STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

CLINTON VALLEY TEI EQUTIES, LLC,
CLINTON VALLEY MERRILL, LLC,
CLINTON VALLEY KNICKERBOCKER, LLC,
CLINTON VALLEY MERRICK, LLC,
CLINTON VALLEY CROWN HILL, LLC,
CLINTON VALLEY UK, LLC, and
CLINTON VALLEY BUFFALOW, LLC,
as Tenants in Common

Plaintiffs,

vs. Case No. 18-1686-CB

WCE, LLC d/b/a Co/Op Optical Visions Designs,
Defendants.
_____/

OPINION AND ORDER

This matter comes before the Court on WCE, LLC d/b/a/ Co/Op Optical Visions Design's ("WCE") objections to garnishment.

I. Background

Plaintiffs Clinton Valley TEI Equities, LLC, Clinton Valley Merrill, LLC, Clinton Valley Knickerbocker, LLC, Clinton Valley Merrick, LLC, Clinton Valley Crown Hill, LLC, Clinton Valley UK, LLC and Clinton Valley Buffalo, LLC (hereinafter collectively referred to as "Plaintiffs") sought to enforce their judgment against WCE by garnishing funds held in a business checking account. On October 15, 2018, a Request and Writ of Non-Periodic Garnishment was issued to garnishee Fifth Third Bank for $35,861.94 to take funds from WCE's account. On November 7, 2018, Defendant WCE filed Objections to Garnishment and a Notice of Hearing. The November 7, 2018 Proof of Service for the Objections to Garnishment indicates electronic service to Carol Ayers and David Blau of

Clark Hill, counsel for Plaintiffs, and Dale Ihrie, III, counsel for WCE, but does not indicate service to garnishee Fifth Third Bank. The objection to garnishment was never set for a hearing. Fifth Third Bank issued a Garnishee Disclosure on November 5, 2018 stating that it was withholding $35,861.94 from WCE's account. The Court issued a Request and Order to Seize Property on November 20, 2018. Plaintiffs filed a motion to strike the garnishment objection but later withdrew the motion as moot after garnishee transmitted the funds to Plaintiffs. WCE then again served a notice of hearing for the garnishment objection and after hearing oral argument on January 14, 2019, the Court took the matter under advisement.

II. Arguments

WCE states that it borrowed $300,000 from Susan Evangelista and in exchange granted to her a security interest in its equipment or in proceeds from the sale of the equipment. WCE claims that it perfected the security interest by filing a UCC-1 financing statement. Subsequently, WCE maintains that it sold equipment and deposited the proceeds into the Fifth Third Bank Account that Plaintiffs garnished. Therefore WCE reasons that the funds in the Fifth Third account belonged to its secured creditor, Susan Evangelista. According to WCE, Plaintiffs are unsecured creditors and would have an impermissible preference over a secured creditor if they retain the garnished funds.

For its legal argument, WCE contends that the money in this case belonged to the secured creditor, not WCE, and a party may only garnish property belonging to the defendant. Further, WCE cites to an old line of cases denying garnishment where more than one party had an interest in the account and argues that where the defendant is

not entitled to any particular part of the assets, funds cannot be garnished because the garnishee could be liable to the other party having an interest in the funds. Finally, WCE argues that it assigned any proceeds from the sale of the secured assets to its secured creditor.

In response and by supplemental brief, Plaintiffs make the following arguments: nothing exempts the funds from garnishment; the funds were the exclusive property of WCE; WCE failed to praecipe the garnishment objection for a hearing which makes the objection moot since the funds have been garnished; WCE did not file a proof of service indicating service on the garnishee; WCE produced no evidence showing that Ms. Evangelista provided any value to support a valid security interest or any default; the garnishment was of a deposit account not sales proceeds; Ms. Evangelista was not a perfected secured party; and Plaintiffs have the status of a lien creditor.

III. Law and Analysis

As an initial matter, counsel for Susan Evangelista, the secured creditor in this matter, did not take a position regarding the objection to the garnishment.[1] However, the Court need not address whether WCE may object to the garnishment or address the procedural irregularity in this matter of an objection to garnishment after distribution of the funds because WCE's objections lack merit—rendering the other issues moot.

[1] MCR 2.201B requires, generally, that an action be prosecuted in the name of the real party in interest. "To have standing, a party must have a legally protected interest that is in jeopardy of being adversely affected." *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013) citation omitted. "A plaintiff must have a special injury or right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large." *Id.* Given that WCE argues that the funds in its account belonged to Susan Evangelista and not WCE, it is not clear what interest, if any, WCE claims to have in the outcome of a dispute between creditors.

Specifically, WCE cites to MCR 3.101(G)(1)(a) permitting garnishment of "all tangible or intangible property *belonging to the defendant* in the garnishee's possession or control. . ." emphasis added. WCE then cites to several cases for the proposition that in cases of joint ownership, non-distinguishable funds cannot be garnished because the garnishee's payment could create liability to other parties entitled to the funds. However, WCE concedes in its brief that "[a]ll funds on deposit with Defendant's bank (garnishee Fifth Third Bank) represent proceeds from the sale of secured assets . . ." WCE has not shown that the funds at issue were indistinguishable from those belonging to another party. WCE has also not shown that the garnishment came out of a joint account or that any other entity had access to the funds.

Instead, WCE appears to take the position that because it had designated the funds in the account for payment to its secured creditor, somehow the funds no longer belonged to WCE. Yet WCE has not shown that the funds belonged to anyone else.[2] As a result, the authority WCE cites relating to accounts with multiple owners does not apply to the facts of this case. To the extent WCE claims that any perfected security interest continued to the funds deposited into its checking account, it has not argued or shown that Ms. Evangelista was a perfected secured party in control of the funds. See, MCL 440.9314(2).

WCE additionally claims that it assigned the proceeds from the sale of the secured assets to its secured creditor, Ms. Evangelista. In support, it cites to the Promissory Note, Security Agreement, and the UCC Financing Statement. None of

[2] WCE has not shown that any exemption prevents garnishment of the subject funds held in a business account.

those documents evidence an assignment. WCE also relies on *Mihajlovski v Elfakir*, 135 Mich App 528, 535; 355 NW2d 264 (1984) which held that assignment of an asset to an unrelated third party before garnishment prevented garnishment. However, in *Mihajlovski,* a contract clearly assigning "all of my interest" in an asset had been executed before entry of judgment for plaintiff. Here, WCE merely granted a security interest which gave the secured party the right to possession upon default—and no evidence before the Court shows a default or of that Ms. Evangelista took possession of the secured equipment or its proceeds.

"An assignment is defined as a transfer . . . to another of *the whole of any property*, real or personal, in possession or in action, or of any estate or right therein." *Weston v Dowty*, 163 Mich App 238, 242; 414 NW2d 165 (1987) citation omitted, emphasis added. "To constitute a valid assignment there must be a perfected transaction between the parties which is intended to vest in the assignee a *present right* in the thing assigned." *Id.* emphasis added. WCE has not shown that it assigned to its secured creditor the funds, held in its account, or the equipment; rather WCE shows only that it granted a security interest in its property. None of the language in the security agreement concerns an assignment or conveys a whole property right. Therefore, WCE has not shown that an assignment prevents garnishment in this case.

For the above reasons, the Court finds no merit to WCE's objections to garnishment on the basis of ownership, joint accounts, and assignment. The request for attorney's fees is denied.

III. Conclusion

For the reasons set forth above, WCE's objection to garnishment is overruled.

Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date: MAR 14 2019

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge