme Court ruled first that a judgment creditor may serve a garnishment summons on a garnishee, attaching funds in a joint account even though one account holder is not a judgment debtor. The Court further held that the account holders, not the judgment creditors, bear the burden of establishing the source of the contribution to the account. Until proven otherwise, it is presumed that all of the funds in the account belong to the debtor. The Court distinguished the Enright case which held only that where it is undisputed that the non-debtor joint account holder had contributed all the funds to the account, the burden is on the judgment creditor to prove otherwise. In Savig there had been no determination of the extent to which the non-debtor contributed funds to the account.

Based on the Savig decision, it is now clear that when a depository institution receives a garnishment summons with regard to one of the parties to a joint account, the depository institution is required to retain all of the funds in the account as though the judgment debtor owns all of the funds in the deposit account. The depository institution is to retain the funds for a period of 14 days to provide the debtor with an opportunity to claim an exemption or to make objections. The depository institution is obligated to provide copies of the exemption notice to the judgment debtor advising the judgment debtor of his or her right to claim an exemption. Savig clearly establishes that the obligation to prove ownership of the funds in the account rests with the account owner, not the judgment creditor.

Minnesota law contains a safe harbor for the garnishee (the depository institution) that provides "… the garnishee is not liable for damages to the debtor … or other person for wrongful retention if the garnishee retains … the property of the debtor or any other person … if the garnishee has a good faith belief that the property retains is subject to the garnishment summons." Minnesota Statutes 571.73, subd. 2. In light of the Savig decision, it appears that the garnishee may have a claim of good faith in retaining the entire balance in a joint account since the law presumes ownership by the debtor.

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