

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ALLENDALE MUTUAL INSURANCE)
COMPANY,)
)
Plaintiff)
)
v.)
)
JAMES F. RUTHERFORD,)
)
Defendant)

Docket No. 95-367-P-H

STATEMENT OF FINDINGS AND ORDER

Pursuant to Fed. R. Civ. P. 69 and the Maine statute governing the enforcement of money judgments, 14 M.R.S.A. § 3120 *et seq.*, this matter came before the court for a disclosure hearing on July 28 and August 21, 1997. The court previously entered judgment in favor of the plaintiff, now the judgment creditor, in the amount of \$6,000,000 (Docket No. 28).¹ Following the disclosure hearing, and by agreement of the parties, the court entered a turnover order on September 16, 1997 (Docket No. 39), the subject of which is a 1991 Ford Explorer owned by the defendant, now the judgment debtor.² The judgment creditor additionally seeks to enforce the judgment via an order directing the judgment debtor to make installment payments and by serving the judgment debtor's wife, Leslie Rutherford, with an order to hold and answer in connection with certain real and

¹ The court has also granted a motion to substitute Allendale Mutual Insurance Company for the originally-named plaintiff, National Energy Production Corporation. Docket No. 32 (endorsement).

² There was also testimony at the disclosure hearing about a pleasure boat owned by the judgment debtor. Because the record reveals that the judgment debtor had no equity in the vessel, I determined at the hearing that the judgment creditor was not entitled to a turnover order as to this property.

personal property to which she holds legal title. For the reasons that follow, the judgment creditor's requests are denied.

The disclosure statute authorizes the court to order a judgment debtor to make specified installment payments to the judgment creditor when it is shown at a disclosure hearing "that the judgment debtor is receiving or will receive money or earnings from a source" that is not exempt from attachment and execution. 14 M.R.S.A. § 3127(1). At the disclosure hearing, it was established that the judgment debtor's only source of current income is \$1,230 in monthly Social Security disability payments. These payments are not subject to attachment or execution. 14 M.R.S.A. § 4422(13)(A).

The judgment debtor resides at a home in Kennebunkport, to which his wife holds title and which is subject to three mortgages. The combined monthly payment on the three mortgages is approximately \$9,875 monthly. The judgment debtor is an obligor on the note underlying each mortgage. Leslie Rutherford has been making the monthly payment on these mortgages. The judgment debtor's credit card balance is between \$10,000 and \$12,000; his wife has been making these monthly payments as well. As of July 28, 1997 the judgment debtor also had an outstanding balance of \$8,388.42 on a loan used to purchase the boat. The joint tax return of the judgment debtor and his wife for 1996 states that she realized \$8,604 in profit from her consulting business during that year.

The judgment creditor's position is that the foregoing numbers defy the principles of arithmetic by suggesting that a couple with less than \$2,000 in monthly income is making monthly payments on a variety of obligations in excess of \$10,000. I agree that the record adduced at the disclosure hearing demonstrates that someone other than the judgment debtor is keeping him current

on his substantial monthly obligations. However, I am not able to agree with the judgment creditor that the foregoing means that an installment payment order is warranted because the judgment debtor is or will be receiving money within the meaning of section 3127 of the disclosure statute. Section 3127 refers to receipt of “money or earnings.” The plain meaning of that phrase simply does not encompass the satisfaction of indebtedness by a third party, and the judgment creditor offers nothing to suggest the Maine Legislature intended to depart from such plain meaning.

In arguing to the contrary, the judgment creditor relies on section 6-103(a) of the Maine Probate Code and the Law Court’s construction of that provision in *Szelenyi v. Miller*, 564 A.2d 768 (Me. 1989). Section 6-103(a) recites that, absent clear and convincing evidence to the contrary, “[a] joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contribution by each to the sums on deposit.” 18 M.R.S.A. § 6-103(a). In *Szelenyi*, and contrary to the suggestion of the judgment debtor, the Law Court made clear that section 6-103(a) states the governing principle as to joint accounts for all purposes under Maine law, not just probate matters. *Szelenyi*, 564 A.2d at 770. Thus, where a husband and wife had commingled their assets in a joint account, the trial court appropriately determined that the husband’s deposits were not a gift to his wife but were his property and subject to attachment in connection with a judgment obtained against him. *Id.* at 771.

Section 6-103 and *Szelenyi* are both inapposite. The record certainly reflects that the judgment debtor and his wife have commingled their funds in a variety of bank accounts, some of them joint accounts, over the years. But in determining whether an order for installment payments under section 3127(1) is warranted, the court is not called upon to construe the ownership of any bank accounts of the judgment debtor and/or his wife.

The judgment creditor further invokes certain equitable principles, i.e., constructive trust and equitable lien, in support of its position that it is entitled to relief under the disclosure statute. I am unable to agree with this position as well. The statute makes clear that its purpose is “to provide an efficient procedure for the enforcement of money judgments.” 14 M.R.S.A. § 3120. By its own terms, the statute is thus is not a mechanism for adding what is in effect a request for equitable relief after a lawsuit is reduced to final judgment. The equitable doctrines cited by the judgment creditor may well be applicable to the circumstances presented by this case, but this is not the time or place to press those issues. The court is here only concerned with the enforcement of a money judgment.

Next, the judgment creditor contends it is entitled to an installment order because it is the subrogee of the judgment debtor as to his rights as against third parties to funds in joint accounts, to commingled funds, to any income stream produced by such funds and to property purchased with his earnings. This theory does not speak to the issue at hand. Assuming the judgment creditor could assert the judgment debtor’s rights to any property held by others does not establish that the judgment debtor is receiving or will receive money or earnings within the meaning of section 3127.

Finally, the judgment creditor requests that the court serve Leslie Rutherford with an order to hold and answer pursuant to 14 M.R.S.A. § 3127-A. Such action is appropriate “when it is shown that there is a reasonable likelihood that a 3rd party has possession or control of property in which the judgment debtor may have an interest or that the 3rd party may be indebted to the judgment debtor for other than earnings.” *Id.* at subsection 1. No such showing has been made here. For the reasons already discussed, and contrary to the position of the judgment creditor, it would be inappropriate to determine at this juncture that some kind of equitable interest has arisen in property such as bank accounts or the Kennebunkport residence to which the judgment debtor does not hold

legal title. Beyond that, the fact that Leslie Rutherford permits her husband to live in a home to which she has title, and the fact that she and/or others have in the past and may again in the future make substantial mortgage payments on the home as well as other debts on which the judgment debtor is obligated, do not establish that it is reasonably likely she holds property in which the judgment debtor may have an interest.

The judgment creditor's request for further enforcement of the judgment under the disclosure statute is therefore **DENIED**.

Dated this 23rd day of September, 1997.

David M. Cohen
United States Magistrate Judge