

**IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA**

**GENERAL COLLECTION COMPANY,**  
Plaintiff,

vs.

**ALFRED S. TURNER and ROSETTA  
MAE TURNER,**  
Defendants.

Case No. J195

**ORDER ON APPLICATION  
FOR CONTINUING LIEN**

**DATE OF HEARING:** August 29, 2003.  
**DATE OF RENDITION:** August 29, 2003.  
**DATE OF ENTRY:** See court clerk's file-stamp date per § 25-1301(3).  
**TYPE OF HEARING:** In chambers (§ 24-734) at District Courtroom, Brown County Courthouse, Ainsworth, Nebraska.

**APPEARANCES:**

For plaintiff: No personal appearance; letter brief submitted by Richard E. Gee.

For defendants: No appearance.

**SUBJECT OF ORDER:** Judgment creditor's application for continuing lien.

**PROCEEDINGS:** At the hearing, these proceedings occurred:

No evidence or argument. The judgment creditor's letter brief and the court file were considered.

**FINDINGS:** The court finds and concludes that:

1. The file shows answers to garnishment interrogatories by the garnishee. Those answers show that a continuing lien already existed at the time of answer and that no wages were subject to payment on this garnishment. The judgment creditor's letter brief implicitly concedes that no immediate amount can be ordered paid on this garnishment.

2. The brief states: "All we want to do is to put ourselves next in line without the race to the mailbox. In other words, we would like our garnishment to step in as soon as the other garnishment expires. We have done this in any number of other Courts including

Lincoln and Omaha and the Judges seem to feel that there is not a problem as long as nothing happens on our garnishment until the other garnishment lien has expired.”

3. Of course, the decisions of other courts of coordinate jurisdiction are entitled to respect, but are not binding on this court. It seems to this court that such a decision is not correct under applicable principles of existing law.

4. The law has long provided that a garnishee’s liability must be determined as of the time of the service of the summons in garnishment. E.g., *Spaghetti Ltd. Partnership v. Wolfe*, 264 Neb. 365, 647 N.W.2d 615 (2002); *Northfield Knife Co. v. Sharpleigh*, 24 Neb. 635, 39 N.W. 788 (1888).

5. Section 25-1056(5) clearly states that only one order of continuing lien against earnings due the judgment debtor shall be in effect at one time. NEB. REV. STAT. § 25-1056(5) (Cum. Supp. 2002). The judgment creditor implicitly argues that if this court grants a continuing lien but defers the effective date to the recited expiration of the existing continuing lien, this court will have complied with the rule limiting such orders to one-at-a-time.

6. However, in this court’s opinion, such procedure constitutes a void conditional order. See *Custom Fabricators v. Lenarduzzi*, 259 Neb. 453, 610 N.W.2d 391 (2000). This seems particularly true in view of the right of the holder of a continuing lien to extend the lien for a second 90-day period by filing a notice of extension during the fifteen days immediately prior to the expiration of the initial lien. NEB. REV. STAT. § 25-1056(3)(g) (Cum. Supp. 2002). At the time of service of the garnishment and answers to interrogatories, the garnishee cannot know whether such notice of extension will be filed. Consequently, a “springing” continuing lien in the second case would be subject to events that had not occurred. Such an order would constitute a void conditional order. It could not be crafted to comply with both requirements that no more than one continuing lien be in effect and that the order of continuing lien act *in praesenti*.

7. The creditor’s counsel might responsively inquire, given this court’s analysis, what is the point of the second sentence of § 25-1056(5) requiring the answer to include

information of the prior continuing lien's existence, termination date, and title of prior case. This requirement still makes sense, under this court's interpretation, by providing the information necessary for a judgment creditor to contest the accuracy of the claim of prior order of continuing lien and to be informed when a subsequent garnishment might be subject to being successfully prosecuted.

8. Because the judgment creditor does not contest the accuracy of the answers to garnishment interrogatories and the requested form of relief would constitute a void conditional order, the application for continuing lien must be denied.

**ORDER:** IT IS THEREFORE ORDERED that:

1. The pending application for continuing lien is denied.

Signed in chambers at **Ainsworth**, Nebraska, on **August 29, 2003**;  
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- If not already done, immediately transcribe trial docket entry dictated by email.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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**William B. Cassel**  
District Judge

Mailed to: