

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
PATRICIA A. FEEZOR,) Bankruptcy Case No. 92-41094
d/b/a HANDY PANTRY,)
)
Debtor.)
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)
PATRICIA A. FEEZOR,)
d/b/a HANDY PANTRY,)
)
Plaintiff,)
)
vs.) Adversary Case No. 93-4087
)
CHARLES "BUD" BRYMER,)
d/b/a Brymer Real Estate)
)
Defendant.)

OPINION

On November 19, 1993, a judgment in the above-entitled adversary proceeding was entered against the Defendant, Charles "Bud" Brymer, in the sum of \$40,000. In seeking recovery on this judgment, the Plaintiff has filed a Citation as to Assets for the purpose of discovering assets of the Defendant which might be used toward payment of the Plaintiff's \$40,000 judgment. A hearing on the Citation as to Assets was held on April 7, 1995, at which time the Defendant and his wife were examined under oath as to their assets. Following the April 7 hearing, the Court directed Plaintiff's counsel to submit a memorandum of law concerning what, if any, of the Defendant's assets could be frozen and ordered turned over to the Plaintiff toward satisfaction of the judgment. As instructed by the Court, counsel for

Plaintiff filed a memorandum of law entitled "Report of Recommendation" in open Court on June 16, 1995. Thereafter, the Defendant filed a Response to Debtor's Report of Recommendation, and a final hearing was held on this matter on July 28, 1995.

Based upon the Plaintiff's Report of Recommendation, the Court finds that Illinois law applies to the collection proceedings instituted by the Plaintiff herein pursuant to Rule 69 of the Federal Rules of Civil Procedure. The collection proceeding herein is governed by the Illinois Code of Civil Procedure found at 135 ILCS 5/2-1402. Based upon the Illinois Code of Civil Procedure and the case of Wienco, Inc. v. Scene Three, Inc., 29 F.3d 329 (7th Cir. 1994), the Plaintiff has recommended that all of the income which the Defendant is entitled to receive as owner of certain real estate in joint tenancy with his wife together with all proceeds he receives from a corporation known as Bud-Tel, Inc. should be subject to the Citation as to Assets, and, as such, should be turned over to the Plaintiff toward satisfaction of the judgment. In response to the Plaintiff's Report of Recommendation, the Defendant asserts that he is no longer an independent contractor for Bud-Tel, Inc., but currently is an employee. The Defendant also asserts that all of the rental income derived from the real estate in which he is a joint tenant with his wife is being paid over to a Chapter 13 Bankruptcy Trustee on behalf of his wife, Freida Brymer, who is a debtor therein.

In considering the Report of Recommendation and the Response thereto, the Court finds, under the facts as presented to it, that it is appropriate to enter a monthly payment order against the Defendant to be paid out of his future income, not only as an employee of Bud-

Tel, Inc., but from his right to receive one-half of the proceeds from rental income that he owns in joint tenancy with his wife. See: 135 ILCS 5/2-1402(c)(4). Based upon the testimony of the Defendant and his wife, the Court finds that the sum of \$175 per month should be paid by the Defendant to the Plaintiff with said payments to begin as of September 1, 1995, and by the first of the month on every month thereafter until the entire sum of \$40,000 has been paid.

ENTERED: August 9, 1995.

/s/ GERALD D. FINES
United States Bankruptcy Judge