

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

SANTOS GUEVARA,

Plaintiff,

-vs-

Case No. 2:06-cv-511-FtM-29SPC

SHUTTER-MAN STORM AND SECURITY,
INC.; KIRK BARNICLE,

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

This matter comes before the Court on the Plaintiff's Motion for Final Judgment Against the Garnishee Regions Bank (Doc. # 108) filed on February 10, 2009.

On September 18, 2007, the Court entered an Amended Judgment (Doc. # 43) for \$88,676.86 against the Defendants and in favor of the Plaintiff. On November 21, 2007, Plaintiff filed a Motion for Second Writ of Garnishment (Doc.# 69). The Court issued a Second Writ of Garnishment against Regions Bank (Doc. # 72) on November 27, 2007. On December 3, 2007, the Garnishee filed its Answer of Garnishee (Doc. # 76) and admitted that it held several bank accounts of the Defendants in the collective amount of \$2,689.08.

The Writ of Garnishment was stayed (Doc. # 80) on December 12, 2007. The stay was lifted by the Court on July 28, 2008, (Doc. # 90). On November 12, 2008, the Court entered another Judgment (Doc. # 105) for \$6,660 against the Defendants and in favor of the Plaintiff.

The Plaintiff now moves the Court for a judgment as a matter of law in the amount of \$2,689.08 based upon the answer of the garnishee. The Court has entered its judgment and the Writ of Garnishment has been properly served and there exists no controversy concerning the Second Writ of Garnishment.

On March 23, 2009, the Court denied that Motion as moot (Doc. # 11). On March 30, 2009, the Plaintiff moved the Court to reconsider the denial. Upon review and reconsideration, the Court granted the Motion for reconsideration and vacated the Order denying the Motion for Judgment (Doc. # 111) against the garnishee Regions Bank. The Court will therefore issue a Report and Recommendation (R & R) on the Motion for Final Judgment against the garnishee Regions Bank (Doc. # 108).

Chapter 77 of the Florida Statutes addresses garnishment procedures. §77.083, entitled “Judgment,” provides:

Judgment against the garnishee on the garnishee's answer or after trial of a reply to the garnishee's answer ***shall be entered*** for the amount of his or her liability as disclosed by the answer or trial. Instead of scire facias, the court may subpoena the garnishee to inquire about his or her liability to or possession of property of the defendant. No judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the amount of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee.

Fla. Stat. §77.083 (emphasis added).

The Plaintiff seeks a judgment against the Garnishee, Regions Bank for the amount set forth in the Garnishee’s Answer (Doc. # 76) specifically, \$2,689.08. The judgment the Plaintiff seeks against the Garnishee Regions Bank in the amount of \$2,689.08 is less than the Amended Judgment (Doc. # 43) for \$88,676.86 against the Defendants, Kirk Barnicle and Shutter-man. Without the

requested judgment against the Garnishee for the amount the Garnishee bank is holding, the Plaintiff cannot obtain the \$2,689.08 he is entitled to from the Garnishee, Regions Bank, to partially satisfy the Amended Judgment (Doc. # 43) entered against the Defendants.

Therefore, good cause exists to grant, the Motion for a Final Judgment against the Garnishee Regions Bank pursuant to Fla. Stat. §77.083.

Accordingly, it is now

RECOMMENDED:

The Plaintiff's Motion for Final Judgment Against the Garnishee Regions Bank (Doc. # 108) should be **GRANTED**, and a final judgment should be entered against the Garnishee Regions Bank as the Garnishee in the amount of **\$2,689.08**.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Respectfully recommended at Fort Myers, Florida, this 1st day of March, 2009.


SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record