

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL FARRELL,
Plaintiff,
v.
BOEING EMPLOYEES CREDIT UNION
and MOORE BREWER & WOLFE,
Defendants.

Case No. 16-cv-02711-NC

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT;
DENYING PLAINTIFF’S
CROSS-MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 103, 104

Plaintiff Daniel Farrell brought claims for unfair debt collection against defendants Boeing Employees Credit Union and Moore Brewer & Wolfe for garnishing his wages from federal employment when he moved from California to Indiana and then to Texas. Dkt. No. 1. This Court granted summary judgment to the defendants. Dkt. No. 89. Farrell appealed. Dkt. No. 92. The Ninth Circuit Court of Appeals affirmed in part, vacated in part, and remanded this Court’s order granting summary judgment. Dkt. No. 95. The Court of Appeals directed this Court to conduct a complete analysis of the question of whether 5 U.S.C. § 5520a requires compliance with the garnishment laws of the state of the debtor’s residence as an issue of first impression. *Id.* at 4–5. Because the Defense Finance and Accounting Service—rather than state agencies—facilitates garnishment of federal employees’ wages, this Court FINDS that § 5220a does not require this domestication. The defendants’ motion for summary judgment is GRANTED and the plaintiff’s cross-motion for summary judgment is DENIED.

1 **I. Background**

2 **A. Facts**

3 Farrell failed to maintain a motor vehicle financing agreement and Boeing obtained
4 a default judgment against him in California state court for repossession of the vehicle and
5 the full amount on the contract. Dkt. No. 76 (Joint Stipulation Regarding Facts; and,
6 Questions of Law) at 1–2. Farrell, a Department of Defense employee, subsequently
7 moved to Indiana. Id. at 3. Moore, Boeing’s attorney, obtained an earnings withholding
8 order and garnished Farrell’s wages through the Defense Finance and Accounting
9 Service. Id. This garnishment continued when Farrell later moved to Texas. Id. The
10 California judgment was not domesticated in Indiana or in Texas. Id.

11 **B. Remand**

12 On cross-motions for summary judgment, this Court held that § 5520a did not
13 require compliance with the garnishment laws of the state of the debtor’s residence based
14 on the lack of an explicit domestication requirement in § 5520a and 5 C.F.R. pt. 582. Dkt.
15 No. 92. The Ninth Circuit remanded that finding for this Court to conduct a complete
16 analysis of this issue of first impression. Dkt. No. 95.

17 On remand, the Ninth Circuit instructed this Court to consider the following:

- 18 1. The potential applicability of Indiana’s and Texas’s state garnishment laws,
19 “since, under § 5520a, the garnishment process is governed by state law.”
20 Dkt. No. 95 at 5.
- 21 2. The lack of clear statutory mandate allowing for interstate garnishment of
22 federal employees’ wages in the commercial debt context in contrast to the
23 family law context.
- 24 3. The amount of deference, if any, owed to the Office of Personnel
25 Management’s view that domestication is not required.

26 The Court discusses these questions in turn. The parties submitted renewed cross-
27 motions for summary judgment and a hearing was held on this matter. Dkt. Nos. 103, 104,
28 107. All parties consented to the jurisdiction of a magistrate judge. Dkt. Nos. 10, 18.

1 **C. Statutory History**

2 Congress enacted 5 U.S.C. § 5520a in 1993 to provide for garnishment of wages of
3 federal employees. Subsequently, President Bill Clinton issued Executive Order 12897
4 which designated the Office of Personnel Management “to promulgate regulations for the
5 implementation” of the statute “with respect to civilian employees and agencies in the
6 executive branch.” EO 12897. In 1995, OPM did so by promulgating 5 C.F.R. Part 582
7 “to implement the objectives of section 5520a.” 5 C.F.R. pt. 582.91. This regulation
8 designated the Defense Finance and Accounting Service as the agent to receive all legal
9 process for Department of Defense civilian employees whose wages were to be garnished.
10 5 C.F.R. pt. 581, App. A.

11 **II. Legal Standard**

12 Summary judgment may be granted when there exists no genuine dispute as to any
13 material fact. Fed. R. Civ. P. 56(a); *Tolan v. Cotton*, 134 S. Ct. 1861, 1863 (2014). Here,
14 the parties previously stipulated to all material facts so no disputes exist. Dkt. No. 76.
15 This Court may thus grant judgment as a matter of law.

16 Interpretation of a statute begins with the plain meaning of the statute itself, because
17 there is a “strong presumption that Congress expresses its intent through the language it
18 chooses.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987). “Where Congress
19 explicitly enumerates certain exceptions to a general prohibition, additional exceptions are
20 not to be implied, in the absence of a contrary legislative intent.” *Andrus v. Glover Const.*
21 *Co.*, 446 U.S. 608, 616–17 (1980). When language is missing in a statute, the doctrine of
22 *expressio unius est exclusio alterius* guides that “omissions are the equivalent of
23 exclusions.” *Clark v. Capital Credit & Collection Srvs.*, 460 F.3d 112, 1169 (9th Cir.
24 2006). This doctrine is “a rule of interpretation, not a rule of law.” *Broad v. Sealaska*
25 *Corp.*, 85 F.3d 422, 433 (9th Cir. 1996).

26 **III. Discussion**

27 **A. Applicability of Indiana and Texas Statutes**

28 The first issue before the Court is whether Indiana and Texas state laws should have

1 applied to Boeing’s garnishment of Farrell’s wages. Dkt. No. 95 at 5. In directing this
2 Court to consider this question, the Ninth Circuit noted that Indiana and Texas statutes
3 may be applicable “since, under § 5520a, the garnishment process is governed by state
4 law.” Id. The statute itself defines “process” as “any writ, order, summons, or similar
5 process in the nature of garnishment” that is “issued by a court of competent jurisdiction
6 within any State, territory, or possession of the United States, or an authorized official
7 pursuant to an order of such a court or pursuant to State or local law.” 5 U.S.C. §
8 5520a(3)(A). This definition indicates that the meaning of the word “process” as used in
9 the statute refers not generally to the mechanics of the garnishment but to legal process —
10 otherwise known as a writ, warrant, mandate, summons, or other order issued from a court.
11 The plain reading of the statute then provides that a state court must issue the writ that
12 allows for the wages to be garnished.

13 The system for facilitating the garnishment for Department of Defense employees is
14 conducted by DFAS. Indiana and Texas have statutes that allow the clerk of the court in
15 each state to facilitate the mechanics of wage garnishment once a court has ordered it. Ind.
16 Code Ann. 34-54-11-1; Tex. Civ. Prac. & Rem. Code Ann. § 35.005. This facilitation
17 occurs through state agencies. Id. These statutes have no logical applicability to the
18 instant situation, because DFAS facilitates the garnishment of wages for Department of
19 Defense employees like Farrell instead.

20 The Ninth Circuit cited *First Virginia Bank v. Randolph* in its framing of this
21 question. 110 F.3d 75, 79 (D.C. Cir. 1997). There, a judgment was obtained in the
22 Superior Court of the District of Columbia and a writ was issued by that same court against
23 an employee of the State Department. Id. at 75. The creditor moved to recover damages
24 against the United States for its failure to garnish the employees’ wages. Id. at 78. The
25 court there stated that “by subjecting the pay of federal employees to the legal process
26 applicable to private employers, § 5520a(b) incorporates the D.C. law” but that it did not
27 subject the United States to actions for damages. Id. at 79.

28 First Virginia Bank is not instructive here for two reasons. First, 5 U.S.C. § 5520a

1 does not provide that DFAS handles wage garnishment for State Department employees
2 like Randolph. Second, in *First Virginia Bank*, the judgment and writ were issued by the
3 same court. Domestication was not a question in that case. The District of Columbia
4 clerk’s office produced the writ and the District of Columbia judicial system enforced the
5 judgment. Here, Farrell moved from California to Indiana and then to Texas; our question
6 in this case is what effect, if any, those moves should have had on the garnishment of his
7 wages. *First Virginia Bank* sheds little light on this issue.

8 **B. Lack of Statutory Mandate Allowing for Interstate Garnishment**

9 Next, the Court addresses the lack of a clear statutory mandate allowing for
10 interstate garnishment of federal employees’ wages in the commercial debt context, in
11 contrast to the family law context. 42 U.S.C. § 666(b)(9)(B) provides that orders to
12 garnish wages for child support and alimony are entitled to “full faith and credit in such
13 state and in any other State,” so no domestication of those judgments is required when a
14 debtor moves from one state to another. This language is not present in 5 U.S.C. § 5520a.

15 Farrell argues that this omission constitutes an intentional exclusion under the
16 doctrine of *expressio unius est exclusio alterius*. *Clark*, 460 F.3d at 1169. This argument
17 requires drawing a connection between 42 U.S.C. § 666(b) and 5 U.S.C. § 5520a such that
18 language present or absent in one has bearing on the other. Farrell’s argument to this
19 effect is that § 666(b) was enacted in 1985, eight years before § 5520a. This supposed
20 connection is rather tenuous given that the statutes are located in entirely different sections
21 of the United States Code. Moreover, the statutes differ in that § 666 includes exhaustive
22 instructions on how states should enforce family law garnishment orders; § 5520a provides
23 no such direction. See 42 U.S.C. § 666(a) (titled “Types of Procedures Required” and
24 stating that “each State must have in effect laws requiring the use of the following
25 procedures . . .”). Most significantly, § 666(b) does not contain language instructing the
26 President to designate promulgations of implementing regulations, whereas § 5520a does.
27 See 5 U.S.C. § 5520a(j)(1)(A) (“Regulations implementing the provisions of this section
28 shall be promulgated by the President or his designee for each executive agency . . .”).

1 Furthermore, the doctrine of *expressio unius est exclusio alterius* “does not relieve
2 of us our duty to make sense of the statute.” *Broad*, 85 F.3d at 422. And the doctrine is
3 best “understood as a descriptive generalization about language rather than a prescriptive
4 rule of construction.” *Id.* Other evidence—such as the regulations promulgated by
5 OPM—makes clear the statutory intent: to process Department of Defense wage
6 garnishment through DFAS. If garnishment were to be handled by state agencies, OPM’s
7 regulation would be nonsensical. Because garnishment is not handled by state agencies,
8 domestication serves no purpose. To make sense of the statute, the Court infers that no
9 domestication requirement exists in § 5520a.

10 **C. Deference Owed to OPM**

11 Finally, the Court considers the amount of deference owed to the Office of
12 Personnel Management on this issue. At 60 Fed. Reg. 13028, OPM discussed the possible
13 Constitutional question that could arise from interstate enforcement of wage garnishment
14 under 5 C.F.R. pt. 582. However, as the parties stipulated at the hearing on this matter, 60
15 Fed. Reg. 13028 is not on point. There, OPM discusses the potential liability of the
16 government as an employer in the event that the garnisher does not comply with applicable
17 state garnishment laws, because some states subject employers to penalties for
18 noncompliance. 60 Fed. Reg. 13028 (stating that “the Federal Government’s
19 responsibilities as an employer are limited” and that the employing agency is not required
20 to “determine whether the court that issued the order has lawfully acquired jurisdiction
21 over the out-of-State obligor.”) This issue does not bear on the question of whether a
22 domestication requirement exists. OPM’s guidance here at least stands for the general
23 proposition that the federal government honors garnishment orders issued by state courts,
24 but is otherwise inapplicable.

25 **IV. Conclusion**

26 The plain reading of the statute, in context with its implementing regulations,
27 indicates that 5 U.S.C. § 5520a does not include a requirement that creditors domesticate
28 wage garnishment orders against federal employees if those debtors move from one state

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to another. Because domestication was not required of Boeing and Moore Brewer & Wolfe under § 5520a, the defendants’ motion for summary judgment is GRANTED and the plaintiff’s cross-motion for summary judgment is DENIED.

IT IS SO ORDERED.

Dated: May 3, 2019



NATHANAEL M. COUSINS
United States Magistrate Judge