

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

WILLIAM WIESENFELD  
by Jason DiNardo, d/b/a  
Keystone Judgment Recovery,  
Assignee,

Plaintiff

vs.

ROBERT KENNEDY and  
RANA FELTON,

Defendants

CIVIL DIVISION

NO. AR97-006102

OPINION AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

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PROthonAL  
ALLEGHENY COUNTY

Counsel for Jason DiNardo, d/b/a  
Keystone Judgment Recovery:

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Counsel for Defendants:

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OPINION AND ORDER OF COURT

WETTICK, A.J.

Defendants' motion for a court order barring Jason DiNardo, d/b/a Keystone Judgment Recovery, Assignee, from participating in court proceedings except through counsel is the subject of this Opinion and Order of Court.

On January 14, 1998, a Board of Arbitrators entered an award in William Wiesenfeld's favor and against Robert Kennedy and Rana Felton in the amount of \$2,800. This award was reduced to a judgment on October 14, 2003.

On June 4, 2007, an assignment of judgment was filed in these proceedings. The assignment, dated April 20, 2007 and signed by Mr. Wiesenfeld, states that Mr. Wiesenfeld is transferring and assigning "all title rights and interest" to the judgment entered at AR07-006192 in the amount of \$2,800.

On June 19, 2007, defendants filed a petition to strike or open the judgment entered on October 14, 2003.<sup>1</sup> The petition identified plaintiff as William Wiesenfeld by Keystone Judgment Recovery, Assignee. On July 9, 2007, Mr. DiNardo, *pro se*, filed an answer to this petition.

On June 19, 2007, defendants also filed a motion to bar assignee for collection from proceeding *pro se* in the court proceedings. In the motion, defendants alleged that

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<sup>1</sup>The petition alleges that neither defendant participated in the arbitration proceedings. A judgment should not have been entered against Rana Felton because the complaint only named Robert Kennedy. A judgment should not have been entered against Robert Kennedy because he never received notice of the hearing.

Mr. DiNardo, doing business as Keystone Judgment Recovery, is a collection agency and that Mr. DiNardo is not permitted to file legal papers with the court except through counsel. On June 29, 2007, Mr. DiNardo (*pro se*) filed an answer to this motion.

On July 13, 2007, I entered a rule to show cause why the motion should not be granted. I provided for the motion to be decided under Pa.R.C.P. No. 206.7 with depositions to be completed within sixty days.<sup>2</sup>

Mr. DiNardo's deposition was taken on August 29, 2007. He described his business as purchasing judgments and then trying to collect them (T. 6). He was asked if he collects them on some kind of a contingency arrangement. His response was that it is not contingency; it is for future consideration (T. 6).

The record (DiNardo Dep., Ex. A) includes the form agreement for assignment that Mr. DiNardo uses (Attachment 1 to this Opinion).

The relevant provisions of this Agreement read as follows:

JUDGMENT CREDITOR hereby agrees to assign all rights, interests in and title to the judgment whose Civil Action Number is: AR-97-006102, and original judgment award amount is \$2,800.00 entered on or about 1/14/1998 in Allegheny County against Robert Kennedy & Rhena Felton, herein after referred to as "JUDGMENT DEBTOR" to ASSIGNEE.

ASSIGNEE will advance all expenses for asset searches, skip tracing, related court costs, process serving and related collection fees. JUDGMENT CREDITOR will not incur or advance any expenses associated with the collection of said judgment. ASSIGNEE will retain, out of revenue collected, sufficient funds to satisfy advanced expenses prior to disbursement to either party, and petition the court to increase the judgment by an equivalent amount.

Thereafter, amounts collected are disbursed as follows:

50% to William Wiesenfeld, JUDGMENT CREDITOR, until such date as JUDGMENT CREDITOR has received 50% of any portion of monies recovered by ASSIGNEE in the above mentioned judgment award amount from any combination of ASSIGNEE and JUDGMENT DEBTOR,

AND all remaining amounts to Jason DiNardo d/b/a Keystone Judgment Recovery, ASSIGNEE, until judgment is satisfied and/or canceled.

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<sup>2</sup>Subsequently, Mr. DiNardo retained counsel (Wayne P. McGrew, Esquire) to represent him in connection with this motion. At oral argument, Mr. McGrew stated that he may not be representing Mr. DiNardo in the proceedings to open or strike the judgment if defendants' motion to bar Mr. DiNardo from proceeding *pro se* is denied.

Mr. DiNardo testified that he has never bought a judgment with no future consideration (T. 12). He further testified that the assignor has no say in how Mr. DiNardo handles the judgment.<sup>3</sup>

Collection agency practices are governed by 18 Pa.C.S. §7311. Defendants rely on §7311(b) which reads as follows:

**(b) Appearance for creditor.**—It is unlawful for a collection agency to appear for or represent a creditor in any manner whatsoever, but a collection agency, pursuant to subsection (a), may bring legal action on claims assigned to it and not be in violation of subsection (c) if the agency appears by an attorney.

Section 7311(h) defines *Claim* and *Collection agency* as follows:

**“Claim.”** Includes any claim, demand, account, note, or any other chose in action or liability of any kind whatsoever.

**“Collection agency.”** A person, other than an attorney at law duly admitted to practice in any court of record in this Commonwealth, who, as a business, enforces, collects, settles, adjusts, or compromises claims, or holds himself out, or offers, as a business, to enforce, collect, settle, adjust, or compromise claims.

Mr. DiNardo contends that he is not governed by §7311(b) because he is not a collection agency acting on behalf of a creditor. He raises the following arguments in support of this contention:

First, a *collection agency*, as defined in §7311(h), reaches only a person who takes action with respect to *claims*. The term *claim*, as defined in §7311(h), does not include a judgment.

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<sup>3</sup>The Agreement is silent on this issue. The implied duty of good faith and fair dealing would be part of the Agreement.

I find this contention to be without merit. The definition of *claim* includes "liability of any kind whatsoever."<sup>4</sup>

Second, it is Mr. DiNardo's position that (1) the definition of *collection agency* only reaches a person who is taking action on behalf of a third party creditor and (2) he is acting on his own behalf as the owner of an assignment, and not on behalf of a third party.

This position is without merit because the purpose of the assignment is for Mr. DiNardo to collect and enforce payment of the judgment on behalf of the judgment creditor. Section 7311(a) provides that it is lawful for a collection agent to take an assignment of a claim from a creditor "for the purpose of collecting or enforcing payment thereof." Section 7311(b) provides that the collection agency taking an assignment for the purpose of collecting or enforcing the payment thereof may bring legal action on claims assigned to it only if the agency appears by an attorney. Section 7311(h) defines a *collection agency* as a person who, as a business, "enforces, collects, settles, adjusts, or compromises claims."

Mr. DiNardo's interpretation of §7311 would render §7311(b) meaningless. Section 7311(b) is intended to cover any person in the business of enforcing, collecting, settling, adjusting, or compromising claims where the amount of the payment that will be made to the creditor is contingent upon the amount which is collected. If a person can evade §7311(b) by using an assignment form, such as Mr. DiNardo is using, every transaction will be structured in this fashion.

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<sup>4</sup>Mr. DiNardo contends that the word *claim*, if given its ordinary meaning, means a demand for money to which one asserts a right. While this may be so, the definition of the term *claim* in §7311(h) is broader. The term *claim* as used in §7311 includes more than a claim; it includes the following in addition to claim: "demand, account, note, or any other chose in action or liability of any kind whatsoever."

This transaction between Mr. DiNardo and Mr. Wiesenfeld is contrasted with a transaction in which a person buys 500 judgments and claims of a large medical practice, paying 15 cents per dollar of the amount of a judgment and 10 cents per dollar of the amount of a claim. In this situation, any collection activities in which the assignee engages are on behalf of the assignee alone and not as a service provider for the assignor because the assignor has no interest in the collection activities of the assignee. Thus, there has been a complete assignment rather than an assignment for the purpose of collecting or enforcing payment.<sup>5</sup>

This distinction that I have drawn between an assignment where the purchase price is dependent upon the amount the assignee collects and an assignment where the assignor has been fully paid and has no interest in the collection activities of the assignee is recognized in the following cases (together with cases cited therein): *Iowa Supreme Court Comm'n on Unauthorized Practice of Law v. A-1 Assocs., Ltd.*, 623 N.W.2d 803 (Iowa 2001); *State ex rel. Frieson v. Isner*, 285 S.E.2d 641 (W. Va. 1981); and *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 514 P.2d 40 (1973).

For these reasons, I enter the following Order of Court:

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<sup>5</sup>This Opinion does not address the issue of whether the term *collection agency* includes a person who is in the business of enforcing, collecting, settling, adjusting, and compromising claims that this person acquired through assignments where the assignor was fully paid and has no interest in the collection activities of the assignee.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WILLIAM WIESENFELD  
by Jason DiNardo, d/b/a  
Keystone Judgment Recovery,  
Assignee,

Plaintiff

vs.

ROBERT KENNEDY  
And RANA FELTON,

Defendants

NO. AR97-006102

ORDER OF COURT

On this 28 day of December, 2007, it is ORDERED that:

(1) defendants' motion to bar assignee for collection from proceeding *pro se* is granted and Jason DiNardo, d/b/a Keystone Judgment Recovery, is prohibited from filing any legal papers in this matter except through counsel; and

(2) an argument on defendants' motion to open or strike judgment will be held on January 25, 2008, at 10 A M o'clock.

BY THE COURT:



WETTICK, A.J.

AGREEMENT FOR ASSIGNMENT

THIS CONSTITUTES THE ENTIRE AGREEMENT, entered into between William Wiesenfeld of 5703 Mifflin Road, Pittsburgh, PA 15207 herein after referred to as "JUDGMENT CREDITOR" and Jason DiNardo dba Keystone Judgment Recovery a Pennsylvania business, herein after referred to as "ASSIGNEE".

JUDGMENT CREDITOR hereby agrees to assign all rights, interests in and title to the judgment whose Civil Action Number is: AR-97-006102, and original judgment award amount is \$2,800.00 entered on or about 1/14/1998 in Allegheny County against Robert Kennedy & Rhena Felton, herein after referred to as "JUDGMENT DEBTOR" to ASSIGNEE.

ASSIGNEE will advance all expenses for asset searches, skip tracing, related court costs, process serving and related collection fees. JUDGMENT CREDITOR will not incur or advance any expenses associated with the collection of said judgment. ASSIGNEE will retain, out of revenue collected, sufficient funds to satisfy advanced expenses prior to disbursement to either party, and petition the court to increase the judgment by an equivalent amount.

Thereafter, amounts collected are disbursed as follows:

50% to William Wiesenfeld , JUDGMENT CREDITOR, until such date as JUDGMENT CREDITOR has received 50% of any portion of monies recovered by ASSIGNEE in the above mentioned judgment award amount from any combination of ASSIGNEE and JUDGMENT DEBTOR,

AND all remaining amounts to Jason DiNardo d/b/a Keystone Judgment Recovery, ASSIGNEE, until judgment is satisfied and/or canceled.

Funds will be disbursed to JUDGMENT CREDITOR within 90 days of receipt by ASSIGNEE.

JUDGMENT CREDITOR affirms that his/her interest in and title to said judgment is real, marketable, was legally obtained, has not been previously assigned, and has not been satisfied or canceled.

JUDGMENT CREDITOR affirms that he/she has, to date, received \$0.00 as partial payment of this debt from JUDGMENT DEBTOR, and will IMMEDIATELY notify ASSIGNEE of any future receipts. From the date of this agreement, JUDGMENT CREDITOR will cease and desist all efforts to collect this judgment and recognize that ASSIGNEE has total and exclusive right to collect said judgment at its discretion.

By signing this agreement the undersigned JUDGMENT CREDITOR acknowledges that he/she had read, accepts, and fully understands the agreement, and is a duly authorized representative with all powers required to execute this agreement.

Executed this 20 th day of April, 2007.

William Wiesenfeld

William Wiesenfeld  
Signature

Jason DiNardo d/b/a Keystone Judgment Recovery

Jason DiNardo  
ASSIGNEE

Exhibit A