

[Cite as *Am. Transfer Corp. v. Talent Transport, Inc.*, 2011-Ohio-112.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94980

AMERICAN TRANSFER CORPORATION

PLAINTIFF-APPELLANT

vs.

TALENT TRANSPORT, INC., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Parma Municipal Court
Case No. 09 CVF 02373

BEFORE: Blackmon, P.J., Boyle, J., and Jones, J.

RELEASED AND JOURNALIZED: January 13, 2011

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} In this accelerated appeal, appellant American Transfer Corporation (“American”) appeals the trial court’s judgment in favor of appellees Robert Dennis and Talent Transport (“Talent”) on American’s complaint for a creditor’s bill. American assigns the following error for our review:

“I. The trial court committed error when it denied plaintiff’s judgment on its Creditor’s Bill Complaint against defendant who owed money to judgment debtor on a contract.”

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court’s judgment. The apposite facts follow.

Facts

{¶ 3} American obtained a judgment from a magistrate against Dennis in the amount of \$3,000, plus statutory interest. On June 11, 2009, American filed a creditor’s bill complaint in Parma Municipal Court naming appellees Robert Dennis and Talent as the defendants. At that time, Dennis was working as an independent contractor for Talent as a truck driver. American was seeking to obtain the wages Talent was paying Dennis to satisfy the \$3,000 judgment it had obtained against Dennis.

{¶ 4} On March 2, 2010, a bench trial was conducted on the matter. At the hearing, Dennis admitted that he did not have any real property in his name nor any assets or personal funds that could satisfy the judgment. He admitted he worked for Talent from June until October of 2009 and was paid approximately \$4,000. He no longer works for Talent. In spite of not having any assets, he did offer to pay the debt under a payment plan.

However, according to Dennis, he was told that American would rather recover the money from Talent.

{¶ 5} American argued at the hearing that Talent was obligated to pay Dennis's debt because Talent received a copy of the creditor's bill complaint and was thus on notice that American was seeking payment for Dennis's debt. Talent did not deny receiving the complaint, but argued that the complaint was not a court order and that because American did not file a temporary restraining order preventing them from paying Dennis, the payments were not in contravention of any court order.

{¶ 6} The trial court concluded that the creditor's bill was not an appropriate remedy as American could have sought to attach or garnish Dennis's wages from Talent. The court also concluded that because Dennis no longer worked for Talent and Talent did not owe Dennis any money, it was not entitled to recover payment for the debt from Talent.

Creditor's Bill

{¶ 7} In its sole assigned error, American argues the trial court erred by concluding that Talent was not obligated to pay the debt.

{¶ 8} A creditor's bill action enables a judgment creditor to secure a lien on those assets of the judgment debtor that cannot be reached by mere execution of the judgment. *Union Properties, Inc. v. Patterson* (1944), 143 Ohio St. 192, 54 N.E.2d 668. An action in the nature of a creditor's suit

under R.C. 2333.01 is wholly equitable in nature and, as such, permits the judgment creditor to reach equitable assets which, by reason of uncertainties respecting title or valuation, cannot be effectively subjected under the ordinary legal process of execution by way of judgment liens, attachment, or garnishment. *Hoover v. Professional & Executive Mtge. Corp.* (1985), 21 Ohio App.3d 223, 225, 486 N.E.2d 1285.

{¶ 9} There are three essential elements to a claim under R.C. 2333.01: (1) the existence of a valid judgment against a debtor, (2) the existence of an interest in the debtor of the type enumerated in the statute, and (3) a showing that the debtor does not have sufficient assets to satisfy the judgment against him. *Richardson v. Fairbanks* (Oct. 28, 1997), 10th Dist. No. 97APE03-384.

{¶ 10} The issue before this court is whether the creditor's bill is a valid action to seize Dennis's interest in monies owed to him under his independent contract with Talent. Underlying this issue is whether a creditor's bill automatically creates a lien against the debtor's interest regardless of the character of the interest or whether there exists an adequate remedy at law to satisfy the judgment.

{¶ 11} Our concern is not whether American had a right to seize the monies owed to Dennis but whether the trial court can enforce a valid, binding judgment through a creditor's bill. See *Fed. Deposit Ins. Corp. v.*

Willoughby (1984), 19 Ohio App.3d 51, 482 N.E.2d 1267; *Bank of Wooster v. Stevens* (1853), 1 Ohio St. 233; *Henry v. Vermillion & Ashland R.R. Co.* (1848), 17 Ohio 187. The historical case law holds that when a creditor's bill is brought to obtain satisfaction of a debt, the parties are estopped from impeaching the credibility of the judgment. However, the validity of the creditor's bill action itself can be attacked when the judgment is not valid and when the monies are non-discretionary.

{¶ 12} Here, the magistrate's order was never adopted by the trial court. "A magistrate's decision is not effective unless adopted by the court." Civ.R. 53(E)(4)(a). R.C. 2333.01 requires a valid judgment before a creditor's bill may automatically attach as a lien. Without a court order adopting the magistrate's decision, there was no valid judgment.

{¶ 13} Additionally, because Dennis was receiving payment from Talent at the time the creditor's bill was filed, garnishment of his earnings would have been the proper way to obtain payment. In *Harris, M.D. v. Craig, M.D.*, Cuyahoga App. No. 79934, 2002-Ohio-5063, we held the trial court did not err by granting summary judgment to the third-party debtor because the money obtained from the settlement constituted discretionary earnings. We explained:

"In determining whether the payment from appellants to Craig is attachable via creditor's bill, we must determine whether the payment was discretionary as argued by

Harris, Inc., or non-discretionary earnings as held by the appellants. If the payment was discretionary, ‘then the bonus is an asset accessible only through a creditor’s bill, but reachable in the full amount.’ *Bank One, Cleveland, N.A. [v. Lincoln Elec. Co. (1990), 55 Ohio Misc.2d 563.]* If the payment was non-discretionary earnings, ‘then garnishment is the appropriate tool and the amount of funds subject to garnishment is limited by state and federal statute. *Id.*”

{¶ 14} In *Bank One*, the court explained non-discretionary earnings are payments to the employee based on an amount he is entitled to for services he has rendered. Discretionary income is not payment for services rendered. It is payment that the worker is not automatically entitled to, such as a bonus based on the availability of the company’s profits for the year. Here, Talent’s payments to Dennis was compensation for his services as a truck driver; thus, it was non-discretionary income subject to garnishment, but not a creditor’s bill.

{¶ 15} Moreover, although in its complaint American requested the lower court to enjoin Talent from paying Dennis, no court order was issued enjoining Talent. Talent, relying on the Ninth District case of *Avon Lake Sheet Metal Co., Inc. v. Huntington Environmental Systems*, 9th Dist. No. 03CA008393, 2004-Ohio-5957, argues that Talent’s receipt of the complaint put it on notice of the creditor’s bill and that Talent acted at its own peril in paying Dennis. However, our reading of *Avon* shows the case did not stand for this proposition. Although the trial court in *Avon* concluded that the

filing of the complaint was enough to put the employer on notice and that payments it made to the employee were at its own peril, the court of appeals did not reach this issue. The trial court vacated its judgment and the creditor appealed the vacated order to the court of appeals. The court of appeals concluded that the trial court erred by granting the employer's motion to vacate because the employer failed to set forth an explanation why the judgment should be vacated and the employer improperly filed the Civ.R. 60(B) as a substitute for a direct appeal. Thus, there was no discussion regarding the merits of the order vacated by the court.

Judgment is affirmed.

It is ordered that appellees recover from appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and

LARRY A. JONES, J., CONCUR