

11-3-2016

Pacific Western Bank v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 78 (Nov. 3, 2016)

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Nevada Law Journal

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Recommended Citation

Elias, Margarita, "Pacific Western Bank v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 78 (Nov. 3, 2016)" (2016). *Nevada Supreme Court Summaries*. Paper 1014.

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PROPERTY: GARNISHMENT OF DEBTS

Summary

The Court concluded that funds contained in financial accounts under 26 U.S.C. § 529² (“529 accounts”) constitute a debt and that these funds are subject to execution and garnishment in Nevada despite their physical location elsewhere. Specifically, the Court adopted Section 68 of the Restatement (Second) of Conflict of Laws and concluded that funds contained in 529 accounts are a debt, not a chattel.

Background

A California court awarded Petitioner Pacific Western Bank (“Pacific Western”) a monetary judgment against real parties in interest Darren D. Badger, John A. Ritter, and Vincent T. Schettler. Pacific Western subsequently domesticated the judgment in Nevada.

To collect on the judgment, Pacific Western caused the constable to serve Wells Fargo Advisors (“WFA”), a company that administered three 529 accounts on Darren D. Badger’s (“Badger”) behalf, with a writ of execution and garnishment, ordering WFA to release funds held in Badger’s name. WFA served a written answer on the constable stating that although WFA “maintained or referenced” the 529 accounts, the account shares were actually maintained at Scholar’s Edge, a New Mexico entity.

Badger filed an exemption claiming that the 529 accounts were exempt from execution pursuant to sections of the NRS.³ In response to Pacific Western’s objection, Badger further argued that the 529 accounts were outside Pacific Western’s reach and outside the Nevada district court’s jurisdiction because they were located in New Mexico.

The district court issued an order quashing the writs of execution and garnishment served upon WFA, reasoning that since the funds held in the 529 accounts were physically located in New Mexico with Scholar’s Edge, a New Mexico court had to determine whether the funds were exempt from execution.

Discussion

Consideration of the writ petition

The Court may address writ petitions which “raise important issues of law in need of clarification”⁴ Accordingly, the Court concluded that Pacific Western’s writ petition warranted the Court’s consideration since the petition involved a significant question of law in need of clarification.

Merits of the writ petition

¹ By Margarita Elias.

² 26 U.S.C. § 529 (2015).

³ NEV. REV. STAT. § 21.090(1)(r)(5), (1)(s) (2013).

⁴ *Int’l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 142–43, 127 P.3d 1088, 1096 (2006).

The district court had jurisdiction to subject the 529 accounts to execution consistent with Section 68 of the Restatement (Second) of Conflict of Laws, which this court now adopts

Based on Section 68 of the Restatement (Second) of Conflict of Laws, Pacific Western argued that the 529 accounts were essentially a debt owed to Badger by WFA and not a chattel.

Section 68 of the Restatement (Second) of Conflict of Laws provides that “[a] state has power to exercise judicial jurisdiction to apply to the satisfaction of a claim an obligation owed to the person against whom the claim is asserted if the obligor is subject to the judicial jurisdiction of the state, even though the state lacks jurisdiction over the person against whom the claim is asserted.”⁵ Two requirements must be satisfied before garnishment of a debt is permitted: (1) “maintenance of the action must be authorized by a statute,” and (2) “the state must have judicial jurisdiction over the [debtor/]garnishee.”⁶ Aside from these, “[t]here is no further requirement, as in the case of chattels, relating to the situs of the thing . . . [A] debt may be garnished wherever personal jurisdiction may be exercised over the garnishee.”⁷ Furthermore, “Debt” is defined as a “[l]iability on a claim; a specific sum of money due by agreement or otherwise.”⁸

Analyzing the funds in the 529 accounts as a debt under the Restatement, the Court found that the two requirements to permit garnishment of a debt were satisfied in the instant case. First, maintenance of the action was authorized by NRS 31.450, which authorizes the issuance of a post-judgment writ of garnishment and allows for liberal construction of a judgment creditor’s ability to collect.⁹ Further, NRS 21.120 authorizes garnishment against the party in whose “possession or control” the property is found¹⁰—where WFA acknowledged that it “maintained or referenced” the accounts on Badger’s behalf, and execution of the funds did not involve the physical delivery of real or personal property pursuant to NRS 21.070.¹¹

As to the second requirement that the state have judicial jurisdiction over the debtor or garnishee, the Court noted that Nevada courts’ jurisdiction over WFA and Badger was undisputed. Accordingly, pursuant to Section 68 of the Restatement, the Court found that the 529 accounts constituted a debt owed to Badger by WFA, and therefore, the accounts were subject to garnishment in Nevada, regardless of the location of the funds.

Conclusion

Applying Section 68 of the Restatement (Second) of Conflict of Laws to the instant case, the funds contained in the 529 accounts are a debt, which the district court has the power to garnish through service of a writ of garnishment upon WFA. Accordingly, the Court issued a writ of mandamus instructing the district court to vacate its order quashing the writs of execution and garnishment and to proceed with a determination on the exemption claims.

⁵ RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 68 (AM. LAW INST. 1971).

⁶ *Id.* § 68 cmt. b.

⁷ *Id.*

⁸ *Debt*, BLACK’S LAW DICTIONARY (8th ed. 2004).

⁹ NEV. REV. STAT. § 31.450 (2015).

¹⁰ NEV. REV. STAT. § 21.120 (2015).

¹¹ NEV. REV. STAT. § 21.070 (2015) (providing that “where the execution is against the property of the judgment debtor” and “requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property . . . is located.”).