

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

**LANDMARK CAPITAL
INVESTMENTS, INC.,**

Plaintiff,

v. 4:11-cv-291

SAVANNAH NEPHROLOGY,

Defendant,

v.

**CAHABA GOVERNMENT BENEFIT
ADMINISTRATOR, LLC,**

Garnishee.

ORDER

Plaintiff Landmark Capital Investments, Inc. (“LCI”) filed this garnishment action on August 11, 2011, in the Northern District of Georgia. *See* Doc. 1. Defendant Savannah Nephrology filed a traverse, alleging that Georgia’s post-judgment garnishment procedure is unconstitutional. *See* Doc. 2. Upon a motion by LCI, the case was subsequently transferred to this Court. *See* Docs. 3; 4; 5. The parties have not filed any additional submissions since the transfer.

A traverse is a proper vehicle for the defense that Savannah Nephrology erects. *See, e.g., Weems v. Sterchi Bros. Stores, Inc.*, 238 Ga. 77, 77 (1976). *But see* O.C.G.A. § 18-4-65 (“[T]he defendant, by traverse of the plaintiff’s affidavit, may challenge *the existence of the judgment or the amount claimed due thereon.* The

defendant may plead any other matter *in bar of the judgment*, except as provided in subsection (b) of this Code section.” (emphasis added)). The traverse, however, is lacking in detail and argument sufficient for this Court to decide the case based on that submission alone. Furthermore, LCI has filed no response to the traverse.

Accordingly, the Court now **ORDERS** Savannah Nephrology to file within twenty (20) days of this Order a motion to dismiss the garnishment proceeding, if Savannah Nephrology still intends to challenge it. The motion to dismiss should explain, in greater detail than the traverse, why Georgia’s post-judgment garnishment procedures are unconstitutional and should discuss the appropriate disposition upon a finding that the procedure is unconstitutional. LCI shall respond to that motion, if filed, within seventeen (17) days. *See* S.D. GA. L.R. 7.5; FED. R. CIV. P. 6(d).

This 28th day of March 2012.



**B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA**