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

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 1410,

Plaintiff, : Case No. 3:11-cv-131

District Judge Walter Herbert Rice
-vs- Magistrate Judge Michael R. Merz

:

MAPLE CITY CONCRETE LLC,

Defendant.

DECISION AND ORDER DENYING MOTION FOR ATTACHMENT

This case is before the Court on Plaintiff's Motion for Prejudgment Attachment (Doc. No. 3). The case has been referred to the undersigned United States Magistrate Judge (Doc No. 6) and the instant Motion is a pre-trial non-dispositive motion within the decisional authority of a magistrate judge on referral.

Fed. R. Civ. P. 64 provides

> At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

The relevant law of Ohio is, as Plaintiff notes, Ohio Revised Code Ch. 2715. Ohio Revised Code § 2715.01 authorizes pre-judgment attachment on eleven different grounds and Plaintiff asserts its claims come within Ohio Revised Code § 2715.01(A)(11) in that its claim is for work or labor.

Plaintiff avers that it is a labor union with a collective bargaining agreement with the Defendant and that under that agreement, Defendant is bound to withhold and pay over to Plaintiff union dues from Plaintiff's members who perform services for Defendant under the collective

bargaining agreement. Plaintiff further avers that Defendant has either not withheld the dues or has withheld them and failed to pay them to Plaintiff (Complaint, Doc. No. 1, ¶ 10.

The sole authority cited by Plaintiff for treating unpaid union dues as money owed for "work or labor" is *Henry v. Mangold*, 84 Ohio App. 188, 81 N.E. 2d 345 (Ohio App. 2nd Dist. 1947). In that case the Second District Court of Appeals was interpreting Ohio General Code § 11819, the predecessor to Ohio Revised Code § 2715.01. The "work or labor" language appears to have been carried forward to the Revised Code without any intention of changing the meaning, so this Court finds *Henry* to be authoritative[1].

Henry does not support Plaintiff's interpretation of "work or labor." The Henry court suggests that these statutory terms are limited to personal services performed for an employer and would exclude professional services:

> The law of Ohio seems to be well established that claims for services performed by executives of a corporation or by physicians or attorneys are not claims for "work." However, in the case at bar, the record discloses that the plaintiff was in the employ of the defendant, that he performed services as an artisan in the production of wealth, and that his exertions were primarily physical and not mental.

Id. at 189. But the union performed nothing like "work" or "labor" for the Defendant as those terms are used in the statute. Rather, it is Plaintiff's members who performed work or labor for defendant. The Union's claim is for dues owed it under the collective bargaining agreement, not for work or labor.

Plaintiff's Motion for Pre-Judgment Attachment is denied.

April 29, 2011.

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

[1]The Ohio courts interpretation is generally binding in federal court on an incorporated remedy such as attachment under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).