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DISTRICT II

February 17, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1064-FT Suburban Motors of Grafton, Inc. v. William T. Gamerdinger
(L.C. # 2006CV10)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Michael McMorrow, assignee of a judgment won by Suburban Motors of Grafton, Inc., appeals from a circuit court order satisfying the judgment and judgment lien against property partially owned by William Gamerdinger. Pursuant to a presubmission conference and this court's order of June 17, 2015, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm.

This is the second appeal in this case. Certain of the relevant facts are set out in the first appeal, *Suburban Motors of Grafton, Inc. v. William T. Gamerdinger (Gamerdinger I)*, No. 2014AP2294-FT, unpublished op. and order (WI App Feb. 4, 2015).

In April 2006, a judgment was filed against William T. Gamerdinger. William subsequently inherited a one-third interest in real property located in Grafton. The assignee of the judgment, [Michael] McMorrow, filed an execution against the property, reflecting the judgment owed. A sheriff's sale was scheduled for March 28, 2013.

Approximately one month before the sheriff's sale was to occur, William transferred his interest in the Grafton property to his brother, Tinsley A. Gamerdinger, in exchange for Tinsley's interest in real property located in Fredonia. William then filed a petition for bankruptcy. In it, he claimed a homestead exemption on the Fredonia property and did not list his transferred interest in the Grafton property as an asset. William received a discharge in bankruptcy on June 24, 2013.

On August 8, 2014, Tinsley, having acquired William's interest in the Grafton property prepetition, applied to the circuit court for a satisfaction of the judgment lien on the property. In response, McMorrow filed a motion to effectively exempt the property from satisfaction on the ground that it was not owned or later acquired by the person discharged in bankruptcy (William), as is required by WIS. STAT. § 806.19(4)(d).

Following a hearing on the matter, the circuit court denied McMorrow's motion and issued an order satisfying the judgment lien.

Id. at 1-2.

We reversed the circuit court's order satisfying McMorrow's judgment lien because WIS. STAT. § 806.19(4) only permits satisfaction of a judgment against property a person discharged in bankruptcy owns or later acquires. *Id.* at 3. The property at issue was not owned or later acquired by William at the time Tinsley submitted his § 806.19(4) application for satisfaction of the judgment.

Upon remand from *Gamerdinger I*, McMorrow sought to execute against the Grafton property to satisfy the judgment. William countered by seeking a satisfaction of judgment pursuant to WIS. STAT. § 806.19(4) on the grounds that he was a grantee of a one-third interest in

the Grafton property pursuant to a quit claim deed from Tinsley to him recorded on March 18, 2015, after remittitur in *Gamerdinger I*.

WISCONSIN STAT. § 806.19 provides in relevant part:

(4)(a) Any person who has secured a discharge of a judgment debt in bankruptcy and any person interested in real property to which the judgment attaches may submit an application for an order of satisfaction of the judgment and an attached order of satisfaction to the clerk of the court in which the judgment was entered.

....

(d) Upon receipt of a completed application, the clerk shall submit the attached proposed order for signature by a judge after which the clerk shall satisfy of record each judgment described in the application. Upon satisfaction, a judgment shall cease to be a lien on any real property that the person discharged in bankruptcy owns or later acquires.

At the hearing on McMorrow's attempt to execute upon the judgment and William's request for satisfaction of the judgment, McMorrow argued that William's reacquisition of an interest in the Grafton property he previously owned meant he could not have relief under WIS. STAT. § 806.19(4). McMorrow further argued that § 806.19(4) does not apply to property a debtor reacquires after failing to disclose said property on the debtor's bankruptcy schedules as having been transferred prior to bankruptcy, allegedly to avoid a creditor. William argued that under the plain language of § 806.19(4), he later acquired the Grafton property and was eligible for relief from the judgment and the judgment lien. The circuit court concluded that § 806.19(4) is unambiguous and applies to later acquired property, including the Grafton property William acquired post-discharge. McMorrow appeals.

McMorrow devotes a substantial portion of his appellate argument to a claim that the pre- and post-bankruptcy real estate transactions between William and Tinsley were fraudulent under

WIS. STAT. § 242.04 and related statutes. McMorrow did not make this argument to the circuit court, and we will not consider it for the first time on appeal. *Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983).

McMorrow is left with his arguments about the meaning of WIS. STAT. § 806.19. As we stated in *Gamerdinger I*:

Statutory interpretation presents a question of law, which this court reviews de novo. *State v. Fischer*, 2010 WI 6, ¶15, 322 Wis. 2d 265, 778 N.W.2d 629. We look first to the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. If it is clear and unambiguous, the plain language of the statute guides us. *See id.*

Gamerdinger I, unpublished slip op. and order at 3.

In *Gamerdinger I*, we stated “that the statute applies only to satisfy judgment liens attached to real property that the person discharged in bankruptcy owns or later acquires.” *Id.* at 3. William did not own the property during the proceedings in *Gamerdinger I*. However, by the time of the second attempt to invoke the provisions of WIS. STAT. § 806.19, William had regained an ownership interest in the Grafton property.

We conclude that on the undisputed facts, WIS. STAT. § 806.19 applies. McMorrow conceded in the circuit court that William received a bankruptcy discharge. The unambiguous language of § 806.19 applies to property in which William had an ownership interest at the time the request to satisfy the judgment was filed. William’s partial ownership interest acquired in 2015 qualifies under § 806.19. The circuit court properly ordered a satisfaction of McMorrow’s judgment and judgment lien against the Grafton property.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

Diane M. Fremgen
Clerk of Court of Appeals