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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-18-790

EAGLE BANK & TRUST COMPANY AND BID CENTRAL, INC., D/B/A BCI MANAGEMENT COMPANY APPELLANTS V. RAYNOR MANUFACTURING COMPANY APPELLEE	**Opinion Delivered** March 13, 2019 APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. 23CV-17-677] HONORABLE CHRIS CARNAHAN, JUDGE AFFIRMED

BRANDON J. HARRISON, Judge

Eagle Bank & Trust Company appeals a $66,569.58 judgment entered against it in the Faulkner County Circuit Court. The bank argues that Arkansas Code Annotated section 4-4-303—a provision in the Uniform Commercial Code for banking—gives a bank like it a "reasonable time" to comply with a writ of garnishment. The circuit court decided that the statute did not apply. Although the bank presents a novel argument, we hold that the circuit court did not err in finding that the bank is liable to Raynor Manufacturing Company. The statutory "reasonable time" period conflicts with specific garnishment statutes and Arkansas Supreme Court case law that has held a garnishee's potential liability starts when the writ of garnishment is served. *E.g.*, *J.B. Hunt, LLC v. Thornton*, 2014 Ark. 62, at 7, 432 S.W.3d 8, 12 (stating that "the effect of the service of a writ of garnishment is to impound all property in the hands of the third-party garnishee that belongs to the judgment debtor *at the time of the service*") (emphasis added).

I.

This case is about an effort by Raynor to collect a judgment from Bid Central, Inc. (doing business as BCI Management Company). On 1 August 2017, Raynor obtained a default judgment against Bid Central for $102,905 in the Faulkner County Circuit Court. On August 3 at approximately 2:20 p.m., Raynor served Eagle Bank with a writ of garnishment, by certified mail, to the office of Eagle Bank's registered agent in Little Rock. The writ directed the bank to lien on all money belonging to Bid Central. The writ contained five interrogatories.

The parties do not dispute that the bank held no money belonging to Bid Central when the writ was served on August 3. This was because on 31 July 2017, the day before the default judgment was entered against Bid Central, Eagle Bank had guaranteed a cashier's check. The cashier's check was for 100 percent of the account balance. Consequently, on August 3, Bid Central's deposit account at the bank was closed.

On August 4 at approximately 8:45 a.m., an agent for Bid Central deposited the cashier's check ($66,569.58) at an Eagle Bank branch in Vilonia, Arkansas. The teller deposited the check into Bid Central's closed deposit account. The deposit reopened the account. In less than two hours, however, the money was wired out of the account and to a creditor, minus a $15 transaction fee. The deposit account was then closed, again.

On August 10, Michelle Garth, an Eagle Bank customer-service manager, filed an unsworn written statement in the circuit court responding to the writ's five interrogatories. On September 5, Raynor filed more interrogatories and requests for document production in the circuit court; one month later the bank filed responses to Raynor's requests.

Raynor moved for judgment against the bank in November 2017. The circuit court convened a hearing in May 2018 on Raynor's motion. The sole witness was Michelle Schrodt,

an Eagle Bank employee and twenty-seven-year banking veteran who runs all the bank's branches.

Schrodt explained that when the bank receives a writ of garnishment it checks whether a relevant account exists and then places a "hold" on the account. She explained that there is a "two-day research period" in the garnishment training and testified that "the State said there's two days" to see if there are any federal benefits in the account that cannot be garnished because those benefits are "protected funds." When asked if safeguards were in place to ensure that nonprotected funds are captured if the accountholder makes a deposit during the two-day research period, Schrodt replied "yes." She said that the account would be flagged, signifying that a writ had been received.

Schrodt said that the writ in this case was delivered after 2:00 p.m. on August 3 and the bank closed at 5:00 p.m., including the Shackleford branch in Little Rock. According to Schrodt, after the bank received the writ it started a review to see if there was a relevant open account. The review revealed that Bid Central's account was closed July 31. So on the date the writ was served on the bank, Bid Central's deposit account was closed. Schrodt agreed that the bank had no process in place to flag a closed account. Only open and active accounts are flagged. Schrodt said that it was not a routine or frequent occurrence for a former account holder to reopen an account after it had been closed.

Schrodt conceded that the bank possessed $66,569.58 that belonged to Bid Central for a two-hour window of time, or until approximately 10:47 a.m. on August 4. When the account reopened no steps were taken to assess whether there was a pending garnishment on the reopened account. Schrodt said it is not the bank's standard practice to inquire whether a garnishment issue existed on a closed account. The transaction was discovered when Michelle

Garth pulled up the account the afternoon of August 4 while preparing to answer the writ's interrogatories. No other account activity occurred after the single deposit and wire transfer occurred on August 4. Schrodt conceded that Garth's August 10 answers to the interrogatories were not sworn or notarized.

On cross-examination, Schrodt said that she has worked for six or seven different banks and that it is not usual practice for a bank to put a hold on a closed account. She also explained that in all the places she had worked, it is typical for a bank's employees, not an attorney, to answer a writ of garnishment and the associated interrogatories.

The circuit court asked Schrodt some questions, too. She confirmed to the court that if a defendant/customer has an open account then the bank's central office can immediately notify all branches that it has received a writ of garnishment. The circuit court understood the process to be that the garnishment would be sent from Eagle Bank's mailroom to an office at the Shackleford location that handles garnishments for the bank; then after some data entry, the account is "flagged." Schrodt did not specifically state how long that process would take.

On 18 June 2018, the circuit court entered an "order on plaintiff's denial of garnishee's answer and default judgment." It found that Raynor "met its burden under Arkansas Code Annotated § 16-110-405(a)" and established that Eagle Bank's answer was "insufficient because the answer is not in affidavit format" under section 16-110-127(a) (Repl. 2016). As we mentioned earlier, the court also found that "Ark[ansas] Code Annotated § 4-4-303 is inapplicable to the facts in this case." Recounting Schrodt's testimony, the court concluded that

> [f]or its failure to impound proceeds belonging to the Defendant, the Garnishee's liability to the Plaintiff is for the same amount that the Garnishee had in its possession during the pendency of the writ.

. . .

> The Garnishee's response to the writ is insufficient in that the answer is not in affidavit format.
>
> The Garnishee's response should be and is hereby deemed a nullity.
>
> After service of the writ on the Garnishee, the Garnishee had in its possession for approximately two hours the sum of $66,569.58 that otherwise belonged to the Defendant.
>
> The Garnishee failed to impound the sum of $66,569.58 that it had in its possession.
>
> The Garnishee is liable to the Plaintiff in the same amount the Garnishee had in its possession.
>
> Pursuant to [Ark. Code Ann.] § 16-110-406(a), which governs garnishee banks, this Court grants judgment to the Plaintiff.

II.

This appeal requires us to interpret statutes, so the standard of review is de novo. *Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III, L.P.*, 374 Ark. 489, 490–91, 288 S.W.3d 627, 629 (2008). Here are the two main statutory sections at issue in the case. Arkansas Code Annotated section 4-4-303, which the bank says controls this case, states:

> (a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or *legal process is received or served and a reasonable time for the bank to act thereon expires* or the setoff is exercised after the earliest of the following:
>
> (1) The bank accepts or certifies the item;
>
> (2) The bank pays the item in cash;
>
> (3) The bank settles for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement;
>
> (4) The bank becomes accountable for the amount of the item under § 4-4-302 dealing with the payor bank's responsibility for late return of items; or
>
> (5) With respect to checks, a cutoff hour no earlier than one (1) hour after the opening of the next banking day after the banking day on which the bank

> received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.
>
> (b) Subject to subsection (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

Ark. Code Ann. § 4-4-303 (Repl. 2001) (emphasis added). Section 4-4-303, comment 6, states that the mere receipt of the writ by the bank does not mean that the writ can be immediately acted on. Comment 6 to Ark. Code Ann. § 4-4-303 (Repl. 1995) (Vol. A). "Usually a relatively short time is required to communicate to the accounting department advice of one of these events but certainly some time is necessary." *Id.*

In contrast, Arkansas Code Annotated section 16-110-406, which the General Assembly enacted early in the twentieth century, provides:

> (a) If any garnishee that is a bank, savings bank, or trust company domiciled in this state, *after having been served with a writ of garnishment* ten (10) days before the return day thereof, shall neglect to answer on or before the return day the writ or any interrogatories which have been exhibited against it, the court or justice before whom the matter is pending shall enter judgment in general terms against the garnishee. The general judgment shall be deemed to be for costs of the garnishment and for an amount not exceeding the full amount specified in the plaintiff's judgment against the original defendant and also not exceeding the amount or value in which *at the time when served and thereafter up to and including said return day* the garnishee was indebted, or had in its hands or possession goods, chattels, moneys, credits, and effects belonging to the original defendant.
>
> (b) At any time after the general judgment the plaintiff may have, from the court or justice in the matter, a discovery against the garnishee and at its cost to ascertain the specific amount due thereunder.

Ark. Code Ann. § 16-110-406 (Repl. 2016) (emphasis added). An interpretation of a statute by an appellate court becomes a part of the statute itself. *Pifer v. Single Source Transp.*, 347 Ark. 851, 857, 69 S.W.3d 1, 4 (2002). Arkansas's appellate courts have long interpreted garnishment statutes like this one to mean that a creditor-garnishor has a lien on all the defendant's property as soon as the writ is served on the garnishee. *Woodcock v. First Commercial Bank*, 284 Ark. 490,

683 S.W.2d 605 (1985); *see also L & S Concrete Co. v. Bibler Bros.*, 34 Ark. App. 181, 186, 807 S.W.2d 50, 52 (1991) (relying on *Magnolia Petroleum Co. v. Wasson*, 192 Ark. 554, 92 S.W.2d 860 (1936)). Immediately, in other words.

Here, Eagle Bank argues that it should not be liable for the amount transferred from Bid Central's account on August 4 because section 4-4-303 gives banks a reasonable time to comply with legal process, garnishments are included in the "legal process" category, and the bank did not have a reasonable time to prevent the wire transfer. According to the bank, the circuit court erred when it deemed the section "not applicable" and declined to determine whether the bank had a reasonable time to comply with the writ. The bank points to cases from other states' courts that have rejected the view that a writ of garnishment is immediately effective upon service because the Uniform Commercial Code provides banks a reasonable time after receiving a writ of garnishment to process it. *See Harbor Bank of Maryland v. Hanlon Park Condo. Ass'n Inc.*, 834 A.2d 993 (Md. 2003) (holding that bank's liability did not begin the moment that judgment creditor served writ of garnishment); *see also W & D Acquisition, LLC v. First Union Nat'l Bank*, 817 A.2d 91 (Conn. 2003) (holding that what is a reasonable time period in which a bank must comply with garnishment process is a factual question). Raynor maintains that the circuit court's "spot-on interpretation and application of the law in light of the facts of this case" should be affirmed because Arkansas law has long required the bank to have immediately impounded the funds Bid Central deposited into its open-then-closed-then-reopened account on August 4; and because the bank failed to do so, the judgment is legally justified.

Eagle Bank's reliance on cases from Maryland and Connecticut, for example, is understandable. *See* 3A Norman J. Singer, *Sutherland Statutory Construction* § 68:2 (8th ed.)

("Where a legislature adopts a statutory provision modeled on a uniform act, courts refer to decisions from other states and the federal judiciary and construe the act the same way as other jurisdictions to provide consistency and uniformity in the law."). Our research has not returned one Arkansas Supreme Court decision that has interpreted section 16-110-406 since it did so in *Woodcock*; only one unpublished court of appeals opinion was located. And no appellate decision in Arkansas has yet addressed section 4-4-303 in a postjudgment garnishment proceeding.

Assuming, but not deciding, that Eagle Bank properly answered the writ of garnishment, we agree with the circuit court that the bank was required to hold nonexempt money belonging to Bid Central as soon as the writ was served on the bank. Section 16-110-406 requires a bank to lien all money "at the time" the writ is "served." *See also* Ark. Code Ann. § 16-110-403 (providing that the interrogatories request the garnishee to recite any money it possesses "at the time of the service of the writ or any time thereafter"). We grant that section 4-4-303 permits a "payor bank" a "reasonable time" to process a legal document after it is "received" or "served." (We are not, however, deciding whether Eagle Bank was in fact a payor bank under the statute. We only assume for the sake of answering the timing question that it was.) Because the garnishment statute is the more specific one relative to the particular question at hand, we hold that it is the controlling authority. A general statute yields to a specific one involving the same subject matter. *Bd. of Trs. for City of Little Rock Police Dep't Pension & Relief Fund v. Stodola*, 328 Ark. 194, 201, 942 S.W.2d 255, 258 (1997). In this case, we are bound by the garnishment statutes and our supreme court's prior interpretations of them.

Article 4 defines the rights between parties with respect to bank deposits and collections. Comment 3 to Ark. Code Ann. § 4-4-101. The article was drafted and updated to remove

state-law barriers so that banks could use automated systems to process and collect checks. Comment 2 to Ark. Code Ann. § 4-4-101. *See also* Ark. Code Ann. §§ 4-4A-101 to -507 (Repl. 2001 & Supp. 2017) (statutes governing wire transfers). Article 4 does not, however, enact a scheme by which a judgment creditor may pursue satisfaction against a judgment debtor, which is the essential purpose of this state's garnishment laws. *See, e.g.*, Ark. Code Ann. §§ 16-110-401 to -417.

We hold that the circuit court did not err in applying the garnishment statutes instead of Article 4 and affirm its judgment.

Affirmed.

KLAPPENBACH and GLOVER, JJ., agree.

Quattlebaum, Grooms & Tull PLLC, by: *Mary-Tipton Thalheimer*, for appellant.

The Key Firm, PLLC, by: *Shawn Key*, for appellee.