

**IN THE COURT OF APPEALS FOR  
THE STATE OF GEORGIA**

BRYAN CAVE LEIGHTON PAISNER, LLP,	)	
	)	
Garnishee and Petitioner,	)	
	)	Georgia Court of
v.	)	Appeals Case
	)	No. A24A1230
	)	
GEBO LAW, LLC,	)	
	)	
Respondent	)	
	)	(Civil Action File
	)	No. 23GR000019 in
	)	the State Court of
	)	Fulton County)
	)	

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**BRIEF OF APPELLANT**

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## **I. INTRODUCTION**

Appellant Bryan Cave Leighton Paisner, LLP (“BCLP”) seeks the reversal of the Fulton County State Court’s (“Trial Court”) December 21, 2023 Order on Plaintiff’s Traverse of Answer By Garnishee Bryan Cave Leighton Paisner, LLP (“Order”). The Trial Court’s Order erroneously held that funds paid by its client as advance fees to BCLP for current and future legal services pursuant to an engagement letter and retainer agreement are subject to garnishment by a judgment creditor of the client—despite clear Georgia law to the contrary. Based on this erroneous holding, the Order directed BCLP to disgorge legal fees it had earned both before and after the garnishment was filed.

As laid out below, the Trial Court committed plain legal error in issuing the Order by finding that funds paid as advance fee payments to a law firm pursuant to an agreement with the client are subject to garnishment, and by directing BCLP to disgorge those funds. There is no authority under Georgia law authorizing a judgment or any other creditor to garnish unearned attorney’s fees held in a client trust account pursuant to a retainer agreement and/or engagement letter. Nevertheless, the Trial Court issued its Order without first making any finding regarding whether Appellee Gebo Law, LLC (“Appellee” or “Gebo Law”) met its burden of demonstrating that BCLP’s Garnishee Answer was untrue or legally insufficient.

The Order is in contravention of Rule 1.15(II) of the Georgia Rules of Professional Conduct (“Rule 1.15(II)”), which provides that under Georgia law, unearned attorney’s fees held in a client trust account are considered the personal funds of the attorney. Moreover, the Order fails to follow the tenets of basic contract law. The Trial Court based its holding in part on a misreading of the engagement letter, which required a \$100,000 retainer to initiate representation and which further authorized BCLP to use deposited funds to pay legal fees and other charges as they were incurred. The Order therefore improperly extends the scope of the Georgia garnishment statutes and enlarges the statutory remedy to reach funds that are not made subject to the garnishment process. The Order further ignored the fact that BCLP had already earned fees before and throughout the garnishment period that it had a right to offset against any amount that may have been subject to garnishment.

Allowing the Trial Court’s holding to stand presents an unworkable circumstance, given the ongoing nature of legal services subject to an engagement letter, and it would be severely detrimental to the attorney-client relationship and a client’s right to legal representation. A judgment debtor’s right to counsel should not be hindered by the errant conception of attorney compensation embraced by Gebo Law and the Trial Court below. This Court should reverse.

## **II. JURISDICTIONAL STATEMENT**

The Court of Appeals has jurisdiction over this discretionary appeal pursuant to Ga. Const. Art. VI, Sec. V, para. III and O.C.G.A. § 15-3-3.1(a)(6) because this case does not fall within the Supreme Court’s exclusive appellate jurisdiction, as conferred by Ga. Const., Art. VI, Sec. VI, para. III. Because this case involves a garnishment, BCLP filed on January 22, 2024, an Application for Discretionary Appeal pursuant to O.C.G.A. § 5-6-35(a)(4) (“Application”). This Court granted the Application on February 14, 2024, and BCLP timely filed a Notice of Appeal in the Trial Court on February 23, 2024. By order dated April 17, 2024, this Court granted an extension of time for BCLP to file its Appellant’s Brief until May 1, 2024. This Brief is therefore timely filed.

## **III. ENUMERATION OF ERRORS**

1. The Trial Court failed to make a finding that Gebo Law met its burden to prove that BCLP’s Garnishee Answer was untrue or legally insufficient before issuing its Order.
2. The Trial Court improperly held that BCLP was only authorized to hold up to \$50,000 as a retainer in its client trust account despite the plain language of the Engagement Letter requiring a \$100,000 retainer.
3. The Trial Court improperly held that any additional funds that were transmitted to BCLP as an advance payment of legal fees are subject to garnishment.

4. In the alternative, the Trial Court improperly ordered BCLP to disburse \$125,265 to the Court Registry without considering BCLP's security interest and/or its right setoff amounts earned in legal fees.

#### **IV. STATEMENT OF THE CASE AND PROCEEDINGS BELOW**

In this garnishment case, Appellee Gebo Law has pursued a relentless campaign to attempt to collect on a judgment it obtained against Defendant Cordial Endeavor Concessions of Atlanta, LLC ("Cordial" or "Defendant") by seeking to garnish funds that are not subject to garnishment under Georgia law. Immediately after obtaining the judgment, Gebo Law began post-judgment discovery efforts directed at Cordial to attempt to collect on the judgment. Cordial engaged BCLP to provide post-judgment legal services, involving extensive post-judgment discovery, settlement negotiations, and potential restructuring or bankruptcy. In exchange, as a condition precedent to the engagement, Cordial paid BCLP an initial retainer and advance legal fees of \$100,000 pursuant to an engagement agreement, which is memorialized in the January 13, 2023 Engagement Letter. V3-663. Cordial agreed that the \$100,000 "retainer deposit amount is an advance fee payment and not an estimate of the total fees and costs." V3-665.

When it soon became clear that the post-judgment discovery sought by Gebo Law would be extensive, Cordial paid a second advance of legal fees of \$100,000 to BCLP. The Engagement Letter expressly authorized BCLP to hold these amounts in



its client trust account to be used to pay legal fees and other charges as they were incurred. V3-665. The parties agreed that BCLP would draw against the funds held in the client trust account to satisfy its monthly statements, which would include costs for attorney's fees and expenses. V3-664-65. BCLP was not obligated to refund to Cordial unearned amounts, if any, until the engagement was terminated. V3-665 (stating that any deposits received from Cordial were "refundable to the extent not subject to disbursement," but "[u]nless otherwise agreed in writing, any unused deposit will be returned to [Cordial] at the conclusion of this matter"). The Engagement Letter further provided that if the account balance was ever equal to or fell below \$50,000, Cordial was obligated to restore it to \$50,000 within ten days or BCLP could terminate the engagement. V3-665.

Pursuant to the Engagement Letter, and to commence representation, Cordial paid BCLP the initial retainer deposit amount of \$100,000 on or about January 19, 2023, which BCLP deposited into its client trust account. V2-179. On February 23, 2023, BCLP issued an invoice for the amount worked by that date—\$24,735—to which the retainer funds were applied, leaving \$75,265 remaining in the account. V2-189. On March 16, 2023, Cordial sent a cashier's check in the amount of \$100,000 to BCLP, requesting that it be deposited into Cordial's retainer account for legal services. V2-194. This payment was made as an additional advance fee

payment, pursuant to the terms of the Engagement Letter, and before Gebo Law had commenced any garnishment proceedings against BCLP. V2-413.

Gebo Law served a Summons and Affidavit of Garnishment on BCLP on March 22, 2023. V2-413. As further set forth in the chart at Figure 1 below, as of the date of service of the summons, BCLP had earned over \$63,500 in legal fees and expenses.<sup>1</sup> BCLP had not yet drawn against the account and applied the advance fees for the entire amount.<sup>2</sup> Because of this, the balance of the BCLP Cordial account was not really \$175,265 on March 22, the date it was served with the summons, but \$136,417.25 and decreasing as BCLP continued to serve its client's needs, most of which were in response to actions taken by Gebo Law.

Throughout the 30-day garnishment period, BCLP continued to perform legal services and incur fees and expenses for its work in assisting Cordial with post-judgment discovery and related issues. As of April 12, 2023, an invoice for \$54,563.50 for work performed in March was drawn against the account. V2-607.

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<sup>1</sup> In addition to the \$24,735 reflected in the February invoice, BCLP had earned another \$38,847.75 in additional legal fees and expenses as of March 22, 2023, as shown in two invoices, dated March 21, 2023, and April 10, 2023. V2-238, 295. For reasons that remain unclear, the March 21, 2023 invoice was not *applied* to the client trust account until April 10, 2023.

<sup>2</sup> BCLP continued to earn approximately \$63,870 in fees after the garnishment period ended through the end of 2023, and another \$2,885.50 in 2024 to the present. All of the fees charged before, during, and after the garnishment period were for post-judgment work performed by BCLP within the scope of the Engagement Letter, other than 2.5 hours of work performed in late April 2023 by Ann Ferebee relating to the garnishment proceeding that were charged against the account in error.

As of April 20, 2023 – the end date of the garnishment period – the account balance appeared to be \$111,550.50, but that amount did not account for fees earned from April 1 to April 20. V2-296. In fact, BCLP had incurred additional fees and expenses for work performed in April, for which it had not yet billed or drawn against the account, in the approximate amount of \$13,000. V2-616. Had that earned amount of legal fees been drawn against the account on or before April 20, 2023, the balance would have been reduced further to \$98,550.50. Stated another way, between the beginning of the engagement on or about January 19, 2023, through the end of the garnishment period on April 20, 2023, BCLP earned a total of \$101,449.50 in legal fees and expenses; Cordial’s second deposit of \$100,000 as an advance fee payment was therefore justified, as it was made in good faith in anticipation of BCLP’s continuing and ongoing provision of legal services to Cordial.

**Figure 1**

<b>Date</b>	<b>Transaction</b>	<b>Amount</b>	<b>Actual Balance</b>
01/19/2023	Advance Fee Deposit	\$100,000	\$100,000
02/23/2023	Invoice for Jan. Work	\$24,735	\$75,265
02/28/2023	Fees Incurred for Feb. Work	\$9,151	\$66,114
03/16/2023	Advance Fee Deposit	\$100,000	\$166,114
03/21/2023	Invoice for Feb. Work	\$9,151	\$166,114
03/22/2023	Fees Incurred for 03/01 to 03/22	\$29,696.75	\$136,417.25
03/22/2023	Service of Garnishment Summons		\$136,417.25
03/31/2023	Fees Incurred for 03/23 to 03/31	\$24,866.75	\$111,550.50
04/10/2023	Invoice for March Work	\$54,563.50	\$111,550.50
04/20/2023	Fees Incurred for 04/01 to 04/20	\$13,000	\$98,550.50
04/20/2023	End of Garnishment Period		\$98,550.50

12/20/2023	Fees Incurred for 04/21 to 12/20	\$63,870.50	\$34,680
12/21/2023	Court Order Requiring Disbursement	\$125,265	\$34,680
01/22/2023	Funds Deposited Into Court Registry	\$125,265	\$34,680 <sup>3</sup>
04/01/2023	Fees Incurred for Work 12/21 to 03/31/24	\$2,885.50	\$31,794.50

Because BCLP was expressly authorized to hold the advance fee payments in the client trust account until earned and to withdraw them as fees and expenses were incurred, the funds in the account did not constitute Cordial's money or property, nor any debt owing by BCLP to Cordial. Accordingly, on May 1, 2023, BCLP filed its Garnishee Answer in which it stated that it did not have any money or property of Cordial in its possession from the time of service of the summons (March 22) through the end of the garnishment period (April 20). Despite these facts, Gebo Law filed a Traverse on May 17, 2023, asserting that BCLP's Garnishee Answer was untrue or legally insufficient. Gebo Law asserted in its Traverse that, "over the past several months, Garnishee has received substantial sums from Defendant and its owners, affiliates and agents, in anticipation of providing legal services to Defendant. Upon information and belief, it is not realistic or reasonable for Garnishee to have incurred legal fees in amounts in excess of the funds paid to Garnishee." V2-126. Gebo Law's unprecedented position that all of the funds in

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<sup>3</sup> When BCLP paid \$125,265 into the Court Registry, the client trust account balance was \$34,680. Had the full amount been applied against the account, the balance would be -\$90,585.

BCLP's client trust account on the date of service of the summons were Cordial's funds that were subject to garnishment ignored the scope and express terms of the Engagement Letter, which Gebo Law had in its possession. It also ignored Gebo Law's own knowledge of the extensive post-judgment discovery efforts it had undertaken, including extensive written discovery, document and electronic file production, and a full day deposition of Cordial's principal—followed by more document discovery demands and correspondence. V2-273-80, 287-88, 292, 297-300.

The Trial Court held a hearing on Gebo Law's Traverse on June 7, 2023, and requested briefing from both parties on the question of whether the funds in BCLP's client trust account were subject to garnishment under Georgia law. The Trial Court noted that there was little if any Georgia authority directly on point and appeared skeptical that the advance fees were garnishable. Surprisingly, after several months,<sup>4</sup> *and without first finding that Gebo Law had met its burden to show that BCLP's Garnishee Answer was legally untrue or insufficient*, the Trial Court erroneously found in its Order that BCLP was only authorized to hold up to \$50,000 as a retainer in its client trust account. V2-567-69. The Trial Court also held that any excess

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<sup>4</sup> While the Trial Court was considering the parties' briefs, Gebo Law filed a separate fraudulent transfer action against Cordial and others in July of 2023. Cordial's engagement of BCLP was thus expanded in scope, and Gebo Law caused Cordial to incur more legal fees defending itself—fees earned by BCLP.

funds that were transmitted to BCLP as an advance where “no such funds were requested or demanded” are subject to garnishment. V2-569. These holdings ignore the plain language of the Engagement Letter, which provided that BCLP’s representation of Cordial would not commence until BCLP received a \$100,000 retainer payment, and authorized BCLP to hold that amount in the client trust account to use to pay fees and other charges as they were incurred. V3-664-65. The provision requiring Cordial to replenish the advance fees if the account balance fell below \$50,000 is the minimum or the floor required for BCLP’s continued representation, not a maximum amount that BCLP is authorized to hold. V3-665. In fact, the Engagement Letter clearly contemplated BCLP holding more than \$50,000 because it required an initial deposit of \$100,000 and regular deposits to keep the amount at or above \$50,000.

Relying on these erroneous findings, the Trial Court’s Order directed BCLP to disburse the sum of \$125,265 to the Court Registry, an amount which included fees BCLP earned *both before and after* the garnishment was filed<sup>5</sup> and an amount that deprives Cordial of its right to counsel because it can no longer pay BCLP for legal services. The Order ignores the fact that BCLP had already earned \$101,449.50 in fees before and throughout the garnishment period that it had a right to offset

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<sup>5</sup> As of the date of the Trial Court’s December 21, 2023 Order, BCLP had earned a total of \$165,205.50 in fees and expenses.

against any amount that may have been subject to garnishment. It also forced BCLP to disgorge \$23,815.5 in additional legal fees earned after the garnishment period during the six months between the hearing on Plaintiff's Traverse and the Trial Court's Order. A holding that BCLP must disgorge legal fees and expenses that it had properly earned fails to adhere to the basic principle that the courts have no right to enlarge the statutory remedy of garnishment so as to reach money or property not made subject to garnishment under the statutes.

Due to these errors, on January 12, 2024, BCLP filed a Motion for Reconsideration, setting forth the reasons why the Trial Court should reconsider its Order and hold that the funds in BCLP's client trust account are not subject to garnishment. V2-586. On January 22, 2024, while the Motion for Reconsideration was still pending, BCLP deposited \$125,265 into the Court Registry and filed its Application for Discretionary Appeal with this Court. V3-631. The filing of the Application acted as a supersedeas and therefore divested the Trial Court of jurisdiction to decide the Motion for Reconsideration, so that motion remains unresolved by the Trial Court.

## **V. STANDARD OF REVIEW**

The standard of review in this case is de novo, and the Court owes no deference to the trial court's ruling. *Wells Fargo Bank, N.A. v. Am. Builders & Contractors Supply Co., Inc.*, 365 Ga. App. 555, 556, 879 S.E.2d 662, 664 (2022).

This case presents a question of law, and the plain legal error standard of review therefore applies. *Rivers v. Rivers*, 348 Ga. App. 402, 404, 823 S.E.2d 84, 87 (2019).

## **VI. ARGUMENT AND CITATION OF AUTHORITY**

The Order failed to make any finding regarding whether Gebo Law met its burden of demonstrating that BCLP's Garnishee Answer is untrue or legally insufficient. BCLP contends that Gebo Law failed to do so, since the Engagement Letter specifically provides that the fees paid into the client trust account were advance fee payments that BCLP was authorized to hold until earned, and Rule 1.15(II) provides that unearned attorney's fees held in a client trust account are considered the personal funds of the attorney. Furthermore, BCLP continued to perform work and incur fees on an ongoing basis both before and throughout the course of the garnishment period and after. Gebo Law failed to prove that the funds in the client trust account were Cordial's funds, and/or it failed to effectively dispute that BCLP had a right to offset, and/or a lien on, or valid security interest in, the funds that took priority over Gebo Law's later attempt to garnish the funds.

The Trial Court's holding that BCLP must disgorge legal fees and expenses that it had duly earned is unprecedented under Georgia law, and it fails to adhere to the basic principle that the courts have no right to enlarge the statutory remedy of garnishment so as to reach money or property not made subject to garnishment under the statutes. The Order is the result of plain legal error, and it should be reversed.



**A. The Trial Court Erred In Failing To Find That Gebo Law Met Its Burden To Prove The Funds In The Client Trust Account Are Subject To Garnishment.**

*1) Georgia Garnishment Statutes Are Strictly Construed, And Plaintiffs Must Prove Funds At Issue Are Subject To Garnishment.*

Gebo Law failed to meet its burden to prove that the funds in BCLP's client trust account are subject to garnishment. The Georgia garnishment statutes are in derogation of the common law and must be strictly construed. *Wachovia Bank of Ga., N.A. v. Unisys Finance Corp.*, 221 Ga. App. 471, 474, 471 S.E.2d 554, 558 (1996). "Garnishment is purely a statutory proceeding and will not be extended so as to reach money or property of the defendant not made subject thereto by statute." *Akridge v. Silva*, 298 Ga. App. 862, 865, 681 S.E.2d 667, 670 (2009) (quotation marks omitted); *see Summer v. Allison*, 127 Ga. App. 217, 227, 193 S.E.2d 177, 185 (1972) ("The courts have no right to enlarge this purely statutory remedy or to hold under it property which is not made subject to the process.").

If a plaintiff traverses a garnishee's answer stating that the garnishee is not holding any funds belonging to the defendant, it is the plaintiff's burden to show by a preponderance of the evidence that the garnishment answer is untrue or legally insufficient. *See Wachovia Bank*, 221 Ga. App. at 471, 471 S.E.2d at 554; *A.C. White Transfer & Storage Co., Inc. v. Grady Memorial Hosp.*, 151 Ga. App. 751, 751, 261 S.E.2d 476, 477 (1979) (reversing garnishment judgment in favor of plaintiff because plaintiff failed to meet its burden of showing any indebtedness of the

garnishee to the defendant during the garnishment period). Here, Gebo Law had the burden to prove that BCLP held money or property of Cordial's that was subject to garnishment. Gebo Law failed, and the Trial Court erred by issuing its Order without first finding that Gebo Law met its burden.

*2) Gebo Law, The Plaintiff In This Action, Failed To Meet Its Burden.*

The funds in BCLP's client trust account were BCLP's funds, not Cordial's, and Gebo Law failed to prove otherwise. O.C.G.A. § 18-4-4 provides that "[a]ll obligations owed by the garnishee to the defendant at the time of service of the summons of garnishment . . . [,] all obligations accruing from the garnishee to the defendant throughout the garnishment period . . . [and] [a]ll money or other property of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment . . . or coming into the possession or control of the garnishee throughout the garnishment period shall be subject to the process of garnishment . . . ." It cannot be disputed that BCLP did not owe any obligations to Cordial at the time of service of the Summons of Garnishment, nor did it accrue any obligations to Cordial. In addition, Cordial did not send any additional funds for deposit into the client trust account during the garnishment period. Thus, Gebo Law had the burden of proving that the funds held in BCLP's client trust account on the date it was served with the Summons of Garnishment constituted "money or property" of Cordial that is subject to garnishment.

Gebo Law failed to prove the funds in the account belonged to Cordial. Under Georgia law, when a client pays a retainer deposit or an advancement of legal fees, those funds no longer belong to the client, they belong to the attorney. As such, the funds are not subject to garnishment by the client's creditors. *See Akridge*, 298 Ga. App. at 867, 681 S.E.2d at 671 ("If the funds in the bank account did not belong to [defendant], then [plaintiff] had no right to obtain them through garnishment proceedings."); *J. Austin Dillon Co. v. Edwards Shoe Stores, Inc.*, 53 Ga. App. 437, 186 S.E. 470, 472 (1936) (garnishment law "is only intended to reach something actually due the defendant and which he could recover himself"). While it is true that some Georgia cases provide that funds held on behalf of a client in trust by an attorney *as custodian* are subject to garnishment while the funds are in the hands of the attorney, that is not the case here. *See, e.g., Water Processing Co. v. Southern Golf Builders, Inc.*, 248 Ga. 597, 597-98, 285 S.E.2d 21, 21-22 (1981) (funds recovered for client as claimant in a bankruptcy received by client's attorney in the form of a check payable to the client were subject to garnishment); *Hiatt v. Edwards*, 52 Ga. App. 152, 182 S.E. 634, 635 (1935) (money held in trust by an attorney as the agent and custodian for the client is the client's money, not the attorney's). Here, Cordial made the payments to BCLP as a retainer deposit and an advance of to-be-earned legal fees. BCLP did not receive the funds "on behalf of the client," nor were they held in trust by BCLP as custodian. Once the retainer deposit was paid, and the

funds were placed into the client trust account as unearned legal fees, those funds no longer belonged to Cordial, they belonged to BCLP, and are not subject to garnishment. Gebo Law failed to prove otherwise.

The *J. Austin Dillon* case is instructive here. In that case, the plaintiff obtained a judgment against the defendant on a note and instituted garnishment proceedings against Edward Shoe Stores. 186 S.E. at 471. The defendant had contracted with Edwards Shoe Stores to paint the front of the store for \$103, with the money that would be owed for labor and materials to be paid directly by the store out of the contract price. The defendant separately had agreed to do additional work on the store building for a person named Womack for \$51, which was separate and apart from the painting contract. *Id.* The labor and material bills that were submitted to the store for payment included labor and material used in the work for Womack, so when the \$103 painting contract price was not enough to cover the amount owed, the defendant turned over the \$51 check he received from Womack to the store to pay for the labor and materials. The store paid all of the labor and material bills out of the \$154 total and was leftover with \$20.30 from which it paid the defendant's wages for 7 days' work, leaving \$5.78, which the store paid into the court when it filed its answer of garnishment. *Id.* On the plaintiff's traverse, the court found that because the \$51 that the defendant had paid to the garnishee were paid to apply on the labor and materials bills, "[t]his should not be considered an indebtedness of the garnishee

to the defendant of money, property, or effects of the defendant coming into its hands subject to the garnishment writ.” *Id.* at 472.

Just as in *J. Austin Dillon*, the money paid by Cordial to BCLP was paid as advance fees to be applied toward future invoices for legal services, and BCLP was authorized to use and draw against those amounts to pay fees and other charges as they were incurred. It therefore should not be considered an indebtedness owed to Cordial by BCLP, or money or property of Cordial coming into BCLP’s possession that is subject to garnishment. Rather, the funds were an advance payment of fees, paid pursuant to the Engagement Letter, that BCLP and the client anticipated BCLP would earn during the course of its engagement by Cordial. *See id.* The trial court erred in holding that these funds were subject to garnishment.

**B. The Trial Court Erred In Holding That BCLP Was Only Authorized To Hold Up To \$50,000 Despite The Plain Language Of The Engagement Agreement Requiring A \$100,000 Retainer.**

Despite Gebo Law’s failure to meet its burden of proof, the Trial Court held that all of the funds paid by Cordial to BCLP that exceeded the \$50,000 floor set forth in the Engagement Letter—regardless of whether they had been earned by BCLP or not—were subject to garnishment. This was clear error.

The Trial Court’s Order directing BCLP to disburse both earned and unearned legal fees is error because it violates the express provisions of the Engagement Letter. “Where a fund is in the hands of a garnishee to be advanced under a contract

and in pursuance thereof and held for one special purpose only, and where the debtor can not compel its payment to purposes foreign to the contract, the garnishing creditor can not extend his rights beyond those of his debtor.” *Kingsberry Mortg. Co. v. Ellis*, 118 Ga. App. 755, 757, 165 S.E.2d 604, 606 (1968); *see J. Austin Dillon*, 186 S.E. at 472 (“[G]arnishee is bound by existing liens, etc., on the property in his hands; and while the garnishment law is to prevent evasions and subterfuges, it does not intend to violate existing contracts or restrain the right to contract.”).

Cordial paid the retainer deposit and advance fees to BCLP pursuant to the Engagement Letter, which authorized BCLP to apply the fees as they were earned. Cordial’s obligation to maintain the account balance at or above \$50,000 had nothing to do with BCLP’s express authorization to hold and use any deposits received from Cordial to apply towards legal fees and expenses as they were incurred. V3-664-65. In fact, the Engagement Letter expressly stated that the required initial \$100,000 deposit was not an estimate of the total fees and costs, and it clearly anticipated that BCLP could hold more than \$50,000 in the account. V3-665. The Engagement Letter also provided that any deposits BCLP received from Cordial were refundable only to the extent not subject to disbursement, and only when the engagement concluded. *See id.* Gebo Law cannot extend the scope of the garnishment statutes to violate the Engagement Letter and garnish funds that Cordial was not at the time entitled to recover against BCLP. *See generally Ross v. Ross*, 25 Ga. 297, 300 (1858) (plaintiff

could not garnish railroad in which defendant held stock because only “debt” owing to stockholder was to pay back the stock when railroad winds up, which may never happen, while garnishment judgment required immediate payment).

Gebo Law failed to prove that the funds in the client trust account are subject to garnishment. After paying the advance fees, Cordial no longer had an interest in – or a right to refund of – the funds unless and until the engagement was terminated and even then, any such refund would consist only of any funds in excess of what BCLP had already earned as of that date. *See Fla. First Nat’l Bank of Jacksonville v. First Nat’l Bank of Columbus*, 154 Ga. App. 211, 213, 267 S.E.2d 849, 851 (1980) (“Thus, the true rule is that a garnishee, if the debtor be indebted to him, has a lien on funds coming into his hands, or future indebtedness to the debtor on his part, superior to that of the plaintiff in garnishment. He is entitled to pay himself before he is required to collect for the benefit of others.”) (citations and punctuation omitted). BCLP had a lien on the funds in the client trust account, and Gebo Law was not entitled to reach them through garnishment. The Trial Court’s Order finding that BCLP was not authorized to hold more than \$50,000 in the client trust account was error.

**C. The Trial Court Improperly Held That Additional Funds Transmitted As Advance Fees Are Subject To Garnishment.**

The Trial Court erred in finding that Cordial’s second deposit of advance fees to BCLP into the client trust account was subject to garnishment. Rule 1.15(II) of

the Georgia Rules of Professional Conduct makes clear that unearned attorney's fees are considered the *personal funds of the attorney*, and an attorney or law firm is expressly permitted to hold the funds in a client trust account *until the fees are earned*, at which point the funds may be debited against the client's account. *See id.* In fact, the Rule provides that "[n]o personal funds shall ever be deposited in a lawyer's trust account, except that unearned attorney's fees may be so held until the same are earned." *Id.*; *see* State Bar of Ga. Formal Advisory Opinion No. 91-2 (1990) (providing that a prepaid "fee paid by the client with the understanding that the attorney will earn the fee as he or she performs the task agreed upon" may be placed in a client trust account "until earned"). The fact that the attorney may draw from the account on a monthly basis, rather than hourly, does nothing to change the fact that the funds belong to the attorney. *See* Rule 1.15(II) cmt. 2 ("Nothing in this rule shall prohibit a lawyer from removing from the trust account fees which have been earned on a regular basis which coincides with the lawyer's billing cycles rather than removing the fees earned on an hour-by-hour basis.").

Here, once the advance fee payments to BCLP were deposited into the client trust account, they represented unearned attorney's fees that BCLP was entitled to hold and use to continue to pay itself via regular monthly invoices. BCLP was entitled to pay itself, and to continue paying itself, with the funds in its trust account.



Gebo Law has absolutely no right to those funds and thus the Trial Court erred by holding otherwise.

**D. In The Alternative, The Trial Court Improperly Failed To Consider BCLP's Security Interest In The Advance Fees, And/Or Its Right To Setoff Earned Fees.**

To the extent the funds deposited in the client trust account were considered Cordial's funds, the Trial Court nevertheless improperly failed to consider BCLP's valid security interest in the advance fees and/or BCLP's right to setoff amounts it duly earned in legal fees. These errors should be reversed.

*1) Even If The Funds In The Client Trust Account Were Considered Cordial's Funds, BCLP Has A Valid Security Interest With Priority Over Gebo Law's Claim For Garnishment.*

In a recent law review article, the authors set forth a persuasive argument that under Article 9 of the UCC, an attorney that receives a retainer deposit as security for payment of legal fees will typically have a valid security interest in the funds that takes priority over creditors' later attempts to garnish the client's funds. *See* Cassandra Burke Robertson, Jesse Wynn, *Untangling Attorney Retainers From Creditor Claims*, 12 ST. MARY'S J. LEGAL MAL. & ETHICS 142, 144-46, 154-55, 159 (2021) ("Both courts and leading bankruptcy authorities agree that an attorney who holds client funds as security for payment generally has a valid security interest in those funds under Article 9 of the UCC."). The article states that as long as the attorney and client agree that the funds will secure payment of legal fees, then "when

the client hands over funds to secure payment for the attorney's expected future services, the attorney has a security interest in those funds under Article 9." *Id.* at 157. There is no particular language or "magic words" that need be used to create a security interest in advance fee payments. *See id.* at 155, 156 ("As long as the attorney and the client agree that the retainer secures payment, it does not matter whether they call it a security interest, and it does not matter whether they intend to invoke the UCC."). Instead, the idea of security is implicit in an agreement (such as the Engagement Agreement here) that provides that the client will pre-pay some or all of the expected cost of the representation, that the funds will be held in trust until the lawyer earns them by performing work, and that the client is obligated to replenish the retainer to maintain a certain baseline of funds in the account. *See id.* at 147-48 (describing this as "[t]he most common type of retainer [that] serves as security for payment"), 162 ("The very purpose of an 'evergreen' retainer, after all, is to offer payment security without requiring pre-payment of the full expected fee.").

The security interest is perfected once the attorney possesses the retainer deposit or has control over the account into which it is deposited. *Id.* at 157. As the holder of a perfected security interest, the attorney would have priority over someone who later becomes a lien creditor. *See id.* at 158. "The relevant date for lien creditor status is the date of the levy, not the date of the underlying debt or judgment." *Id.*

Therefore, “a client who owes funds to a judgment creditor could pay an attorney retainer, and the attorney would have priority in that retainer as long as the judgment creditor has not yet levied on the funds.” *Id.*; *see id.* at 172 (stating that “creditors who try to levy on the security retainer will generally find that their interest is subordinate to the attorney holding those funds to secure payment for their future services”).

That is exactly what occurred here – Cordial paid over to BCLP on January 19, 2023, a retainer deposit amount of \$100,000 to secure the payment of legal fees for future services, and an additional \$100,000 advance payment of fees on March 16, 2023. V2-179, 194. As soon as BCLP took possession of those funds and deposited them into the client trust account that it controls, its security interest in those funds was perfected, and BCLP has priority over Gebo Law, which did not levy on the funds by serving a Summons of Garnishment until March 22, 2023. *See id.* at 158-59.

2. *BCLP Has A Right Of Setoff For Earned Fees.*

In the alternative, to the extent the court below correctly found that Cordial’s March 16, 2023, payment of an additional \$100,000 to BCLP without an invoice is subject to garnishment, BCLP is entitled to a setoff. *See Fla. First Nat’l Bank*, 154 Ga. App. at 213, 267 S.E.2d at 852. “The setoff of a valid claim is a remedy specifically given by law to garnishees, and the garnishment lien is subject to any

claim or right of offset in the garnishee, at the time of the service of the summons of garnishment, or subsequently thereto up to the time for the answer, provided the right in the garnishee was not a result of bad faith on its part.” *Id.* (citations and punctuation omitted). A garnishee “is bound by existing liens . . . on the property in [its] hands; and . . . the garnishment law . . . does not intend to violate existing contracts or restrain the right to contract.” *J. Austin Dillon*, 53 Ga. App. 437, 186 S.E. at 472. At the time BCLP was served with the Summons of Garnishment, it held \$175,265 in its client trust account for Cordial, but BCLP had already earned certain fees which it had not yet applied against the account balance. The Trial Court erroneously found in its Order that BCLP was only entitled to hold \$50,000 in its client trust account “for services rendered or to be rendered,” and that the remaining \$125,265 was subject to garnishment. However, from the time of service through the end of the garnishment period, BCLP earned legal fees and expenses totaling approximately \$76,714.50 that had not been already applied against the account, for which it has a right of offset. *See Fla. First Nat’l Bank*, 154 Ga. App. at 213, 267 S.E.2d at 852; Rule 1.15(II) cmt. 2 (nothing in the Rule prohibits a lawyer from removing earned fees from a client trust account on a regular basis that coincides with the lawyer’s billing cycles). Therefore, under the Trial Court’s reasoning, only

\$48,550.50 would be subject to garnishment.<sup>6</sup> The Order erred in requiring BCLP to pay \$125,265 into the Court Registry when BCLP had a right to offset at least the \$76,714.50 in fees it had already earned but not yet applied through the end of the garnishment period.

## VII. CONCLUSION

This Court should reverse the Trial Court's Order requiring BCLP to pay \$125,265 into the registry of the court below.

*This submission does not exceed the word count limit imposed by Rule 24.*

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<sup>6</sup> BCLP contends that none of the advance fees in the client trust account were or are subject to garnishment, since it was entitled to hold the funds in the account until earned, and BCLP earned those fees after the garnishment period ended. However, if this Court believes the Trial Court's reasoning applies to unearned funds in the BCLP client trust account, BCLP would be entitled to receive payment for services rendered before and during the garnishment period.

**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

BRYAN CAVE LEIGHTON PAISNER, LLP,	)	
	)	
Garnishee and Petitioner,	)	
	)	Georgia Court of
v.	)	Appeals Case
	)	No. A24A1230
	)	
GEBO LAW, LLC,	)	
	)	
Respondent	)	
	)	(Civil Action File
	)	No. 23GR000019 in
	)	the State Court of
	)	Fulton County)
_____	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a true and correct copy of the foregoing Brief of Appellant using the Court’s E-FAST system. Copies of the filing were also served on the parties listed below by electronic service pursuant to a prior agreement with each of the same to allow documents in a .pdf format sent via email to suffice for service:

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This 1st day of May, 2024.

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