

# Judgment Creditors No Longer Entitled to Blanket Personal Property Judicial Liens

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Prior to July 2014, a judgment creditor only needed to take a few simple steps in order to obtain a perfected judicial lien against all of a judgment debtor's non-exempt personal property:

- a. Obtain and docket the judgment; and
- b. Serve the judgment debtor with an Order to Appear at a supplementary debtor's examination.

That was the holding of the 1999 *Badger Lines* Wisconsin Supreme Court Case.

## The Legal Landscape Changes

The Wisconsin Supreme Court has effectively reversed *Badger Lines* through two companion decisions, *Associated Bank N.A. v. Collier* and *Attorney's Title Guaranty Fund, Inc. v. Town Bank and Heartland Wisconsin Corp.*, that eliminate a judgment creditor's ability to obtain a blanket personal property lien. Now, in order to obtain a perfected judicial lien on personal property of a judgment debtor, a judgment creditor must take the following steps:

1. Obtain and docket the judgment;
2. Identify specific personal property (through a debtor examination, a private investigator or otherwise); and
3. "Levy" on that specifically identified personal property by, for example:
  - a. having the sheriff serve a writ of execution identifying and seizing specific non-exempt property;
  - b. serving a garnishment complaint on a third party garnishee defendant in a separate garnishment lawsuit to seize specific property in the hands of the garnishee; or
  - c. obtaining an order from a judge directing that specific identified personal property be applied to the satisfaction of the judgment.

With these recent decisions, not only has the process a judgment creditor must use to perfect its lien changed, but the scope of the lien has narrowed significantly. The concept of a "blanket judgment creditors' lien" no longer exists.

### **The Road to (Un)Certainty**

How did we get here? In *Associated Bank*, the judgment creditor at issue followed the steps to obtain a blanket lien under the law in existence at the time, except that the judgment clerk mistakenly failed to docket the judgment. The error was not discovered until more than a year later, after a different creditor obtained and docketed a judgment, and served its Order to Appear for a debtor's exam on the judgment debtor. The issue before the Supreme Court was whether the docketing of the judgment was a prerequisite to any judgment enforcement, including the service of an Order to Appear for a debtor's exam. The Court ruled that docketing the judgment is a condition to establishing a creditor's lien and, going further, rejected the law as previously understood, to the effect that service of the Order to Appear creates and perfects the lien. Instead, the Court found that only actual "levying" on specifically identified property of the judgment debtor gives rise to and perfects a judgment creditor's lien. The term "levy" is not defined; the Court simply gave the three examples listed above and rejected other Supreme Court case law holding that service of an Order to Appear constitutes a levy.

The dispute in *Attorney's Title* did not arise from procedural mishaps, but rather from the nature of the judgment debtor's property at issue. The judgment creditor had docketed its judgment and served an Order to Appear for, and conducted, a debtor's exam. Thereafter, the judgment debtor obtained a loan from a second lender, and that lender took an assignment of the judgment debtor's legal malpractice claim. Long after the judgment creditor had served its Order to Appear, the second lender filed its UCC financing statement. The judgment debtor settled his legal malpractice claim, and both the judgment creditor and the second lender claimed priority in the proceeds therefrom. Relying entirely on its holding in *Associated Bank*, the Court in *Attorney's Title* ruled that a blanket lien based on service of an Order to Appear is no longer available to a judgment creditor and, therefore, gave priority to the second lender who had a UCC filing.

### **An Ongoing Quest for Perfection**

The *Associated Bank* case reversed what was understood to be the law as to a "receiver's" or "creditor's" lien under Wis. Stats., Ch. 816 ("Supplementary Proceedings"). Now, judgment creditors can only be certain that they have a perfected judicial lien in a judgment debtor's personal property if they have docketed the judgment, identified specific non-exempt personal property, and "levied" on it. The new decisions leave much uncertainty as to just how specific a judgment creditor must be in describing property to be "levied" and, apart from a sheriff's execution or a garnishment of property in the hands of a third party, what exactly needs to be done to "levy" on the property. The simple and practical clarity of the *Badger Lines* decision has been lost.

This reversal of the law also places a significant burden on all judgment creditors to expend time and money to locate and identify a judgment debtor's personal property. These decisions benefit debtors.

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