GARNISHMENT DECISION STANDS

A few issues back, *The Arrow* warned its readers that a decision from the Kentucky Court of Appeals looked as if it might change garnishment law as we know it in the Commonwealth of Kentucky. The case in question was Ferguson Enterprises, Inc. vs. Main Supply, Inc. and it has now become a published decision. See 868 S.W. 2d 98. The Supreme Court has denied discretionary review, and so the decision in question appears to be the law in Kentucky for the time being.

Whereas in the past it was common practice for a bank to set off the funds in its account debtor's account upon receipt of a garnishment from a third party, the Ferguson case would deny banks that option.

Ferguson holds that setoff by the bank of its depositor's account must be completed prior to the acceptance of the garnishment by the bank. The Court found three steps necessary for a setoff to be completed:

(1) The decision to exercise the right,

(2) Some action which accomplishes the setoff, and

(3) Some record which evidences that the right of setoff has been exercised.

In short, this decision requires a bank to make a bookkeeping entry evidencing setoff prior to its receipt of the legal process constituting the garnishment.

This is good news for judgment creditors and bad news for banks. Although we represent both types of creditors in our practice, we believe that it is only common sense that a bank should not have to pay out funds in its possession to a third party when its depositor is in default to the bank.

Your editor will be happy to provide a copy of the Ferguson decision to any reader requesting one.