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Original Content

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Credit Card Line of Credit Is Not Available To Judgment Creditor

In litigation, winning the case is sometimes only half of the battle — collecting on the judgment can be just as difficult, or more so.

In New York, "a money judgment may be enforced against any property which could be *assigned or transferred*, whether it consists of a present or future right or interest and whether or not it is vested, unless it is exempt from application to the satisfaction of the judgment." CPLR 5201. "Where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as sufficient to satisfy the judgment, to the judgment creditor." CPLR 5225(a).

With this language in mind, the judgment-creditor in *Carbo Indus., Inc. v. Alcus Fuel Oil, Inc.*, 2014 WL 6607172 (Sup. Ct. Nassau Cnty. 2014), who obtained a judgment for nearly $843,000, creatively sought to enforce its judgment against a defendant's available credit line on his two credit cards, in the combined amount of $18,250. The creditor argued that the defendant has "intangible rights pursuant to CPLR 5201 under his credit line agreement with HSBC Bank," with the "right to withdraw cash from these credit cards and deliver it to a third person."

The Court disagreed. It held that the plaintiff failed to establish that these lines of credit are "assignable or transferable property which defendant can be compelled to use to satisfy the subject judgment[.]" Moreover, as a matter of policy, the Court noted that determining otherwise would simply create an additional creditor for the defendants, as the likelihood of repayment to the credit card company, who had no relationship or interests in the instant matter whatsoever, is very unlikely.

Employee's Facebook Not Protected Activity

As we have discussed in several prior newsletters, people's actions on social media can land them in serious trouble at work, and even get them fired. This was the case in *Richmond District Neighborhood Center v. Calaghan*, where the National Labor Relations Board weighed in on the boundaries under which an employee's speech on Facebook is a "protected concerted activity."

In *Richmond*, the respondent operates the Beacon Teen Center at San Francisco's George Washington High School, providing after-school activities to students. The petitioners, Callaghan and Moore, were two employees who occupied the positions of "activity leader" and "program leader," respectively. In May 2012, the supervisor of the program held a year-end staff meeting at which she asked the employees to write down the pros and cons of working at the Beacon; the comments ended up being predominately negative.

Both petitioners, however, were rehired for the following year, albeit, Moore was demoted from "program leader" to "activity leader" because of a negative review from her supervisor. The record reflects that during the evening of August 2, Callaghan and Moore had the following exchange on Facebook concerning their return the Beacon:

> MOORE: U gOin baCk or nO??
>
> CALLAGHAN: I'll be back, but only if you and I are going to be ordering shit, having crazy events at the Beacon all the time. I don't want to ask permission, I just want it to be LIVE. You down?
>
> MOORE: Im gOin to be a activity leader im not doin the t.c let them figure it out and when they start loosn kids i aint helpn HAHA
>
> CALLAGHAN: hahaha. Sweet, now you gonna be one of us. Let them do the numbers, and we'll take advantage, play music loud, get artists to come in and teach the kids how to graffiti up the walls and make it look cool, get some good food. I don't feel like bein their bitch and making it all happy-friendly-middle school campy. Let's do some cool shit, and let them figure out the money. No more Sean. Let's fuck it up. I would hate to be the person takin your old job.

MOORE: Im glad im done with that its to much and never appriciated sO we just gobe have fuN dOin activities and the best part is WE CAN LEAVE NOW hahaha I AINT GOBE NEVER BE THERE even thO shawn gone its still hella stuCk up ppl there that don't appriciate nothing.

CALLAGHAN: You right. They dont appreciate shit. Thats why this year all I wanna do is shit on my own. have parties all year and not get the office people involved. just do it and pretend they are not there. I'm glad you arent doing that job. let some office junkie enter data into a computer. well make the beacon pop this year with no ones help.

MOORE: They gone be mad cuZ on wednesday im goin there aNd tell theM mY title is ACTIVITY LEADER dont ask me nothing abOut the teen cenTer HAHA we gone have hella clubs and take the kids ;)

CALLAGHAN: hahaha! Fuck em. field trips all the time to wherever the fuck we want!

MOORE: U fUckn right see u wednesdaY

CALLAGHAN: I won't be there wednesday. I'm outta town. But I'll be back to raise hell wit ya. Dont worry. Whatever happens I got your back too.

The next day, a Beacon employee sent screen-shots of this conversation to management. On August, 13, relying solely on the Facebook posts, the respondents rescinded Callaghan and Moore's rehire offers, explaining that "these statements give us great concern about you not following the direction of your managers in accordance with RDNC program goals. . . . We have great concern that your intention and apparent refusal to work with management could endanger our youth participants."

As a result of his termination, Callaghan filed a charge with the National Labor Relations Board ("NLRB") alleging that the Richmond District Neighborhood Center committed certain violations of Section 8(a)(1) of the National Labor Relations Act ("NLRA"), namely that the conversation was a "protected concerted activity." Congress enacted the NLRA in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy. Section 8(a)(1) of that Act grants employees the right to act together to try to improve their pay and working conditions, with or without a union, i.e., engage in a "protected concerted activity." If employees are fired, suspended, or otherwise penalized for taking part in protected group activity, the NLRB will fight to restore what was unlawfully taken away. Here, the petitioners argued that the

Facebook conversation was a "continuation of the complaints made in the May meeting," and thus, a protected activity.

The Administrative Law Judge rejected this argument, and the NLRB agreed, holding that "the pervasive advocacy of insubordination in the Facebook posts, comprised of numerous detailed descriptions of specific insubordinate acts, constituted conduct objectively so egregiously as to lose the Act's protection and render Callaghan and Moore unfit for further service."

> We are not presented here with brief comments that might be more easily explained away as a joke, or hyperbole divorced from any likelihood of implementation. The magnitude and detail of insubordinate acts advocated in the posts reasonably gave the Respondent concern that Callaghan and Moore would act on their plans, a risk a reasonable employer would refuse to take. The Respondent was not obligated to wait for the employees to follow through on the misconduct they advocated.

The two are apparently available for hire.

Treat Them As Such, But A Chimp Is Not A Person

The common law writ of habeas corpus provides a summary procedure in which a "person" who has been detained or imprisoned, can challenge that detention or imprisonment as unlawful. In New York, Article 70 of the Civil Practice Laws and Rules ("CPLR") codifies this procedure.

On December 2, 2013, the Nonhuman Rights Project filed a habeas corpus petition in Fulton County Court, New York, on behalf of Tommy, a chimpanzee, who allegedly was being held in a cage in Gloversville, New York. The suit alleged that "chimpanzees have attributes sufficient to consider them 'persons' for the purposes of their interest in personal autonomy and freedom from unlawful detention. . . . [C]himpanzees exhibit highly complex cognitive functions — such as autonomy, self-awareness and self-determination, among others — similar to those possessed by human beings." The Supreme Court disagreed, and held that the term "person" under CPLR Article 70 did not include chimpanzees, and refused to grant the petition. The petitioner appealed to the Appellate Division, Third Department. *People ex rel. Non Human Rights Project, Inc. v. Lavery*, 2014 Slip Op. 08531 (3d Dept. Dec. 4, 2014).

In its decision, the Third Department first recognized the limited scope of its inquiry. Petitioners had not asked the Court to evaluate the quality of Tommy's living conditions, but instead to "enlarge the common-law definition of 'person' in order to afford legal rights to an

animal." The Court noted that "animals have never been considered persons for the purpose of habeas corpus relief nor have they been explicitly considered as persons or entities capable of asserting rights for the purpose of state or federal law." However, this lack of precedent was not determinative. The writ of habeas corpus has gained increased use, and proved to have great flexibility.

The liberty rights protected by habeas corpus "has historically been connected with the imposition of societal obligations and duties. Reciprocity between *rights* and *responsibilities* stems from principals of social contract[.]" Society extends rights to "persons" in exchange for an express or implied agreement from those "persons" to submit to social responsibilities. "Legal personhood has consistently been defined in terms of both *rights* and *duties*."

> [U]unlike human beings, chimpanzees cannot bear any legal duties, submit to societal responsibilities or be held legally accountable for their actions. In our view, it is this incapability to bear any legal responsibilities and societal duties that renders it inappropriate to confer upon chimpanzees the legal rights—such as the fundamental right to liberty protected by the writ of habeas corpus—that have been afforded to human beings.

Thus, the Court rejected the petition, and affirmed the Supreme Court's ruling.

The Court noted, however, that just because it chose not to extend the rights of a "person" to chimpanzees, does not leave Tommy, or other animals, defenseless. The Legislature has extended significant protections to animals, subject to criminal penalties, such as the prohibition of torture or unjustifiable killing, abandonment in a public place, and cruel or inhuman transportation, just to name a few.