

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

KEMPER MORTGAGE, INC.,

Plaintiff,

:

Case No. 3:06-cv-0042

-vs-

Magistrate Judge Michael R. Merz

:

JEFFREY RUSSELL,

Defendant.

DECISION AND ORDER ON RENEWED MOTION FOR GARNISHMENT

This case is before the Court on Motion of Judgment Creditor Kemper, Mortgage, Inc., for Order of Garnishment of Wages (Doc. No. 111).

On July 12, 2010, the Court denied a prior Motion for Writ of Garnishment because of a number of formal deficiencies, “without prejudice to its renewal upon correction of these deficiencies.” With this renewed Motion, Plaintiff has tendered the garnishee fee of one dollar. However, the Motion is still not in a form which permits this Court to proceed.

Plaintiff purports to bring this proceeding under 15 U.S.C. § 1672, et seq.. The referenced statutes do not authorize garnishment proceedings, but rather set a cap of 25% on the amount of personal earnings which can be taken by garnishment. See 15 U.S.C. § 1673(a).

Plaintiff also purports to bring the Motion under Fed. R. Civ. P. 64. This is perhaps the result of the Court’s citing that Rule in the July 12, 2010, for which the Court apologizes. Fed. R. Civ. P. 64 applies to pre-judgment remedies. The relevant Rule is instead Fed. R. Civ. P. 69 which provides in pertinent part:

(a) In General.

(1) **Money Judgment; Applicable Procedure.** A money judgment is enforced by a writ of execution, unless the court directs otherwise. The 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.

The procedure referenced in the Rule is the state procedure on execution and not general state procedural law. *Rumsey v. George E. Failing Co.*, 333 F. 2d 960 (10th Cir. 1964). The procedure for garnishment of personal earnings in Ohio, in effect incorporated by reference in Fed. R. Civ. P. 69, is set out in detail in Ohio Revised Code § 2716.02, et seq. Plaintiff must follow the process set forth in those statutes to obtain garnishment of personal earnings of the judgment debtor. In following that statute, Plaintiff should keep the following in mind:

1. Neither the Court nor the Clerk will prepare any of the forms referenced in the statute as required for garnishment. This is consistent with the Court's practice of not preparing summonses, subpoenas, or the like. Any required forms must be prepared by the Plaintiff. See S. D. Ohio Civ. R. 4.1.
2. Any forms required by Ohio Revised Code § 2716.02, et seq., and tendered for Court or Clerk signature must be submitted in Word or WordPerfect format so as to be modifiable by the intended signatory. See Electronic Filing Policies and Procedures Manual § E(2)(d).
3. To the extent that Plaintiff seeks to have the Clerk serve any paper required by the garnishment process by certified mail, Plaintiff must comply with S. D. Ohio Civ. R. 4.2.

The present Motion for Order of Garnishment of Wages does not comply with Fed. R. Civ. P. 69 as incorporating Ohio Revised Code § 2716.02, et seq. It is accordingly DENIED.

October 2, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge