

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/23/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV1804363

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: Q. ROARY

PLAINTIFF: BH FINANCIAL
SERVICES, LLC

vs.

DEFENDANT: GEORGE ADAMS

NATURE OF PROCEEDINGS: CLAIM OF EXEMPTION HEARING

RULING

Appearances required.

Background

This is a collections action originally filed in 2018. Plaintiff BH Financial Services, LLC (“Plaintiff”) alleged that Defendant George Adams (“Defendant”) took out a loan from LoanMe, Inc. and defaulted on it. (Complaint, ¶ 7.) Plaintiff subsequently purchased that debt and sued Defendant for the outstanding balance. (*Id.*, ¶ 8.) The parties stipulated to a resolution of the case, and judgment was entered against Defendant pursuant to that stipulation in the amount of \$15,553.54. (Judgment [Apr. 12, 2019].) On October 9, 2023, this Court issued a writ of execution directing the Marin County Sheriff’s Office to enforce the judgment.

On or around April 30, 2024, Bank of America submitted to the levying officer a form indicating that a Bank of America safe deposit box (number 013837L) and account (number #37L4) located in Greenbrae and belonging to Defendant had been levied upon. (Notice of Filing of Claim of Exemption [filed June 26, 2024], p. 2.) The submission contained an attestation from Bank of America’s representative that Bank of America is “holding \$11,023.29 in excess of the statutory exempt amount from an account that receives direct deposit of social security public benefits payments” and is “unable to determine if all or part of the funds are exempt.” (*Ibid.*) The levying officer served Bank of America’s submission on Plaintiff by mail on May 10, 2024. (*Id.* at p. 1.) Plaintiff noticed a hearing for the Court to determine the portion of the \$11,023.29 that is exempt. (See Code Civ. Proc., § 704.080, subd. (e)(1).¹) Defendant has not offered any evidence or argument on his own behalf.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise specified.

Legal Standard

Code of Civil Procedure, section 704.080 relates to attempts by a judgment creditor to collect a money judgment by placing a levy on the judgment debtor's deposit account. "Deposit account" within the meaning of the statute "means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent." (§ 704.080, subd. (a)(1).) " 'Social security benefits' means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.' 'Public benefits' means aid payments authorized pursuant to" specified portions of the Welfare and Institutions Code. (§ 704.080, subd. (a)(2).)

Up to a certain dollar amount, deposit accounts are automatically exempt from being levied to satisfy a money judgment, regardless of whether the judgment debtor seeks an exemption. (§ 704.080, subd. (b) ("Section 704.080(b)").) The amount that is automatically exempt is determined by the type of payments the government makes to the account (i.e., public benefits versus Social Security payments) and the number of depositors serving as the designated payee. (*Ibid.*) For example, for a deposit account where only one depositor is the recipient of directly deposited government payments and those payments are public benefit payments as opposed to Social Security payments, \$1,750 worth of the funds in the account are exempt. (§ 704.080, subd. (b)(1).) Funds in a deposit account in excess of that automatic exemption threshold are exempt "to the extent [they] consist[] of payments of public benefits or social security benefits." (§ 704.080, subd. (c) ("Section 704.080(c)").)

When a judgment creditor levies upon a deposit account, the financial institution that holds the deposit account must place the amount in the account that exceeds Section 704.080(b)'s automatically exempt portion "in a suspense account or otherwise prohibit withdrawal of that amount[.]" (§ 704.080, subd. (d).) "Within 10 business days of the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the [automatic] exemption provided by [Section 704.080(b)]. (*Ibid.*) "Promptly upon receipt" of this notice, the levying officer "shall serve the notice on the judgment creditor" personally or by mail. (*Ibid.*) If the judgment creditor wishes to claim that the amount described in the notice is *not exempt*, within five days of being served with the financial institution's notice, the judgment creditor must file with the court and the levying officer an affidavit alleging that the amount is not exempt. (§§ 704.080, subd. (e)(1); see also 703.560 [requirements for affidavits in opposition to claims of exemption].) A hearing will then be held to determine the portion, if any, of the deposit account that is exempt under Section 704.080(c). (§ 704.080, subd. (e).) *If the judgment creditor does not serve the judgment debtor with notice of the impending hearing on a Section 704.080 claim of exemption and a copy of the affidavit/notice of opposition at least ten days before the hearing, the levying officer is required to release the deposit account from the levy and notify the financial institution.* (§§ 703.570, subd. (b); 704.080, subd. (e)(2).)

At the hearing, the judgment debtor has the burden of proving that any portion of the amount in excess of the amount described in Section 704.080(b) is exempt under Section 704.080(c). (§ 704.080, subd. (e)(4); see also § 704.080, subd. (f) [if the judgment debtor claims a portion of the contested amount is exempt under any authority other than Section 704.080(c), he must file a

claim of exemption in the standard manner described in Article 2, commencing with Section 703.510].)

The court shall immediately transmit a certified copy of its order to the financial institution and the levying officer. (§ 704.080, subd. (e)(6).) The financial institution must remove any restrictions on the judgment debtor's withdrawal of any portion of the account deemed exempt under Section 704.080(c). (*Ibid.*)

Discussion

Plaintiff served Defendant with a notice of the July 23, 2024 hearing by mail on June 25, 2024 and again on June 28, 2024. (See Notice of Hearing [filed June 26, 2024], p. 3; Amended Notice of Hearing [filed June 28, 2024], p. 3.) The proofs of service for both notices of hearing say Defendant was served with "the attached Notice of Hearing on Claim of Exemption and the attached Notice of Opposition to Claim of Exemption[.]" but each of them attaches only the former document and *not* a notice of opposition. Other than these documents, there is no indication in the record that Defendant was served with a copy of the notice of opposition.

Because the proofs of service purportedly proving that Defendant was served with Plaintiff's opposition in this case claim to attach that opposition but do not actually do so, the Court is concerned that Defendant was not served with a copy of the opposition. If this is the case, the levying officer was required to release the deposit account from levy, taking this claim of exemption out of the Court's hands. (§§ 704.080, subd. (e)(4); 703.570, subd. (b)(2).) Under these circumstances, it would not matter that Defendant put forth no evidence or argument on his own behalf. A judgment debtor's burden to prove the extent to which Section 704.080(c)'s exemption applies only kicks in once the matter reaches the hearing stage. (See § 704.080, subd. (e)(4).)

Therefore, Plaintiff should appear at the July 23, 2024 hearing prepared to offer proof that the documents it mailed to Defendant on June 25 or June 28, 2024 in fact included a copy of the notice of opposition. If getting this evidence requires more time (for example, if Plaintiff no longer has copies of exactly what it served and needs to prove that the opposition was included by getting a declaration from "E. Escobar," who signed the proofs of service), the Court will continue the matter.

The Court notes that Plaintiff filed multiple Notices of Opposition in this case, one on May 14, 2024 and two others (each using a different form) on June 26, 2024. The only valid opposition on record, and the one Defendant needed to be served with, is the one filed on May 14, because this was the only one filed within the statutorily permitted time period (within five days of the levying officer serving the judgment creditor with the notice from the financial institution). (§ 704.080, subd. (e)(1)-(e)(2).)

The Court will not reach the merits of the claim of exemption absent assurance that the statutory prerequisites to the Court hearing the matter are satisfied. The statutory scheme does not contain any mechanism for the judgment creditor to get a second chance at fulfilling the requirements to get to the hearing stage, so if Plaintiff did not timely serve Defendant with a copy of the notice of opposition, the Court will grant the exemption in the amount of \$11,023.29.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for July, 2024 is as follows:

<https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09>

Meeting ID: 160 292 5171

Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/23/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000353

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: Q. ROARY

PLAINTIFF: PLEIADES WINE
COMPANY, INC., ET AL

vs.

DEFENDANT: THACKREY & CO., ET AL

NATURE OF PROCEEDINGS: MOTION TO COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

The hearing has been continued to September 17, 2024 at 1:30 p.m. in Courtroom A.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for July, 2024 is as follows:

<https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09>

Meeting ID: 160 292 5171

Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/23/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001531

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: Q. ROARY

PLAINTIFF: EDWARD STEINMAN, ET
AL

vs.

DEFENDANT: GARY STARR

NATURE OF PROCEEDINGS: DEMURRER

RULING

Because a first amended complaint was filed by Plaintiffs on July 3, 2024, the demurrer by defendant Starr is ordered **DROPPED** from the calendar. (Code Civ. Proc., § 472, subd. (a); *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 505-506.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for July, 2024 is as follows:

<https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09>

Meeting ID: 160 292 5171

Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>