

MEMORANDUM

TO: NEW JERSEY LAW REVISION COMMISSION
FROM: JOHN M. CANNEL, EXECUTIVE DIRECTOR
DATED: MAY 10, 2004
RE: ENFORCEMENT OF JUDGMENTS

This draft reflects the Commission's decisions at the April meeting, but the marked text (strikeouts and underlines) indicates not only the latest changes but all issues that are still under review.

C-6. Exemptions

a. The following property of a judgment debtor, who is either a natural person domiciled in the State of New Jersey or the estate of a decedent who was domiciled in the State of New Jersey at the time of death, shall be exempt from a collection order pursuant to this chapter:

- (1) property that federal or other state statute forbids taking to satisfy a state judgment;
- (2) wearing apparel of the judgment debtor other than furs and jewelry; and
- (3) property whose value does not exceed either \$2,000 or, the amount determined pursuant to subsection (b) of this section; and

b. The Governor, in consultation with the Department of the Treasury, not later than March 1 of each odd-numbered year, shall adjust the exemption amounts set forth in subsection (a) of this section, or subsequent to 2005 the exemption amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York City and Philadelphia areas as reported by the United States Department of Labor. The Governor, no later than June 1 of each odd numbered year, shall notify the Clerk of the Superior Court of the adjustment. The adjustment shall become effective on July 1 of each odd-numbered year.

c. The exemptions provided in this section shall not apply if the judgment being enforced:

- (1) arises from the purchase of the same property against which collection is sought; or
- (2) is for alimony or child support; or
- (3) is for the collection of taxes.

Source: 2A:17-19

COMMENT

The purpose of this section is to simplify the provisions of the source statute which specifies the property of a judgment debtor that is exempt from collection and levy. Proposed subsection (a)(1) is a reference to the fact that numerous statutes exempt various kinds of property, often of public and quasi-public entities, from collection and levy. See, e.g., 5:12-168 (property of Casino Reinvestment Development Authority exempt from levy and

collection); 27:19-33 (property of bridge commissions); 33:1-25 (alcoholic beverage licenses). With respect to individuals, there are numerous statutory provisions which exempt pensions from collection and levy. See generally Title 43 Pensions and Retirement and Unemployment Compensation.

The current personal property exemption is updated in proposed subsections (a)(3) and (a)(4). Wearing apparel of the judgment debtor, other than furs and jewelry, is exempt. At present, there is a general exemption for \$1,000 worth of personal property. The \$1000 amount has not been revised since 1973 and covers far less property than it did when written. Subsections (a)(3) and (a)(4) follow the recommendation of the August 17, 1993 "Report of the Supreme Court Committee on Post-Judgment Collection Procedures in the Special Civil Part." The committee, chaired by the Hon. Nicholas G. Mandak, A.J.S.C., judged that the amounts given in subsections (a)(3) and (a)(4) are "required to ensure that debtors are not deprived of bare necessities to exist for one month and maintain a minimal household." Post-Judgment Collection Procedures Report at 47. Inherently, any specific dollar amount is affected by inflation. To obviate the need for periodic revision of the section, subsections (a)(3) and (a)(4) provide that the exemption amounts are to be adjusted for inflation. Subsection (b) sets out the method for the adjustment. This method is now used to adjust other statutory limits, such as the threshold for awarding without bids public school contracts (N.J.S.A. 18A:18A-3), local public contracts (N.J.S.A. 40A:11-3), and state contracts (N.J.S.A. 52:34-7).

Proposed subsection (c)(1) continues the provision in the current statute which removes the exemption from collection and levy from property which was purchased with funds which gave rise to the debt underlying the collection action, *i.e.* a "purchase money debt." See Stoutenburgh v. Konkle, 15 N.J. Eq. 33 (1862).

Subsection (c)(2) is new; it codifies the principle enunciated in Redick v. O'Brien, 191 N.J. Super. 614 (Ch. Div. 1983), which held that the policy behind the exemption provision, *i.e.*, the protection of the debtor and his family from destitution, precluded the judgment debtor's use of the exemption in cases where the judgment being enforced was for support of the debtor's dependents.

Subsection (c)(3) continues the exception in the source section for the collection of taxes and assessments.

C-13. Levy against personal property in the custody of a third party

a. If the judgment creditor instructs the collection officer to levy against personal property in the possession of a person other than the judgment debtor, the officer shall serve a copy of the collection order personally on the person who has possession of the property.

b. The service of the collection order shall be effective against:

(1) any personal property of the judgment debtor in the custody of the third party at the time of service; and

(2) any additional personal property which the judgment debtor becomes entitled to receive from the time of the levy to the time of the order directing that the property be turned over to the collection officer.

c. Service of the collection order on any office of a business shall be effective against any personal property of the judgment debtor in the custody of the business.

d. During the time the levy is in effect, the third party holding custody of personal property subject to the collection order shall hold the property pending order of the court and shall not honor any other demand for the property.

e. Any time within 30 days after levy, the creditor may make a motion pursuant to the Rules of Court for an order directing that the property be turned over to the collection officer.

f. If the property or the debtor is a bank account, the bank may withhold \$25 to defray the cost of complying with the levy.

Source: 2A:17-58; 2A:17-63

COMMENT

This proposed provision is intended to generalize the current law concerning collection against rights and credits.

C-2. Issuance of collection orders

a. At the request of a judgment creditor and upon receipt of any required fee, the clerk of the court shall issue a collection order directing the satisfaction of a money judgment from the property of the judgment debtor.

b. A collection order may be issued only within 20 years after entry of the judgment to be collected, or if the judgment has been revived, a collection order may be issued only within 20 years after the date of the revival of the judgment.

Source: 2A:17-3

COMMENT

Subsection (a) of this proposed section states a general rule that is implied but not stated in the source sections, and is expressed in Court Rule 4:59-1(a). The fees for issuing writs of execution are established in 22A:2-7. Subsection (b) continues the rule of source section 2A:17-3 that places a 20-year limit on the issuance of a writ of execution, unless the judgment is revived. Note that there are no current statutory provisions concerning revival of a judgment.

C-3. ~~By whom issued~~ Collection orders against personal property or earnings

a. A collection order against ~~any property~~ personal property or earnings of the judgment debtor may be issued:

(1) by the Clerk of the Superior Court if the judgment is recorded in the judgment docket of the Superior Court.

~~b. A collection order against personal property or earnings may be issued~~ (2) by the Clerk of the Special Civil Part if the judgment is recorded in the case records of the Superior Court, Law Division, Special Civil Part but not in the judgment docket of the Superior Court.

e. b. A clerk may issue as many collection orders with respect to a particular judgment as the judgment creditor requests, and may issue a collection order to more than one county at the same time.

Source: 2A:17-4; 2A:17-17

COMMENT

Subsection (a)(1) of this proposed section continues the rule in current law that if a judgment is docketed in the Superior Court, the clerk of that court issues the collection order, even if the judgment originally was obtained in the Special Civil Part. In addition, subsection (b) continues the rule under current law that the clerk of the Special Civil Part issues a collection order on judgments that have been obtained in that Part but not

docketed in the Superior Court. Subsection (c) restates 2A:17-4. It also makes it clear that successive orders may issue after the return of the order or its expiration. See Vitale v. Hotel California, Inc., 184 N.J. Super. 512, 520-21 (Law. Div. 1982), aff'd 187 N.J. Super. 464.

Note that the Clerk of the Superior Court may issue a collection order against any kind of property, including real property, while collection orders issuing from the Special Civil Part are limited to personal property and earnings. This distinction is consistent with the current statutes; see 2A:17-17.

C-3½. Collection orders against real property

a. A collection order against real property of the judgment debtor may be issued only by a judge.

b. A judge shall enter a collection order against real property if the judge finds:

(1) the creditor has diligently attempted to ascertain the property of the debtor in accordance with standard commercial practice and the personal property found is insufficient to satisfy the judgment;

(2) the debtor has been notified at the debtor's last known address and has not supplied information concerning personal property sufficient to satisfy the judgment; and

(3) the amount owed on the judgment exclusive of interest and costs is \$10,000 or more.

c. A collection order shall be docketed in the Superior Court Judgment Docket.

COMMENT

In its original report on this subject, the Commission recommended that collection orders against real property be available for all judgments docketed in the Superior Court, whether or not personal property of the debtor had been exhausted. That recommendation engendered substantial controversy. Some people suggested this it might cause debtors to lose their homes even though they had other property from which the judgment might be satisfied. While the Commission does not believe that that would have been the result of its original position, it has reexamined its recommendation. This section continues the current law that requires personal property to be exhausted before execution against real property. The section adds an additional safeguard to debtors in subsection (b)(3); real property cannot be used to satisfy a judgment or less than \$10,000. Under current law, however, it is difficult to sell real property because the sale may be set aside if, after the sale, it appears that personal property has not been exhausted. This section provides for determination before the sale whether there is a need to execute against real property. An order is entered only when the standards have been met to allow execution against real property. When an order is entered, it is docketed in the Judgment Docket and serves as proof that the sale of real property was authorized. As a result, better title can be produced by an execution sale.