

Lenders Beware: A Change in the Law of Receiver Liens

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This year, the Wisconsin Supreme Court issued a tandem of decisions that fundamentally altered the landscape for creditors seeking to enforce their money judgments. *Associated Bank, N.A. v. Collier*, 2014 WI 62, 355 Wis. 2d 343, 852 N.W.2d 443; *Attorney's Title Guaranty Fund, Inc.*, 2014 WI 63, 355 Wis. 2d 229, 850 N.W.2d 28. These decisions place extra hurdles for creditors to surmount in attempting to satisfy their judgments.

For many years, a judgment creditor was only required to docket its judgment and serve the debtor with an order to appear for a supplemental proceeding to have a blanket receiver's lien against the debtor's personal property. *Mann v. Bankruptcy Estate of Badger Lines, Inc.*, 224 Wis. 2d 646, 590 N.W.2d 270 (1999). The creditor was not required to take any additional steps to perfect its blanket lien. This blanket lien encumbered a debtor's ability to transfer its personal property. The lien was also considered to be superior to all unsecured creditors and all security interests that were secured after the debtor was served with the order to appear.

The Wisconsin Supreme Court has now redefined the process a creditor must use to obtain a receiver's lien on a debtor's personal property. Under the *Associated Bank* and *Attorney's Title Guaranty Fund* decisions, the Court explained that service of an order to appear for a supplemental proceeding does not automatically give rise to a blanket receiver's lien. Instead, a creditor must identify and take action against specific personal property of the debtor. The Court stated that a creditor "obtains an interest in a

judgment debtor's identified, non-exempt personal property superior to other unsecured creditors when it docket its money judgment, identifies specific personal property, and levies that property." *Associated Bank*, 2014 WI 62, ¶ 59.

The Court provided three examples of such a levy: (1) an execution against specifically identified personal property through the assistance of a sheriff; (2) service upon a garnishee defendant in a garnishment action to seize specific property being held by a garnishee defendant; and (3) an order for a debtor to turnover specific personal property to be applied in satisfaction of the judgment. *Attorney's Title Guaranty Fund*, 2014 WI 63, ¶ 26.

The upshot of these decisions upon the rights of judgment creditors is clear and far-reaching. The process for a judgment creditor to secure a perfected lien against a debtor's personal property has changed, and the scope of the lien is significantly constrained. At the same time, a judgment debtor faces significantly fewer restrictions on disposing of personal property upon receiving an order to appear for a supplemental examination. Accordingly, it is imperative that judgment creditors take affirmative action to identify and then levy specific property of the debtor.

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