NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. NC-06-1245-SKuB
MARK CHAPMAN TIFFANY and MELODYE GAYLE TIFFANY,	Bk. No. 93-58255
Debtors.	Adv. No. 94-05278
FIRST FEDERAL BANK OF CALIFORNIA,	
Appellant,	
v.	**M E M O R A N D U M**[1]
MARK CHAPMAN TIFFANY,	
Appellee.	

Argued and Submitted on February 23, 2007
at San Francisco, California

Filed - July 31, 2007

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable James R. Grube, Bankruptcy Judge, Presiding

Before: SMITH, KURTZ[2], and BRANDT, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Frank L. Kurtz, Chief Bankruptcy Judge for the Eastern District of Washington, sitting by designation.

Based on the plain language and legislative history of California Code of Civil Procedure ("CCP") § 706.023(c)[3], the bankruptcy court found that First Federal Bank of California ("First Federal") could not collect on its earnings withholding order. First Federal filed a timely notice of appeal on July 6, 2006. We AFFIRM.

I. FACTS

First Federal obtained a $600,000 nondischargeable judgment against Mark Tiffany ("Debtor") on March 28, 1996, in this adversary proceeding. Since the entry of the judgment, only $1,000 has been paid towards the judgment, which was renewed on May 18, 2005, in the sum of $1,147,054.79.

On October 26, 2005, Richard Lohr ("Lohr"), who had purchased another judgment against Debtor, served Debtor's employer, Johnson Capital, with a earnings withholding order (the "Lohr Order"). The Lohr Order directed Johnson Capital to garnish $100 per pay period until the total amount due of $13,508.14 was withheld.

A little over a month after the Lohr Order was served, First Federal served Johnson Capital with its earnings withholding order. First Federal's order sought payment of "$1,210,525.63, plus interest at $314.25 per day from 12/6/05, plus attorneys' fees and costs." Because Johnson Capital had already received the Lohr Order, it returned the Employer's Return to First Federal on January 10, 2006, notifying First Federal that its order was ineffective.

[3] Unless otherwise indicated, all references to sections are to the California Code of Civil Procedure.

In response to the Employer's Return, First Federal sent Johnson Capital a letter advising it that it was required to withhold 25% of Debtor's disposable earnings. Based upon the information provided by Johnson Capital, First Federal calculated Debtor's disposable earnings to be $2,491.47 per pay period. According to First Federal, Johnson Capital should have been withholding $622.87 ($2,491.47 x 0.25) per pay period. Because Lohr had agreed to accept only $100 per pay period, First Federal demanded that the balance of $522.87 per pay period be paid to it on account of its order. On January 16, 2006, Johnson Capital advised First Federal that it would commence withholding the sum demanded by First Federal on January 30, 2006.

Four days later, on January 20, 2006, Debtor filed a "Notice of Filing of Claim of Exemption" and instructed Johnson Capital to refrain from withholding any of his earnings for First Federal's benefit. Notwithstanding its earlier advisement to First Federal, Johnson Capital instead honored Debtor's request.

First Federal filed an immediate opposition to the claim of exemption, asserting that based on the information set forth in the claim of exemption, Debtor's monthly income provided him with $5,638.55 of disposable earnings per month. After deducting the 25% ($1,409.64) of disposable earnings that were subject to be withheld, Debtor would be left with $4,228.91 per month with which to support his family and himself. Given these circumstances, First Federal argued that the claim of exemption should be denied and Johnson Capital should be directed to pay it $604.82 per pay period for all pay periods ending on and after December 22, 2005.

On February 16, 2006, Debtor filed a "Notice of Withdrawal of Claim of Exemption" on the ground that the exemption was "premature in that any purported wage garnishment issued by [First Federal was] subsequent to the wage garnishment issued by Richard Lohr on October 26, 2005." That same day, Debtor also filed a reply to First Federal's opposition in which he argued that First Federal's order was ineffective under § 706.023 because it was served subsequent to the Lohr Order.

First Federal replied that there was no legal basis for permitting Debtor and Lohr to informally reduce the amount to be withheld beyond the federal 75% exemption amount. In other words, Johnson Capital should be required to withhold the statutory maximum of 25% of Debtor's disposable earnings unless Debtor could prove that some additional portion of his earnings was necessary for familial support.

On March 2, 2006, the matter came on for hearing. At the hearing an issue arose over whether § 706.023 allowed for only one earnings withholding order to be effective at a time -- even if the order did not provide for garnishment of the full 25%. The hearing was continued to April 27, 2006, to allow the parties to submit further briefing on the issue.

In supplemental pleadings, First Federal maintained that a literal reading of the statute would permit a judgment debtor to prevent one of his creditors from collecting on its judgment indefinitely by entering into a collusive arrangement with another friendly judgment creditor for a nominal garnishment, i.e., less than the maximum allowed by law. Applying § 706.023 in this way would produce an absurd result. To avoid this

consequence, First Federal urged the bankruptcy court to interpret the statute's legislative history so as to support the simultaneous execution of two or more withholding orders, up to 25% of the judgment debtor's disposable earnings.

For his part, Debtor emphasized that the statute on its face expressly does not permit multiple withholding orders. Further, because there is no minimal amount upon which a creditor is required to garnish earnings, the Lohr Order was validly executed and, that being the case, First Federal's garnishment order would not be effective until full satisfaction of the Lohr Order.

The bankruptcy court found that the language of § 706.023(c) was clear and, based on the legislative history, the statute as written is consistent with the legislative purpose. Under § 706.023(c), an employer only has to comply with one earnings withholding order at a time and any subsequent orders served upon the employer are ineffective. Importantly, the court noted that the legislative history relied upon by First Federal, when read as a whole, and not in part as First Federal suggested, recognized the circumstance of simultaneous execution of multiple disparate earnings orders, e.g., support order, tax orders, and judgment creditor orders. The court found

> [t]his reading [to be] consistent with the Law Review Commission Comment to the 1992 Amendments to Section 706.022 that provides "[a]n employer is not generally required to withhold pursuant to two orders at the same time, except in special cases involving withholding orders for support or taxes. Thus, an ordinary earning withholding order served when an earlier order is in place will not be given effect."

Order Regarding Hr'g On Claim Of Exemption Relating To Wage Garnishment Order 4, June 23, 2006. Reviewing the statute and

its legislative history, the bankruptcy court reluctantly concluded that the statute "permits a judgment debtor to install a favorable earnings withholding order that prevents another judgment creditor from collecting on a subsequent earnings withholding order." Id. at 5. Though obviously not pleased with this result, the court determined that any change in the law would require legislative intervention.

Based on the foregoing, the bankruptcy court determined that there was no legal basis to interpret § 706.023(c) other than by its express language. Therefore, Johnson Capital could not be required to withhold any additional funds from Debtor's wages for First Federal.

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C. §§ 158(b)(1) and (c)(1).

III. ISSUE

1) Whether § 706.023 permits the simultaneous withholding of wages under two or more earnings withholding orders.
2) Whether a creditor and judgment debtor can agree on an amount in an earnings withholding order that is less than the statutory maximum.

IV. STANDARD OF REVIEW

We review a bankruptcy court's legal conclusions, including its interpretation of state law, de novo. Smith v. Lachter (In re Smith), 352 B.R. 702, 705 (9th Cir. BAP 2006).

V. DISCUSSION

In California, with the exception of earning assignment orders for support, the Wage Garnishment Law ("WGL") (CCP §§ 706.010 et seq.) is the exclusive judicial method for compelling an employer to withhold earnings. CCP § 706.020. The WGL "limits the amount of earnings which may be garnished in satisfaction of a judgment and establishes certain exemptions from earnings which may not be garnished." Cal. State Employee's Assoc. v. California, 243 Cal. Rptr. 602, 604 (Ct. App. 1988); see CCP §§ 706.050-706.052.

A. Simultaneous Earnings Withholding Orders

To effect a wage garnishment, a judgment creditor must serve the judgment debtor's employer with one of the following types of earnings withholding orders: (1) a withholding order for support which is issued to collect delinquent amounts under a child or spousal support judgment (§ 706.030), (2) a withholding order for taxes used to collect a state tax liability (§ 706.072), or (3) an earnings withholding order that is issued neither for support nor taxes. Once an effective earnings withholding order is served on an employer, the employer must withhold from the judgment debtor's earnings "the amounts required to be withheld under § 706.050[4], or such other amount as specified in the

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[4] Section 706.050 states

> Except as otherwise provided in this chapter, the amount of the earnings of a judgment debtor exempt from the levy of an earnings withholding order shall be that amount that may not be withheld from the judgment debtor's earnings under federal law in Section 1673(a) of Title 15 of the United States Code.

(continued...)

earnings withholding order" for all pay periods until the full amount is satisfied or the order is terminated. CCP §§ 706.122 & 706.125(f) (emphasis added).

When several creditors levy on the earnings of a judgment debtor, the priority of the earnings withholding orders is determined by § 706.023. Under this section, "[a]n employer shall comply with the first earnings withholding order served upon the employer." CCP § 706.023(a)(emphasis added). "If an earnings withholding order is served while an employer is required to comply with another earnings withholding order with respect to the earnings of the same employee, the subsequent order is ineffective and the employer shall not withhold earnings pursuant to the subsequent order." CCP § 706.023(c)(emphasis added).

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[4](...continued)
Section 1673(a) in turn states,

> (a) Maximum allowable garnishment. Except as provided in subsection (b) and in section 305 [15 USCS § 1675], the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed
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> (1) 25 per centum of his disposable earnings for that week, or
>
> (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 USC § 206(a)(1)] in effect at the time the earnings are payable,
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> whichever is less. In the case of earnings for any period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

First Federal complains that the bankruptcy court misconstrued the legislative intent behind § 706.023(c) when it concluded that the plain language of the statute prevented First Federal from simultaneously collecting on its earnings withholding order during the pendency of the Lohr Order. It contends that, irrespective of the plain language of the statute, the underlying legislative history supports multiple, simultaneous earnings withholding orders. In this regard, First Federal directs us to that portion of a report from the California Assembly that provides that "[s]imultaneous withholdings under two or more orders is permitted if the debtor's earnings are sufficient so that such withholdings will not exceed the amount permitted to be withheld."[5] Letter & Summary Report from the Assembly of California Legislature, to Honorable Edmund G. Brown, Jr., Governor of Cal., Assembly Bill 393 (Employee's Earnings Protection Law)(Sept. 20, 1978). Because the express language of the statute is inconsistent with the legislative history, First Federal urges us to ignore the statutory language and permit both earnings withholding orders.

We begin by examining the text of the statute, giving it a plain and common sense meaning. People v. Cole, 135 P.3d 669, 674 (Cal. 2006); Microsoft Corp. v. Franchise Tax Bd., 139 P.3d 1169, 1173 (Cal. 2006). In interpreting the statute,

> [w]e do not . . . consider the statutory language in isolation; rather, we look to the entire substance of

[5] First Federal cites as further support: "The Bill permits the simultaneous execution of two or more earning withholding orders if the debtor's income is sufficient to enable such withholdings." Senate Committee on Judiciary Analysis of Assembly Bill 393.

> the statutes in order to determine their scope and purposes. That is, we construe the words in question in context, keeping in mind the statutes' nature and obvious purposes. We must harmonize the various parts of the enactments by considering them in the context of the statutory frame work [sic] as a whole.

Cole, 135 P.3d at 675-75. If the language "is unambiguous and provides a clear answer, we need go no further." Microsoft, 139 P.3d at 1173. However, if the language is susceptible to more than one reasonable interpretation, then we may look to extrinsic sources, including the legislative history. Id.; Hoechst Celanese Corp. v. Franchise Tax Bd., 22 P.3d 324, 332 (Cal. 2001).

Here, the statutory language of § 706.023 is unambiguous and provides a clear answer as to what an employer is to do when confronted with two earnings withholding orders. Under the statute, only one earnings withholding order can be effective against a debtor at a time. CCP § 706.023(c). The Lohr Order was properly served upon Johnson Capital prior to First Federal serving its order. Consequently, the Lohr Order has first priority and First Federal's order is ineffective.

B. Amount of Garnishment

The Lohr Order requires Johnson Capital to withhold only $100 per pay period. As discussed above, this amount is less than the maximum amount permitted under California law and allows Debtor to forestall any payment towards First Federal's judgment by extending the amount of time it will take to payoff the amount provided for in the Lohr Order. Though we agree with First Federal that such manipulation of the WGL smacks of collusion, we also agree with the assessment of the bankruptcy court that "the

wage garnishment scheme as currently written appears to permit abuse without granting parties a remedy to address an alleged collusive scheme."[6]

Together CCP § 706.050 and 15 U.S.C. § 1673(a) establish the minimum amount of earnings a judgment debtor may exempt from the levy of an earnings withholding order (75%) and the maximum amount a judgment creditor is entitled to garnish (25%). The statutes are silent, however, as to what, if any, remedies are available to a junior judgment creditor if a senior judgment creditor chooses to garnish less than 25%, as is the case here. Although the WGL clearly indicates that a judgment debtor may not exempt more than 75% of his or her wages without first filing a claim of exemption pursuant to CCP § 706.051, it appears not to contemplate a scenario where a judgment debtor's wages are neither exempt nor being used to satisfy an earnings withholding order. Because the WGL does not require an employer to garnish the maximum amount allowed under 11 U.S.C. § 1673(a), but rather directs an employer to withhold either the amount stated under CCP § 706.050 or the amount specified in the earnings withholding order, we agree with the bankruptcy court that no legal basis exists upon which Johnson Capital could be required to withhold more from Debtor's earnings than the Lohr Order provides for.

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[6] Notably, prior to the 1989 Amendment, under CCP § 706.022(a)(1), a garnishment order generally terminated 100 days after the date of service on the employer. CCP § 706.022 (2007)(notes concerning 1989 Amendment). Such a limitation on the duration of earnings withholdings orders would have provided some modicum of protection to subsequent judgment creditors such as First Federal. However, the California legislature deleted this provision from §702.022(a)(1) without explanation with respect to orders served after July 21, 1992. Id.

Whether First Federal might be able to seek an equitable remedy against Lohr to compel him either to increase his withholding to 25% or to account to First Federal for the difference is not presented by this appeal. Accordingly, we express no opinion as to what, if any, redress First Federal may have against Lohr.

VI. CONCLUSION

For the foregoing reasons, we AFFIRM the bankruptcy court's ruling that First Federal's order is ineffective.