

FILED
12-06-2022
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

BY THE COURT:

DATE SIGNED: December 6, 2022

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

LEONARD POZNER,

Plaintiff,

Case No. 18-CV-3122

v.

JAMES FETZER,

Defendant.

DECISION AND ORDER ON OBJECTION OF AN ELECTION OF AN EXEMPTION

Plaintiff Leonard Pozner (“Pozner”) filed an objection to Defendant James Fetzer’s (“Fetzer”) election of an exemption. (Dkt. 534). For the reasons below, this objection is SUSTAINED.

BACKGROUND

On July 8, 2022, this court ordered Fetzer to turn over property to satisfy a judgment against him. (Dkt. 510). At an earlier hearing, Fetzer stated he planned to assert an exemption pursuant to Wis. Stat. § 815.18(3)(b). (Dkt. 509 at 24:19-25:1). At the time, this court decided to wait to rule on that exemption until after the property had been valuated. (*Id.* at 40:1-9). Since then, the

property has been valued at \$100,000. (Dkt. 528). Pozner filed an objection arguing that Wisconsin Law does not exempt copyrights or domain names, and that the copyrights and domain names were not Fetzer's "business property." (Dkt. 534 at 2, 5).

ANALYSIS

Wisconsin law does not exempt a copyright or domain name from execution. Wis. Stat. § 815.18(3)(b) provides exemptions for "Equipment, inventory, farm products, and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed \$15,000 in aggregate value." Copyrights and domain names are not listed in that exemption.

Fetzer argues that *Ager v. Murray*, 105 U.S. 126, 127-31 (1881), specified that copyrights cannot be seized. (Dkt. 522 at 2). However, that case is not dispositive. *Ager* predates the current Federal Rule on Execution, FRCP 69. *See Skycam, Ltd. Liab. Co. v. Bennett*, 62 F. Supp. 3d 1261, 1264 (N.D. Okla. 2014).¹ FRCP 69 says, "the procedure on execution...must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." State law controls. *Hendricks & Lewis PLLC v. Clinton*, 766 F.3d 991, 996 (9th Cir. 2014). No Wisconsin statute exempts either copyright or domain names from execution. Therefore, Fetzer cannot exempt his copyrights or domain names.

Second, the copyrights were not used in any business of Fetzer. As stated earlier, Wis. Stat. § 815.18(3)(b) gives an exemption for items "used in a business." Whether or not property is business or personal property is fact-specific, depending if the property was intended "primarily for the purchase, sale, lease or rental of property, for the manufacturing, processing or marketing of property, or for the sale of services." Wis. Stat. § 815.18(2)(b); *see also Tralmer Sales & Serv. v. Erickson*, 186 Wis. 2d 549, 561, 521 N.W.2d 182 (Ct. App. 1994). This court already determined

¹ There are two decisions with identical citations. The decision referenced here took place on November 14, 2014.

that Fetzer's copyrights and domain names were personal property, and therefore not business property. (Dkt. 510 at 1-2; Dkt. 528 at 2). Because the property is personal, Fetzer cannot exempt the property under Wis. Stat. § 815.18(3)(b).

ORDER

For the above reasons, the objection is SUSTAINED.

This is a final order for purposes of appeal. Wis. Stat. § 808.03(1).