

**IN THE COURT OF APPEALS OF IOWA**

No. 3-189 / 12-1360

Filed June 26, 2013

**SPAR INCENTIVE MARKETING, INC.,**

Plaintiff-Appellant,

**vs.**

**THOMAS F. HUNTER, JOHN HARPER**

**HAWKINS III, AND STIMULYS, INC.,**

Defendants,

and

**METABANK d/b/a META PAYMENT SYSTEMS,**

Intervenor/Appellee.

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Appeal from the Iowa District Court for Buena Vista County, Nancy L. Whittenburg, Judge.

Plaintiff appeals the district court's ruling finding funds Plaintiff sought to garnish in a MetaBank bank account were excepted from garnishment because the funds were for a "special purpose." **AFFIRMED.**

Phil C. Redenbaugh and Ryan A. Mohr of Phil Redenbaugh, P.C., Storm Lake, for appellant.

Mitchell A. Peterson of Davenport, Evans, Hurwitz & Smith, L.L.P., Sioux Falls, and Ted Brown of Mack, Hansen, Gadd, Armstrong & Brown, P.C., Storm Lake, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Doyle and Tabor, JJ.

**DOYLE, J.**

Spar Incentive Marketing Inc. (“Spar”) is a judgment creditor seeking to garnish funds in a MetaBank bank account. Stimulys, Inc. (“Stimulys”), the account titleholder, is Spar’s judgment debtor. Following a bench trial, the district court ruled the funds in the bank account were excepted from garnishment because the funds were deposited into that account for a “special purpose.” Spar appeals. We affirm.

***I. Scope and Standards of Review.***

Because garnishment proceedings are actions at law, our review is for errors at law. See Iowa R. App. P. 6.904; *Ellefson v. Centech Corp.*, 606 N.W.2d 324, 330 (Iowa 2000). To the extent this appeal concerns matters of contract construction, our review is also at law. *Ellefson*, 606 N.W.2d at 330. We are not bound by the district court’s legal conclusions, and “we may inquire into whether the district court’s ultimate conclusions were materially affected by improper conclusions of law.” *Id.* However, the district court’s findings of fact are binding if supported by substantial evidence. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Beal Bank v. Siems*, 670 N.W.2d 119, 125 (Iowa 2003). We view the evidence in a light most favorable to the district court’s judgment. *Van Oort Constr. Co. v. Nuckoll’s Concrete Serv., Inc.*, 599 N.W.2d 684, 689 (Iowa 1999).

***II. Background Facts and Proceedings.***

From the evidence presented at trial, a reasonable jury could have found the following facts.

**A. MetaBank.**

Meta Payment Systems (MPS) is a division of MetaBank.<sup>1</sup> MPS, the largest issuer of prepaid cards in the nation, has a relationship with some 6000 banks that sell its gift cards. Through MPS, MetaBank issues and manages prepaid cards on behalf its clients.

The prepaid cards “function like a credit card or debit card but the concept is a little bit different . . . . The consumer . . . or a corporate entity prefunds . . . an account, and then a consumer can use the card to make purchases.” The prepaid cards are branded, typically VISA® or MasterCard®, and the cards are accepted by merchants that accept that brand of payment. The brands contract with merchants; in exchange for a fee, the merchant is guaranteed payment from VISA and MasterCard when a charge is cleared through its payment system.

MetaBank offers various prepaid card programs, including employer incentive programs, and each program has a program manager or “Marketer” that markets and distributes the cards. Although MetaBank is the card issuer, many processing steps by other entities are involved. The complex process, in its most basic general terms, goes like this. First, a client decides to offer a prepaid card to persons. The client places a card order with MetaBank, providing issuing information, including the brand of card, the number of cards to be issued, and the amount to be loaded onto each card for each soon-to-be cardholder. The client then wires funds into MetaBank’s operating account to

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<sup>1</sup> Prior to 2005, MetaBank was named First Federal Savings Bank of the Midwest. Although many of the contracts relevant to this case were executed prior to MetaBank’s name change, we will refer to the bank contractor hereinafter as MetaBank.

support the card balances to be loaded onto each card. The operating account contains a pool of funds to support all of its clients' prepaid card balances.

MetaBank in turn uses a third-party processor to manage the cards, including funding the cards, managing the actual transactions, and item accounting for the cardholders. After taking the client's card order, MetaBank creates an electronic file that is transmitted to the processor, directing the processor to add certain dollar amounts to certain cards. Thereafter, the processor transmits a file back to MetaBank that the processor loaded the card with the requested dollar amount. MetaBank then moves the money from its operating account to its funding account, and the funds for each card's balance remain there until cardholders use their card.

The processor also manages the transaction activity of the cards. Through its electronic process, when a card is swiped, the processor electronically looks at each card account number and determines if the card number is valid, expired, or closed, as well as what the available balance is on the card, and it lets the merchant know whether the transaction should be approved. If approved, the customer walks away with the purchase; however, there is no actual cash in the merchant's hand at this time.

At some point, the merchant reconciles its sales and informs the card brand that it is owed a certain amount for the purchase. VISA or MasterCard pays the merchant; then it goes back to the processor and informs the processor that it paid out a card purchase. The processor then reduces the associated card's available balance. Additionally, the brand debits the same amount from MetaBank's settlement account. Based upon that information, MetaBank then

debits that same amount from its funding account, and it transfers said amount into its settlement account. Thus, the settlement account is “replenish[ed] after the fact.” “MetaBank is moving . . . fungible money from account to account on an as-needed basis, based upon what’s happening in the various prepaid programs.”

***B. Stimulys and the Sealy Program.***

In 2004, MetaBank and Stimulys entered into a “Marketer Agreement” for Stimulys to offer prepaid cards issued by MetaBank “to consumers as an alternative to credit cards, cash or checks.” Stimulys would promote and market MetaBank’s prepaid cards to prospective customers, and Stimulys was to provide “Processing Services to switch or process [prepaid card] transactions.” MetaBank and Stimulys also entered into a “Business Cash Management Agreement” describing the terms and conditions under which MetaBank would provide Stimulys with access to MetaBank’s electronic banking services. This agreement authorized MetaBank in its

sole discretion [to] charge and automatically deduct from [Stimulys’s] Authorized Accounts or any other account [it maintained with MetaBank] as necessary, the amount of a transfer or other Service on or after the date on which [MetaBank] execute[s] the transfer or other Service plus any fees and other amounts incurred with the Services on the date on which such fees or other amounts are due.

The agreement also provided that Stimulys was “solely responsible for the amount of each funds transfer or other Service and other fees or amounts incurred with the Services, even if [it] did not authorize the funds transfer or other Service.” Stimulys agreed to indemnify and hold harmless MetaBank “from and

against any and all losses, liabilities, claims, damages or expenses . . . arising from or related to the access or use of the Services.”

Also in 2004, Sealy, a mattress manufacturer, sought to obtain prepaid cards to pay its salespersons’ earned monetary incentives, and it contracted with Stimulys. To effectuate the Sealy program, Stimulys opened two accounts with MetaBank. The first account was a customer-controlled account, held in the title of Stimulys, known as the Stimulys, Inc. Operating Account (“Operating Account”). Stimulys and Sealy established a process whereby Sealy would directly wire funds it wanted loaded on its salespersons’ prepaid cards into Stimulys’s Operating Account. The second account, also held in the title of Stimulys, was known as the Stimulys, Inc. Commission Account, in which MetaBank paid the commissions Stimulys’s earned from MetaBank as a marketer.

At some point, MetaBank began issuing prepaid cards for Sealy. Sealy would wire the funds to Stimulys. Stimulys would place the card order with MetaBank and the funds Sealy provided to Stimulys to fund the cards would be transferred from Stimulys’s operating account into MetaBank’s operating account. Thereafter, MetaBank used Symmetrex as the third-party processor of Stimulys’s client’s transactions. The process would continue in the ordinary manner from there. However, if a recipient of Sealy’s incentive program did not want a prepaid card, a check would be drafted from Stimulys’s Operating Account by Stimulys, and Stimulys would then have to advise MetaBank to unload the already loaded card.

In 2008, there was a breach in the Symmetrex system, and MetaBank ceased using Symmetrex for its card programs. The Sealy program was then transitioned to MetaBank's own operating system, Simplexus. In doing so, activity was stopped on the existing prepaid Sealy cards, and essentially the process of funding the cards was reversed. The funds in the Symmetrex funding account, which equaled the total available balances on the cards, were moved back into Stimulys's Operating Account, and the card balances were zeroed out. New cards were issued and reloaded with the previous balances, and the funds to support the card balances were then to be manually transferred from Stimulys's Operating Account to MetaBank's Simplexus operating account. At the time of the switchover to Simplexus, there was a balance of close to a million dollars in the Symmetrex funding account. Because the MetaBank system was not designed for the Sealy program, the Sealy card transactions had to be manually processed for about five months. Millions of dollars were run through Stimulys's Operating Account around that time. The Sealy program ended at the end of 2009.

***C. Spar and Subsequent Proceedings.***

At some point, Spar and Stimulys became involved in litigation, and following a settlement agreement, two separate judgments totaling more than \$700,000 were entered by the Supreme Court of New York in favor of Spar and against Stimulys. Spar later learned Stimulys was the titleholder of the MetaBank accounts.

In 2010, Spar filed petitions in Iowa district court for recognition of its foreign judgments against Stimulys, along with a motion for prejudgment seizure

of collateral. The motion stated Spar sought to take possession or to freeze funds held by MetaBank on behalf of Stimulys. The motion also asserted Spar's claim to the funds held by MetaBank were superior to any other claims. The district court the same day entered its order freezing the account funds until a hearing was held "to determine the rights and obligations of the parties." A hearing was then set on the matter.

On April 15, 2010, MetaBank filed its petition to intervene. MetaBank's petition stated that at the time it received the February 8, 2010 Order to Freeze Funds, the amount in Stimulys's Operating Account was approximately \$445,588.54. "Following commencement of [Spar's] action to enforce a foreign judgment, MetaBank learned of the excess funds in [Stimulys's Operating Account]." MetaBank further explained:

For reasons yet to be determined, insufficient funds were withdrawn from [Stimulys's Operating Account] to cover Sealy card loads for a period of almost [two] years. As a result, MetaBank effectively deposited its own money into the funding account without a corresponding debit or withdrawal from [Stimulys's Operating Account] to cover the amount loaded to the stored value cards issued in the Sealy program. Accordingly, a substantial sum of money in [Stimulys's Operating Account] is money that should have been withdrawn to fund the funding account for the Sealy program, but which was simply not withdrawn. As a result, a substantial sum of money in [Stimulys's Operating Account] belongs to MetaBank.

MetaBank stated it had "begun a process of reconciling [Stimulys's Operating Account] to determine the precise amount of money that should have been debited or withdrawn to fund the Sealy stored value cards."

On April 4, 2011, the district court ruled that \$160,270.58, the total balance of Stimulys's Operating Account of \$445,588.54 minus MetaBank's



claimed interest in the account of \$285,317.96, should be released to Spar. A trial concerning the remaining balance of Stimulys's Operating Account was held. Among other things, MetaBank argued<sup>2</sup> that even if the district court found the funds in the account were the property of Stimulys, the funds deposited into that account were for a special purpose, giving MetaBank priority to the funds over Spar's garnishment action. The district court agreed. The court also found that MetaBank possessed a common-law right of set off against the account "when it agreed to and did fulfill card loads requested by Stimulys for the Sealy sales reward program and Stimulys agreed to the terms of [its contract with MetaBank]." The district court entered judgment in favor of MetaBank for the amount MetaBank claimed it was due, but determined the remaining balance in Stimulys's Operating Account, as it previously ruled, was the property of Spar, as well as the amount in Stimulys's Commission Account.

Spar appeals.

### ***III. Discussion.***

Garnishment is a creature of statute which permits a creditor to obtain property of its debtor in the possession of a third party. See *Shine v. Iowa Dep't of Human Servs.*, 592 N.W.2d 684, 688 (Iowa 1999); *Hubbard v. Des Moines Indep. Cmty. Sch. Dist.*, 323 N.W.2d 238, 241 (Iowa 1982). Iowa Code chapter 642 governs Iowa's garnishment process. The statutes contained therein are

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<sup>2</sup> MetaBank also asserted that the funds in the Stimulys, Inc. Operating Account were the property of Stimulys LLC, doing business as Fusion, and not Stimulys, Inc. There is no dispute on appeal concerning the ownership of the account, so we do not discuss the account holder's name issue.

remedial in nature and, to effect their purpose, they are to be “broadly and liberally” construed. *Hopping v. Hopping*, 10 N.W.2d 87, 94 (Iowa 1943).

As a general principle, garnishment proceedings can reach “moneys, credits, or other property,” including a debtor’s general bank deposits, as long as such “actually belong to [the debtor].” 38 C.J.S. *Garnishment* §§ 64, 86 (internal footnotes omitted). Consequently, “the right of the garnishing creditor is dependent upon the right of the debtor to the fund.” *Hopping*, 10 N.W.2d at 94. Additionally, the right of the creditor “is measured by the right of the debtor, and, if as between themselves the debtor has no right to demand and receive the fund from the [third-party] garnishee, then the creditor cannot acquire such right by the garnishment.” *What Cheer Sav. Bank v. Mowery*, 128 N.W. 7, 8 (Iowa 1910); see also *First Nat’l. Bank v. Propp*, 200 N.W. 428, 429 (Iowa 1924); *Iowa Mut. Liab. Ins. Co. v. De La Hunt*, 196 N.W. 17, 18-19 (Iowa 1923); 38 C.J.S. *Garnishment* § 86. In essence, the creditor stands in the shoes of the debtor/depositor and, thus, is generally entitled to the funds located in the account held by the third-party upon demand. See *Ellefson*, 606 N.W.2d at 334. However, our courts have long held that, under the common law, some bank deposits cannot be garnished to satisfy the debtor’s general obligations. See *Andrew v. Colo Sav. Bank*, 219 N.W. 62, 65 (Iowa 1928).

Bank deposits are divided into three types: “general, special, and specific; and, in the absence of proof to the contrary, every deposit is presumed to be general.” *Id.* (internal quotation marks and citation omitted).

A special deposit is created where the money is left for safe-keeping and return of the identical thing to the depositor. And a specific deposit exists when money or property is given to a bank

for some specific and particular purpose, as a note for collection, money to pay a particular note, or property for some specific purpose.

*Id.* Although the terms special and specific are often interchanged when referring to the type of deposit, both types of deposits require “a definite provable contract creating the same.” *Id.* The burden of proving a deposit is special or specific is on one claiming it. See *Andrew v. Union Sav. Bank & Trust Co. of Davenport*, 263 N.W. 495, 497 (Iowa 1935). If it is proved the deposits are special or specific, the garnishment is subordinate to the terms of the contract of deposit. See *Hamilton v. Imes*, 249 N.W. 135, 135 (Iowa 1933). “These propositions are . . . well established and . . . widely accepted . . .” *Andrew*, 263 N.W. at 497. Few cases since the 1935 *Andrew* decision have addressed the “specific purpose” exception to bank funds.

Upon our thorough review of the record, we find substantial evidence supports the district court’s finding that MetaBank established the deposits made into the Stimulys Operating Account were for a specific purpose, not general. Spar faults MetaBank’s overall accounting processes and MetaBank’s failure to recognize, until after Spar’s garnishment action, which the excess funds in the Stimulys Operating Account were there because MetaBank failed to transfer the funds as a result of the 2008 system switchover and manual transfer errors. Nevertheless, MetaBank’s delay in claiming the funds never changed the purpose for which funds were deposited in the Stimulys Operating Account—To fund card loads for the Sealy program. And MetaBank established it used its own funds to cover the loading of Sealy cards instead of transferring Sealy’s funds from the Stimulys Operating Account to load the cards. Even Spar’s

witness, who was with Stimulys until October 2008, testified the money in the Stimulys Operating Account was deposited by Sealy for the purpose of funding card loads for its incentive program. MetaBank's high volume of business and large daily monetary transactions unfortunately allowed its error in failing to transfer the money to its own funding account to go unnoticed until Spar sought garnishment of the account. Even so, the funds in that account were never actually Stimulys's funds, nor were the funds ever used for the purpose of paying debts or obligations owed by Stimulys. The district court's finding that MetaBank established the deposits made into the Stimulys Operating Account were for the specific purpose of covering card loads for the Sealy prepaid card program is supported by substantial evidence in this record. We therefore find no error in the court's conclusion that MetaBank's claim to the funds in the Stimulys Operating Account was superior to Spar's claim. Accordingly, we affirm the ruling of the district court.<sup>3</sup>

**AFFIRMED.**

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<sup>3</sup> Because MetaBank's claim is superior to Spar's claim, we need not discuss MetaBank's contractual rights to setoff or Spar's contentions concerning MetaBank's answers to its interrogatories.