

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL LAW

TODAY'S HOUSING, INC. :  
Plaintiff :  
vs. : NO: 08-0491  
:  
SCHLEICHER'S MOBILE HOME SALES, INC., :  
Defendant :  
  
James E. Gavin, Esquire Counsel for Plaintiff  
Stephen A. Strack, Esquire Counsel for Defendant  
  
Nanovic, P.J. - September 16, 2011

MEMORANDUM OPINION

Today's Housing, Inc., Plaintiff, has appealed our decision granting Schleicher's Mobile Home Sales, Inc.'s ("Employer") Claim for Exemption under 42 Pa.C.S. § 8127. This statute shelters from attachment an employee's wages while in the hands of the employer.

FACTUAL AND PROCEDURAL HISTORY

On March 10, 2011, a judgment in the amount of \$18,411.77, plus interest at the legal rate of six percent per annum from November 23, 2005, until September 21, 2010, was entered against Employer and in favor of Today's Housing. This judgment which resulted from a breach of contract was obtained following a non-jury trial held on September 16, 2010. A verdict in Today's Housing's favor was entered on September 21, 2010.

Subsequently, a writ of execution was issued on April 6, 2011 seeking, *inter alia*, to attach any of Employer's property in the possession of First Niagara Bank ("Bank"), as garnishee. This writ was served on the Bank on or about April 6, 2011. On April 13, 2011, Employer filed a claim for exemption with respect to a checking account in its name at the Bank with a balance of \$9,722.82. Specifically, Employer argued that this account contained monies due and owing its employees for wages earned and that such funds are exempt from attachment under 42 Pa.C.S.A. § 8127.

A hearing on Employer's claim was held on April 18, 2011. At the hearing, Employer's bookkeeper and administrative assistant testified that Employer maintains a business checking account at the Bank and that the then current balance was \$9,722.82. Employer's corporate payroll is deposited into and paid out of this account with the most recent deposit for payroll purposes made on April 6, 2011, in the amount of \$9,300.00. This deposit was intended to cover the pay period ending April 10, 2011. While this account is not used exclusively for payroll purposes, Employer's witness further testified that of the balance in the account at the time of attachment, \$8,645.05 was deposited and reserved for the payment

of wages and salaries earned by its employees.<sup>1</sup> No evidence was offered to the contrary. It is these monies which are claimed to be exempt by Employer pursuant to 42 Pa.C.S.A. § 8127.

An order granting the exemption was entered on April 20, 2011. This order exempted from attachment only those monies in the account to be paid as wages to employees, \$8,645.05, with the balance to be paid to Today's Housing.

On May 9, 2011, Today's Housing filed its appeal. In response to our 1925(b) order, Today's Housing identified the following issue on appeal:

WHETHER THIS HONORABLE TRIAL COURT ERRED BY GRANTING DEFENDANT'S CLAIM FOR EXEMPTION FROM EXECUTION PURSUANT TO 42 PA.C.S.A. 8127(A), IN THAT SUCH EXEMPTION APPLIES ONLY TO PROTECT THE EMPLOYEE DEBTOR, AND IS INAPPLICABLE WHERE THE DEBTOR IS AN EMPLOYER?

#### DISCUSSION

At the hearing, Today's Housing claimed that Section 8127(a) applies as an exemption from attachment only when an employee is the judgment debtor. Today's Housing further contends that the exemption does not apply when the employer is the judgment debtor as in the instant case. These contentions

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<sup>1</sup> The manner in which this figure was computed by the witness, while unclear from the record, is the figure Employer's bookkeeper testified was the amount owed by Employer to its employees for services rendered. (N.T. 4/18/11, pp. 13, 15). It is important to note, however, that the accuracy of this figure is neither the issue on appeal, nor the issue argued to the court at the time of hearing. Rather, Today's Housing's position at the time of hearing, as it is on appeal, is that "Section 8127 applies in a situation where [the] judgment debtor is an employee. It does not apply when the judgment debtor is the employer, [as] in this case." (N.T. 4/18/11, p.21).

notwithstanding, the restrictions Today's Housing seeks to impose on the exemption claimed do not appear in the statute.

As a general rule, Section 8127(a) provides that "[t]he wages, salaries, and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process" with enumerated exceptions. The obvious purpose of this exemption is to protect earnings from execution to secure to the workman and his family the monies to which he is entitled. See Jefferson Bank v. J. Roy Morris and Scanforms, Inc., 639 A.2d 474, 477 (Pa.Super. 1994), *appeal denied*, 648 A.2d 789 (Pa. 1994); see also State Farm Mut. Auto. Ins. Co. v. Am. Rehab. & Physical Therapy, Inc., 2009 WL 2096274 \*6 (E.D.Pa. 2009) (holding that the exemption operates "to secure to the laborer the earnings of his own personal labor"), *affirmed*, 376 Fed. Appx. 182 (3<sup>rd</sup> Cir.(Pa.) 2010). None of the exceptions to this basic premise which appear in Section 8127(a) limit the general rule in the manner requested by Today's Housing.

The principal objective of statutory interpretation is to ascertain and effectuate the intention of the legislature. 1 Pa.C.S.A. § 1921(a). "The basic tenet of statutory construction requires a court to construe words of the statute according to their plain meaning." Commonwealth v. Heberling, 678 A.2d 794, 795 (Pa.Super. 1996). "When the words of a statute are clear

and unambiguous, a court cannot disregard them under the pretext of pursuing the spirit of the statute." *Id.* A statute which is clear and unambiguous on its face is to be construed by what it says, not by what one or more of the parties believe it was intended to say or should have said.

We respectfully submit that the plain language of the statute and case law interpreting the statute show that the purpose of this exemption is to protect the wages of employees. The Statute makes no distinction between whether the debt owed and being executed upon is that of the employee or of the employer. Nor has Today's Housing provided any case law holding contrary to our understanding of the statute. Contrary to Today's Housing's position, we read the statute as giving priority to the payment of wages, salaries and commissions which are due and payable to an employee for services rendered from monies set aside for this purpose before the payment of other creditors of the employer. The statute does not simply protect an employee against the attachment of wages by his creditors. *Cf. Eastern Litho. Corp. v. Neville*, 198 A.2d 391 (Pa.Super. 1964) (noting that the main purpose of the Act is to protect compensation for labor).<sup>2</sup>

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<sup>2</sup> Although Eastern Litho was decided under a former wage exemption statute since repealed - Section 5 of the Act of April 15, 1845, P.L. 459, 42 P.S. § 886 - the language in the proviso of this prior statute was similar to the language which now appears in 42 Pa.C.S.A. § 8127(a). The former statute provided:

## CONCLUSION

The interpretation and application of a statute is a question of law. Here, the statute upon which Employer bases

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If the garnishee in his answers admits that there is in his possession or control property of the defendant liable under said act to attachment, then said magistrate may enter judgment specially, to be levied out of the effects in the hands of the garnishee, or so much of the same as may be necessary to pay the debt and costs: *Provided however, That the wages of any laborers, or the salary of any person in public or private employment, shall not be liable to attachment in the hands of the employer.*

(emphasis added). Under this statute, two closely related questions were involved: "(1) whether the money in the hands of the garnishee falls within the legislative designation of monies exempt from attachment; and (2) whether the garnishee may properly be considered the employer of the defendant." Eastern Litho., 198 A.2d at 393.

In contrast, under the language of the present statute, the two questions involved are: (1) whether the money which is the subject of attachment constitutes wages or salaries within the meaning and objectives of the statute; and (2) whether such monies are "in the hands of the employer." In this case, we do not believe the first question is in dispute, nor has the second been raised as an issue. Although we are unaware of another court of this Commonwealth deciding a case similar to this, monies deposited in a bank account in the employer's name remain subject to the control of the employer and are, in a figurative sense, if not literally, "in the hands of the employer."

In Wagner-Taylor Co. v. McDowell, 9 A.2d 144, 145 (Pa.Super. 1939), the Court stated that "[i]n interpreting the Act of 1845, 42 P.S. § 881 et seq., the courts have been uniform in extending its provisions to protect and assist the wage earner in obtaining the fruits of his labor without interference from creditors." There, in construing the phrase "in the hands of the employer" in favor of an employee and against a creditor of the employee seeking to attach monies from the estate of a shareholder of the corporate employer by whom the employee was employed - at the time a shareholder was personally liable as a guarantor for the payment of an insolvent corporation's employees' salaries and wages - the Court stated:

We believe that the words as set forth in the Act of 1845, "in the hands of the employer", are placed there solely to limit the exemption to those cases only in which the employe has not as yet received his wages or they have not come under his control. If those words were not in the statute a workman might obtain payment of his wages, deposit the same in his bank account, and contend that the moneys so deposited were exempt from attachment by the creditor by reason of the provisions of the Act of 1845.

*Id.* at 146. Since in McDowell, the wages due the employee had never reached his hands, they were held exempt from attachment under the Act of 1845. The Court reasoned as follows: "If, therefore, for the purpose of enabling the wage earner to obtain his wages, the stockholder is considered the employer, the wages due [the employee] are still 'in the hands of the employer'." *Id.* at 146. In so holding, the Court further stated that "the Act of Assembly exempting wages from attachment should not be construed so as to defeat the manifest intention of the legislature." *Id.* at 145.

its claim for exemption is clear and unambiguous in giving priority to an employee of the payment of his wages, salary and commission above that of other creditors. It is these wages, salaries, and commissions which were exempted in our order of April 19, 2011. Accordingly, we respectfully ask that our decision be affirmed and the appeal denied.

BY THE COURT:

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P.J.