

CITIBANK SOUTH DAKOTA v. ROBERTSON

10CF9394

CLAIM OF EXEMPTION

This is a limited-jurisdiction, collections case. Before the Court is the defendant-debtor's wage garnishment claim of exemption.

On 02/14/11, a clerk's judgment by default was entered in the amount of \$16,262.50.

On 10/03/18, a writ of execution was returned unsatisfied. No payments had been secured. At the time, the accrued debt had reached \$21,932.58.

On 03/22/19, this Court granted in part defendant-debtor's wage garnishment claim of exemption, concluding that he could pay \$181.64 each pay period.

On 12/21/20, the judgment was renewed in the total amount of \$17,486.74. This amount accounted for payments received (\$4,430.84) and interest accrued post-judgment (\$5,610.08).

On 02/03/23, defendant-debtor filed a second wage garnishment claim of exemption. Therein, he advised that he was unwilling to agree to *any* withholding. He states the following as his pertinent finances:

- Monthly income: \$3,410.91
- Spouse income: "unknown" (spouse did not sign)
- Adult son income: "unknown"
- Savings: "none"
- Assets: "nothing of significant value"
- Monthly expenses: \$4,070.00 (50% tax debt)

To defendant-debtor's credit, he claims higher monthly income, and lower monthly costs, now than he did in 2019. Nevertheless, the refusal to offer anything – even the amount previously ordered – is curious. He claims that he and his wife "keep their finances separate" and yet he apparently covers 100% of the monthly household expenses (including "rent" and \$300 for DirectTV).

A certain portion of a judgment debtor's wages are automatically exempt (*Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1058), leaving the *lesser* of: (1) 25% of the employee's disposable earning for that week; or (2) the amount by which the disposable earning for the week exceeds 30 times the federal minimum hourly wage, or stated another way 50% above the state minimum hourly wage. (CCP §706.050.)

"Disposable earnings" are those earnings remaining after deduction of any amounts required by law to be withheld including social security, federal and state income taxes,

and state disability insurance. (*Ahart*, Cal. Prac. Guide, *Enforcing Judgments and Debts*, § 6:1171.) Based on the figures provided, and creditor's calculations, that amount comes to \$578.31

Additional amounts are exempt to the extent they are necessary for the support of the judgment debtor or his family. CCP §706.051(a)(b). There is no precise definition of what is "necessary" for the support of a judgment debtor or his family. (*Ahart*, Cal. Prac. Guide, *Enforcing Judgments and Debts*, § 6:1179.) "Necessary" expenses normally include housing costs, food, insurance, automobile costs, and the like, but the court must consider the circumstances surrounding each individual case. (*J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16, 18.) Although the burden of proof lies with the party claiming the extra necessities, exemption statutes are generally construed in favor of the debtor. (*Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86.)

Initially, creditor has not "done the math" for this Court as to the necessities, yet at the same time this Court is unclear whether the household costs are debtor's 50% (splitting with his spouse), or the entire household expense. For example, is DirectTV \$300/month or \$600/month? Taking that the installment payments belong solely to debtor, and since debtor failed to provide any evidence regarding the other costs in Paragraph 4, this Court concludes that those "necessities" in Paragraph 4 (except j) are overstated by 50%. This leaves roughly **\$200/month that can be garnished. Since debtor is paid monthly, that shall be the order.**

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.