Reaching Your Share: Enforcing Judgments by Levying on Joint Bank Accounts and Safety Deposit Boxes

Like anyone else, sometimes judgment debtors keep joint bank accounts with their spouses or children. We're often asked if judgment holders can reach these funds when seeking to enforce their judgment. The answer is yes, but it will take time and effort.

Shared ownership

In New York, real property (i.e., houses, apartments, etc.) can be owned by two spouses "in the entirety." Translating from fancy lawyer to plain English, this means that both spouses entirely own the property. If a creditor has a judgment against only one spouse, the creditor can't take the property. (The creditor's rights in this situation are featured in this blog post.)

But all other property — like bank accounts, safety deposit boxes, cars, etc. — can't be held "in the entirety". Instead, when you walk into the bank and ask to open a "joint account," it's presumed to be held in "joint tenancy with right of survivorship." Banking Law § 675(b). (And because nobody except our parents still uses safety deposit boxes, we will focus on joint bank accounts as an example.)

Judgment Creditors' Rights

When property like a bank account is held jointly — "joint tenancy" — a creditor can reach the entire account. This is because each of the account holders is considered to be "possessed of the whole of the account so as to make the account vulnerable to the levy of a money judgment by the judgment creditor of one of the joint tenants" Viggiano v. Viggiano, 136 A.D.2d 630, 630 (2d Dep't 1988).

However, even though each "tenant"— or, in the bank account example, account holder — is supposedly "possessed of the whole," the presumption is that each holder only owns half of the account. Mendel v. Chervanyou, 147 Misc. 2d 1056, 1059 (Civ. Ct., Kings Cty. 1990). The judgment creditor can overcome the presumption — by showing, for example, that the second name on the account was really there just for convenience or to frustrate creditors.

And while banks will simply hand over the contents of an individual account to a judgment creditor, they won't directly turn over the joint account. Instead, we have to file a special proceeding for "turnover," under CPLR 5225(b), asking the court to order it. The proceeding is served on the other named account holder, who can then establish

how much of the funds are actually theirs. See Household Fin. Corp. v. Rochester Cmty. Sav. Bank, 143 Misc. 2d 436, 437 (City Ct., Monroe Cty. 1989). In other words (borrowed from Jerry Maguire), the non-judgment account holder has to show us the money.

No response?

What if no one responds to the turnover proceeding? What if the non-judgment debtor doesn't show up to claim their half of the account? The courts are divided as to whether the default means that the judgment creditor gets the whole account.

In Mendel, the court seems to say that a default doesn't entirely meet the creditor's burden to prove the entire ownership. 147 Misc. 2d. at 1060; accord Direct Merchants Credit Card Bank v. Greenpoint Bank, 2003 WL 2004163, at *4 (Dist. Ct., Nassau Cty. Mar. 11, 2003). In contrast, in Ford Motor Credit Co. v. Astoria Fed., the court explained, "The default of the non-debtor tenant establishes that he/she has no ownership interest; this is especially true when the non-judgment tenant is personally served and defaults in answering the allegations of the petition which seeks the full amount of the bank account." 189 Misc. 2d 475, 477 (Dist. Ct., Nassau Cty. 2001).

While the lower courts seem to be enjoying a talmudic discussion around the issue, we can presume that, at a minimum, we should be able to reach at least half of the account.

Conclusion

An extra account holder is a complication, but it won't prevent you from recovering the funds you are entitled to in seeking to satisfy a judgment in New York.

(For more information on judgment enforcement and asset recovery, contact Enforcement@PollockCohen.com.)