



THE ENFORCER

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Who You Gonna Call?

How many times have you sat in a packed courtroom during motion call and heard any of the following scenarios? Perhaps you have run across them in your own practice:

Fact pattern A. The Judgment of Divorce orders husband or wife to refinance the former marital home in their name alone within 6 months of entry of the judgment, or the property is to be sold forthwith and the equity divided. One year after the entry of the judgment, the property is neither refinanced or listed for sale, and after a show cause the spouse shows no signs of listing the property for sale.

Fact pattern B. Defendant/payer exclaims at an enforcement hearing, "I'll never pay!" However, debtor/payer has a job, or property, or other assets, and simply will not comply.

Fact pattern C. Payer owes a huge child support arrearage, but claims the only asset is a 401(k) account.

Fact pattern D. The Judgment of Divorce provides that one ex-spouse is to liquidate stock options, or other assets, to pay to the other party. Subsequent enforcement orders have no effect, and now you suspect the assets have been transferred.

Fact pattern E. Debtor/payer keeps assets hidden or insulated from garnishment, i.e. in a safe in his bedroom closet, in a safety deposit box, in the form of a collection of valuables in the trunk of his car.

Fact pattern F. The debtor owns a business, which needs to be taken over to obtain access to the real books and records, prevent waste of the asset, or perhaps be sold as an on-going concern.

Fact pattern G. Debtor/payer "sold" his assets to his brother/aunt/secretary and now he claims he is broke.

Receivership is an effective and appropriate remedy in any of the above situations. Consider this: under Michigan law, when a court appoints a receiver, the property of the debtor passes into the custody of law and the administration of that property is wholly in control of the court¹. Once appointed, a receiver can gain control of a debtor's property to enforce the orders of the court, including bank accounts, investments, personalty, business interests and real property. When there is a business, a receiver may take control and supervise the business' operations. In all cases, funds held by the receiver are deposited into a trust account. An accounting is submitted to the parties and the Court of all assets administered by the receiver, and distribution occurs in accordance with the orders of the Court.

Trial courts have the authority to appoint a receiver pursuant to statute and case law. The power to appoint a receiver is inherent in courts of equity. *Michigan Minerals, Inc. v Williams*, 306 Mich 515, 11 NW2d 224 (1943). If you are enforcing support, consider that unpaid child support is a judgment which entitles a support payee to enforce the support in the same manner as a money judgment of this state. MCL §552.603(2) states:

(2) Except as otherwise provided in this section, a support order that is part of a judgment or is an order in a domestic relations matter as defined in section 2 of the friend of the court act, MCL §552.502, is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.

One of the remedies available to a judgment creditor is to seek the appointment of a Receiver. A number of statutes provide for the appointment of a Receiver against a judgment debtor as well as a support payer:



I. MCL §600.6104(4) provides for the appointment of a Receiver wherein a money judgment has been entered. It states that:

After judgment for money has been rendered in an action in any court of this state, the judge may, on motion in that action or in a subsequent proceeding:

(4) Appoint a receiver of any property the judgment debtor has or may thereafter acquire.

II. MCL §552.27 specifically authorizes the appointment of a Receiver wherein the support payer has defaulted in his support obligation:

If alimony or an allowance for the support and education of the children is awarded to either party, the amount of the alimony or allowance constitutes a lien upon the real and personal estate of the adverse party as provided in section 25a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.65a. The court may do 1 or more of the following if the party defaults on the payment of the amount awarded:

(a) Order the sale of the property against which the lien is adjudged in the same manner and upon the same notice as in suits for the foreclosure of mortgage liens.

(b) Award execution for the collection of the judgment.

(c) Order the sequestration of the real and personal estate of either party and may appoint a receiver of the real estate or personal estate, or both, and cause the personal estate and the rents and profits of the real estate to be applied to the payment of the judgment.

(d) Award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just.

(Emphasis supplied)

III. MCL §600.2926 is the catchall section of the Michigan Compiled Laws, authorizing the appointment of a Receiver:

Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law. This authority may be exercised in vacation, in chambers, and during sessions of court. In all cases in which a receiver is appointed the court shall provide for

bond and shall define the receiver's power and duties where they are not otherwise spelled out by law. Subject to limitations in the law or imposed by the court, the receiver shall be charged with all of the estate, real and personal debts of the debtor as trustee for the benefit of the debtor, creditors, and others interested.

The phrase in the statute above "allowed by law" is not limited to statutory authority, but has also been interpreted to mean those cases where the facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court's equitable jurisdiction. *Band v Livonia Associates*, 176 MichApp 95, 105; 439 NW2d 285 (1989); *Petitpren v Taylor School Dist.*, 104 MichApp 283, 294; 304 NW2d 553 (1981).

The appointment of a Receiver is considered a harsh remedy. Most courts expect that litigants will have attempted other, less drastic means for enforcement, prior to requesting a Receiver. Should the appointment of a Receiver be necessary, it is accomplished by filing of a Motion under one of the previously described statutory provisions. A Receiver may be appointed ex-parte but this is unusual². Typically, a Receiver is appointed at a hearing at which time an order is entered. The order of appointment should include the following:

Name and identifying information of the person or entity under receivership;

Assets to be administered under the Receivership;

Powers and duties of the Receiver; and

Provision for bond for the Receiver.

The order need not include every consideration or possibility. This would be unduly onerous. However, it should sufficiently delineate the powers and duties of the Receiver rather than a reliance on the judgment or orders of the Court. Due to the creation of Receiverships under the common law, Michigan statutes and Rules of Court will not address most issues. Invariably, someone will ask: where in the order does it say that the Receiver is authorized to do this? It is best to attempt to avoid having the Receiver 'come back to the well' each time additional authority is to be requested from the Court.

Endnotes

1. *Michigan Trust v People*, 52 F2d 842 (6th Cir. 1931).
2. *Livingston v. Southern Surety Co.*, 262 Mich. 438 (1933), the Supreme Court held:

But the right of a court of equity to appoint a receiver *ex parte* is an inherent part of its equity powers. It is entirely a matter of judicial discretion.

Id @ 441.

