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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	NC-06-1245-SKuB
	)		
MARK CHAPMAN TIFFANY and	)	Bk. No.	93-58255
MELODYE GAYLE TIFFANY,	)		
	)	Adv. No.	94-05278
Debtors.	)		
<hr/>			
FIRST FEDERAL BANK OF	)		
CALIFORNIA,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM</b> <sup>1</sup>	
	)		
MARK CHAPMAN TIFFANY,	)		
	)		
Appellee.	)		
<hr/>			

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<sup>2</sup>, and BRANDT, Bankruptcy Judges.

<sup>1</sup> 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.

<sup>2</sup> Hon. Frank L. Kurtz, Chief Bankruptcy Judge for the Eastern District of Washington, sitting by designation.



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

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

18 First Federal filed an immediate opposition to the claim of  
19 exemption, asserting that based on the information set forth in  
20 the claim of exemption, Debtor's monthly income provided him with  
21 \$5,638.55 of disposable earnings per month. After deducting the  
22 25% (\$1,409.64) of disposable earnings that were subject to be  
23 withheld, Debtor would be left with \$4,228.91 per month with  
24 which to support his family and himself. Given these  
25 circumstances, First Federal argued that the claim of exemption  
26 should be denied and Johnson Capital should be directed to pay it  
27 \$604.82 per pay period for all pay periods ending on and after  
28 December 22, 2005.

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

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

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

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

1 consequence, First Federal urged the bankruptcy court to  
2 interpret the statute's legislative history so as to support the  
3 simultaneous execution of two or more withholding orders, up to  
4 25% of the judgment debtor's disposable earnings.

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

11 The bankruptcy court found that the language of § 706.023(c)  
12 was clear and, based on the legislative history, the statute as  
13 written is consistent with the legislative purpose. Under  
14 § 706.023(c), an employer only has to comply with one earnings  
15 withholding order at a time and any subsequent orders served upon  
16 the employer are ineffective. Importantly, the court noted that  
17 the legislative history relied upon by First Federal, when read  
18 as a whole, and not in part as First Federal suggested,  
19 recognized the circumstance of simultaneous execution of multiple  
20 disparate earnings orders, e.g., support order, tax orders, and  
21 judgment creditor orders. The court found

22 [t]his reading [to be] consistent with the Law Review  
23 Commission Comment to the 1992 Amendments to Section  
24 706.022 that provides "[a]n employer is not generally  
25 required to withhold pursuant to two orders at the same  
26 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."

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

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

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

## 13 **II. JURISDICTION**

14 The bankruptcy court had jurisdiction under 28 U.S.C.  
15 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.  
16 §§ 158(b)(1) and (c)(1).

## 17 **III. ISSUE**

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

## 23 **IV. STANDARD OF REVIEW**

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

1 **V. DISCUSSION**

2 In California, with the exception of earning assignment  
3 orders for support, the Wage Garnishment Law ("WGL") (CCP  
4 §§ 706.010 et seq.) is the exclusive judicial method for  
5 compelling an employer to withhold earnings. CCP § 706.020. The  
6 WGL "limits the amount of earnings which may be garnished in  
7 satisfaction of a judgment and establishes certain exemptions  
8 from earnings which may not be garnished." Cal. State Employee's  
9 Assoc. v. California, 243 Cal. Rptr. 602, 604 (Ct. App. 1988);  
10 see CCP §§ 706.050-706.052.

11 A. Simultaneous Earnings Withholding Orders

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

23 \_\_\_\_\_  
24 <sup>4</sup> Section 706.050 states

25 Except as otherwise provided in this chapter, the  
26 amount of the earnings of a judgment debtor exempt from  
27 the levy of an earnings withholding order shall be that  
28 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...)

1 earnings withholding order" for all pay periods until the full  
2 amount is satisfied or the order is terminated. CCP §§ 706.122 &  
3 706.125(f) (emphasis added).

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

15  
16 \_\_\_\_\_  
17 <sup>4</sup>(...continued)

18 Section 1673(a) in turn states,

19 (a) Maximum allowable garnishment. Except as provided  
20 in subsection (b) and in section 305 [15 USCS § 1675],  
21 the maximum part of the aggregate disposable earnings  
22 of an individual for any workweek which is subject to  
23 garnishment may not exceed

24 (1) 25 per centum of his disposable earnings  
25 for that week, or

26 (2) the amount by which his disposable  
27 earnings for that week exceed thirty times  
28 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,

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).



1 First Federal complains that the bankruptcy court  
2 misconstrued the legislative intent behind § 706.023(c) when it  
3 concluded that the plain language of the statute prevented First  
4 Federal from simultaneously collecting on its earnings  
5 withholding order during the pendency of the Lohr Order. It  
6 contends that, irrespective of the plain language of the statute,  
7 the underlying legislative history supports multiple,  
8 simultaneous earnings withholding orders. In this regard, First  
9 Federal directs us to that portion of a report from the  
10 California Assembly that provides that “[s]imultaneous  
11 withholdings under two or more orders is permitted if the  
12 debtor’s earnings are sufficient so that such withholdings will  
13 not exceed the amount permitted to be withheld.”<sup>5</sup> Letter &  
14 Summary Report from the Assembly of California Legislature, to  
15 Honorable Edmund G. Brown, Jr., Governor of Cal., Assembly Bill  
16 393 (Employee’s Earnings Protection Law) (Sept. 20, 1978).  
17 Because the express language of the statute is inconsistent with  
18 the legislative history, First Federal urges us to ignore the  
19 statutory language and permit both earnings withholding orders.

20 We begin by examining the text of the statute, giving it a  
21 plain and common sense meaning. People v. Cole, 135 P.3d 669,  
22 674 (Cal. 2006); Microsoft Corp. v. Franchise Tax Bd., 139 P.3d  
23 1169, 1173 (Cal. 2006). In interpreting the statute,

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

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26 <sup>5</sup> First Federal cites as further support: “The Bill permits  
27 the simultaneous execution of two or more earning withholding  
28 orders if the debtor’s income is sufficient to enable such  
withholdings.” Senate Committee on Judiciary Analysis of  
Assembly Bill 393.

1 the statutes in order to determine their scope and  
2 purposes. That is, we construe the words in question  
3 in context, keeping in mind the statutes' nature and  
4 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.

5 Cole, 135 P.3d at 675-75. If the language "is unambiguous and  
6 provides a clear answer, we need go no further." Microsoft, 139  
7 P.3d at 1173. However, if the language is susceptible to more  
8 than one reasonable interpretation, then we may look to extrinsic  
9 sources, including the legislative history. Id.; Hoechst  
10 Celanese Corp. v. Franchise Tax Bd., 22 P.3d 324, 332 (Cal.  
11 2001).

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

20 B. Amount of Garnishment

21 The Lohr Order requires Johnson Capital to withhold only  
22 \$100 per pay period. As discussed above, this amount is less  
23 than the maximum amount permitted under California law and allows  
24 Debtor to forestall any payment towards First Federal's judgment  
25 by extending the amount of time it will take to payoff the amount  
26 provided for in the Lohr Order. Though we agree with First  
27 Federal that such manipulation of the WGL smacks of collusion, we  
28 also agree with the assessment of the bankruptcy court that "the

1 wage garnishment scheme as currently written appears to permit  
2 abuse without granting parties a remedy to address an alleged  
3 collusive scheme.”<sup>6</sup>

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

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23 <sup>6</sup> Notably, prior to the 1989 Amendment, under CCP  
24 § 706.022(a)(1), a garnishment order generally terminated 100  
25 days after the date of service on the employer. CCP § 706.022  
26 (2007) (notes concerning 1989 Amendment). Such a limitation on  
27 the duration of earnings withholdings orders would have provided  
28 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.

