

THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SMALL CLAIMS DEPARTMENT
450 SOUTH STATE, SALT LAKE CITY, UTAH 84111

GATEWAY FINANCIAL,
(BENEFICIAL UTAH, INC.)

Plaintiff,

**MEMORANDUM DECISION
AND ORDER**

vs.

KATHERINE PARKER,

Case No. 968202033

Defendant.

This matter comes before the court, the Hon. Edward B. Havas Judge *Pro Tem* presiding, on defendant Katherine Parker's request for hearing on a Writ of Execution¹ issued by the plaintiff in pursuit of collection of a judgment entered against her on August 13, 1996². The issue before the court is whether Gateway Financial ("Gateway"), the successor to Beneficial Utah, Inc., also referred to as Beneficial Finance ("Beneficial"), in whose favor the judgment was originally entered, is entitled to execute upon the judgment in this court or whether it is an assignee of Beneficial, rendering this an inappropriate forum in which to seek execution. The defendant's request for hearing came before the court on March 16, 2004, at which time the court

¹ Implicit in a request for hearing is a request for relief from the imminent execution. Plaintiff characterizes the matter as a "Motion to Lift Stay on Writ of Execution." However characterized or titled, the proceeding is one to examine the validity of the writ and defendant's objections to it, and to enter such ruling with regard to the writ as is appropriate.

² A similar request for hearing was filed on behalf of Wayne Parker, who is a part-owner of the property against which the Writ of Execution was issued, but is not named in the judgment. The court previously granted Mr. Parker's request for relief and quashed the writ on the grounds that it would be inappropriate to enforce against him a judgment in which he is not named. The court hereby reaffirms that determination, but in light of the holding below finds also that the writ should be quashed as improvidently issued in this forum.

sua sponte raised the jurisdictional question³ and sought further documentation and argument on the narrow question of how Gateway came to “own” the judgment, and whether that constituted an assignment precluding relief in this court⁴.

Some documentation was provided by Gateway, most of which was not responsive to the court’s request. Specifically, Gateway provided a copy of the court’s docket indicating the proceedings which have preceded the latest matter before the court. Likewise, Gateway provided a copy of a letter to Ms. Parker indicating that it had purchased Beneficial’s account (and thereby the judgment entered upon that account). Both were reviewed by the court at the time of the hearing, and neither address the issue of assignment. Gateway has not produced for the court’s review any documentation specific to the transaction by which Gateway acquired Beneficial’s account and judgment.

The sole document produced by Gateway which the court considers relevant to the issue of concern is a list of definitions from Barron’s Law Dictionary. Those definitions comport with the court’s understanding of the meaning of the terms “assign” and “assignment,” but fail to support Gateway’s position. This court concludes that Gateway is an assignee of Beneficial with respect to this judgment, thus precluding this court’s continued exercise of authority over the case, including the execution sought by Gateway.

Small claims court is a creature of statute. See Utah Code Ann. § 78-6-1 *et seq.* It is a court of limited jurisdiction, and must exercise its authority within the statutory parameters. Utah Code Ann. § 78-6-6 provides that “[n]o claim shall be filed or prosecuted in such small claims court by any assignee of such claim.” The court interprets that provision to preclude not only the initiation suit on an assigned cause of action, but any subsequent proceedings to obtain and enforce a judgment based on that filing (any other interpretation would render the additional phrase “or prosecuted” in

³ Like subject matter jurisdiction, the question of the authority of the court to act may be raised at any time and may (some would argue *must*) be raised by the court itself when the issue is apparent.

⁴ It was expressly not the purpose of this hearing, nor was it undertaken by the court, to re-litigate the underlying indebtedness. The judgment entered in 1996 appears to be valid and the time for appeal from it has long since expired. The sole issue before the court is whether it has the jurisdiction and authority to assist in the plaintiff’s efforts to enforce that judgment.

meaningless; principles of statutory interpretation dictate that the language of a statute is presumed to have been selected and used advisedly). Accordingly, if Gateway is an assignee of the claim, this court is an inappropriate forum for it to obtain the relief sought, namely execution upon the judgment.

As noted by Gateway, “assign” means “[t]he transfer of another’s interest, rights, title and property, contract or other rights to another.” Likewise, Black’s Law Dictionary (5th Ed.) defines an assignment as “a transfer or making over to another of the whole of any property, real or personal, in possession or in action” There is no question that the original judgment was entered in favor of Beneficial. A final judgment constitutes property which may be possessed, and may be transferred from the original judgment creditor to a subsequent holder. Such a transfer constitutes an assignment and the subsequent holder becomes an assignee.⁵

As an assignee, Gateway is statutorily precluded from availing itself of small claims court⁶. That does not mean it is without any recourse, only that it must resort to the regular civil docket of the district court, not the small claims court.⁷ This may result in slight additional inconvenience or expense to the plaintiff, but additional inconvenience or expense is not sufficient justification for this court to ignore the express statutory prohibition against assigned claims⁸.

⁵ While the subsequent assignee may be, as plaintiff contends, a “holder in due course” and thereby vested with certain rights attendant that designation, being a holder in due course does not preclude it simultaneously having the status of assignee.

⁶ The wisdom of the policy underlying the statutory prohibition is not for this court to determine. If plaintiff wishes to challenge that policy, or alter the statutory prohibition, the proper object of those efforts is the legislature.

⁷ While the small claims court is a division of the district court in this instance, the court’s holding is consistent with the different treatment accorded small claims court judgments, compared to those entered in the regular district court civil docket. E.g., a small claims judgment from *any court*, district or otherwise, does not qualify as a lien upon real property unless and until abstracted to the civil division of the district court, a requirement not imposed on judgments entered in the district court civil docket. See Utah Code Ann § 78-22-1(4). The same process is available to Gateway, and is the proper avenue for it to follow.

⁸ The plaintiff, apparently having previously availed itself of this forum in similar proceedings, offers its prior experience as justification for the relief sought here. The prior *correct* holding of a court of equal rank carries with it no precedential value, and is

CONCLUSION

It is the court's conclusion that Gateway is an assignee of the claim and judgment against defendant Katherine Parker. As such, this court is without authority to permit or assist in further proceedings to prosecute this action, including execution upon that judgment. Accordingly, Gateway must take those steps necessary to lodge the judgment in the civil docket of the district court and seek execution there. The Writ of Execution, having been improvidently granted in a court divested of authority, is therefore quashed.

Dated this _____ day of April, 2004.

By the Court:

Hon. Edward B. Havas
Judge *Pro Tem*

not binding on this court. It is axiomatic, therefore, that the prior *incorrect* exercise of jurisdiction cannot support the application of authority in the face of express statutory prohibition. As noted to the parties at the March 16, 2004 hearing, judges such as the undersigned oversee these proceedings specifically to ensure that proper statutory and evidentiary standards are applied. This court would be abdicating its responsibility to do otherwise, notwithstanding the prior experience of the plaintiff to the contrary.