FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed May 22, 1984

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NORWEST BANK CEDAR FALLS, Formerly FIRST NATIONAL BANK, CEDAR FALLS,

Plaintiff-Appellant,

vs.

DISTILLERLAND DISCOUNT CENTERS, INC., An Iowa Corporation,

Defendant,

GENE H. GAVLOCK,

Defendant-Appellee,

And DON E. GOTTSCHALK,

Defendant.

4-107
83-987

Appeal from the Iowa District Court for Black Hawk County - L. John Degnan, Judge.

Plaintiff bank appeals from an adverse judgment in garnishment proceedings, asserting, inter alia, that defendant judgment debtor did not meet his burden of proving that the garnished funds should not be turned over to the bank. REVERSED.

Donald B. Redfern of Redfern, McKinley, Mason & Dieter, Cedar Falls, Iowa, for plaintiff-appellant.

L. Don Snow of Mershon, Snow & Knock, Cedar Falls, Iowa, for defendant-appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

Plaintiff bank appeals from an adverse judgment in garnishment proceedings, asserting, inter alia, that defendant judgment debtor did not meet his burden of proving that the garnished funds should not be turned over to the bank. We agree and reverse the trial court decision.

In 1981, plaintiff, Norwest Bank, obtained a judgment of $52,754.11 against defendant Gavlock and others which remained unsatisfied. In 1983, the bank sought to garnish $7,500, which Gavlock had paid to a realtor in connection with his proposed purchase of a house. The $7,500 was turned over to the sheriff and Gavlock filed a resistance to the garnishment requesting that the money be held by the court pending the outcome of a lawsuit in which he sought specific performance of the real estate contract after the vendor refused to sell to him. The court found that Gavlock's right to the money remained to be determined in his action for specific performance and that the money was therefore not subject to garnishment.

The burden of proof in moving to deny payment of garnished funds is upon the defendant. Iowa Code § 642.15 (1983); Hopping v. Hopping, 233 Iowa 993, 1006 (1943). The only evidence presented by Gavlock was testimony by the garnishee's representative, Larry Winninger. Mr. Winninger testified that Gavlock placed $7,500 in the Winninger trust account for payment over to the seller of a home which Gavlock sought to buy. Winninger testified that those funds were garnished by the Black Hawk County Sheriff on behalf of the bank. In the meantime the seller refused to close the real estate transaction, which prompted Gavlock to institute an action for specific performance. Winninger testified that the $7,500 belonged to Mr. Gavlock. There was no evidence presented to the contrary, and no other parties have appeared to make any inconsistent claim to the money. Because we find no evidence in the record that anyone other than the debtor, Mr. Gavlock, is entitled to the money, we find that the trial court erred in finding that the money in question was not subject to garnishment. The plaintiff is entitled to garnishment of the $7,500.

REVERSED.