

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MICHAEL B. MOODY, JR.,

Debtor.

Case No. 97-00695-jcs

Chapter 7

Hon. Scott W. Dales

WHIRLPOOL FINANCIAL
CORPORATION,

Plaintiff,

Adversary Pro. No. 97-88282

v.

MICHAEL B. MOODY, JR.,

Defendant.

ORDER REGARDING REQUEST FOR GARNISHMENT WRIT

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

More than fifteen years ago, the court entered a consent judgment against debtor-defendant Michael B. Moody, Jr., in favor of plaintiff Whirlpool Financial Corporation (“Whirlpool”). *See* Consent Judgment Declaring Debt to Whirlpool Financial Corporation Non-Dischargeable (the “Judgment,” DN 4). Since obtaining the Judgment, Whirlpool has filed numerous requests for writs of garnishment, which the court has granted pursuant to Fed. R. Civ. P. 69. On December 19, 2012, Whirlpool filed its latest Request and Writ for Garnishment (Nonperiodic) (the “Request,” DN 20), reciting that \$716.44 remains unsatisfied. Although the Clerk usually issues garnishment writs for the court in accordance with LBR 5003(a)(5),

concerns about the continuing validity of the fifteen-year-old Judgment in this case prompted the court to review the Request before endorsing it as a writ.

Because there is no federal statute governing how long a federal judgment is effective, federal courts use state procedures. *See* Fed. R. Civ. 69; 28 U.S.C. § 1652; *Stark v. Fifarek (In re Fifarek)*, 370 B.R. 754 (Bankr. W.D. Mich. 2007). In Michigan, a judgment is effective for 10 years from rendition or, in the federal system, entry on the court’s docket. *See* M.C.L. § 600.5809(3); *Fifarek*, 370 B.R. at 760. Under applicable state law, judgment creditors “shall not bring or maintain an action to enforce” a judgment unless they commence their actions “within the applicable [10 year] period of time prescribed in [M.C.L. § 600.5809].” In many respects, this statute operates as a statute of limitations, and ordinarily the court does not raise a time-bar defense *sua sponte* because litigants may waive it. In this case, however, the court makes an exception for several reasons.

First, Rule 69 requires the court to follow state law regarding enforcement of judgments and with respect to garnishments M.C.L. § 600.4011(7) provides that a garnishment proceeding “shall not be commenced if the commencement of such a proceeding is forbidden by a statute of this state.” As noted above, the prohibitory language of M.C.L. § 600.5809, limiting enforcement of judgments to ten years, though perhaps operating in part as a statute of limitations, may also be read as forbidding the enforcement of the Judgment through garnishment and thus limiting the court’s authority to issue the writ.

Second, the court notes that the entry of the Judgment fifteen years ago was premised on a prepetition debt that would have been discharged, had the court not entered the Judgment. 11 U.S.C. § 523(c). Although the rule against construing discharge exceptions narrowly does not

strictly fit here since the parties have resolved the dischargeability question and reduced their agreement to judgment, the spirit of that rule prompts the court to hesitate before enforcing an otherwise time-barred exception to discharge. The court notes, too, that Whirlpool could have taken steps to renew the Judgment, had it acted within the 10 year period, but as far as the docket shows, the creditor took no such action. *See* M.C.L. § 600.5809(3); *Fifarek*, 370 B.R. at 761.

Third, if the court were to issue the writ of garnishment despite its doubts about its authority for doing so, the modest amount of unsatisfied debt could impede the exercise of Mr. Moody's rights. In other words, the expense of retaining counsel or perhaps even the burden of taking time off work to attend garnishment proceedings might undermine his rights, as a practical matter.

On the present record, the court is not inclined to set the judicial machinery in motion for what appears to be a patently stale judgment. For these reasons,¹ the court will not enter the writ as Whirlpool requests at this time, but will give Whirlpool an opportunity to establish its right to the relief requested, notwithstanding the court's concerns, by filing a brief within 14 days after entry of this Order. Should Whirlpool fail to file a brief, the court will enter a separate order denying the Request and directing the Clerk to close the adversary proceeding.

Finally, the court notes that the Request contains Mr. Moody's social security number, contrary to Rule 9037. Accordingly, the court will restrict remote access to that document.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

¹ The Request is formally defective as it does not include the adversary proceeding number in the caption. Fed. R. Bankr. P. 9004.

1. The Clerk shall restrict electronic access to the Request in accordance with his usual procedures under Fed. R. Bankr. P. 9037;
2. Whirlpool may file a brief addressing the court's concerns within 14 days after entry of this Order;
3. If Whirlpool does not file a brief as provided herein, the court will deny the Request and the Clerk shall close the adversary proceeding.


IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order upon Michael B. Moody, Jr., Tricia N. McKinnon, Esq., attorney for Whirlpool, Mark A. Talsma, Esq., and the United States Trustee, pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4.

END OF ORDER

IT IS SO ORDERED.

Dated December 21, 2012





Scott W. Dales
United States Bankruptcy Judge