

FILED
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CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

Leonard Pozner,

Plaintiff,

Case No.: 2018 CV 3122

v.

James Fetzer, et al.,

Defendants.

**DEFENDANT JAMES FETZER’S RESPONSE BRIEF IN OPPOSITION TO
PLAINTIFF’S MOTION FOR TURNOVER OF PROPERTY TO APPLY PROPERTY
TO SATISFY JUDGMENT**

Defendant, James Fetzer (hereinafter “Fetzer” and/or “Defendant”) by his attorneys, Fuhrman & Dodge, S.C, by Attorney Jennifer M. Schank, respectfully submits the following Response Brief in Opposition to Plaintiff’s Motion for Turnover of Property to Apply Property to Satisfy Judgment, as set forth below.

INTRODUCTION

Plaintiff filed his Motion for Turnover of Property to Apply Property to Satisfy Judgment on April 26, 2022, as Document No. 490 (the “Motion”) and the Affidavit of Randy J. Pflum in Support of the Motion as Document No. 491 (the “Pflum Aff.”). Plaintiff requests that Defendant James Fetzer turn over certain editions of books and certain domain names. *Id.*

The Motion should be denied. Intellectual property is exempt from execution. *Ager v. Murray*, 105 U.S. 126, 127–31 (1881). The Motion is not a proper mechanism for Plaintiff to gain

ownership of books and domain names. Further, the property subject to the motion has no monetary value that can be applied to Plaintiff's money judgment.

FACTS

Plaintiff obtained a money judgment against Fetzer on December 12, 2019, in Dane County Circuit Court, in the amount of \$457,395.13 (the "Money Judgment"). (Pflum Aff. ¶ 2). The Money Judgment remains unsatisfied. (Pflum Aff. ¶ 3). Plaintiff now seeks post-judgment collection action against Fetzer to be applied against the Money Judgment.

ARGUMENT

I. Fetzer does not own the property that Plaintiff requests he turn over.

Fetzer cannot turn over property that he does not own. Fetzer does not own the domain names and books Plaintiff lists in the Pflum Affidavit.

Domain names connect Internet Protocol (IP) Addresses (e.g., 146.197.184.71), to an alphanumeric designation (e.g., Nike.com). Emily Litka, *Establishing Rights in a New Domain: Defining Registration under the ACPA*, 90 Temp. L. Rev. 519, 522 (2018). Rights to use a domain name are licensed by a registrar, contracted by ICANN, a nonprofit corporation authorized by the U.S. Department of Commerce to manage domain names. *Id.* at 523.

"To reserve a domain name, a registrant must apply to register the name with a registrar. . . . The registrant will be required to enter into a contract with the registrar, . . ." and the holder of the contract "owns the rights to use that registration." *Id.* at 523–524 (quoting ICANN, *Beginner's Guide to Domain Names* 3 (2010), <https://www.icann.org/en/system/files/files/domain-names-beginners-guide-06dec10-en.pdf>.)

Fetzer did not register these domain names. (Affidavit of James Fetzer, Ph.D. “Fetzer Aff.,” filed herewith, ¶ 21). The domain names www.jamesfetzer.net and www.falseflagnews.org are available for purchase on the open market, making it clear that Fetzer does not own these domain names. (Fetzer Aff. ¶ 22). Further, www.falseflagnews.net has a registrant name Perfect Privacy LLC, an entity Fetzer is not affiliated with nor does he know the owner of this domain name. (Fetzer Aff. ¶ 23). Lastly, the registrar for the domain name www.jamesfetzer.org is namecheap.com and Fetzer believes that WWW owns this domain name. (Fetzer Aff. ¶ 24).

Fetzer manages his website at www.jamesfetzer.org, but he does not own the domain name. Plaintiff did not move to turnover websites owned by Fetzer, nor does the website found at www.jamesfetzer.org have any monetary value that could be applied to Plaintiff’s judgment. (Fetzer Aff. ¶ 26).

Further, Fetzer does not own the books that Plaintiff moves to be turned over. Books are assigned an International Standard Book Number (the “ISBN”) to distinguish each publication. (Fetzer Aff. ¶ 5). Plaintiff specifically requests four different versions of the book named *Nobody Died At Sandy Hook*. Fetzer cannot turn over the 1st edition or the banned edition of the book (2015) because Createspace owned the ISBN for this book, and he believes that it ceased to exist after it was banned by Amazon. (Fetzer Aff. ¶ 11). The PDF Version that Plaintiff requests was never published and is not a book. The last book listed on the Pflum Affidavit (2nd Edition 2016) was published by Wrongs Without Wremedies, LLC (“WWW”), d/b/a Moon Rock Books Publishing, and WWW would have obtained the ISBNs for the 2nd and any subsequent editions of books named *Nobody Died At Sandy Hook*. (Fetzer Aff. ¶ 14). Fetzer is not an owner of WWW.

(Fetzer Aff. ¶ 15). Fetzer cannot be ordered to turn over the properties because he does not own them.

II. Intellectual Property is not subject to execution.

Notwithstanding Fetzer's lack of ownership, Plaintiff has no right to order the property in question to be turned over. Copyrights and other intellectual properties are not available for seizure and sale in an execution at law. *Ager v. Murray*, 105 U.S. 126, 127–31 (1881). The U.S. Supreme Court in *Ager* quoted with approval *Stephens v. Cady*, 55 U.S. 528, 531 (1852):

The copperplate engraving, like any other tangible personal property, is the subject of seizure and sale on execution But the incorporeal right, secured by the statute to the author, to multiply copies of the map by the use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process.

Id. Because intellectual property is exempt from execution, “[t]he creditor’s only option is to have a receiver appointed . . . to carry out the sale.” Jessica Bozarth, *Copyrights and Creditors: What Will Be Left of the King of Pop’s Legacy?*, 29 *Cardozo Arts & Ent. L.J.* 85, 86–88 (2011) (citing California law).

Under Wisconsin law, executions may be made against “personal property” or “real property.” Wis. Stat. § 815.05(1s). Any property seized is sold at a public sale. Wis. Stat. § 815.29. By the terms of the statutes, the limitation of execution to “personal property” or “real property” excludes intangible property. *See* Wis. Stat. § 815.05(1s). *See generally* Aaron Perzanowski & Jason Schultz, *Reconciling Intellectual Property and Personal Property*, 90 *Notre Dame L. Rev.* 1211, 1217–25 (2015) (differentiating between personal property interests and intellectual property interests). Therefore, Plaintiff cannot simply “execute” against intellectual property and have it delivered to him.

III. Plaintiff's use of the Motion is an improper legal mechanism to achieve Plaintiff's goals.

Beyond an execution, a judgment creditor has two additional alternatives to levy on the property of a debtor. *Attorney's Title Guar. Fund, Inc. v. Town Bank*, 2014 WI 63, ¶ 26, 355 Wis. 2d 229, 850 N.W.2d 28. The creditor may garnish property owed to the debtor and held by a third party. *Id.* Or, the creditor may “apply specifically identified personal property to the satisfaction of the judgment, which a creditor may do with the assistance of a supplemental receiver.” *Id.*

Plaintiff has no right to an execution or direct transfer of the intellectual property allegedly held by Fetzer. Plaintiff has not requested the appointment of any receiver and simply asked the Court for the intellectual property to be “turned over and applied to satisfy the judgment.” (Motion 1.) Plaintiff is not automatically entitled to ownership and control of Fetzer's property under Wis. Stat. § 816.08 by the mere fact that Fetzer is indebted to him. Rather, Wis. Stat. § 816.08 sets forth the standards by which property may be applied toward satisfaction of a judgment.

816.08 Property to be applied to judgment. The court or judge may order any property of the judgment debtor or due to the judgment debtor, not exempt from execution, to be applied toward the satisfaction of the judgment; but if it appear that any person alleged to have property of the judgment debtor or to be indebted to the judgment debtor claims an adverse interest in the property or denies the debt, such interest or debt shall be recoverable only in an action against such person by the receiver; and a transfer or other disposition of such property or interest may be restrained till a sufficient opportunity be given to the receiver to commence the action and prosecute the same to judgment and execution or until security therefor shall be given as ordered.

That statute does not provide for a judgment debtor to relinquish his control and ownership rights in property to a judgment creditor to utilize as it sees fit. Plaintiff does not claim that he has

a security interest in any of the property he requests to be turned over nor does he show the Court any authority to grant a turnover of intellectual property.

Further, the Wisconsin Legislature did not contemplate the satisfaction of money judgments with anything other than either money or a “payment intangible.” *See Attorney’s Title Guar. Fund*, 2014 WI 63, ¶¶ 20–24. In *Attorney’s Title Guar. Fund*, the Wisconsin Supreme Court explained that while the rights to any proceeds of a legal malpractice claim may be assigned to a creditor, the rights themselves cannot. *Id.* In that case, the Wisconsin Supreme Court was concerned that assigning “the right to litigate the claim to a receiver would result in a stranger to the attorney-client relationship litigating the claim.” *Id.* ¶ 21. “[T]here is a real difference between the claim from which the proceeds arise and the proceeds themselves.” *Id.* ¶ 23.

Here, just as there is a real difference between a claim and proceeds from a claim, there is a real difference between intellectual property and proceeds from that intellectual property. Plaintiff intends to have intellectual property allegedly owned by Fetzer turned over to be applied to the judgment. This goes against the general principles of collection and the Wisconsin public policy that indicates that assignment of rights beyond a right to be paid is beyond the scope of collecting on a money judgment. *See id.* ¶¶ 20–24.

It appears that Plaintiff is not utilizing the Motion to reduce his money judgment against Fetzer. Rather, Plaintiff attempts to gain control of valueless assets, assets that Fetzer does not even own. Even if Plaintiff could prove Fetzer owns any of the property listed in the Pflum Affidavit and such property could be utilized to apply to Plaintiff’s money judgment, under Wisconsin law, Plaintiff does not gain indefinite ownership and control of said property. Rather, a

receivership and sale would be necessary, and any sale proceeds would subsequently be applied to Plaintiff's judgment. Under Wis. Stat. § 816.08, the creditor may "apply specifically identified personal property to the satisfaction of the judgment, which a creditor may do *with the assistance of a supplemental receiver.*" *Attorney's Title Guar. Fund*, 2014 WI 63, ¶ 26 (emphasis added).

It appears that Plaintiff is simply attempting to gain control of property for his own purposes, not to satisfy the Money Judgment. Plaintiff would rather not have anyone else be able to claim an ownership interest in the property, but it is not in the spirit of Wisconsin collections laws for a creditor to gain control over a judgment debtor's property for reasons other than debt collection. A judgment creditor cannot obtain an order to turn over purely sentimental property because it serves emotional value to the creditor. A money judgment entitles a judgment creditor to payment, not to control of property as in a replevin action or as a punitive tactic.

Finally, the property that Plaintiff requests be turned over has no value to apply to the Money Judgment. The distribution of the property would be impossible due to the litigation between the parties. (*Id.*) Distribution is also unlikely due to the works' apparent lack of value in the market after being banned by Amazon and having no other foreseeable sales. (*Id.* ¶¶ 11–17.)

Even if Fetzer were to have any rights to the property in question, the property would likely be exempt from execution under Wis. Stat. § 815.18. Fetzer reserves his right to object to execution against his property under the exemptions granted by Wis. Stat. § 815.18 or any other applicable law should there be a finding that he has any ownership interest in the property in question.

CONCLUSION

Plaintiff has made no showing that the proposed turnover is within the authority of the Court, or that it would further Plaintiff's interest in recovering on the Money Judgment. Plaintiff has made no showing that the intellectual property allegedly owned by Fetzer has any marketability or that the intellectual property rights are associated with any foreseeable proceeds. Therefore, Plaintiff's motion must be denied.

For the reasons stated herein, Defendant Fetzer respectfully requests that this Court deny Plaintiff's Motion for Turnover of Property to Apply Property to Satisfy Judgment, and grant Defendant James Fetzer such further relief as may be allowed by law.

Dated: June 3, 2022.

FUHRMAN & DODGE, S.C.
Attorneys for Defendant,
James Fetzer

Electronically Signed by Jennifer M. Schank
Jennifer M. Schank, State Bar No. 1077110
2501 Parmenter Street, Suite 100A
Middleton, WI 53562
Ph: 608-327-4200
jschank@fuhrmandodge.com