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NJ Court Fails To Clarify Payroll Account Levy Rules

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Law360, New York (May 21, 2015, 10:40 AM ET) -- Earlier this month, the New Jersey state appeals court seemingly set a bright-line test balancing the rights of judgment creditors and employees when it comes to monies in a levied bank account. In The Pitney Bowes Bank Inc. v. ABC Caging Fulfillment, 2015 N.J. Super. LEXIS 70 at *1 (App. Div. May 8, 2015), a creditor levied upon a bank account maintained by a business debtor, ABC Caging Fulfillment, at a local community bank, Shore Community Bank. When the judgment creditor, The Pitney Bowes Bank Inc., sought a court order approving the transfer of funds from this account, it received resistance from its judgment debtor. Citing underutilized sections of New Jersey's statutes, ABC argued that the funds in the levied account were completely exempt based upon the fact that the account at issue was a "payroll" account used to pay employees. In response, Pitney Bowes argued that the funds at issue were not exempt because ABC was able to pay its employees through other means. Who was right?

Existing Statutes

New Jersey employees benefit from two different statutory sections under existing law, N.J.S.A. §§ 34:11-31, 34:11-32, which give them priority over general creditors in reference to funds held in a levied bank account. This statutory scheme specifically provides that, before a judgment creditor can seize funds held in a bank account, the creditor "shall first pay or cause to be paid to the operatives, mechanics and other employees of such person, manufacturer or corporations the wages then owing from such person, manufacturer or corporation." N.J.S.A. § 34:11-31.

An employee's right to his or her wages is so strong that the employee, within 10 days of when a bank account is levied, can object to the seizure of funds on his or her own and demand that she or he receive at least two months' pay. N.J.S.A. § 34:11-32. These statutory sections are written in mandatory terms and, as such, leave "no question about the general primacy of the wage claimant's position under New Jersey law." The Pitney Bowes Bank Inc., supra, 2015 N.J. Super. LEXIS 70 at *7.

The Pitney Bowes Decision

Pitney Bowes presented a very typical situation in the debt collection world. In this case, Pitney Bowes brought a claim against ABC claiming that ABC breached the terms of a

purchasing agreement. After ABC failed to answer discovery, Pitney Bowes obtained a default judgment in the amount of $69,315.59. Two months later, Pitney Bowes levied upon ABC's bank account containing $30,455. At the time of the levy, ABC owed its employees about $10,000 in wages. While the pending levy was in place, but before the trial court could issue a ruling determining the entitlement to the funds in the relevant account, ABC was able to pay all of its employees through a principal's personal funds.

When Pitney Bowes sought a court order approving the transfer of monies out of ABC's account, ABC argued that the account at issue was exempt because it was ABC's "payroll" account. Naturally, Pitney Bowes contended that all of the funds in the account were available for execution because the wages at issue were already paid. In finding middle ground, the Appellate Division held that the date of the levy fixes which funds are available to judgment creditors versus employees. As stated by the Appellate Division, "N.J.S.A. 34:11-31 unambiguously requires that wages 'then owing' to employees at the time of the levy must be paid before the creditor for who the sheriff levied." Pitney Bowes, supra, 2015 N.J. Super. LEXIS 70 at *9.

Accordingly, the Appellate Division stated that "to the extent that the funds in the account represented employee wages then due and owing, they were exempt from the levy." Id. To curb any potential abuse, the Appellate Division also made it clear that the claim that "the wages that became due and owing after the levy were exempt … is not supported by the statute." Id. at *10. Thus, after Pitney Bowes, an employer or employee can only exempt from execution those "wages due at the time of the removal." Id. Plainly, any argument that wages coming due after a levy are exempt "ignores the reality that the funds were removed on the day of the levy and the wages due and owing were fixed by the date of the removal." Id.

The Impact of Pitney Bowes and The Remaining Question

Pitney Bowes answered an important question regarding the balance of rights between judgment creditors and employees. Following Pitney Bowes, New Jersey businesses, employees and creditors know the specific date of when the pertinent exemption applies. Once the sheriff levies on a bank account, the exemption is set.

Where Pitney Bowes falls short, however, is in describing what proofs a business debtor must utilize to establish what amounts are owed to employees. To protect creditors from overzealous debtors, a bright-line rule is also needed to address this issue. Without a ruling that independent and preexisting documentary evidence must be produced by an employer or employee in response to a levy, the Pitney Bowes panel failed to address the more practical question that will likely determine the individual application of this ruling in future cases, the specific evidence needed to address this exemption. Unless and until a court answers this specific question, the rights of judgment creditors and employees will ultimately remain in flux.

Thus, even after Pitney Bowes, there is no rule that specifically prevents a business debtor from preserving monies in an account simply by arguing that all the funds in that account, based upon a self-serving certification from the business debtor, are dedicated to employee wages, even if those funds may not be. If our courts really want to clarify this area, they must also limit the proofs that can be presented. Otherwise, instead of solving this issue, the Pitney Bowes decision will be seen as encouraging an endless cycle of exemption arguments even when those arguments are unjustified.

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