

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Credit Acceptance Corp.,	:	C.A. No. 97-10-0075
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
James F. Cole, Jr.,	:	
And Kimberly S. Cohey,	:	
	:	
Defendants.	:	

Upon Defendant's Motion to Quash an Attachment Fi.Fa.

Submitted: October 14, 2008

Date Decided: October 21, 2008

Motion is denied.

**Charles S. Knothe, Esquire, 3516-14 Silverside Road, Wilmington, Delaware 19801,
Attorney for Plaintiff.**

**Kimberly Cohey/Carroll, 163 Brooklyn Drive, Harrington, Delaware 19952, *Pro Se*
Defendant.**

Trader, J.

In this civil case, the defendant has written a letter requesting relief from a default judgment entered in this Court because the judgment is over ten years old and has expired. I will treat this letter as a Motion to Quash an Attachment *Fi. Fa.* executed on the judgment. I hold that the Motion to Quash is denied because there is no time limitations on judgments entered in the Court of Common Pleas. Although 10 *Del. C.* § 4711 applies to judgments entered in the Superior Court, that statute does not apply to judgments entered in the Court of Common Pleas. Hence, judgments entered in this Court that are more than ten years old remain valid.

On April 7, 1998, a judgment was entered against the defendant, Kimberly Cohey/Carroll in favor of the plaintiff, Credit Acceptance Corp. for a total of \$6,934.56 which includes principal, prejudgment interest, post judgment interest at the rate of 22% on the principal, and attorney's fees. On September 19, 2007, an attachment *Fieri Facias* was issued and served upon the Secretary of the State. The defendant is an employee at Two Farms, Inc. and beginning September 19, 2008, pursuant to the wage attachment, the defendant's wages were garnished. In response to the writ garnishing her wages, the defendant wrote to the Court asking for relief from judgment under 10 *Del. C.* § 4711, contending that the judgment has expired as it is over ten years old. This letter is viewed by the Court as a Motion to Quash an Attachment *Fi Fa.* The defendant's contention is incorrect.

The judgment against Ms. Cohey/Carroll was entered under 10 *Del. C.* § 1325 and Court of Common Pleas Civil Rule 58, in this Court on April 7, 1998. Judgments entered in the Court of Common Pleas are transferred to the Superior Court under 10 *Del. C.* §

1325 and become a lien against real property for ten years unless renewed within that ten year period. 10 *Del. C.* § 4711. 10 *Del. C.* § 4711 states in pertinent part:

No judgment for the recovery of money entered or recorded in the *Superior Court*, whether rendered by that Court or transferred thereto from the Supreme Court, or from the dockets of a justice of the peace or the Court of Common Pleas, or operative by virtue of any writ of testatum fieri facias, or otherwise, howsoever recorded in the Court, shall continue a lien upon real estate for a longer term than 10 years next following the day of entry or recording of such judgment,... (emphasis added)

The Supreme Court held that after the 10 years has expired and the lien against real property is lost, the judgments still remain obligations of record and continue as such for twenty years until which time it is presumed paid. *Id.* (citing *Cohen v. Tuff*, 86 A.833 (Del. 1913)).

The judgment issued in this case, has not been transferred to the Superior Court. Therefore, 10 *Del. C.* § 4711 does not apply to the judgment in this case. The State of Delaware does not have any statute that limits the validity of a judgment because of the age of the judgment. *Gamles Corp. v. Gibson*, 939 A.2d 1269, 1272 (Del. 2007). “There is only a rebuttable common law presumption of payment after twenty years.” *Id.* In the case before the Court, the common law presumption of payment has not arisen because the writ of execution for wage garnishment was executed when the judgment was only 10 years old. *See Id.* The Court of Common Pleas has no Rule of Court or statute stating a time period in which civil judgments are no longer valid. Hence, the judgment is valid and execution may be issued on this judgment.

Although the defendant’s contention only addresses the validity of judgments, an analysis of other statutes relating to execution on civil judgments in the Court of Common Pleas must be addressed.

Subchapter XII of Delaware Code Title 10 entitled *Scire Facias* on Judgments contains three sections. Section 5071 provides for the issuance of a writ of *scire facias* to obtain execution upon a judgment. Section 5072(a) provides that a writ of execution upon a judgment may be issued within five years from the time when such judgment was entered. This section applies only to cases when no execution has been previously issued or to cases where one or more writs of execution have been issued and the judgment has not been paid or satisfied. Section 5073 applies to executions on Superior Court judgments that have been transferred from the Court of Common Pleas or the Justice of the Peace Court to the Superior Court. An execution on this judgment after it is transferred must be made within five years of the entry of the transcript.

A *scire facias* is a writ requiring the person against whom it is issued to appear and show cause why a dormant judgment should not be revived. BLACK'S LAW DICTIONARY 1347 (7th ed. 1999). Section 5071 concerns the issuance of a writ of *scire facias* and it only applies to the Superior Court because (1) the Justice of the Peace Court has its own statute for the writ of *scire facias* (10 *Del.C.* § 9579 through 10 *Del. C.* § 9581); and (2) the Court of Common Pleas has no statute or Rule of Court permitting the issuance of a writ of *scire facias*.

10 *Del. C.* § 5073 expressly applies to issuance of writs of execution on Superior Court judgments that have been transferred from the Court of Common Pleas or Justice of the Peace Court to the Superior Court. Under this section no execution can be issued within five years after the transcript of the judgment has been filed in the Superior Court. Section 5072(a) does not expressly mention the Superior Court, but based upon the interpretation of Sections 5071 and 5073 and construing the sections as a whole, I hold

that Sec. 5072(a) must apply only to the Superior Court. *See Delaware Bay Surgical Servs., P.A. v. Swier*, 900 A.2d 646, 652 (Del. 2006) (Statutory construction requires the court to “ascertain and give effect to the intent of the legislature.” Because a statute passed by the General Assembly is to be considered as a whole, rather than in parts, each section should be read in light of all others in the enactment.) (citing *Coastal Barge Corp. v. Coastal Zone Ind. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985)).

10 Del. C. §5702(a) has been the law of Delaware since March 4, 1857. *See Laws of Delaware.*, Vol. 11, Ch. 451. At the time of the enactment of this statute, the Court of Common Pleas was not in existence. Therefore, at the time of the enactment of the statute the statute applied solely to judgments entered in the Superior Court. There have been no amendments to the statute since its enactment and I conclude that Section 5072(a) still only applies to the Superior Court.

The purpose of this subchapter is to preclude the issuance of a writ of execution after five years unless a writ of *scire facias* has been brought to permit the issuance of an execution on the judgment. Thus, Section 5072(a) applies to judgments originally entered in the Superior Court and Section 5073 applies to judgments in the Superior Court that were transferred from the Court of Common Pleas and Justice of the Peace Court. None of these three sections apply to judgments remaining in the Court of Common Pleas.

In conclusion, 10 Del. C. § 4711 does not apply to the defendant’s judgment because the judgment has never been transferred to the Superior Court and it has never been a lien against real property. Judgments in the Court of Common Pleas have no statute of limitations and remain in effect until satisfied. Additionally, there is no time

limitation on the issuance of execution on civil judgments in the Court of Common Pleas.

Hence, the defendant's Motion to Quash an Attachment *Fi. Fa.* is DENIED.

IT IS SO ORDERED.

Merrill C. Trader
Judge