

BANK ONE, LOUISIANA. N.A. * **NO. 2006-CA-0071**
VERSUS * **COURT OF APPEAL**
ANIOMA HOME HEALTH * **FOURTH CIRCUIT**
CARE AGENCIES, INC., I. C. *
A. OKPALOBI AND PAIGE * **STATE OF LOUISIANA**
OKPALOBI

* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-1837, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

* * * * *

Judge Roland L. Belsome

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(Court composed of Judge Patricia Rivet Murray, Judge Terri F. Love, Judge Edwin A. Lombard, Judge Leon A. Cannizzaro, Jr., Judge Roland L. Belsome)

LOMBARD, J. CONCURS WITH REASONS

CANNIZZARO, J. CONCURS IN PART AND DISSENTS IN PART WITH REASONS

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REVERSED AND REMANDED

Gentilly Medical Clinic for Women (“Gentilly Medical”) appeals the district court’s judgment granting JPMorgan Chase’s petition to assess judgment against Gentilly Medical as the garnishee. We remand.

FACTS AND PROCEDURAL HISTORY:

Plaintiff JPMorgan Chase (f/k/a Bank One)(“Chase”) obtained a judgment against the defendants, Aniona Health Care Agencies, Inc., I.C.A. Okpalobi and Paige Okpalobi for a default on a note secured by a mortgage for property located at 3024 Gentilly Boulevard, New Orleans, Louisiana, in July 2001. The defendants then filed for bankruptcy. In October 2002, Chase subsequently obtained a judgment against defendant-in-rule Gentilly Medical, Mr. Okpalobi’s employer, ordering Gentilly Medical to garnish Mr. Okpalobi’s wages. The Okpalobis sold the mortgaged property to a third party in January 2005, and the equity proceeds of the sale were applied to their debt. Due to numerous outstanding tax liens, however, neither the sale of the property nor a subsequent reimbursement for a portion of the city

taxes extinguished the Okpalobis' debt at the time of the sale. Accordingly, although the sale of the property resulted in a cancellation of the mortgage itself, it did not satisfy the debt that continued as an *in personam* liability, because both Mr. and Mrs. Okpalobi personally guaranteed the promissory note. Therefore, even after the sale of the mortgaged property, Gentilly Medical was legally obligated to continue garnishing Mr. Okpalobi's wages until the debt to Chase was satisfied.

Gentilly Medical, however, failed to make the appropriate garnishment payments from January through May of 2005. As a result, Chase filed a rule to assess a judgment against Gentilly Medical. After a hearing on May 27, 2005, the trial court held Gentilly Medical liable for the full amount of the unpaid amount pursuant to Article 2412. The court also ordered Gentilly Medical to pay all past due payments within 30 days, and to continue the monthly garnishment payments under the terms of the original garnishment order until the debt was satisfied. The court further ordered attorney's fees and costs and contempt sanctions in the amount of \$500.00 each. The judgment stated the amount due as of May 31, 2005 as \$396,184.12. This appeal followed.

We review this judgment to determine whether the trial court was manifestly erroneous in granting the Chase's petition to assess judgment

against the garnishee for the full amount of the balance due.

DISCUSSION:

The principal amount of the defendants' debt was \$324,953.17. After the sale of the property, Chase received \$77,435.02 for the cancellation of past due taxes, and the sale proceeds of \$116,354.89 were described on the HUD statement as "Payoff of First Mortgage to JPMorgan Chase Bank." The sale of the property resulted in the cancellation of the mortgage; however, the *in personam* debt of defendants remained for the remainder of the balance due.

The Okpalobis assert that a deficiency judgment was in fact conducted through executory process, and moreover, that it was executed incorrectly, because no legal appraisal of the property was made. The Okpalobis further argue that the trial court did not credit them for the previously withheld garnished amounts. Neither of those issues, however, are the subject of the judgment presently before this Court.

Additionally, although the issue is not for review in this Court, Chase correctly notes that pursuant to La. C.C.P. Art. 2771, a creditor may *only* obtain a deficiency judgment if the property is sold through executory process. Because the sale of the property was a private, rather than a judicial sheriff's sale, no deficiency judgment procedures were necessary in this

case. Furthermore, the Okpalobis offered no proof that the plaintiff failed to credit the proper amounts to their debt, and, according to Chase, did not even request a statement of the amount due under the judgment. Thus, the argument that Chase failed to follow the procedures for a deficiency judgment is without merit.

Accordingly, despite the arguments set forth in the appellants' brief, the only issue before this Court is whether the trial court's judgment holding Gentilly Medical liable for the full amount of the unpaid judgment with interest and costs was proper. Under Louisiana law, a garnishee may be held responsible for withholding wages until the full amount of a judgment is paid:

In every case in which the wage or salary...shall be garnished either under attachment or fieri facias or as otherwise provided by law, a judgment shall be rendered by the court of competent jurisdiction in which the garnishment proceedings may be pending fixing the portion of such wage, salary, commission, or other compensation as may be exempt, as provided by law, **and providing for the payment to the seizing creditor of whatever sum for which judgment may be obtained**, out of the portion of such compensation which is not exempt.

La. R.S. 13:3921(A)(2006)(emphasis added).

Louisiana law does not, however, specifically address the appropriate remedy for a garnishee that fails to make the ordered payments. The court in *Smetherman v. Wilson Oil Company, Inc.*, 635 So.2d 593, 595 (La.App. 3

Cir. 1994), No. 93-1165 4/6/94, a case with a nearly identical fact pattern, noted this omission in the garnishment statutes. In that case, the Third Circuit found that under Louisiana law, a court may order a garnishee to enforce the garnishment order, and that a garnishee may be held liable only for the amount that it failed to collect. *Id.* In *Smetherman*, the plaintiff, Smetherman, instituted litigation to collect on a promissory note owed by J. Michael Wilson (“Wilson”). *Id.* at 594. The trial court granted summary judgment in favor of Smetherman. *Id.* Smetherman then instituted garnishment proceedings against Wilson, who was employed as the president of defendant Wilson Oil Company (“Wilson Oil”). *Id.* Interrogatories were issued to Wilson Oil, which were answered within the delays mandated by Article 2412. *Id.* A consent judgment was then granted whereby Wilson Oil agreed to garnish Wilson’s wages and to turn the seized money over to the sheriff. *Id.* As in this case, despite the court order, the garnishee failed to withhold the appropriate amounts. *Id.*

Smetherman filed a rule to show cause, and the trial court held Wilson Oil Company liable for the full amount of the amount due on the note, including interest and attorney's fees, pursuant to Article 2413. *Id.* On appeal, Wilson Oil argued that it should have been held liable only for the amount that it failed to withhold until the date of the judgment, as opposed

to the entire balance owed by Wilson. *Id.* at 594-95. Significantly, the court noted that although garnishment is governed by both Article 2411 *et seq.* and La. R.S. 13:3921 *et seq.*, “[n]either body of law provides for or specifies a penalty against a garnishee who fails to comply with a court ordered garnishment. Accordingly, ordinary contempt and/or collection proceedings must be invoked to enforce such a judgment.” *Id.* at 595 (emphasis added).

In this case and in *Smetherman*, the garnishees timely responded to the interrogatories and subsequently entered into a consent judgment for the garnishment procedure. *Id.* The court in *Smetherman* noted that the failure of the garnishee to withhold the ordered amounts was “even more egregious than [the conduct that is] penalized by Article 2413 [failure to answer garnishment interrogatories].” *Id.* The court further observed that “**the law provides for no particular penalty for this conduct, and we know of no authority by which we can analogize the penal provisions of Article 2413 to the instant case.**” *Id.* (emphasis added). Accordingly, the court found that “*Smetherman* is clearly entitled to judgment against Wilson Oil, but his judgment is not based on Art. 2413 because Wilson did not fail to answer interrogatories,” and thus limited the judgment to the amount that should have been withheld from the date of service of the garnishment proceedings.

Id. Additionally, the court ordered Wilson Oil to continue garnishment payments until the debt was satisfied. *Id.*

No assertion has been made by Chase that Gentilly Medical did not timely answer the garnishment interrogatories; the record indicates that Gentilly Medical answered the interrogatories within the delays mandated by Article 2412. Thus, Gentilly Medical cannot be held liable for the full amount of the judgment under either arts. 2412 or 2413. Accordingly, because the only remedy provided by garnishment statutes is with respect to failure to answer interrogatories, this Court looks to the jurisprudence in determining the appropriate remedy for failure to make court-ordered garnishment payments. We find the Third Circuit's reasoning limiting the enforcement of the judgment to the past due amounts and an order to continue garnishment payments persuasive.

The trial court shall therefore order the garnishee to pay the amounts that should have been withheld from the date of the original garnishment order and to continue garnishment payments until the debt to Chase is satisfied. Moreover, because the trial court's judgment awarded attorney's fees and contempt sanctions pursuant to Article 2413, we adopt the Third Circuit's reasoning that such amounts may be awarded at the trial court's discretion, but only through ordinary contempt and collection proceedings,

and not pursuant to Article 2413. Therefore, we remand this matter to the trial court for a determination of the precise amount owed Chase by Gentilly Medical.

DECREE:

Reversed and remanded to the trial court for further proceedings in accordance with this opinion.

**REVERSED AND
REMANDED**