

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DIVISION

INTERNATIONAL TRADER, a
Florida corporation,

Plaintiff,

vs.

LADD FURNITURE INC., a foreign
corporation doing business through LADD
UPHOLSTERY COMPANY, its division

Defendant.

CLAYTON MARCUS CO., INC., a
North Carolina corporation

Intervening Plaintiff,

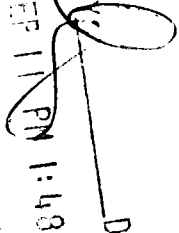
vs.

INTERNATIONAL TRADER, a
Florida Corporation

Counter Defendant.

CASE NO.: 01-3598-CIV-KING

MAGISTRATE JUDGE KING

FILED BY: 
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CLARENCE HADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA - MIA
D.C.

**PLAINTIFF, INTERNATIONAL TRADER, INC.'S, CORRECTED¹ RESPONSE TO
EMERGENCY VERIFIED MOTION FOR ISSUANCE FOR WRIT OF GARNISHMENT
OR
ALTERNATIVE MOTION TO DEPOSIT FUNDS IN THE COURT REGISTRY**

The Plaintiff, INTERNATIONAL TRADER, INC., by and through undersigned counsel,
hereby responds to LADD FURNITURE, INC'S motion for issuance of writ of garnishment or
alternative motion to deposit funds in the court registry.

¹ This is being filed to correct a clerical error as to the certificate of service.

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**I. THE MOTION FOR ISSUANCE OF
WRIT OF GARNISHMENT SHOULD BE DENIED**

Due to the fact that garnishment is a remedy that works a deprivation of debtor's property, it must comply with the requirements of procedural due process. See Ray Lein Construction, Inc v Waywright, 346 So.2d. 1029 (Fla 1977). Procedural due process requires sufficient constitutional safeguards, to protect a debtor from being deprived of its property by procedures that require no notice or hearing to the debtor. See North Georgia Finishing, Inc., v Di-Chem, Inc., 419 US 601, 95 S. ct. 719, 42 L.ed 2d. 751 (1975), procedure which provided for ex-parte issuance of writ of prejudgment garnishment upon application and posting of bond was deemed unconstitutional based in part on failure to have post seizure hearing. Failure to provide for an immediate post seizure hearing, violates procedural due process under the United States Constitution. See Ray Lein Construction, Inc v Waywright, 346 So.2d. 1029, 1032 (Fla 1977). In Waywright, the Florida Supreme Court held unconstitutional Florida's predecessor prejudgment garnishment statute based upon the fact that it did not provide for immediate post seizure hearing.

In the case at bar, counsel for LADD FURNITURE, INC., has asked the court for time to file post trial memoranda. The court granted twenty (20) days for this period. The court is expected to rule sometime in the beginning in October of 2002. Trial of all the issues in this case has been concluded. There will be nothing served by holding a post writ hearing. What LADD FURNITURE, INC., seeks is a writ of garnishment holding Plaintiff, INTERNATIONAL TRADER, INC.'S, funds until this court issues a final judgment. This means, that Florida Statute § 77.031 would be applied in this case, if the court were to issue a writ, without recourse to an immediate hearing as required by Florida Statute 77.07. That would result in an unconstitutional denial of procedural due process.

The Motion for Issuance of Writ of Garnishment should also be denied because the movant, LADD FURNITURE, INC., cannot show probability that final judgment will be rendered in its favor. Pursuant to Florida Statute 77.07, a court must dissolve a writ of prejudgment garnishment unless the Petitioner proves that there is reasonable probability that final judgment will be rendered in its favor. The court can deny the writ on this ground as the court has heard all evidence of the parties.

First of all, it should be noted that LADD FURNITURE, INC., never filed a claim against INTERNATIONAL TRADER, INC. While LADD FURNITURE, INC. designates itself as “Counterclaimant”, there is no such counterclaim. At best, it might have a set-off for late deliveries. Since LADD FURNITURE, INC. has not sought affirmative relief, it cannot obtain a money judgment in its favor.

Moreover, even if LADD FURNITURE, INC., were a proper counterclaimant, the evidence introduced at trial, does not show a probability of it obtaining a money judgment , in its favor. The evidence introduced during trial was to the effect that LADD FURNITURE, INC., was required to provide projections of leather it would need under the service agreement. LADD UPHOLSTERY GROUP did not provide projections beyond the time period covering July 30, 2000 for CLAYTON MARCUS and Pennsylvania House. It was also undisputed that LADD UPHOLSTERY never provided projections of leather to be purchased from INTERNATIONAL TRADER, INC., by BARCLAYS FURNITURE. It was testified, by everyone that took the stand, that the projections were necessary to allow INTERNATIONAL TRADER, INC., to stock the appropriate inventory in order to fill the orders on a timely basis. The projections were a condition precedent to LADD’s entitlement to penalties not substantially performed by LADD FURNITURE, INC. Dauer v. General Health Services, Inc., 317 So.2d 456 (FLA 3 DCA 1975) and Fla. Stat. Sec 672.311(3). Thus LADD

FURNITURE, INC., cannot claim penalties for any late deliveries on purchase orders for Barclays Furniture, (which did not issue projections) or for any purchase orders subsequent to August 1, 2000 for Pennsylvania House and CLAYTON MARCUS. Based on the foregoing, penalties that can be recovered by LADD FURNITURE, INC., for CLAYTON MARCUS (assuming the court finds that late charges are not waived) total \$13,386.57, (See purchase orders issued prior to August 1, 2000, CLAYTON MARCUS Trial Exhibit CM312), The most that can be claimed for penalties on behalf of late deliveries to Pennsylvania House is \$50,561.08 (See purchase orders issued prior to August 1, 2000, Clayton Marcus Trial Exhibit CM 357).

LADD FURNITURE, INC., through the testimony of Wayne Stewart, admitted receipt of goods and open invoices from INTERNATIONAL TRADER, INC., in the amount of \$177,537.09. Thus, if one accepts the best case scenario for LADD FURNITURE, INC., INTERNATIONAL TRADER, INC., would still be entitled to a final judgment of \$113,589.44 for invoices after deducting any possible allowable penalties for late deliveries.

Based on the foregoing the motion for the writ of garnishment should be denied.

II. LADD FURNITURE, INC.'S, ALTERNATIVE MOTION FOR ORDER REQUIRING DEPOSIT OF FUNDS INTO COURT REGISTRY SHOULD BE DENIED AS RULE 67, FEDERAL RULE OF CIVIL PROCEDURE IS NOT APPLICABLE

The plain language of Rule 67, Fed. R.of Civ. Pro., is applicable when a party, voluntarily wants to deposit funds into the court registry. It provides for an avenue for a party to do so with leave of court. The language of the rule makes no provision for the court ordering a party to involuntarily deposit funds in the court registry. This Rule cannot be used to compel a party to deposit funds into the court registry against its will. Rogath v. Siebenmann, 941 F.Supp. 416

(S.D.N.Y. 1996) As such, LADD FURNITURE, INC.'S, motion in this regard should denied summarily.

Respectfully submitted,

RAUL R. LOPEZ, P.A.

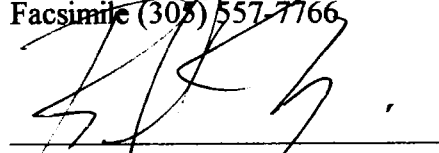
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RAUL R. LOPEZ

Fla. Bar No. 705667

CERTIFICATE OF ADMISSION AND SERVICE

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court in and for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1(A).

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail on this 9th day of September, 2002, to: Carlos F. Concepcion, Esq., Concepcion Rojas & Santos LLP, 220 Alhambra Circle, Suite 350, Coral Gables, Florida 33134.



RAUL R. LOPEZ, ESQ.