

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LUDMYLA SKORYCHENKO CARLBORG,

Plaintiff,

v.

ERNEST TOMPKINS,

Defendant.

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ORDER

10-cv-187-bbc

08-cv-626-bbc

This court entered judgments in favor of plaintiff Ludmyla Skorychenko Carlborg totaling approximately \$17,000 in these two cases. Initially, plaintiff attempted to collect the money judgments from defendant Ernest Tompkins by garnishing his wages, but defendant is no longer employed and plaintiff has looked to other potential sources. On April 29, 2011, in case number 10-cv-187-bbc, plaintiff filed a letter with the court stating that she would like to garnish \$4,000 that defendant received in state and federal tax refunds in order to satisfy the judgments. Dkt. #42. I denied the motion because plaintiff had not provided enough information about the alleged \$4,000. I instructed plaintiff to submit an affidavit stating whether defendant has paid her any amount of the judgment and the basis for her assertion that defendant has \$4,000 in his possession. Also, I instructed defendant to submit an affidavit stating whether he has paid any amount on the judgments, whether

he is receiving any income and whether he has cash or property in his possession or in any account that can be used to satisfy the judgments. I instructed defendant to explain whether he believed any cash or property he possessed was exempt from garnishment or execution.

Both parties have responded. (Plaintiff filed a motion for sanctions, dkt. #48 in 10-cv-187-bbc, contending that defendant failed to respond in a timely manner. Although defendant's response was six days late, I will deny the motion for sanctions because plaintiff suffered no prejudice from the delay.) Plaintiff admits that she has no proof or basis for believing that defendant has \$4,000 in his possession. In other words, plaintiff was guessing that he had \$4,000. The court cannot order garnishment of money on the basis of plaintiff's guess. Recognizing this, plaintiff contends that defendant should satisfy the judgment by selling his real property, which includes a mobile home and surrounding land, and that, according to defendant's financial disclosure statement filed in April 2009, dkt. #46-1 in 10-cv-187-bbc, is worth approximately \$118,000. (In the 2009 financial disclosure statement, defendant avers that the real property is subject to two mortgages totaling \$91,000.) Plaintiff requests that the court impose a judgment lien upon the property and issue a writ of execution against it.

In his response, defendant states that he has no cash or personal property that can be used to satisfy the judgment. He states that the value of his real property has dropped to \$78,500 and that now his two mortgages total approximately \$80,000. He also contends that his real property is exempt from execution under the homestead exemption set forth in

Wis. Stat. § 815.20.

Under Fed. R. Civ. P. 69, this court must follow the execution procedures of Wisconsin. Under Wisconsin law, money judgments may be enforced by execution, and an execution of judgment “may issue at any time within 5 years after the rendition of the judgment.” Wis. Stat. §§ 815.02, 815.04(1)(a). Under a writ of execution, a judgment debtor, such as defendant, may be ordered to turn over money or personal property to satisfy a judgment, or if sufficient personal property cannot be found, a lien may be placed on the debtor’s real property, subject to certain exceptions. The execution may also direct a sale of the real property. Wis. Stat. §§ 815.05, 815.18, 815.20; see also Zahran v. Frankenmuth Mutual Insurance Co., 172 F.3d 54, 1998 WL 975072, \*3 (7th Cir. 1998) (unpublished) (discussing Wisconsin’s writ of execution statute).

In this case, however, defendant possesses no cash or personal property at this time that can be used to satisfy the judgment. In addition, defendant’s real property is protected by the homestead exemption. Under Wis. Stat. § 815.20, an individual’s homestead “shall be exempt from execution, from the lien of every judgment, and from liability for the debts of the owner to the amount of \$75,000. . . .” The value of this exemption “is based upon the debtor’s equity in the homestead.” Rumage v. Gulberg, 2000 WI 53, ¶ 27, 235 Wis. 2d 279, 296, 611 N.W.2d 458, 465. In other words, if the debtor’s equity exceeds \$75,000, “there is surplus equity and the homestead is [only] ‘partially exempt.’” Id. On the other hand, if the debtor’s equity in the homestead equals \$75,000 or less, the property is

completely exempt from execution or judgment liens. Id. ¶ 28.

Regardless whether defendant's real property is worth \$118,000, as plaintiff asserts, or \$78,500, as defendant asserts, it is undisputed that defendant owes at least \$80,000 on two mortgages against the property. Thus, his equity in the property is less than \$75,000, making his homestead completely exempt from execution or judgment liens. Accordingly, I will deny plaintiff's motion for a writ of execution against defendant's real property.

#### ORDER

IT IS ORDERED that

1. Plaintiff Ludmyla Skorychenko Carlborg's motion for a writ of execution against Ernest Tompkins's homestead property, dkt. #45 in 10-cv-187-bbc, and dkt. #108 in 08-cv-626-bbc, is DENIED.

2. Plaintiff's motion for sanctions, dkt. #48 in 10-cv-187-bbc, is DENIED.

Entered this 24th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge