

NO. A09-1221

State of Minnesota
In Supreme Court

Mona Savig and Robert Savig,

Plaintiffs,

vs.

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

Defendants.

ON QUESTION CERTIFIED BY UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA, HON. JOAN N. ERICKSEN

**REPLY BRIEF OF DEFENDANTS
FIRST NATIONAL BANK OF OMAHA AND MESSERLI & KRAMER P.A.**

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Statement of Facts

Plaintiffs' Statement of Facts contains assertions not supported by the record. In particular, Plaintiffs state that, "[a]fter discovering his funds had been attached, Robert Savig contacted Defendant Messerli & Kramer to discuss the seizure of his funds, and he requested that the funds be released immediately," and that Messerli & Kramer refused to release the funds. (Pls.' Resp. Br. at 5.) The record, including Plaintiffs' own Complaint in the federal district court, reflects that Robert Savig requested release of *all* the funds in the joint accounts, notwithstanding his simultaneous statement that he did not deposit all such funds. (A. 3 ¶ 11; A. 4 ¶ 18; Add. 15 n.13.) Furthermore, Messerli & Kramer did not refuse to release the funds but requested that Robert Savig submit documentation showing the funds belonged to him. (A. 15.) Robert Savig refused, and the Savigs commenced this litigation shortly thereafter. (*Id.*) On May 11, 2009, after the Savigs provided some information, Messerli & Kramer sent Robert Savig a check for \$842.37 representing funds in the joint accounts that, based on the information provided, appeared to have been deposited by him.

Argument

I. Minnesota Law Explicitly Allows Service of a Garnishment Summons, Regardless of the Nature of the Account from Which the Garnishee Thereafter Retains Funds.

Minnesota law unequivocally allows a judgment creditor to issue a garnishment summons against *any third party* at *any time* after entry of judgment. MINN. STAT. § 571.71(3). Because the Minnesota legislature anticipated that a garnishment summons may be served on a third party that may retain funds from a joint account, it also enacted a provision in the

garnishment statute permitting a non-party who claims an interest in the funds at issue in a garnishment proceeding to intervene or join in that proceeding. MINN. STAT. § 571.83. This procedure provides “some measure of protection for assets in a joint bank account from creditors of either party” while at the same time serving a judgment debtor’s “moral and legal obligation to pay what he owes.” *Enright v. Lehmann*, 735 N.W.2d 326, 332 (Minn. 2007); *Denzler v. Prendergast*, 126 N.W.2d 440, 443 (Minn. 1964).

Unable to directly address this clear Minnesota law, Plaintiffs instead frame their arguments around an inexact interpretation of the word “garnish,” based upon their strained interpretation of the *Enright* decision. (Pls.’ Resp. Br. at 8-9, 13-15.) *Enright* provided that “funds in a joint account may not be garnished to satisfy a judgment against a party who did not contribute the funds.” 735 N.W.2d at 336. However, funds *retained* by a garnishee in response to a garnishment summons have not been “garnished to satisfy a judgment.” Instead, the funds remain in the possession of the garnishee subject to the judgment debtor or other account-holders’ showing of individualized ownership.

Enright did not preclude a judgment creditor from issuing a garnishment summons on a joint account. The court simply held that the lower courts erred in their determination that the judgment creditor could *use* the disputed funds to satisfy the judgment against Ronald Lehmann *after* Lehmann showed that he did not deposit the funds in the account, and therefore, that the funds did not belong to him under the Minnesota Multiparty Accounts Act (“MPAA”) MINN. STAT. §524. The court did not hold that the appellate court erred in allowing the garnishment summons to be issued. Consistent with Minnesota law, this Court therefore should hold that a creditor may serve a garnishment summons against any third

party at any time after judgment, including against a third party who ultimately retains funds from a joint account in response to the summons.

II. Minnesota Garnishment Procedure Complies with the Due Process Clauses of the United States and Minnesota Constitutions.

Minnesota's garnishment statute protects a non-party's due process rights. The United States Supreme Court has repeatedly stated that the "requirements of due process of law are not technical, nor is any particular form of procedure necessary." *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 610 (1974) (quoting *Inland Empire Dist. Council v. Millis*, 325 U.S. 697, 710 (1945)). Instead, the fundamental requirement of due process is an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

Here, in the event the judgment creditor serves a garnishment summons upon a financial institution and the financial institution retains funds in a joint account, the garnishment statute allows a non-party claiming an interest in the property attached to intervene in the garnishment proceeding. MINN. STAT. § 571.83. None of the other states that have adopted laws equivalent to the MPAA have concluded that this procedure violates due process. Minnesota's garnishment procedure likewise is constitutional.

A. This Court Has Already Held that Minnesota's Garnishment Procedure Provides Sufficient Due Process Under *Sniadach*.

Plaintiffs rely heavily on *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Fuentes v. Shevin*, 407 U.S. 67 (1972). These cases are distinguishable because they interpret pre-judgment garnishment techniques, whereas this case relates to post-judgment garnishment techniques. For instance, because the *Sniadach* case involved a prejudgment

garnishment statute, there was no opportunity to challenge the garnishment prior to resolution of the case on the merits.

Even the Supreme Court has recognized the limited reach of those cases. In *Mitchell*, the Court stated:

Petitioner asserts that his right to a hearing before his possession is in any way disturbed is nonetheless mandated by a long line of cases in this Court, culminating in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Fuentes v. Shevin*, 407 U.S. 67 (1972). The pre-*Sniadach* cases are said by petitioner to hold that 'the opportunity to be heard must precede any actual deprivation of private property.' Their import, however, is not so clear as petitioner would have it: they merely stand for the proposition that a hearing must be had before one is *finally* deprived of his property and do not deal at all with the need for a pretermination hearing where a full and immediate post-termination hearing is provided. The usual rule has been '(w)here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.' *Phillips v. Commissioner*, 283 U.S. 589, 596 (1931).

416 U.S. at 611 (parallel citations omitted) (emphasis added). Regarding the laws under review in *Mitchell*, the Court concluded:

[T]he . . . system seeks to minimize the risk of error of a wrongful interim possession by the creditor. The system protects to debtor's interest in every conceivable way, except allowing him to have the property to start with, and this is done in pursuit of what we deem an acceptable arrangement pendente lite to put the property in the possession of the party who furnishes protection against loss or damage to the other pending trial on the merits.

Id. at 618.

Even under the *Sniadach* standard, the Minnesota Supreme Court has found that the post-judgment garnishment provision met the requirements of due process. *Credit Service Co.*

v. Linnerooth, 187 N.W.2d 632, 633 (Minn. 1971) (“The only provision [of the garnishment statute] held unconstitutional was the portion of the statute which permitted garnishment Before judgment . . .”). That ruling was correct. Reviewed under the balancing analysis articulated by the court’s procedural due process jurisprudence, the process provided by the Minnesota statute is constitutional.

1. The Garnishment Statute Protects Private Interests from Deprivation by Providing A Hearing.

Sniadach, *Fuentes*, and *Mitchell* all emphasize the importance of an available hearing, which Minnesota’s garnishment process provides. A case in New Mexico, which has also adopted the uniform law on which the MPAA is based, discussed the overall procedure for resolving garnishment of a joint asset. *Jemko, Inc. v. Liaghat*, 738 P.2d 922 (N.M. Ct. App. 1987); N.M. STAT. ANN. § 45-6-211. There, as here, garnishment is accomplished via ancillary proceeding. *Jemko*, 738 P.2d. at 926. “[T]he answer of the garnishee is not conclusive upon the court issuing the garnishment as to the true ownership of the funds sought to be garnished . . .” *Id.* at 924. “Hence, where it becomes apparent in a garnishment proceeding that the property rights of persons who are not parties to the proceedings may be affected, the remedy is to have them joined.” *Id.* at 926.

Indeed, every other state that has adopted the uniform law in question allows for proceedings after a third party/garnishee retains funds in a joint account. *See, e.g., Brown v. Commonwealth*, 40 S.W.3d 873 (Ky. Ct. App. 1999) (proceedings after writ of garnishment); *Browning & Herdrich Oil Co., Inc. v. Hall*, 489 N.E.2d 988, 992 (Ind. Ct. App. 1986) (proceedings after third party levy); *Lamb v. Thalimer Enters.*, 386 S.E.2d 912, 913 (Ga. Ct. App. 1989) (proceedings after filing of garnishment action).

Likewise, Minnesota's statutes provide for a prompt hearing after service of a garnishment summons and have a specific provision calling for joinder and intervention of interested third parties. Curiously, however, Plaintiffs forsook that hearing in lieu of a costly and time-consuming independent action in federal court alleging violations of the federal Fair Debt Collection Practices Act based on purported violations of Minnesota state law. Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (2006). In fact, among the number of federal cases recently arising on this topic, listed on page four of Defendants' brief, almost none of the plaintiffs has contested the garnishment in state court, despite the much quicker potential for recovery of funds. The prompt hearing called for by Minnesota law satisfies the requirement of due process of law, notwithstanding Plaintiffs' failure to make use of the proceeding.

2. The Parties' Interests and Practical Effect.

Much is said by Plaintiffs with regard to the "measure of protection for assets in a joint bank account" provided by the MPAA. To be sure, the MPAA and other laws protect the account-holders' private interests in their deposited funds. They allow courts to determine entitlement to funds in a joint account based on the reality of equitable ownership, rather than bare legal title.

However, it is the account-holders, not the judgment creditors, who have the knowledge required to determine equitable ownership. As courts have recognized, only the depositors know the deposits. *Hancock v. Stockmens Bank & Trust Co.*, 739 P.2d 760, 762 (Wyo. 1987) (holding that placing the burden of proof of ownership on the account-holders "is in harmony with the 'general rule of evidence that the burden of proof lies on the person

who wishes to support his case by a particular fact which lies more peculiarly within his knowledge, or of which he is supposed to be cognizant” (citing PRINCIPLES OF EVIDENCE § 274; 1 GREENL. EV. § 79; STARKIE EV. § 589). Therefore, under Plaintiffs’ interpretation of the law, bank garnishment and levy would cease to exist in Minnesota because attorneys and judgment creditors would not risk the potential liability of garnishing an account that ultimately may be jointly held. Judgment creditors, unable to divine the transactions on unknown accounts in private financial institutions, simply would not garnish, thereby reducing the value of a judgment, and contravening the explicit purpose of the legislative adoption of garnishment. *Nordstrom v. Eaton*, 652 N.W.2d 79, 82 (Minn. Ct. App. 2002) (describing purposes of garnishment “to reach property in the hands of the garnishee” and “to protect creditors without injustice to debtors or garnishees”). Unable to enforce judgments against defaulting parties, lenders would spread the cost to the public at large. Individuals owed money judgments as the result of accidents and injuries would have diminished recourse against their injurers.

It is Plaintiffs’ position that, “[b]y the time of an exemption hearing, the funds will have been frozen, and the damage will have been done.” (Pls.’ Resp. Br. at 16.) This logic cuts off any adjudication of the ownership of the funds, turning a joint bank account into the “equivalent of a Swiss Bank account,” as noted by the referring court. *Savig v. First National Bank of Omaha*, No. 09-CV-00132 (JNE/RLE), 2009 WL 1955476, at *6 (D. Minn. July 6, 2009) (order). Defrauding one’s creditors is not a legitimate private interest for due process purposes; and the state’s interest in the enforcement of judgments would be

hamstrung by a rule that, in practical effect, eliminates a remedy explicitly approved by the Minnesota legislature.

3. The Parties' Interests, Voluntary Joint Accounts, and the Testamentary Device.

Plaintiffs ignore the fact that they have implicitly consented to the garnishment proceeding by entering into a joint account. While the short-term retention of funds by the garnishee could be inconvenient for the non-debtor account-holder, the account-holders all voluntarily chose to enter into an contractual arrangement that surrenders some of their financial autonomy, allowing them to commingle their funds and “becloud the respective rights of the depositors.” Note, *Garnishment—Property Subject to Garnishment—Joint Account Depositor Has Burden of Proving His Ownership of Funds to Prevent their Garnishment for Debts of Other Depositor—Leaf v. McGowan* (Ill. App. 1957), 71 HARV. L. REV. 557, 558 (1958). Retention by the garnishee, with a subsequent hearing, “effect[s] the fairest compromise between the rights of creditors and those of joint-account depositors.” *Id.* at 559. One court, discussing personal property, called the temporary imposition on the co-owner “merely one of the disagreeable incidents of their joint ownership.” *Ruscitti v. Sackheim*, 817 P.2d 1046, 1048 (Colo. Ct. App. 1991) (quoting *Sharp v. Johnson*, 63 P. 485, 485 (Or. 1901)).

Plaintiffs contend that “the benefit of the MPAA—a simple and inexpensive way to transfer money from a decedent to a surviving joint owner—would be lost if creditors of either party could easily reach funds in a joint account.” (Pls.’ Resp. Br. at 9.) This *was* a risk under the subrogation rule of *Park Enterprises v. Trach*, 47 N.W.2d 194 (Minn. 1951), and was ameliorated in *Enright*. However, the retention by a garnishee in the interim before an evidentiary hearing poses no such dilemma. After the hearing, if a non-debtor account-

holder has shown ownership of the funds, he or she will be entitled to keep the funds, free to pass them along upon death.

The MPAA also describes an alternative account type that retains the testamentary benefit of the joint account, while avoiding even the minimal disruption associated with garnishee retention. Payable on Death Accounts are described under the MPAA, which states, "A P.O.D. account belongs to the original purchasing or depositing party during the party's lifetime and not to the P.O.D. payee or payees . . ." MINN. STAT. § 524.6-203(b).

For those whose concern is strictly testamentary, "yes, joint bank accounts serve a testamentary function--but so do payable-on-death (POD) accounts, and without the dangerous legal baggage of a joint account." Martha A. Churchill, *Joint Bank Accounts: One Size Doesn't Fit All*, 78 MICHIGAN BAR JOURNAL 292, 294 (1999). "Such accounts eliminate the guesswork regarding the depositor's intention at the time that the account was created." *Id.* "Power of attorney, custodial accounts, and trust accounts are also available at many banks, giving depositors flexibility in allowing a younger family member or trusted friend to assist with banking chores." *Id.* Comparing alternative multiparty accounts with traditional joint accounts, another commentator notes:

The claims of a creditor to sums on deposit in a P.O.D. or trust account should be simpler yet to resolve. Since the ownership of the account remains with the depositor until his death, there should be no question that his creditors may reach all the funds and that creditors of the beneficiary or payee can reach none. Such considerations may effect the decision to choose one form of multi-party account over another.

Note, *The "Poor Man's Will" Gains Respectability: Using the Minnesota Multiparty Accounts Act*, 1 WM. MITCHELL L. REV. 48, 65 (1974) (footnote omitted). Given the availability of such

alternative multiparty accounts, the procedure authorized by the Minnesota statutes strikes a fair compromise between the interests of judgment creditors and account-holders.

B. The Constitutional Avoidance Doctrine Is Inapplicable.

Plaintiffs are unable to present a single example of another MPAA state, or indeed any other state, following their suggestion that a judgment creditor cannot serve a garnishment summons if the garnishee ultimately retains funds from a joint account. Recognizing the absence of statutory or case law in support of their claims, Plaintiffs simply assert that the interpretation of the MPAA and state law, shared by every other MPAA state, is unconstitutional and, pursuant to the doctrine of constitutional avoidance, Minnesota's law should be interpreted in a manner that has no relation to its text. (Pls.' Resp. Br. at 13.) That argument fails for two reasons.

First, the constitutional avoidance doctrine does not apply because the MPAA is not ambiguous. "[T]he canon of constitutional avoidance has no application in the absence of statutory ambiguity." *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 494 (2001). This Court has stated, and Plaintiffs' own brief states, that the MPAA is not ambiguous. *Enright*, 735 N.W.2d at 331; Pls.' Resp. Br. at 14.

Second, the avoidance doctrine does not apply because Plaintiffs' construction is not reasonable. The doctrine only allows for *reasonable* constructions of ambiguous statutes. *Edward J. Bartolo Corp. v. Florida Gulf Coast Bldg. and Const. Trades Council*, 485 U.S. 568, 575 (1988) ("the Court will construe the statute to avoid such problems unless such construction is plainly contrary" to legislative intent); *Hooper v. California*, 155 U.S. 648, 657 (1895) ("[t]he elementary rule is that every reasonable construction must be resorted to"). The Minnesota

legislature adopted a uniform law, and such laws are construed uniformly. *Enright*, 735 N.W.2d at 331. The uniform law itself contains provisions exhorting uniform interpretation. MINN. STAT. § 524.1-102(b)(4). The construction urged by Defendants is consistent with the text of the law and with all other reported decisions from states that have adopted the uniform law. In contrast, the construction urged by Plaintiffs is contrary to the text and other decisions. Because it thus is unreasonable, Plaintiffs' interpretation would not be appropriate under the canon of constitutional avoidance.

III. The Presumption of Ownership

Plaintiffs suggest that the court cannot apply a presumption of ownership with respect to funds in a joint account without violating due process. None of the numerous courts that have applied such a presumption have found that the presumption violates that state's constitution. (Br. of Defs. at 30.)

Relying on *Enright*, Plaintiffs also argue that no presumption exists under Minnesota law. Again, Plaintiffs misread *Enright*. Funds retained by a garnishee in response to a garnishment summons have not been "garnished to satisfy a judgment." 735 N.W.2d at 336. *Enright* said that the judgment creditor could not keep such funds once the identity of their contributor was proven. *Enright* did not say that the retention of such funds by a garnishee was somehow an illegal act by a judgment creditor. As described in Defendants' brief, the common law, the case of *Bar-Meir v. North American Die Casting Association*, No. C6-03-331, 2003 WL 22015444 (Minn. Ct. App. Aug. 26, 2003), the majority rule, and the legislative history all support a presumption that the judgment debtor owns the entire account.

IV. Burdens of Proof.

Numerous cases place the burden on the account-holders to prove their net deposits, under the MPAA and other regimes. (See Br. of Defs. at 18-24; see also *Delta Fertilizer, Inc. v. Weaver*, 547 So.2d 800, 803 (Miss. 1989) (“It is our view that under the facts in this case the court should have held all of the joint bank account was prima facie subject to garnishment, and that the burden was on each joint depositor to show what portion of the funds he or she actually owned” (quoting *Hayden v. Gardner*, 381 S.W.2d 752, 754 (Ark. 1964))); *Jimenez v. Brown*, 509 S.E.2d 241, 246 (N.C. Ct. App. 1998) (“there is a presumption that all of the joint bank account is owned by the debtor . . .’ and that the depositors have the burden to prove that ownership of the funds is otherwise”); *Cupit v. Brooks*, 112 So.2d 813, 814 (Miss. 1959) (requiring judgment debtor to show identity of depositors to joint account); *House v. Malcolm Thomas Indus., Inc.*, 611 So.2d 1085, 1085 (Ala. Civ. App. 1992) (“[T]here is a rebuttable presumption that the funds in the joint account belong to the debtor. The burden is on the depositors to prove otherwise” (quoting *Amarlite Architectural Products, Inc. v. Copeland Glass Co.*, 601 So.2d 414, 416 (Ala. 1992))); *Norcross v. 1016 Fifth Avenue Co., Inc.*, 196 A. 446, 448 (N.J. Ch. 1938) (“The complainant is here charged with the burden of establishing that his wife was a joint depositor with him as a convenience to him in making deposits and withdrawals, and that she was without any interest in the accounts.”); *In re Kondora*, 194 B.R. 202, 209 (Bankr. N.D. Iowa 1996) (holding that intervening joint account-holder had failed to meet his burden of proving by clear and convincing evidence that he deposited all of the funds in a joint account) (applying Iowa law); *S&S Diversified Services, L.L.C. v. Taylor*, 897 F. Supp. 549, 552 (D. Wyo. 1995) (“The burden of proving what funds

in a bank account, held jointly by the judgment debtor and another depositor, are not subject to execution is on the depositors”); *Society of Lloyd’s v. Collins*, 284 F.3d 727, 731 (7th Cir. 2002) (holding that because money was in a joint account, judgment creditor had established a prima facie case that the money belonged to the judgment debtor, and the burden was on the other account-holder to prove her deposits) (interpreting Illinois law).) An especially clear expression of the rule was set forth by the Supreme Court of Hawaii, a state that has adopted the MPAA:

We now adopt the majority view that the debtor presumptively holds the entire joint bank account but may disprove this supposition to establish his or her actual equitable interest. In this way, the debtor, at an evidentiary hearing, may prevent the judgment creditor from seizing more than the debtor’s fair share of the account. The judgment creditor, moreover, may introduce its own evidence on this issue. Should the debtor fail to establish by a preponderance of the evidence that he or she does not possess the whole joint account, however, then the judgment creditor may confiscate all the deposits therein to satisfy the garnishment.

Traders Travel International, Inc. v. Howser, 753 P.2d 244, 248 (Haw. 1988) (citations omitted); see also HAW. REV. STAT. § 560:6-103.

The Minnesota Court of Appeals followed this path in *Bar-Meir v. North American Die Casting Association*, No. C6-03-331, 2003 WL 22015444 (Minn. Ct. App. August 26, 2003) (*See* Br. of Defs. at 24-25). *Bar-Meir* concluded that the burden of proving “who contributed what” to a joint account fell to the account-holders. Though *Bar-Meir* was unreported and predated *Enright*, the recent decision of the Court of Appeals in *Russell’s AmericInn, LLC v. Eagle General Contractors, LLC*, ___ N.W.2d ___, 2009 WL 2928544, (Minn. Ct. App. Sept. 15, 2009), follows the same logic.

In *Russell*, the judgment debtor, Dale Werth, claimed that the funds in a joint account held with his son were exempt from attachment pursuant to the MPAA. The district court denied his claim, holding that he “failed to provide documentation showing that he only made deposits and never withdrew any funds,” and therefore “failed to meet his burden of proof.” *Russell’s AmericInn*, 2009 WL 2928544, at *1. Thus, the Minnesota Court of Appeals endorsed the garnishment process and confirmed that the account-holders bear the burden of establishing their deposits.

These authorities are supported by sound reasoning. One commentator notes that this majority approach “treats each case on its merits and permits actual ownership to prevail in cases in which accurate records have been kept.” Note, *Garnishment—Property Subject to Garnishment—Joint Account Depositor Has Burden of Proving His Ownership of Funds to Prevent their Garnishment for Debts of Other Depositor—Leaf v. McGowan (Ill. App. 1957)*, 71 HARV. L. REV. 557, 559 (1958).

[S]ince the depositors’ use of a joint account gives them the power to obscure their respective rights in the fund, it is more equitable to place the burden of proof on the nondebtor depositor than on the garnisher. This resolution seems desirable because the facts of actual ownership are peculiarly within the knowledge of the depositors.

Id. Another writer notes that:

[T]he debtor and other account holders may generally present evidence to the judge or jury attempting to show that the debtor did not own the money. The creditor, likewise, may introduce evidence showing the debtor owned the money or questioning the debtor’s credibility.

Most states allow the presumption of ownership to be rebutted, but only by clear and convincing evidence, for fear that depositors might resort to fraud or collusion to avoid paying a

debt. A joint account owned by a husband and wife would almost never be garnished by the creditor of the wife, for example, if the couple could simply escape the garnishment by making unsupported assertions that the money belonged to the husband.

Martha A. Churchill, Annot., *Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor*, 86 A.L.R.5th 527, §2[a] (2007). The annotation further describes the variety of evidence an account-holder may be advised to offer when contesting garnishment.

Some judges may accept the affidavit of a depositor, by itself, as proof that the debtor did not own the money in the account, as suggested by the dissenting opinion in *Beehive State Bank v. Rosquist*, 439 P.2d 468 (Utah 1968). Most courts, though, would cast a suspicious eye on self-serving statements by interested parties, depending on the circumstances, as the court did in *Norcross v. 1016 Fifth Avenue Co.*, 196 A. 446 (N.J. Ch. 1938) (the husband claimed he had money stashed in a jar of corn flakes), and *American Nat. Bank & Trust Co. of Mich. v. Modderman*, 195 N.W.2d 342 (Mich. Ct. App. 1972) (court may disregard unreliable testimony of interested parties). On the other hand, an un rebutted affidavit may be sufficient where the circumstances lend credibility to the depositors' statements, as in *Esposito v. Palovick*, 101 A.2d 568 (N.J. App. Div. 1953), where the debtor had no earnings.

Id. (parallel citations omitted). These sources show that the placing of the burden of proving net deposits on the account-holders is the fair and sound result in light of the purpose of the MPAA, and the depositors' unique access to relevant information.

Conclusion

Defendants have shown that Plaintiffs' idiosyncratic interpretation of the MPAA and garnishment law is without support in this or any other jurisdiction. Accordingly, this Court's answers to the certified questions, consistent with the Multiparty Accounts Act;

Enright v. Lehmann, 735 N.W.2d 326, 332 (Minn. 2007); and Minnesota law generally, should hold that:

1. Yes, a judgment creditor may serve a garnishment summons on a joint account to satisfy the debt of an account holder when not all of the account holders are judgment debtors;
2. the account-holders bear the burden of establishing net contributions to the account in the garnishment proceeding, and;
3. the judgment debtor is initially, but rebuttably, presumed to own all funds in the account.

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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 4,529 words. This brief was prepared using Microsoft Word 2003.

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