

CLIENT ALERT

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1

BANK WARNING: DON'T GET CHARGED MILLIONS FOR PROCESSING OUT-OF-STATE GARNISHMENTS IMPROPERLY

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I. Overview of Changes

On May 4, 2022, the Consumer Financial Protection Bureau (the "Bureau")¹ issued a Consent Order implicating how certain banking institutions must respond to Garnishment Notice.² The Consent Order places the burden on banks that fall under the purview of the Bureau to determine whether a state restricts out-of-state garnishments, as well as to apply state-specific garnishment rules and exemptions from the applicable state. In the Consent Order, the Bureau found that the national bank at issue did not properly follow the applicable state garnishment-related laws.³ As a result, the Bureau ordered that the bank refund at least \$592,000 to affected consumers and pay a \$10 million civil penalty. To avoid liability and monetary penalties, banks under the jurisdiction of the Bureau should take a proactive approach to compliance.

This client alert provides an overview of certain key compliance requirements following the Consent Order, and addresses whether the State of Michigan prohibits garnishment of Out-of-State Accounts. It also discusses how Michigan defines the "location" of funds held in bank deposit accounts. Lastly, the alert identifies risks and sets forth recommendations regarding banks' response and handling of Garnishment Notices issued in Michigan.⁴

What Information Do Financial Banking Institutions Need to Determine When They Get a Garnishment?

Under the Consent Order, when a bank receives a Garnishment Notice, it must first determine the "location" of the garnished bank account. If the Garnishment Notice concerns an Out-of-State Account, the bank must then determine whether the state from which the garnishment originates is a "Restriction State." A "Restriction State" is a state that prohibits or otherwise restricts garnishment of Out-of-State Accounts. "Non-Restriction States" permit garnishment of Out-of-State Accounts.

If the Issuing State is a "Restriction State" and the deposit accounts are located in other states, the bank must notify the creditor that the bank does not have garnishable assets located within the Issuing State. If the Garnishment Notice comes from a "Non-Restriction State," i.e., a state whose statutes or case law authorizes garnishment of accounts located in

other states, the bank must then determine whether courts in the Issuing State have jurisdiction to reach the account. Under the Bureau's Consent Order, "[t]o garnish a bank account lawfully, a state court must have jurisdiction over the garnishee (the bank that holds a deposit account) and the property to be garnished (the deposit account)."

The Bureau notes that Restriction States "include but are not limited" to Alabama, Arizona (before August 2019), California, Florida (after August 2014), and Oregon. This list is not all-inclusive, such that other states, including Michigan, may constitute "Restriction States."

II. Legal Analysis: Processing a garnishment issued in Michigan Post-Consent Order

A. Michigan Prohibits Garnishment of Out-of-State Accounts

Michigan's garnishment statute and relevant case law establishes that Michigan is a "Restriction State." Michigan statute specifically limits the Court's ability to order satisfaction of a judgment with a defendant's personal property that is in possession of a third party. MCL 600.4011(a). The Court may only enforce a judgment if: (1) "the third person is subject to the judicial jurisdiction of the state" and (2) "**the personal property to be applied is within the boundaries of this state.**" *Id.* (emphasis added).

Michigan case law defines the "location" where funds in a deposit account are held as the location where the account holder is domiciled. *CFE Racing Products, Inc. v. BMF Wheels, Inc.*, No. 11-13744, 2016 WL 3125211, *2 (E.D. Mich., 2016). Therefore, if account owners are domiciled outside of the State of Michigan, their bank accounts are **outside the boundaries of the state**, and do not fall within the scope of personal property that may be garnished by a Michigan court. *Id.* at *3 (a "court sitting in Michigan does not have the authority to issue writs of garnishment that can reach assets in California. The proper procedure is for the plaintiff to register its judgment in a California federal court ... and pursue its collection remedies there.")

The Michigan Court of Appeals has specifically addressed whether accounts "located" outside Michigan are subject to garnishment orders issued in Michigan and have held that they are not.

In *CFE Racing Products, Inc.*, defendants debtors, who were domiciled in California, moved to quash writs of garnishments directed to two national banks and argued that the writs were improper because the personal property held in their bank accounts was not subject

¹The CFPB supervises a range of companies to assess compliance with federal consumer financial laws. The CFPB has supervisory authority over banks, thrifts, and credit unions with assets over \$10 billion, as well as their affiliates. See 12 U.S.C. § 5515.

²In re Bank of America, N.A., 2022-CFPB-0002.

³*Id.*

⁴For purposes of consistency, this Alert uses the terms set forth in the Consent Order, as summarized below. "Garnishment Notice" means the notice of legal process by creditors, seeking that a bank turn over funds in a consumer's account to satisfy an amount owed to a creditor; "Issuing State" is the state from which a particular Garnishment Notice is issued; "Out-of-State Account" is an account that is located outside the state that issued the garnishment notice; and "Out-of-State Garnishment Notice" is a Garnishment Notice concerning an Out-of-State Account but does not include Garnishment Notices domesticated in the state where the consumer's account is located.

to garnishment under Michigan law. *Id.* at *1. The Eastern District of Michigan, applying Michigan law, held that the funds in the defendants' bank accounts were located in California and subject only to garnishment issued in California. *Id.* at *3. Similarly, in *Macatawa Bank v. Wipperfurth*, 294 Mich. App. 617 (2011), defendants, who were domiciled in Florida, objected to a writ of garnishment and argued that their IRAs were exempt from garnishment under Michigan law "because the IRA accounts constitute[d] intangible personal property the situs of which, under Michigan law, is the state in which the owner is domiciled." *Id.* at 618, 619. The parties agreed that the Court had jurisdiction over the garnishee, but defendant debtors argued that their IRAs were not "legally within the boundaries of the state." *Id.* at 619. The court agreed and held that the situs of defendants' IRAs was Florida, and the IRAs were not located "within the boundaries of Michigan." *Id.* at 620. See also *Currier v. PDL Recovery Group, LLC*, No. 14-12179, 2018 WL 4057394, *2 (E.D. Mich. 2018) ("It is undisputed that Defendant's domicile is in New York. Thus, his intangible assets ... are located there-and thus, not within the boundaries of Michigan.").

Thus, because Michigan law mandates that courts may only exercise jurisdiction over property in possession of a third party if the property is within the boundaries of Michigan, and Out-of-State Accounts are not within the boundaries of Michigan, Michigan law prohibits garnishment of Out-of-State Accounts.

B. Under Michigan Law, Funds in a Bank Account Are "Located" Where the Account Owner Is Domiciled

In Michigan, "the situs of intangible assets is the domicile of the owner unless fixed by some positive law." *In Re Rapport's Estate*, 317 Mich. 291, 301 (1947). Bank accounts are intangible assets. *See id.* (bank accounts and stock certificates are intangible personal property); *Macatawa Bank*, 294 Mich. App. at 619-620 ("an IRA is intangible personal property, similar to a bank account."); *Currier v. PDL Recovery Group, LLC*, No. 14-12179, 2018 WL 4057394 (E.D. Mich., 2018) (bank accounts and cryptocurrency accounts are intangible personal property); and *CFE Racing Products, Inc.*, No. 11-13744, 2016 WL 3125211 (E.D. Mich., 2016) (bank accounts are intangible personal property).

As discussed above in Section A, under Michigan law, funds in bank accounts constitute intangible assets and are located where the account owner is domiciled. Please note that banks may be able to otherwise define the "location" of bank accounts if such designations are set forth satisfactorily in bank deposit account agreements. Contact the Authors of this client alert to further discuss how your bank can draft deposit account agreements provisions to specify account "location" without running afoul of the Consent Order and relevant case law.

III. Identified Risks and Recommendations

In the wake of the Bureau's Consent Order, banks subject to the Bureau's jurisdiction are faced with potential competing liability. One, a bank processing garnishments may be at risk to its depositors if they freeze and/or release funds that should not be restricted. Two, a bank may be exposed to liability to the Bureau if they process garnishments against Out-of-State Accounts in violation of the Issuing State's law. Lastly, banks may be held liable to the creditor if they fail to release funds and/or disclose account assets legally required. The extent to which these risks are imposed and what to do in order to minimize potential liability should be examined and determined by banking institutions to avoid the millions of dollars in civil penalties the Bureau assessed under the Consent Order.

Please contact the authors of this client alert for further information or in order to tailor a specific updated policy, Deposit Account Agreement, and procedure for responding to out-of-state garnishments.

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