

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

PATRICK ROSSI, an individual

Plaintiff,

v.

Case No: 2:15-cv-180-FtM-29MRM

GARY BILLMYRE,

Defendant.

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**ORDER**

This cause comes before the Court on Plaintiff's Motion for Writs of Garnishment to Billmyre Enterprises, Inc., John Pulling, and Marsha Pulling (Doc. 39) filed on April 19, 2017.

First, Plaintiff states that he believes that Defendant Gary Billmyre "receives ongoing and recurring salary, wages, dividends, or other regular compensation" from Billmyre Enterprises, Inc. (Doc. 39 at 5). As a result, Plaintiff requests that the Court issue a continuing writ of garnishment to Billmyre Enterprises, Inc. (*Id.* at 3).

Second, Plaintiff states that Defendant Gary Billmyre and Billmyre Enterprises, Inc. were awarded a combined judgment totaling \$289,528.28 against John Pulling, Jr. and Marsha Pulling. (*Id.* at 2). Based on this fact, Plaintiff requests that the Clerk issue writs of garnishment to John Pulling and Marsha Pulling. (Doc. 39 at 3).

Pursuant to Fed. R. Civ. P. 69(a), "[t]he procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Under Florida law, garnishment is governed by Fla. Stat. § 77.01, *et. seq.* "After judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, the

plaintiff's agent or attorney, shall file a motion (which shall not be verified or negative defendant's exemptions) stating the amount of the judgment." Fla. Stat. § 77.03. The Court issues continuing writs of garnishment. Fla. Stat. § 77.0305. Additionally, pursuant to Fla. Stat. § 77.04:

The writ shall require the garnishee to serve an answer on the plaintiff within 20 days after service of the writ stating whether the garnishee is indebted to the defendant at the time of the answer, or was indebted at the time of service of the writ, plus up to 1 business day for the garnishee to act expeditiously on the writ, or at any time between such times; in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff's motion. If the garnishee is a business entity, an authorized employee or agent of the entity may execute, file, and serve the answer on behalf of the entity.

Moreover, under Florida law, post-judgment writs of garnishment may be issued *ex parte* and without notice to the judgment debtor. *Blitz Telecom Consulting, LLC v. Peerless Network, Inc.*, No. 6:14-cv-307-ORL-40GJK, 2016 WL 7134831, at \*1 (M.D. Fla. Apr. 5, 2016), *order dissolved*, No. 6:14-cv-307-ORL-40GJK, 2016 WL 7394561 (M.D. Fla. Apr. 29, 2016) (citing *United Presidential Life Ins. Co. v. King*, 361 So. 2d 710, 713 (Fla. 1978)); *see also Commc'ns Ctr., Inc. v. Komatsu*, No. 6:05-cv-1254-Orl-31GJK, 2008 WL 2717669, at \*1 (M.D. Fla. June 27, 2008).

Upon review, Plaintiff's Motion and Writs of Garnishment attached thereto appear to comply with the Florida Statutes governing the issuance of writs of garnishment. Accordingly, pursuant to M.D. Fla. R. 6.01(c)(19) and based on the papers filed by Plaintiff, it appears that Plaintiff is entitled to the issuance of the Writs of Garnishment.

Accordingly, the Court hereby **ORDERS** that:

- 1) Plaintiff's Motion for Writs of Garnishment to Billmyre Enterprises, Inc., John Pulling, and Marsha Pulling (Doc. 39) is **GRANTED**.
- 2) The Continuing Writ of Garnishment shall issue in the amount of \$183,907.07.
- 3) The Clerk of Court is directed to issue the Writ of Garnishment (Doc. 39-2) attached to Plaintiff's Motion.

**DONE AND ORDERED** in Fort Myers, Florida on May 2, 2017.



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MAC R. MCCOY  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Parties