

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN ROBINSON,)	
)	
Plaintiff,)	
)	No. 4:08-CV-992 CAS
v.)	
)	
CUSTOM TREE & LAWN SERVICE,)	
INC., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on review of the file. On May 9, 2011, plaintiff’s counsel filed a document entitled “Notice of Execution,” which lists as a garnishee Commerce Bank (Doc. 162), and a document entitled “Notice of Execution,” which lists as a garnishee Custom Tree & Lawn Service, Inc. (Doc. 163). Both documents appear to request Court action in the form of a Writ of Execution upon the assets of debtor Custom Tree & Lawn Service, Inc. “as and for the principal balance unsatisfied on the consent judgment entered October 14, 2010.” The documents attach various forms as exhibits, labeled by counsel as “Summons to Garnishee,” “Writ of Execution,” “Marshal’s Form 285,” and more than 100 pages of print-outs from the Missouri Department of Revenue, presumably of vehicles owned by Custom Tree & Lawn Service, Inc.

As an initial matter, although plaintiff’s counsel filed a document titled “Consent Judgment” on October 14, 2010, this Consent Judgment was never approved by the Court. If counsel seeks to have the Consent Judgment recognized by the Court, counsel needs to file a Motion for Approval of the Consent Judgment. The Court will take no further action on any writ of execution or writ of garnishment until the Consent Judgment has been approved.

Additionally, pursuant to Federal Rule of Civil Procedure Rule 69(a), a “money judgment is enforced by a writ of execution, unless the court directs otherwise.” Fed. R. Civ. P. 69(a)(1). Rule 69 further provides that the procedure on execution, and in proceedings in aid of execution, “must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.” Id. In the absence of a controlling federal statute, a district court “has the same authority to aid judgment creditors in supplementary proceedings as that which is provided to state courts under local law.” H.H. Robertson Co. v. V.S. DiCarlo Gen. Contractors, Inc., 994 F.2d 476, 477 (8th Cir.) (citation omitted), cert. denied, 510 U.S. 1019 (1993).

Missouri proceedings for attachments and garnishments are governed by Missouri Revised Statutes, Title XXXVI, Chapters 521 and 525. The Rules of Civil Procedure applicable to these proceedings are Missouri Rules of Civil Procedure 85 and 90. Based on the Court’s cursory review of the “Notices of Execution” and exhibits filed by plaintiff, the documents are not in accordance with the procedures of Missouri state courts for attachment and garnishment proceedings. Although not an exhaustive list, the Court notes the following errors: (1) the “Notice of Execution” to Commerce Bank states, “Summons to garnishee is to be returnable February 11, 2011,” (2) the “Certificate of Service” attached to the “Notice of Execution” to Commerce Bank has a empty blank as the delivery date on the United States Marshal; (3) the “Summons to Garnishee” to Commerce Bank states that the garnishee is to appear before the Judge on February 11, 2011; (4) the Summons to Garnishee to Custom Tree & Lawn Service, Inc. is directed to vehicles identified in attachments “Exhibit 1 through Exhibit *****,” which are unidentifiable; and (5) the documents are not in accordance with Missouri law and procedures for seizing property. For these reasons, the Court will order the “Notices of Execution” to be stricken from the record for filing error. In the future, the documents shall be filed

in accordance with the procedure on execution of judgment, and in proceedings in aid of execution of judgment, of the State of Missouri. See generally Chapter 525 R.S.Mo.; Mo. R. Civ. P. 90.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's filings titled "Notice of Execution," filed May 9, 2011 are **STRICKEN** from the record. [Docs. 162 and 163]

A handwritten signature in cursive script, reading "Charles A. Shaw", written in black ink. The signature is positioned above a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 12th day of May, 2011.