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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
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 First Citizens Bank and Trust)
 Company, Inc..)
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 Plaintiff,)
)
 v.)
)
 Dorn Properties, Inc. and)
 Henry A. Dorn.)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2009-CP-24-1272

ORDER

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SEP 21 2016

SC Court of Appeals

FILED COMMON PLEAS
 8th JUDICIAL CIRCUIT
 GREENWOOD, SC
 2016 SEP -9 AM 11:35

This matter came before the Court on July 19, 2016, for a hearing on all pending motions filed in connection with Plaintiff's efforts in supplemental proceedings to collect on a judgment it obtained against Defendants in the amount of \$149,665.92 on August 3, 2010. At the time of the hearing, the following motions were pending:

1. Defendants' Motion for Protective Order; and
2. Plaintiff's Motion to Set Aside and Execute on Post-Judgment Contributions to IRA Accounts.

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At the commencement of the hearing, counsel for Plaintiff and Defendants agreed that both motions present the same legal question: whether post-judgment contributions by Defendant Henry A. Dorn to his Individual Retirement Account are subject to claims of judgment creditors.

FACTUAL BACKGROUND

Defendant Henry A. Dorn is an employee of Dorn, Dempsey & Associates, Inc., an accounting firm in Greenwood, South Carolina. He has been employed by the firm since it was formed on June 1, 2010. Prior to joining Dorn, Dempsey & Associates, Inc., Dorn was employed

by the accounting firm of Green and Company for 29 years.

Dorn, Dempsey & Associates, Inc. provides to its employees an employer-sponsored IRA plan. This plan allows its employees to make contributions to their IRA via salary deferrals. The funds contributed by the employee to the IRA are never actually received by the employee, but are withheld from his paycheck.

ERISA and other federal laws and regulations limit the amount an employee may contribute to his IRA account each year. The amount an employee contributes from his salary cannot exceed \$12,500 in 2015 and 2016. Employees over the age of 50 are allowed an additional "catch-up" contribution of \$3,000.00. Also, amounts contributed to the IRA cannot be withdrawn before the employee turns age 59½ without a penalty of 10%, and all withdrawals are subject to income tax at the rates applicable at the time of the withdrawal.

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During his employment at Dorn, Dempsey & Associates, Inc., Dorn has made the following contributions via salary withholding to his IRA:

Year 2010 \$3,233.00

Year 2011 \$13,083.00

Year 2012 \$14,000.00

Year 2013 \$14,500.00

Year 2014 \$14,500.00

Year 2015 \$2,417.00

Dorn's contributions have never exceeded the amount allowed by law. While he was employed at Green and Company, Dorn made regular contributions to the IRA provided to its employees.

HISTORY OF THE IRA EXEMPTION UNDER SOUTH CAROLINA LAW

Prior to 1999, the South Carolina exemption statute, Section 15-41-30 of the South Carolina Code, did not contain a specific exemption for an IRA. As such, in 1987 the South Carolina Court of Appeals held that Individual Retirement Accounts were not exempt from attachment by judgment creditors. *See Rowland v. Strickland*, 294 S.C. 119, 362 S.E.2d 892 (Ct. App. 1987). However, in 1999, the South Carolina legislature revised the exemption statute to make it clear that IRAs are protected from attachment by adding the following exemption to Section 15-41-10:

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The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, "Internal Revenue Code" has the meaning provided in Section 12-6-40(A).

1999 S.C. Act No. 60. Then, in 2012, the legislature made the exemption even broader by eliminating the limitation that an IRA is only exempt "to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." 2012 S.C. Act No. 153. Based on this legislative history, it is clear that the South Carolina legislature intends to extend to IRAs broad protection from attachment by judgment creditors.

LEGAL ANALYSIS

The only limitation on the exemption for an IRA is that the exemption "may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account..." S.C. Code Section 15-41-30(A)(13) (Supp. 2015). Although no South Carolina appellate courts have addressed what constitutes a fraudulent conveyance into an IRA, it seems

that this limitation would typically apply in two circumstances. The first circumstance would arise when a debtor made contributions to his IRA that exceeded the amount allowed under federal law. The second circumstance would arise where a debtor contributes a non-exempt asset into an IRA in order to protect it from attachment. Neither of these two circumstances is present in this case.

First, Dorn's contributions to his IRA have never exceeded the maximum amount allowed by federal law. Second, an individual's earnings for his personal services are not subject to attachment or garnishment in South Carolina. *See* S.C. Code §15-39-410. Therefore, the funds that are being contributed to the IRA by Dorn are not subject to Plaintiff's judgment and thus the contribution is not a fraudulent conveyance.

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CONCLUSION

I have reviewed and considered all of the arguments set forth by the Plaintiff in its Memorandum in Support of its Motion to Set Aside and Execute on Post-Judgment Contributions by Henry A. Dorn to IRA Accounts, along with the arguments presented by counsel for the Plaintiff at the hearing on this Motion. However, an IRA is subject to the claim of a judgment creditor only to the extent that the account contains funds which represent a fraudulent conveyance. S.C. Code §15-41-30(A)(13) (Supp. 2015). In this case, none of the funds sought to be attached by Plaintiff were fraudulently conveyed by Dorn into the IRA. Dorn, Dempsey & Associates provides an employer-sponsored retirement plan that is available to all of its employees. Like all employees, Dorn had the right to make contributions to the plan via funds withheld from his paycheck. His contributions never exceeded the amount allowed by federal law. Therefore, none of Dorn's post-judgment contributions were fraudulent conveyances, and

his IRA is not subject to attachment by judgment creditors.

Accordingly, based on the foregoing, it is

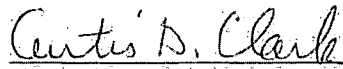
ORDERED that Defendants' Motion for Protective Order is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Set Aside and Execute on Post-Judgment Contributions to IRA Accounts is DENIED.

AND IT IS SO ORDERED.

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September
August 2, 2016
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Curtis G. Clark
Master in Equity for Greenwood County