

## Michigan Appeals Court Opinion Could Affect Banks Response to Creditor Garnishments

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The **Michigan Court of Appeals** recently issued an opinion that may have a big impact on how banks respond to creditor garnishments for customers who are in default on their loans from the bank.

In [\*Ladd v Motor City Plastics Co\*](#), the garnishee bank received a garnishment for one of its customers. The customer had defaulted on its secured loan obligations to the bank prior to the bank receiving the garnishment. When the bank received the garnishment, it filed a disclosure stating that the customer was in default on its loans and was indebted to the bank in excess of the balance in the customer's accounts.

The bank did not send the funds in the accounts to the creditor, did not exercise its right to set-off, and the customer continued to use the funds in the accounts. The creditor claimed the bank should have attached the funds in the customer's accounts and sent them to the creditor, particularly since the bank did not actually exercise its right to set-off and apply the funds in the accounts to the customer's loan obligations. The creditor asked the Court to enter judgment against the bank for the amount of the judgment and for sanctions.

The Michigan Court of Appeals ruled in favor of the bank, and held the bank had acted properly in not withholding the funds and sending them to the creditor, and that the bank was not required to actually exercise its right to set-off against the funds in the accounts. According to the Court, the bank did not waive its right to set-off or its security interest by allowing the customer to continue using its bank accounts after service of the garnishment, and that a perfected security interest is a valid defense against a writ of garnishment.

The Court's opinion was not unanimous, and it is possible the creditor will attempt to appeal the decision to the Michigan Supreme Court. In the meantime, Michigan banks which receive a creditor garnishment for customers who are in default of their secured loans may file garnishment disclosures which state that the bank has a right to set-off against the accounts of the garnished customer, without actually exercising their set-off rights and applying the funds against the loan balance.

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