COURT OF APPEALS
DECISION
DATED AND RELEASED

April 30, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3199

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

MAX GENDELMAN,

PLAINTIFF-RESPONDENT,

v.

ARMANDO GOLLAZ,

GARNISHEE-DEFENDANT-APPELLANT,

NELSON BROTHERS AND STROM,

GARNISHEE.

APPEAL from an order of the circuit court for Racine County: STEPHEN A. SIMANEK, Judge. *Affirmed.*

BROWN, J. Armando Gollaz appeals from an order enforcing an earnings garnishment in favor of Max Gendelman. Gollaz contends that the garnishment is void because Gendelman no longer owned the underlying judgment and could not have legally commenced the action. In addition, Gollaz

asserts that James Gourley, Sr., and COM-TEC SERVICES, Inc., engaged in the unauthorized practice of law during an earlier attempt to collect Gendelman's judgment. We conclude that Gendelman owned the judgment and that Gollaz's allegations of unauthorized practice of law by Gourley and COM-TEC have no effect on the garnishment order. We affirm.

Gendelman obtained this judgment against Gollaz in 1991 for unpaid rent. Five years later, in March 1996, Gendelman entered into an agreement with Gourley who was to help him collect the judgment. They labeled their agreement an "assignment contract." The agreement gave Gourley the "exclusive right" to collect the judgment against Gollaz for nine months. It further provided that Gendelman and Gourley would equally split any amounts collected by Gourley.

The following May, Gourley wrote Gendelman to notify him that he had located Gollaz and his place of employment. Gourley also informed Gendelman that COM-TEC, of which Gourley was president, had become a licensed collection agency in Wisconsin and he asked Gendelman to sign a new agreement with COM-TEC relating to the collection of Gendelman's accounts, including the Gollaz judgment.[1]

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[1] Gourley's letter to Gendelman contained an enclosure that described the services provided by COM-TEC as follows:

> Here at COM-TEC SERVICES, INC., we specialize in the research and execution of uncollected judicial judgments. While obtaining a judgment against those who owe you money is really not all that difficult, the buck seems to stop here .... Not only do debtors do an excellent job of hiding their assets, but actually go into hiding themselves causing you to wonder what action to take. In conjunction with our computers being on-line with national credit bureaus, we make daily visits to the Court Houses of this and neighboring counties utilizing 15 state and local departments, all in the process of locating your debtor and his or her assets.

(continued)

Gendelman therefore entered into a new agreement with COM-TEC; this agreement was labeled an "agency agreement." It continued to award COM-TEC half of any amount recovered from Gendelman's accounts in exchange for COM-TEC's services. However, Gendelman specifically maintained "the right to determine whether a claim shall be placed in litigation and to select an attorney for that purpose."[2]

The following June, Gendelman initiated this earnings garnishment action against Gollaz. The garnishment notice listed Gendelman as the creditor and named Attorney Robert C. Kupfer as Gendelman's attorney. The notice was signed by Kupfer and the notice was stamped to indicate that it was drafted by Kupfer.

Gollaz moved to dismiss the action. Gollaz claimed that Gendelman previously assigned his rights to the judgment to Gourley through their March agreement, and therefore, Gendelman no longer owned the judgment. Moreover, Gollaz claimed that the action had not been brought by the real party in interest, namely, Gourley.

At the hearing on the motion,[3] Gollaz elaborated on his claims. He argued that the March agreement between Gendelman and Gourley was an assignment which had the effect of transferring ownership of the judgment from Gendelman to Gourley, and thus, Gendelman no longer owned the judgment. In

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[2] *Compare* ***State ex rel. State Bar of Wis. v. Bonded Collections, Inc***., 36 Wis.2d 643, 655, 154 N.W.2d 250, 256 (1967) (concluding that a collection agency engaged in the unauthorized practice of law when it retained and directed counsel on behalf of its clients who were the actual creditors).

[3] The Honorable Dennis J. Flynn, presiding.

addition, Gollaz relatedly argued that Gourley, through COM-TEC, was engaged in the unauthorized practice of law because he and his firm, not Gendelman, were the real parties in this collection action.

In response, Kupfer stated that he currently was appearing on Gendelman's behalf. He also clarified that he had represented Gendelman concerning this judgment, "on and off," since 1991. Kupfer, however, acknowledged that Gendelman had also retained the services of COM-TEC.

The trial court denied Gollaz's motion to dismiss. It rejected his argument that Gendelman and Gourley's March agreement affected Gendelman's current attempt to collect the judgment. The court also found that Kupfer represented Gendelman in the present action to collect the judgment against Gollaz. Finally, the court found that Gollaz did not establish that COM-TEC "was practicing law without a license."

In October 1996, the court entered a final garnishment order against Gollaz.[4] Gollaz now appeals from that order, seeking review of the earlier ruling not to dismiss the claim. *See* RULE 809.10(4), STATS. ("[a]n appeal from a final judgment or final order brings before the court all prior nonfinal judgments, orders and rulings ....").

On appeal, Gollaz first renews his argument relating to the ownership of the judgment. This issue involves the interpretation of the original (March) agreement between Gendelman and Gourley to determine whether Gendelman transferred ownership of the judgment to Gourley. Construction of a

[4] The Honorable Steven A. Simanek, presiding.

written agreement is a matter of law that this court reviews independently of the trial court. *See* ***Eden Stone Co., Inc. v. Oakfield Stone Co., Inc.,*** 166 Wis.2d 105, 115, 479 N.W.2d 557, 562 (Ct. App. 1991).

Our supreme court set out the following definition of an assignment in ***Kornitz v. Commonwealth Land Title Ins. Co.***, 81 Wis.2d 322, 327, 260 N.W.2d 680, 683 (1978):

> "As a general rule, a valid and unqualified assignment operates to transfer to the assignee all the right, title, or interest of the assignor in the thing assigned, but not to confer upon the assignee any greater right or interest than that possessed by the assignor. It passes the whole right of the assignor, nothing remaining in him capable of being assigned, and the assignor has no further interest in the subject matter of the assignment." [Quoted source omitted.]

Although Gendelman and Gourley labeled their March agreement as an "assignment contract," the issue we face is whether it actually was an assignment under the ***Kornitz*** standard.

We conclude that it was not. The agreement stated that Gendelman "agrees to assign all rights, interest in and title to the judgment" to Gourley. But in substance, "the whole right of the assignor" (allegedly Gendelman) was never transferred to Gourley. *See* ***id.*** We know this because Gendelman retained the right to half of whatever was collected or, in other terms, half of the judgment. Moreover, Gendelman retained a conditional right to the whole judgment as Gourley was required to "assign the said judgment back to [Gendelman] in the event of unsuccessful collection." Whatever label Gendelman and Gourley affixed to this agreement, it was not an assignment under the ***Kornitz*** standard because Gendelman did not transfer all of his interest in the judgment to Gourley.

Given the nature of the arrangement between Gendelman and Gourley, their March agreement would have been more suitably labeled as a "service agreement." Indeed, we note that they labeled their second agreement as an "agency agreement." These phrases better describe the purpose and effect of their agreements. Gourley agreed to provide his collection services to Gendelman in exchange for half of the proceeds from the collection, if collection ever took place.

Whatever drafting errors Gendelman and Gourley made in their March agreement, these errors have no effect on our legal conclusion that the March agreement was not an assignment. Thus, we reject Gollaz's argument that Gendelman did not own the judgment when he commenced this action.

Next, we turn to Gollaz's claim that Gourley and COM-TEC engaged in the unauthorized practice of law. Here, he seems to be seeking relief from the final garnishment order on the grounds that he was somehow "victimized" by these activities.[5]

We have reviewed Gollaz's allegations and are not persuaded that the trial court erred in its conclusion that no unauthorized practice took place. We will not discuss why we are of this view, however, because regardless of whether

[5] We base our characterization of Gollaz's argument on the following statements from his brief:

> The garnishment was not legally commenced because the person in whose name it was filed did not own the judgment. *This alone entitles Mr. Gollaz to a reversal of the order of the circuit court.* But the record is also unequivocal and abundantly clear that the real proponent of the earnings garnishment, James K. Gourley, Sr., has at least twice engaged in the unauthorized practice of law. [Emphasis added.]

Gourley and COM-TEC engaged in unauthorized practice, we could not, as a remedy, reverse the garnishment order against Gollaz. *See* ***Littleton v. Langlois***, 37 Wis.2d 360, 364, 155 N.W.2d 150, 152 (1967) (holding that the remedy for unauthorized practice of law is *not* the reversal of the judgment). In fact, Gollaz concedes that ***Littleton*** controls.[6]

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

[6] Because we conclude that Gendelman owned the judgment and properly commenced this garnishment action, and we conclude that Gourley and COM-TEC's alleged unauthorized practice of law could not affect the validity of the resulting garnishment order which is the subject of this appeal, we dismiss Gollaz's claim that this garnishment action was frivolous.