

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
DOCKET NO. BCD-CV-2018-04

EMILE CLAVET,)
)
Plaintiff,)
)
v.)
)
KEVIN DEAN, et al.,)
)
Defendants.)

**ORDER ON DEFENDANT’S
MOTION FOR ADJUDICATION**

This matter comes before the Court on Defendant Kevin Dean’s motion for adjudication that Camden National Bank (“CNB”) should not be adjudged trustee with respect to accounts in which CNB is a lender to defendant Kevin Dean (“Adjudication Motion”). Plaintiff Emile Clavet opposes the motion. The Court heard oral argument on the motion on July 2, 2018; Mr. Dean was represented by George Marcus, Esq. and Mr. Clavet was represented by Clifford Ruprecht, Esq.

BACKGROUND

On May 23, 2018, this Court entered its combined order on pending motions (the “Prior Order”) which more fully lays out the facts giving rise to this lawsuit. In addition to denying Defendant Cecile Dean and the Parties-in-Interest Blue Water Marina, LLC and Covered Marina, LLC’s motions to dismiss, the Court ordered attachment and attachment on trustee process on the assets of Defendant Kevin Dean as follows:

Plaintiff Emile Clavet’s motion for attachment and attachment on trustee process is GRANTED. The Court ORDERS attachment on all attachable assets of Kevin Dean up to the amount of \$2,972,500. The Court further ORDERS attachment on trustee process against all parties in possession of property payable to Kevin Dean to the amount of their attachable credits not to exceed \$2,972,500.

(Prior Order 15-16.)

Pursuant to the Prior Order, Mr. Clavet served a summons to trustee on CNB on June 1, 2018. (Def's Adj. Mot., Ex. A.) In response to that summons, CNB filed its trustee disclosure which disclosed the existence of a home equity line of credit ("HELOC") with account number 20241962 naming Mr. Dean as "Primary" account owner and his wife Cecile Dean as "Comaker." (*Id.*; *See* Def's Adj. Mot., Ex. C.) The HELOC is secured by residential property owned solely by Mrs. Dean. Upon service of the summons to trustee, CNB "froze" the HELOC, meaning that it suspended the rights of the Deans to obtain loans pursuant to the account.

DISCUSSION

Mr. Dean's position is that with respect to the HELOC, CNB should be adjudged not to be a trustee and should be discharged. (Def's Adj. Mot. ¶ 7.) Mr. Dean argues that although his right to receive loans under the HELOC is a contract right and thus a form of property interest, it is not the kind of property that can be subject to trustee process because the contractual right to obtain a home equity loan from CNB under the HELOC is not "due absolutely and not on any contingency." *See* 14 M.R.S. § 2602(4). In support of this proposition, Mr. Dean points to the HELOC Loan Agreement (Def's Adj. Mot., Ex. C), which lists a number of conditions on CNB's obligation to extend money pursuant to the HELOC and lists various contingencies to which Mr. Dean's ability to draw on the HELOC is subject.

Mr. Clavet responds that the HELOC is more akin to a checking account than a loan agreement because the account is "funded with real estate" rather than money, as CNB took title to the residence in the form of a mortgage to secure all "withdrawals" made against the fund balance. (Pl's Opp. to Def's Adj. Mot. 2.) Mr. Clavet further argues that the conditions and contingencies cited by Mr. Dean "are simply the ordinary rights of [CNB] to close the account if the account holders do something to impair the assets held on deposit by [CNB], if various

government actions impair the account relationship, and the like.” (Pl’s Opp. Motion 4.) The main thrust of Mr. Clavet’s argument is that the Summons to Trustee is the only obstacle stopping Mr. Dean from simply writing a check for the full available balance of the account—nearly a million dollars (*see* Def’s Adj. Mot., Ex. B)—notwithstanding the conditions and contingencies listed in the loan agreement.

An “order discharging the trustee is subject to an immediate appeal as an exception to the ‘final judgment’ rule, because ‘great and irreparable loss’ may otherwise result.”¹ *Loyal Erectors, Inc. v. Hamilton & Son, Inc.*, 312 A.2d 748, 751-52 (Me. 1973) (citing *Foisy v. Bishop*, 232 A.2d 797 (Me. 1967)). “The burden is upon the plaintiff to show that the trustee should be charged.” *Loyal Erectors, Inc.*, 312 A.2d at 756.

“In connection with the commencement of any personal action, [subject to exceptions not applicable here], trustee process may be used in the Superior Court” 14 M.R.S. § 2601. However, as to certain classes of property, “[n]o person shall be adjudged trustee[.]” 14 M.R.S. § 2602. The parties direct the Court’s attention to one such exception for “[d]ebts due defendant:”

No person shall be adjudged trustee. . . [b]y reason of any money or other thing due from him to the principle defendant unless, at the time of the service of the summons upon him, it is due absolutely and not on any contingency[.]

14 M.R.S. § 2602(4). The parties argue about whether the funds available under the HELOC (nearly a million dollars) are “due absolutely” or on “any contingency.” However, the Court does not see the relevance of this provision. The money available under the HELOC is not a “debt due” Mr. Dean. It is a “line of *credit*,” *i.e.* a promise to extend credit that is then a debt due *CNB* in the

¹ Orders for attachment and trustee process are reviewable on appeal for an abuse of discretion or clear error. *Libby O’Brien Kingsley & Champion, LLC v. Blanchard*, 2015 ME 101, ¶ 5, 121 A.3d 109. However, the question of whether the HELOC is an attachable interest subject to trustee process pursuant to M.R. Civ. P. 4B and 14 M.R.S. §§ 2601-2714 is a question of law subject to *de novo* review. *City of Bangor v. Penobscot Cty.*, 2005 ME 35, ¶ 9, 868 A.2d 177.

event that Mr. Clavet draws on the account as he is entitled to under the HELOC Loan Agreement. “[S]ubject to certain exceptions, a party is not chargeable in trustee process with respect to credits, unless *the party* is liable in an action to the principal defendant.” Horton & McGehee, *Maine Civil Remedies* §23-3 at 434 (4th ed. 2004) (citing *Loyal Erectors, Inc.*, 312 A.2d 748) (emphasis added). Section 2602(4) would only apply if a debtor of Mr. Dean had a “debt due absolutely and not on any contingency” payable to him. CNB is not Mr. Dean’s debtor; it is his creditor. That any loan extended to Mr. Dean on the line of credit is secured by real estate does not transmute it into a “debt due” Mr. Dean.² The Court’s research on this issue did not uncover any cases in which a HELOC has been attached or a bank extending a HELOC has been adjudged trustee (or “garnishee” as it may be called in other jurisdictions) with respect to a HELOC.

In sum, Mr. Clavet has failed to meet his burden to show that CNB should be adjudged trustee with respect to the HELOC. The Court concludes that the HELOC—or, more specifically, CNB’s contractual obligation to extend credit to Mr. Dean pursuant to the HELOC Loan Agreement—is not an asset which can be trustee pursuant to M.R. Civ. P. 4B and 14 M.R.S. §§ 2601-2714. This conclusion flows from the established principle that “a party is not chargeable in trustee process with respect to credits[.]” Horton & McGehee, *Maine Civil Remedies* §23-3 at 434 (4th ed. 2004). The Court sees no reason to abrogate the rule on the grounds that the HELOC entitles Mr. Dean to credit up to a certain limit or because the resulting debt is secured by real estate.

² The Court distinguishes the “asset” as to which Mr. Clavet urges CNB to be adjudged trustee—the HELOC—from Mr. Dean’s equitable right of redemption of the mortgage securing the HELOC. The latter may be trustee. Horton & McGehee, *Maine Civil Remedies* §23-3 at 433 (4th ed. 2004); 14 M.R.S. § 2712. By this Order the Court concludes that the former may not.

CONCLUSION

Based on the foregoing it is hereby ORDERED:

That Camden National Bank shall be and hereby is discharged as trustee with respect to Defendant Kevin Dean's HELOC Loan Account, and shall have no duty to Plaintiff Emile Clavet with respect to Mr. Dean's HELOC account and is hereby adjudicated not to be a trustee with respect to that account.

The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: August 20, 2018

/s
M. Michaela Murphy
Justice, Business and Consumer Court