

Asset Acceptance LLC v. Welch, No. 482-8-06 Wncv (Teachout, J., May 4, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

ASSET ACCEPTANCE, LLC,)	
Plaintiff,)	Washington Superior Court
)	Docket No. 482-8-06 Wncv
v.)	
)	
PATRICIA M. WELCH,)	
Defendant.)	

ENTRY ORDER

This matter came before the court for hearing on April 23, 2007. Plaintiff was represented by Attorney Alan A. Bjerke. Patricia M. Welch was present and represented herself.

The parties reached an agreement and placed the terms of their agreement on the record. They agreed to a judgment in the total amount of \$8,858.13 as of April 23, 2007, based on \$5,915.91 in principal, \$261.62 in court costs, and \$2,680.60 in prejudgment interest. They also agreed that no interest would accrue on the judgment until June 1, 2007, and beginning on that date interest would not accrue for any biweekly period for which Ms. Welch made a biweekly payment of \$60.00, either directly or through withholding from her earnings from her employer, the Montpelier School District. She agreed to stipulate to biweekly withholding of \$60.00 beginning June 1, 2007 from her earnings.

Because Attorney Bjerke did not have funds with him to file a motion for trustee process, the question arose whether an order for trustee process could issue simultaneously with the judgment, without the filing of a post judgment motion. The court stated that it would research the issue, and either issue both a judgment and order for trustee process against earnings, or a judgment and an entry order regarding the issue of trustee process.

The court has researched the issue, and determined that statutory law does not authorize the issuance of an order for trustee process at the time of entry of judgment. 12

V.S.A. §3168(b) and V.R.C.P. 4.2 (j)(3) require notice to be provided to both the trustee and the debtor. Notice includes not only the motion but the disclosure form and the list of exemptions. The trustee must either appear at the hearing or serve a disclosure under oath prior to the hearing.

The disclosure of the trustee, or the trustee's appearance at the hearing, provide third party verification of a particular alleged trustee as an employer of the debtor, and of the amount of earnings. The list of exemptions alerts the debtor and employer to the fact that certain earnings are exempt, as well as the fact that certain exemptions may not be waived as a matter of law. 12 V.S.A. §3170(d).

The trustee's disclosure is necessary to ensure that the court will have reliable information in determining the debtor's actual and available non-exempt earnings, and it enables the court to ensure compliance with the requirements of law despite an agreement that might otherwise be made between the judgment creditor and debtor.

Therefore, the court enters this day a judgment pursuant to the terms of the agreement the parties have placed on the record. The court retains in its file the stipulation of the parties to trustee process against earnings. Once a motion for trustee process is filed and the requirements of notice to the trustee and debtor have been satisfied, the court will act on the basis of the stipulation.

It is possible that as a result of this process, it will take longer than June 1, 2007 for payments to be made from Ms. Welch's earnings. Ms. Welch is reminded that under the terms of the agreement, beginning June 1, 2007, it is her obligation to make \$60.00 biweekly payments directly in order to avoid the accrual of interest for that biweekly period.

Dated at Montpelier, Vermont this ___ day of May 2007.

Mary Miles Teachout
Superior Court Judge