

A09-1221

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**STATE OF MINNESOTA  
IN SUPREME COURT**

Mona Savig and Robert Savig,

*Plaintiffs,*

vs.

First National Bank of Omaha and  
Messerli & Kramer, P.A.,

*Defendants.*

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**BRIEF OF AMICUS CURIAE  
MINNESOTA CREDIT UNION NETWORK**

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## INTEREST OF AMICUS CURIAE

The Minnesota Credit Union Network (MnCUN) respectfully submits this brief as *amicus curiae* in support of clarification of a garnishee's burden of liability.<sup>1</sup> MnCUN is a statewide organization serving the needs and interests of Minnesota's 156 credit unions, which are not-for-profit cooperative financial institutions owned and controlled by their more than 1.5 million members and operated for the purpose of promoting thrift, providing credit at reasonable rates and providing other financial services to their members. *Amicus curiae* is concerned that, acting as third-party garnishees, credit unions in the State of Minnesota will face a substantial burden of liability, causing possible losses to their member-owners and inability to protect the interests and investments of their members if garnishees shoulder the responsibility of determining the source and ownership of funds held in a joint account at their institution. This liability could result in the cessation of high demand products and services currently offered to credit union members and hinder commerce in general. *Amicus curiae* has no interest in the dispute between the parties. Its interest lies in a need for clarification of applicable policy issues and Minnesota laws.

## STATEMENT OF THE FACTS

MnCUN adopts and incorporates the factual statement presented in the

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 129.03, the Minnesota Credit Union Network states that counsel for neither party authored this brief, in whole or in part, and that no person or entity, other than *amicus curiae*, made a monetary contribution or promise of contribution to the preparation or submission of the brief.

## SUMMARY OF ARGUMENT

Minnesota statutory and case law is currently causing ambiguity for creditors and garnishees attempting recovery on unpaid debts. Creditors are unable to ascertain the burden of liability resulting from the issuance of a garnishment (from hereon “garnishment” will refer to both a garnishment and a levy<sup>2</sup>) where the named debtor holds a joint account with at least one other individual not named as a debtor. This uncertainty is leaving many creditors that are owed substantial sums without any recourse or option of recovery. Minnesota law, the intent of our lawmakers, and accepted practices and interpretations by other jurisdictions all support the argument that the creditor should be able to issue a garnishment summons on any account where the debtor has an individual right of withdrawal, the garnishee must retain the funds in the account, and the debtor bear the responsibility of establishing that funds held should be excluded from garnishment.

Similarly, garnishees are unable to determine their liability for processing or failing to process a garnishment on a joint account where at least one owner is not a debtor. For the same reasons as those stated above, this causes great concern and clarification is needed that, again, the burden of establishing the source and

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<sup>2</sup> Both garnishments and levies are forms of recovery used by creditors that result in retention of a debtor’s property and, in the case of a garnishment or levy served on a financial institution, retention of funds held in the debtor’s accounts. The issues and concerns raised in determining the source and ownership of funds held in a joint account pursuant to a garnishment or levy are indistinguishable.

ownership of funds in a joint account is best fit for the party with the most access to the relevant information, the accountholders.

## ARGUMENT

### **I. GARNISHEES SHOULD NOT HAVE THE RESPONSIBILITY OF DETERMINING WHICH ACCOUNTS AND FUNDS ARE SUBJECT TO A GARNISHMENT NOR BEAR LIABILITY FOR COMPLYING WITH A GARNISHMENT SUMMONS.**

In addition to the concern that creditors have in finding legally permissible and fair methods of obtaining payment for unpaid debt, garnishees, the recipients and processors of garnishments, are currently without any clear guidance on how to comply with the garnishment laws of Minnesota, and they are unsure of their own liability when they comply or fail to comply with a garnishment summons that involves a joint account where at least one of the accountholders is not a named debtor. This confusion is due to Minnesota law that instructs a garnishee to comply with a garnishment summons and recent case law that puts prior accepted garnishment practices into question. *See, e.g., Enright v. Lehmann*, 735 N.W.2d 326 (Minn. 2007).

Minnesota law provides that a garnishee must “retain nonexempt disposable earnings, indebtedness, money, or other property belonging to the debtor up to 110 percent of the amount claimed in the garnishment summons.” Minn. Stat. § 571.78(2). Subsequently, the garnishee is instructed to “remit and deliver” said funds upon receipt of a levy, debtor authorization, court order or operation of law. Minn. Stat. § 571.78(3)(a). A garnishee will

only be relieved of its duty to retain and remit under certain circumstances. *See* Minn. Stat. § 571.79. If a garnishee fails to properly disclose the funds held in an account pursuant to a garnishment summons, it will be subject to liability under Minnesota law. *See* Minn. Stat. § 571.82 Subd.1. The accumulation of these laws expresses an unquestionable intent by lawmakers to have garnishees comply with a garnishment summons. Furthermore, the lawmakers took into account that there may be reasons for the release of funds held by a garnishee pursuant to a garnishment summons prior to remittance and delivery to the creditor. It was for this very reason that the exemption process was implemented for funds that fall within certain specified categories, a detailed timeline for the retention of funds by a garnishee outlined, and deadlines set forth for the creditor to ultimately receive such funds. It is during this timeframe and with the requirements set forth in the law (remittance will not occur until receipt of levy, debtor authorization, court order or operation of law) that there lies a protection for a debtor that wishes to prove that the funds retained are not in fact legally subject to garnishment by the creditor.

Similar to the procedures by which a debtor asserts an exemption claim under Minn. Stat. § 571.912 and 571.913, which allow a debtor to claim that funds retained by a garnishee are exempt for specified reasons listed in the law, where the debtor is required to claim the exemption and is encouraged to provide written documentation substantiating the exemption

claim, the debtor is the only party that can establish the source of funds held in a joint account and prove they should not be subject to the garnishment with confidence and complete accuracy. The debtor has the first-hand knowledge and access to information necessary to adequately prove an exemption and, likewise, prove the source and ownership of funds in a joint account. To put the burden of determining the source of funds on a garnishee is analogous to putting the burden of claiming a permissible exemption, such as that the funds are the earnings of a minor child or life insurance proceeds, facts the garnishee may never have the ability to establish, on the garnishee. *See* Minn. Stat. § 571.912. The garnishee is simply not in a position to assert the claims of the debtor due to lack of knowledge and access to information, as well as a lack in internal resources needed for a garnishee to embark on an immediate investigation to expediently determine the source of funds for each garnishment received.

Since the law requires that a garnishee comply with a garnishment summons and a debtor has the ability to contend that any funds retained should not be subject to the garnishment, garnishees should not be subject to any liability for complying with a garnishment summons, and the parties with the most information and interest in the outcome, the debtor and creditor, should be allowed to determine how they would like to proceed. Liability for the garnishee should be limited to following Minnesota law requiring compliance with a garnishment summons. From that point forward, the debtor, the party with the most information and with easy access to information, should bear the burden of proving the funds

are otherwise not subject to the garnishment to the creditor (and court, if applicable).

**II. INCREASED LIABILITY ON GARNISHEES WILL FORCE FINANCIAL INSTITUTIONS TO ASSESS THE FEASIBILITY OF PRODUCTS AND SERVICES OFFERED AND CAUSE A DETRIMENT TO COMMERCE IN GENERAL.**

If credit unions, acting as garnishees, are put in a position where they are obligated and responsible for determining the source of funds held in a joint account where one owner is not a debtor subject to a garnishment, they will be forced to make critical business decisions taking into account new and increased liability. Garnishees are not in the best position to determine the source of funds in an account, as they do not have adequate information, or often any information, relating to the funds nor the resources necessary to embark on investigations and make informed decisions as to the ownership of funds. Therefore, due to the concern that garnishees will have over the increased liability they would face, credit unions, particularly small credit unions that serve many of our underserved populations in Minnesota, may eliminate the option of joint accounts. This would cause a great detriment to Minnesota credit union members that have relied upon and appreciated the benefits of joint accounts, which include not only daily convenience but also testamentary benefits.

Credit unions are owned by their members, who are the accountholders, and they must make business decisions that best protect their members and the communities they serve. Unfortunately, if it is deemed a garnishee's responsibility

to determine whether funds held in a joint account are subject to a garnishment summons, credit unions will have to assess the cost of liability that such a decision by this Court would have on its member-owners. Credit unions operate to serve their members and the needs of their membership, and one of the needs of members is the option to have joint accounts with their associated benefits. It would be difficult for credit unions to decide between offering a service of great demand and reducing the risk of liability to their member-owners, as both are issues of high importance.

Should the inescapable pressure of liability prove to be too great and financial institutions including credit unions reduce the products and services available, there will be a negative effect on commerce. Joint accounts are extremely common and facilitate commerce with their ease of use and numerous benefits. Many credit union members in Minnesota would neither have easy access to funds in accounts structured to provide them with an efficient daily means of payment nor the opportunity for easy long-term testamentary planning should credit unions cease offering joint accounts. If joint accounts are eliminated because the liability risks are too high, there will be one less means to easy and efficient commerce. Consequently, there would be a negative impact on commerce in general.

### **CONCLUSION**

For the foregoing reasons and as holders of the most accurate information relating to the accounts at issue, accountholders should bear the burden of

establishing the source and ownership of funds held in a joint account subject to a garnishment summons. No party other than the accountholders is privy to the details of deposits and withdrawals from an account and has easy access to the relevant information needed to make an accurate determination regarding the source of funds held in a joint account.

Respectfully submitted,

Dated: Aug 17, 2009

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