

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>AMERICAN CONTRACTORS</b>	)	
<b>INDEMNITY COMPANY,</b>	)	
	)	
<b>Judgment Creditor</b>	)	
	)	
v.	)	<b>No. 2:10-cv-434-DBH</b>
	)	
<b>BILL WHORFF, INC., et al.,</b>	)	
	)	
<b>Judgment Debtors</b>	)	

**RECOMMENDED DECISION ON JUDGMENT CREDITOR'S  
RENEWED MOTION FOR INSTALLMENT PAYMENT ORDER**

In the wake of this court's denial without prejudice of the judgment creditor's ("Creditor's") motion for an installment payment order in the amount of \$303.50 weekly against judgment debtor Thomas P. Quinn ("Quinn"), *see* Motion for Order for Installment Payments ("Original Motion") (Docket No. 59) at 5; Recommended Decision on Judgment Creditor's Motion for Installment Payment Order ("Recommended Decision") (Docket No. 60); Order Affirming Recommended Decision of the Magistrate Judge (Docket No. 61), the Creditor renews its motion, this time requesting an installment payment order in the amount of \$186.08 weekly, *see* Renewed Motion for Order for Installment Payments ("Renewed Motion") (Docket No. 62) at 6.

While, in its Renewed Motion, the Creditor corrects the deficiencies of failing to account for tax withholdings and misstating Quinn's monthly rental payment amount, *compare* Recommended Decision at 1, 3 *with* Renewed Motion ¶¶ 8, 10(d)(x), 13, its own corrected numbers reveal that Quinn's total expenditures exceed his disposable income. In the absence of

any argument as to why, in those circumstances, the court should exercise its discretion to order a payment of \$186.08 weekly, I recommend that the court deny the Creditor's Renewed Motion.

### **I. Procedural Background**

On January 24, 2011, this court entered a judgment in the amount of \$509,290.32 against Bill Whorff, Inc. and Quinn, jointly and severally. *See* Default Judgment (Docket No. 45).<sup>1</sup> On June 4, 2011, Quinn was served a disclosure subpoena obliging him to attend a disclosure hearing set for June 20, 2011, and bring with him certain listed documents. *See* Hearing Exh. 1. I presided at a disclosure hearing on the stated date at which Quinn appeared *pro se* but brought no documents. He gave testimony primarily as to his income and expenditures.

On July 1, 2011, I issued an order directing that Quinn produce certain documents to the Creditor by July 5, 2011. *See* Order (Docket No. 58). On July 13, 2011, the Creditor filed the Original Motion, representing, *inter alia*, that Quinn had neither produced the documents that were the subject of my order nor offered any explanation or excuse for his failure to do so. *See* Original Motion ¶ 6. According to the Creditor, as of the time of the filing of the Renewed Motion, Quinn still had not produced responsive documents or offered an explanation or excuse for his failure to do so. *See* Renewed Motion ¶ 6. Quinn filed no response to either the Original Motion or the Renewed Motion. *See generally* ECF Docket. At the June 20, 2011, disclosure hearing, Quinn testified that he intended to file for bankruptcy that week. The court has received no notice that he has done so.

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<sup>1</sup> On January 24, 2011, the same day as the judgment issued, the Creditor notified the court that Bill Whorff, Inc., had filed a bankruptcy petition. *See* Docket No. 47. The Creditor did not seek a default judgment against six of the eight defendants because they had previously filed petitions for bankruptcy. *See* Docket Nos. 40, 43.

## II. Factual Background

Quinn is employed as an estimator for St. Laurent & Son, a construction/earth moving company based in Lewiston, Maine. His salary from that job is his only source of income. He earns a gross salary of \$1,500 per week. He has expenses of \$286 weekly for child support, \$160 monthly for cable, \$100 monthly for electricity, \$120 monthly for a cell phone, \$600 monthly for food, \$100 monthly for clothing, \$150 monthly for heating oil, \$416 monthly for health insurance, \$386 monthly toward a debt for the purchase of a motorcycle, \$150 monthly for automobile insurance, and \$1,600 monthly for a house rental.<sup>2</sup>

## III. Discussion

“[I]n the absence of a controlling federal statute, the district court has the same authority to aid judgment creditors in supplementary proceedings as that which is provided to state courts under local law.” *United States ex rel. Goldman v. Meredith*, 596 F.2d 1353, 1357 (8th Cir. 1979). The Creditor identified no controlling federal statute. *See generally* Renewed Motion.

Under Maine law, courts have the authority following a disclosure hearing to “determine the amount, if any, of the installment payments that the judgment debtor must make to the judgment creditor.” 14 M.R.S.A. § 3126-A. The statute also provides, in relevant part:

In the case of a judgment debtor who is an individual, the maximum amount of earnings for any workweek that is subject to an installment order may not exceed the least of:

- A.** Twenty-five percent of the sum of the judgment debtor’s disposable earnings and exempt income for that week;
- B.** The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly wage prescribed by 29 United States Code, Section 206(a)(1); or

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<sup>2</sup> In its Original Motion, the Creditor mistakenly stated that Quinn paid \$650 monthly in rent, *see* Original Motion ¶ 8(d)(x), Quinn having testified that he paid \$1,600 monthly in rent. As noted above, the Creditor has rectified that error. *See* Renewed Motion ¶ 10(d)(x).

**C.** The total amount of disposable earnings.

*Id.* § 3126-A(3). “Earnings” are defined as “compensation paid or payable for personal services, whether denominated as wages, salary, commissions, bonuses or otherwise, and includes periodic payments pursuant to a pension or retirement program.” *Id.* § 3121(1). “Disposable earnings” are defined as “that part of the earnings of any judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.” *Id.* § 3121(2).

“Exempt income” is defined as a debtor’s right to receive:

- A.** A social security benefit, unemployment compensation or a local public assistance benefit;
- B.** A veteran’s benefit;
- C.** A disability, illness or unemployment benefit;
- D.** Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor; and
- E.** A payment or account under a stock bonus, pension, profit sharing, annuity, individual retirement account or similar plan to the extent described in section 4422, subsection 13, paragraph E.

*Id.* § 3126-A(1). In addition, a court may not order a judgment debtor to make installment payments if his or her money or earnings emanate only from a source or sources exempt from attachment or execution pursuant to 14 M.R.S.A. §§ 4421-26. *See id.* § 3216-A(2). Earnings for personal services are not among sources exempt from attachment or execution. *See id.* §§ 4421-26.

Quinn has no exempt income. It is not clear whether the sum of \$286 weekly is “required by law to be withheld” from his earnings for child support; however, the Creditor presumes that it is, *see* Renewed Motion ¶ 13, and I, too, adopt that presumption. The phrase “any amounts required by law to be withheld[,]” 14 M.R.S.A. § 3121(2), includes required withholdings from

an employee's earnings, such as taxes, *see, e.g., People's Heritage Sav. Bank v. Aldrich*, No. CIV.A AP-99-84, 2000 WL 33675764, at \*2 & n.1 (Me. Sup. Ct. Apr. 7, 2000).

The Creditor reasonably estimates, based on Quinn's testimony that he earns \$1,500 weekly and is single, as well as FICA/Medicare withholding rates and federal and state tax rates and allowances, that withholdings from Quinn's pay for state and federal income and employment taxes, including FICA and Medicare taxes, total \$469.70 weekly. *See* Renewed Motion ¶ 13; Affidavit of Christopher S. McLoon (Docket No. 63) ¶¶ 3-7 & Exhs. A (Docket No. 63-1) & B (Docket No. 63-2) thereto.

Quinn's disposable weekly earnings, calculated pursuant to 14 M.R.S.A. § 3121(2), therefore, total \$744.30 (\$1,500 minus \$286 minus \$469.70). Twenty-five percent of that amount is \$186.08. The federally prescribed minimum wage is \$7.25 per hour. *See* 29 U.S.C. § 206(a)(1)(C). Forty times \$7.25 is \$290. Quinn's disposable weekly earnings exceed that amount by \$454.30. The least of the three relevant sums (\$186.08, \$454.30, and \$744.30) is \$186.08. Quinn hence cannot be ordered to make installment payments to the Creditor exceeding that amount.

In addition to setting a cap on the amount that may be subject to an installment payment order, Maine's installment payment statute sets forth factors that a court "may take into consideration" in fixing that amount. 14 M.R.S.A. § 3126-A(4). These factors are:

- A.** The reasonable requirements of the judgment debtor and the judgment debtor's dependents;
- B.** Any payments the judgment debtor is required to make to satisfy other judgment orders or wage assignments;
- C.** Other judgment orders or wage assignments that have priority;
- D.** The amount due on the judgment;

- E. The amount of money or earnings being or to be received; and
- F. Any other factors the court considers material and relevant.

*Id.* § 3126-A(4).

With respect to these factors, the Creditor argues that (i) “Quinn has the benefit of a relatively high income and low debt burden[,]” consisting only of the instant judgment debt and his motorcycle payment, (ii) Quinn has no obligations to dependents other than his child support obligation, and (iii) the judgment in this case is substantial, meaning that it will follow Quinn for a substantial period of time if he is not required to begin making significant payments toward its satisfaction. *See* Renewed Motion ¶ 16. Accordingly, the Creditor contends, “there is no reason that Quinn should not be ordered to pay the maximum installment payment allowed under 14 M.R.S.A. § 3126-A.” *Id.* ¶ 17.

Tellingly, however, the Creditor ignores the issue of Quinn’s “reasonable requirements[.]” 14 M.R.S.A. § 3126-A(4)(A). Quinn’s average weekly expenditures, apart from his child support obligation, total \$872.77 (total monthly expenditures of \$3,782 multiplied by 12 and divided by 52). Hence, they exceed by \$128.47 his disposable weekly earnings of \$744.30, calculated with the benefit of the Creditor’s estimate of tax withholdings. Insofar as appears, Quinn lacks sufficient disposable income to pay the requested installment payment, or even a lesser amount. In the absence of any argument that his expenses exceed his “reasonable requirements[.]” I cannot conclude that the requested order is appropriate.

#### **IV. Conclusion**

For the foregoing reasons, I recommend that the court **DENY** the Renewed Motion.

#### **NOTICE**

*A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for*

*which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within fourteen (14) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within fourteen (14) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Dated this 11<sup>th</sup> day of January, 2012.

/s/ John H. Rich III  
John H. Rich III  
United States Magistrate Judge

**Plaintiff**

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INDEMNITY COMPANY**

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**V.**

**Defaulted Party**

**THOMAS P QUINN**