

ILLINOIS CREDITORS BAR ASSOCIATION

SEPTEMBER/OCTOBER 2000

FROM THE PRESIDENT'S DESK

Dear Members,

I hope you all had a great summer! In this issue of the newsletter we have included a "preliminary" membership roster for 2000/2001. Please take a moment to review your information and confirm that everything is correct. If you need to make additions or changes, contact Leigh-Ann Thompson at (877) 724-5504 or via e-mail at leighann@san.rr.com. The final 2000/2001 roster will be mailed to you by October 20th.

Have you marked your calendars for the NARCA Fall Collection Conference? It will be held in Chicago October 26 - 28. We will be sponsoring the continental breakfast at the convention on Saturday, October 28th from 8 to 9 AM. For more information and registration please contact Diane Darrow at (800) 633-6069.

Would you like to be published? We are always looking for interesting articles related to creditors law to include in the newsletter. If you would like to submit an article for the next newsletter please contact Leigh-Ann Thompson at (877) 724-5504 or Steven Fink at (312) 696-1000.

The next board meeting will be held October 16 at 77 West Washington St., Suite 615 in Chicago. All members are encouraged and invited to attend. Thank you for your continued support.

Sincerely,

Robert Becker
President 2000/2001 Term

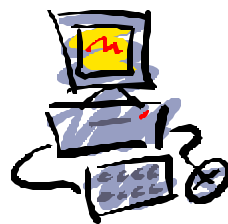
WELCOME NEW MEMBERS

The Illinois Creditors Creditors Bar Association would like to extend a warm welcome to the following new members:

- Thomas Brabec
Chicago, IL
- Horace Ealy
Homewood, IL
- Julie Egan
Chicago, IL

Thank you for your support!

DO WE HAVE YOUR E-MAIL ADDRESS?



One of the benefits of being an ICBA member is unlimited participation in the listserv and access to the website (www.ilcba.org). We also offer free e-mail addresses to any of our members! To obtain an e-mail address contact Barry Lowe at (312) 644-1000. To sign up for the listserv, contact Leigh-Ann Thompson at (877) 724-5504.

• Visit us on the web: www.ilcba.org •

Article of Interest

WHEN PROCEEDS OF THE SALE OF HOMESTEAD PROPERTY ARE NOT EXEMPT

Contributed by Ira N. Helfgot

When are the proceeds of the sale of homestead property entitled to protection from creditors, pursuant to Section 12-906 of the Illinois Code of Civil Procedure? That novel issue was decided in In re Ziegler, 239 B. 375 (Bkrcty.CD.Ill.1999). This article will briefly examine the Ziegler opinion, which is required reading for any member of the Creditor's Bar Association.

The Zieglers encountered financial difficulties and sought the advice of a bankruptcy attorney. He advised them that they had too much equity in their residence (the Residence) to seek Chapter 7 relief. To preempt a potential foreclosure action, the Zieglers ostensibly sold the Residence to Mr. Ziegler's sister, Donna. At the closing, the Zieglers received a check in the sum of \$17,151.53, which they deposited into their checking account. Four days later, the Zieglers purchased a certificate of deposit in the sum of \$10,000.

The Zieglers continued to reside in the Residence and made monthly payments on the mortgage taken out by Donna, until slightly less than one year after the sale, when they filed a Chapter 7 petition. By that time, the remaining balance of the certificate of deposit was \$4,152.38, which the Zieglers claimed as a homestead exemption. The Trustee objected to the claim of exemption, and an evidentiary hearing was held. The Bankruptcy Court sustained the Trustee's objection.

The Bankruptcy Court, relying, *inter alia*, on Florida bankruptcy law (In re Gilley, 236 B.R. 441 (Bkrcty.M.D.Fla. 1999)), found that although Section 12-906 of the Code does not specifically require a debtor's intent to use the proceeds of the sale of a homestead to acquire another homestead, such a requirement was implicit in the statute. Therefore, it held that the proceeds of a voluntary sale of a homestead would be exempt from the claims of creditors if, and only if, the vendor demonstrated, by a preponderance of evidence, an abiding good faith intention prior to and at the time of the sale of the homestead to reinvest the proceeds of sale in another homestead within a reasonable time. The Bankruptcy Court expressly limited the application of the homestead exemption to those proceeds necessary to purchase the new homestead and held that any surplus over and above what would be needed to purchase the new homestead would be treated as general assets of the debtor. In *dicta*, the Court applied this condition to the case of debtors selling their home to purchase a less expensive home and found that using any of the proceeds of sale prior to the

purchase would result in a loss of the exemption. Further, it conditioned the application of the homestead exemption by requiring that the proceeds of sale be segregated for the sole purpose of acquiring another home and not commingled with other monies of the debtor.

In summing up its opinion, the Bankruptcy Court noted that the chief purpose of the homestead exemption is to shelter the family and permitting debtors to claim the exemption when there is no intention to use those funds to acquire a homestead. This fails to satisfy the purpose of the exemption, which works an injustice upon their creditors. Although there is scant precedent contained in Ziegler, its straightforward logic, such as that contained within its summation, is persuasive. After carefully reading the entire Ziegler opinion, it should be added to the arsenal of any member of this bar association.

What's New?

NEW RULES...EFFECTIVE IMMEDIATELY MEMORANDUM 7/14/00

To: All First Municipal Civil Judges; Presiding Judge's Administrative Staff Room 1301; Cynthia Eddington, Assistant Deputy Chief Clerk Civil Division (for appropriate distribution to clerk's staff)

From: Jacqueline P. Cox, Presiding Judge - First Municipal District

Re: Satisfactions and Releases of Judgements, Memorandums of Judgment and Motions to Vacate Installment Orders

Effective immediately, Satisfactions and Releases of Judgments and Memorandum of Judgment which require a judge's signature will be reviewed by the judges assigned to the Presiding Judge's Office in Room 1301/1303.

Parties requesting these orders must obtain a print-out of the case and submit that print-out and the original order to a staff member in Room 1301/1303 who will immediately bring the documents to a judge to be reviewed and signed or rejected.

Satisfactions and Releases of Judgments which do not require a judge's signature may still be filed and stamped in Room 602. Effective immediately, Motions to Vacate Installment Orders, currently entertained only in Room 1401, must be presented in one of the following ways:

- Spindle for hearing on the 2 PM Motion Call in the 11th floor courtroom in which the original order was entered.
- Spindle for the regular motion call in the jury room in which the order was originally entered.

These motions will no longer be brought to Courtroom 1401.

These procedures SUPERCEDE all previously required procedures.

MINUTES FROM THE SEPTEMBER ICBA BOARD MEETING

I.C.B.A. Minutes/ 9-11-00

1: The Minutes: The minutes of the 6-16-00 meeting were approved unanimously. The treasurer reported that we currently have \$16,000.00 in the account, and a few small outstanding bills. His profit and loss sheets were distributed.

2: New Business: A: Leigh Ann's report, delivered by e-mail, was discussed. Nametags - The nametags that are being distributed (Rob Becker should have them) are for seminars, NARCA events, luncheons, etc. Please inform me if you notice any misprints or if any are missing. Comment: The name-tags were received by all of the board members and appeared to be in good order. September Newsletter - The September newsletter will be e-mailed to Steven Fink for proofing by Friday, September 15th. If you have any additional material to contribute, please e-mail it to me by Wednesday, September 13th. Included in the newsletter are 2 articles, the 2000/2001 membership roster, NARCA convention info, and individualized ICBA certificates recognizing each member.

NARCA - The ICBA will be sponsoring a breakfast at the NARCA convention in Chicago on Saturday, October 28th. The cost for sponsorship is \$2000. Would the board like me to have signage made? Anything else? Please inform. Comment: Ira Liebsker suggested that signs would be taken care of by NARCA, and if handouts are to be made we should contact Diane at NARCA. It was approved that Leigh-Ann should look into the design of a banner that can be used now and in the future. There was some discussion about whether it should be a banner of the size required to place on the front of a lectern, or one that could be for the front of a literature table. Barry Lowe suggested that if we were having one made, making two might not be that much more expensive. He also suggested that it should be made of nylon, and have grommets in its corners. Barry Lowe agreed to float a request for design ideas on the list serve. Leigh-Ann should discuss this with him, and produce a mockup by our next meeting, 10-16-00. Ira also said that there would be an easel in front of the breakfast meeting we are sponsoring which will carry a sponsor board, and this will be handled by NARCA. Brochure - I would like to have a

new ICBA brochure available to participants at the NARCA convention. In addition to a current ICBA phone number, website info and address, what other info would you like me to include? Please inform within the next 2 weeks so I can design it in time to be printed for the NARCA event.

Comment: Describe the listserve. Note that we are the largest and most successful state creditors bar association in the country. It was agreed that Leigh-Ann should run a draft copy of the text on the listserve before the next meeting, and solicit membership comments.

3: Membership - The ICBA membership database is current at 115 paying members. Due to their high number of referrals, Bob Markoff and Michael Matek have both earned a free membership for next year. I will remind members about the "Refer 5 people, get your membership free" program in the September newsletter.

Comment: Mr. Markoff and Mr. Matek received whistles of appreciation.

My New Phone Number - In order that ICBA members can continue to contact me at their convenience, I can now be reached (in San Diego) via a toll-free number. My new number is (877) 724-5504.

Comment: as we are now drawing to the end of this year, it would be good for Leigh Ann to produce a schedule of next year's meetings, and when we can expect to see her in Chicago. It was stated that she will try to attend every other meeting.

National List: the National List has inquired whether we are interested in cross linking our Web site to theirs. There was a general agreement that this would be acceptable as long as there were no charge, and we should find out whether there is a charge. If it can be accomplished for no charge, we should apply to other law lists for cross linking arrangements, as well as solicitations to run ads in our newsletter. This matter should be discussed again at the next meeting after more investigation is done.

Mr. Markoff suggested that attorneys be aware the Illinois Court's Rule Book is valuable in that it features each year additions to the Rules in highlighted text.

Scott Alexander reported on the J. Betar suggestion box he has been running for the past several months on the list serve. The following suggestions were approved to be written up more formally and submitted in confidence on behalf of the board to Judge Betar:

1. The board would like to formally extend its grateful recognition to all of the clerks working in courtroom 1401, and especially to Chuck.
2. Attorneys are still finding it difficult to obtain stamped orders in the morning that they are heard, and suggest that more attention be paid to distributing these while counsel are present, especially since it is not good to have dispositive

orders left around, and many of these orders are extremely time sensitive.

3. There is a court Rule that defendants may not "Check in" after 10:00 a.m. This rule is more honored in the breach, and is too rigid. It would be better if defendants were allowed to "Check in" after 10:00 a.m., so long as the attorney for plaintiff is still in the courtroom.

4. Switch the times for the 2:00 p.m. and 2:30 p.m. court calls. Have the Pro Se call start at 2:30 and the detinue/replevin/revival call start at 2:00. This would reduce delays for the waiting lawyers and give the Court time to focus on the time consuming Pro Se parties.

5. It is onerous and expensive for the volume filers to pull copies of a served Cites and Rules to support Motions for Rules and Attachments. We recognize that the Court needs to exercise care in issuing these Orders. It is suggested that the high volume filers go through the files the day before and stand up these documents in the front of the court file rather than chasing down and copying these documents for their Motions.

6. It would be good to publish all the current 1401 rules on the Clerk of the Circuit Court's website. They should also be posted in the Courtroom.

4: Education: There was a discussion of an upcoming lecture we would like to hold featuring Judge Wedoff to talk about bankruptcy code changes, but he wants another topic. Steve Fink agreed to solicit ideas for bankruptcy topics on the listserve. There was also some general discussion about the desirability of having a downstate speaker.

5: Legislation: Mr. Markoff discussed with Senator Ira Silverstein our legislative agenda, and Senator Silverstein agreed to initiate our revival of judgment proposal. We would also like to advance our proposal to amend the rules to allow multiple cites and executions out of county. Judge Betar suggested that going to the Supreme Court Rules Commission would be effective. There was a lengthy discussion regarding the service of citations. Since it is now allowed to use certified mail, return receipt requested for service, why not service by Federal Express. It was suggested that we look into two possibilities: that the Rules be changed to include U S Postal Service second day mail with return receipt; and that the Rule be extended to all private messenger services that provide return receipts.

6. Technological: A separate link page was started on the Web site so that we could add many more links. We already have a link to NARCA, and CLLA. It would be good if we could put in each newsletter a request that members supply us with their new business and e-mail addresses when these change. It was reported that our Web site had 200 hits last month. The website has been improved so that Leigh-Ann can add items on her own. The list serve has been altered to

give Leigh-Ann moderator status so that she can make changes to the list serve.

SERVICE OF CITATIONS ON CORPORATE RESPONDENTS

There has been a clarification of the proper method by which to serve a Citation, a non-wage garnishment or a wage deduction summons when a corporation is the respondent. It had been the practice in room 1401 (the supplementary proceedings courtroom in the 1st municipal district) to require that service of such pleadings, when a corporation was the respondent, be on a specific individual. This was so particularly if service was had by certified mail.

This requirement has been deemed unnecessary. The Court interpreted Illinois Supreme Court Rule 105(b) only to require that service be on an agent of the corporation. Further, that the agent need not be identified in the pleading. Service may be voidable on a proper showing by the Respondent, but otherwise, your service will be good even though you do not identify a specific corporate agent in your pleading or certified mail delivery.

RECENT TOPICS POSTED ON THE ICBA LISTSERVE

Last January the ICBA began a "listserv" on the internet so members could communicate with each other on a daily basis.

To date, 60% of ICBA members are participants in this free service. Our goal is to bring that number to 100%. If you are not currently enrolled in the ICBA "listserv" please contact us for a free e-mail address and membership.

Following are recent topics that were posted on the "listserv:"

- A list of 101 law sites that are posted on the internet.
- A summary of FTC responses to the National Association of Credit Managers.
- Information about how to short-circuit a class action FDCPA proceeding by making a settlement offer.
- Wage deduction case – California-Peterson Currency Exchange, Inc., v. Jerry Friedman.

We highly encourage you to participate in this free service that is included with your Illinois Creditors Bar Association membership. For more information please contact Leigh-Ann Thompson at (877) 724-5504 or leighann@san.rr.com.

Reminder:

Any member who refers 5 new members to the ICBA within a one year period will receive a free membership for the next year.

Congratulations to Bob Markoff and Michael Matek for each earning a free membership for 2001/2002!