UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0473

September Term, 2015

ROBERT HOROWITZ, *et ux.*

v.

SELZER, GURVITCH, RABIN,
WERTHEIMER, POLOTT & OBECNY, P.C.,

Meredith,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: December 6, 2016

Selzer Gurvitch Rabin Wertheimer Polott & Obecny, PC (the "Firm") obtained a judgment in the Circuit Court for Montgomery County against the appellants, Robert and Cathy Horowitz, and has tried, without success, to collect it. The Firm obtained several writs of execution against the Horowitzes' home, personal property, and bank account, and the Horowitzes attempt to challenge orders requiring them to allow an appraiser into their residence, declining to release their home from levy, and denying their motion to strike the Firm's motion to condemn bank assets. Only the third of these orders is appealable, and we affirm the circuit court's decision in that regard and dismiss the remainder of the appeal.

I. BACKGROUND

The Horowitzes were clients of the Firm, but did not pay the Firm's bill for services. The Firm brought suit and eventually obtained judgments against the Horowitzes on November 3, 2014 in the amount of $87,727.46. (The court also dismissed the Horowitzes' counterclaim for legal malpractice.) The Horowitzes appealed the judgment and we affirmed, *Horowitz v. Selzer, Gurvitch, Rabin, Wertheimer, Polott & Obecny, P.C.*, No. 2459, Sept. Term 2014 (Md. App. Sept. 27, 2016), slip op. at 3, so the validity of the debt is beyond dispute at this point.

The Horowitzes neither stayed nor bonded the judgment, so the Firm obtained two writs of execution, one for the Horowitzes' real property, and one for their personal

property. The Sheriff attempted to enter the home on December 17, 2014, but was turned away by the Horowitzes' daughter[1] and returned the writ of execution "non est."

In response, the Firm filed a "Motion for Order Authorizing the Sheriff to Gain Access to Property by Forcible Entry and Ancillary Relief" on January 16, 2015, in which it asked that the court "authoriz[e] the Sheriff to gain access to [the Horowitzes'] real property by forcible entry in order to levy upon [their] personal property in execution of judgment." The Firm also obtained and served, on November 20, 2014, a writ of garnishment on Bank of America, N.A., where the Horowitzes had a safe deposit box and a joint checking account with a balance of roughly $650.00. The Horowitzes responded on January 26, 2015, with a Motion to Strike the Motion for Condemnation of Assets.

The court held a hearing on April 23, 2015. After hearing argument from counsel, the court decided that the Firm was entitled to attach the bank account and take possession of the contents of the safe deposit box. In the course of ruling, the court addressed some of the Horowitzes' protests:

> [W]hat I will do is *in lieu of ordering the sheriff, I will order that the creditor designate an appraiser* and . . . consult with the debtor, through counsel, to find a mutually agreeable time within the next 30 days where the appraiser will be given access to the property to inventory . . . and if [the Horowitzes] fail to do that, then that's without prejudice to you to return to court to seek further relief.

[1] The Horowitzes complained in the circuit court, and in their brief here, about the manner in which the Sheriff attempted to enter the property, but we need not resolve the disputes over what happened or didn't. The circuit court had before it no sworn testimony from either side about the encounter, and even if we were to assume the truth of the Horowitzes' allegations, they wouldn't affect the debt or the Firm's right to collect it.

(Emphasis added.) As the court explained in response to an inquiry by the Firm's counsel, "I think it's a reasonable intermediate step before we have to send sheriffs into a property." Finally, the court considered the Horowitzes' argument that because their property was underwater—*i.e.*, the value of the property had fallen below the amount they owed on it—they were entitled to a statutory exemption from execution, and thus to block a Sheriff's sale of the property. The court disagreed, holding that the governing statute "defines value as the property without reference to liens on the property." (citing CJ § 11-504(a)).

Consistent with its rulings from the bench, the court entered two written orders on April 27, 2015: one that authorized the Firm to send an appraiser to the property, and one that denied the Horowitzes' motion to release the property from levy. Not long after, on May 14, 2015, the court granted the Firm's motion to order the Sheriff to take possession of the assets in the safe deposit box at Bank of America, and entered a judgment of condemnation in the amount held in the Bank of America account. The Horowitzes filed several motions to revise or reconsider these various orders,[2] all of which were denied, and they filed a timely notice of appeal.

[2] These motions included a Motion to Revise and/or Stay the Order Denying Release from Levy and Deferring Disposition of Exemptions, Motion to Reconsider the Judgment Condemning Bank Assets, and Motion to Reconsider or Clarify the Court's Order Requiring That They Allow a Private Appraiser to Access and Search Their Dwelling House.

II. DISCUSSION

This should be a simple collections case. There is no doubt whatsoever that the Horowitzes owe the money. There is no doubt that the Firm is entitled to collect the debt. The disputes lie entirely in how the Firm can collect,[3] a legitimate objective the Horowitzes have thwarted actively, delayed now for nearly two years, and, for what it's worth, mischaracterized and overdramatized.[4] As if to underscore these points, we can't reach the merits with regard to two of the three orders the Horowitzes have appealed because those orders aren't appealable. The third is appealable, and the Horowitzes' challenge is meritless.

[3] The Horowitzes present the following questions on appeal:

> 1) Did the Court err or abuse its discretion in ordering the appellants to admit an appraiser to their dwelling house to inventory personal property, and in maintaining that order upon reconsideration?
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> 2) Did the Court err in its determining not to release an underwater interest in real property once exemptions were sought under Md. CJP §11-504 and release from levy requested under Maryland Rule 2-643?
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> 3) Did the Court err or abuse its discretion by denying appellants' motion to strike or in opposition to appellee's motion to condemn bank assets, or in maintaining that ruling upon reconsideration?

[4] Counsel described the Firm's efforts to levy as a "judgment creditor [that] has gone immediately to seeking violence and seeking a disturbance of the peace, and seeking confrontation that is not necessary in this case." And in the course of insisting that the Firm should be limited to serving interrogatories to discover the Horowitzes' assets, counsel contended that "[w]e just don't want violence here. We don't want bloodshed."

A. The Trial Court's Orders Regarding The Appraiser And The Sale Of The Residence Are Not Appealable.

The Horowitzes mischaracterize the contents of the first order, which authorized an appraiser, and the posture of the case. This is not a criminal case, and the court has never authorized the Sheriff (or any other law enforcement authority) to conduct a warrantless search of the Horowitzes' home.[5] This is now a collections case, and the Horowitzes' assets are subject to execution. After the Firm obtained its judgment, the Clerk issued a writ "directing the sheriff to levy upon property of the judgment debtor to satisfy a money judgment." Md. Rule 2-641(a). But when the Sheriff arrived to carry out that order, the Horowitzes turned him away, which led to further litigation and, eventually, the order permitting the Firm to hire an appraiser—at its own expense—and requiring the Horowitzes to give the appraiser access to their home for the purpose of conducting the appraisal.

This order is not a final judgment. Indeed, the order itself says that the Firm "may seek such further post judgment relief as permitted under Maryland law and the Maryland Rules of Procedure upon completion of the inventory." It simply allows the Firm to find out, in an orderly manner, what assets the Horowitzes have, and therefore is more in the nature of a discovery order. The Horowitzes may, and obviously do, disagree with the manner in which the court has ordered them to provide information about their assets to the Firm. But they have no more right to appeal from this order than they would an order compelling them to respond to discovery, and it is not "[a]n order entered with regard to

[5] As the trial court put it, "I've never seen a debtor take this position."

the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom," the closest category of appealable interlocutory orders. *See* Md. Code (1974, 2012 Repl. Vol.), § 12-303(1) of the Courts & Judicial Proceedings Article ("CJ").

The same is true for the order denying their motion for an exemption from levy. The Horowitzes sought to exempt their home on the theory that they owe more on the house than it's worth, and therefore that their underwater interest in real property is exempt from a money judgment lien levy. The circuit court rejected this argument on the grounds that CJ § 11-504(a) defines value as the "fair market value as of the date upon which the execution or other judicial process becomes effective against the property of the debtor, or the date of filing the petition under the federal Bankruptcy Code," and because the legislative definition does not consider any liens on the property. The court also rejected their argument relying on CJ § 11-504(b)(5) that the encumbered house qualified as "cash or property of any kind equivalent in value to $ 6,000." But the order embodying those decisions isn't appealable either. The order did not relate to the possession of the property or income or dividends from it, CJ § 12-303(1), nor did the court order the sale of the property, *id*. at (3)(v), determine any question of right between the parties, or order an account, *id*. at (3)(vi). There may yet be future orders relating to the house that might be appealable, but this one isn't, and we dismiss the Horowitz's appeal from this order as well.

B. The Trial Court Did Not Err When It Issued A Judgment Of Condemnation Of Assets Confessed By The Bank.

This leaves the third order, in which the circuit court entered a judgment of condemnation as to the Horowitzes' assets at Bank of America. Unlike the prior orders, this one *is* appealable because it allowed the Firm to take possession of the assets the bank held on the Horowitzes' behalf, *id.* at (1), which is the purpose of the garnishment procedure:

> A garnishment is used to attach property of the judgment debtor that is in the possession of a third party[, the garnishee]. The procedure for garnishing property, other than wages . . . , is set forth in Maryland Rule 2-645. The end result, if the judgment creditor is successful, is that any property found to belong to the debtor is turned over to the creditor.

R & D 2001, LLC v. Rice, 402 Md. 648, 664 (2008). "A garnishment proceeding is, in essence, an action by the judgment debtor for the benefit of the judgment creditor which is brought against a third party, the garnishee, who holds the assets of the judgment debtor." *Hunt Valley Masonry, Inc. v. Fred Maier Block, Inc.*, 108 Md. App. 100, 104 (1996) (quoting *Fico, Inc. v. Ghingher*, 287 Md. 150, 159 (1980)). "The sole purpose of the garnishment proceeding therefore is to determine whether the garnishee ha[s] any funds, property or credits which belong to the judgment debtor." *Parkville Fed. Sav. Bank v. Md. Nat'l Bank*, 343 Md. 412, 418 (1996) (quoting *Fico*, 287 Md. at 159). Where a creditor seeks to garnish property, Maryland Rule 2-645(e) details the garnishee's duty:

> **(e) Answer of Garnishee.** The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor

> and shall specify the amount and nature of any debt and describe any property. . . .

Here, Bank of America was the garnishee, and in that role had a duty to "specify the amount and nature of any debt and describe any property" that it held for the Horowitzes. *Id.* Failure to do so would have resulted in a default judgment against the bank. Md. Rule 2-645(g). Bank of America responded appropriately and confessed the existence of the Horowitzes' account and the safe deposit box.

The Horowitzes argue, however, that the money in the bank account constituted wages that, they say, should not have been disclosed to the Firm[6] and were not garnishable. They are wrong. Where a creditor seeks to garnish wages, a different procedure applies:

> **(e) Response of Garnishee and Debtor.** The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. . . .
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> . . . .
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> **(i) Withholding and Remitting of Wages.** While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the

[6] The Horowitzes argue that the Firm improperly obtained the judgment of condemnation because its counsel, Miles & Stockbridge P.C., also served as the bank's counsel. But to the extent this dual representation posed a conflict (and we offer no views on whether it did), it doesn't bear on the issues before us. Bank of America's obligations as garnishee were purely ministerial. And although the Horowitzes say in their brief that "[i]t is reasonable under the circumstances to assume that Miles illegally accessed information about the Horowitzes and their accounts through BofA's electronic communications systems," this is pure speculation and, for the reasons we explain in the text, the information and assets in fact condemned by the order were fair game.

> creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the order in which served.

Md. Rule 2-646(e), (i). Thus, under Rule 2-646, a writ of garnishment is served upon an employer-garnishee and attaches to wages payable to the debtor-employee. *See id.* at (e), (i); *In re Smoot*, 237 B.R. 875, 880 (Bankr. Md. 1999); *Hunt Valley Masonry, Inc.*, 108 Md. App. at 106 (stating that Rule 2-646 "requires the employer/garnishee to begin withholding wages upon service of the writ"). But the contents of the Horowitzes' bank account weren't wages, even if the funds were paid originally to the Horowitzes as wages by an employer. Bank of America was not their employer—it was their bank, and Rule 2-646 does not apply. Instead, the money in the Horowitzes' account was money, not exempt from garnishment as wages, and properly subject to judgment of condemnation on the assets held (and confessed) by the bank.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.