

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	CRIMINAL ACTION
v.	:	NO: 1:21-CR-206-01-JPB
	:	
ANDRE LEE GAINES,	:	
Defendant,	:	
and	:	
	:	
MORGAN & MORGAN,	:	
Garnishee.	:	

BRIEF IN SUPPORT OF MOTION FOR ENTRY OF FINAL DISPOSITION
ORDER ON GARNISHMENT AS TO DEFENDANT ROBERT ELLIOTT
SHEPPARD AND GARNISHEE MORGAN & MORGAN

This matter involves a garnishment proceeding initiated by the United States to recover a debt owed by Defendant Andre Lee Gaines (“Defendant”) pursuant to the Court’s judgment in Criminal Action No. 1:21-CR-206-01-JPB.

I. FACTS OF THE CASE

The United States initiated this garnishment proceeding on June 22, 2023, by filing of an Application for Writ of Continuing Garnishment, regarding property of Defendant held by Garnishee Morgan & Morgan including settlement funds.

The writ of garnishment was based upon this Court's entry of judgment in the original amount of \$806,810.00 against Defendant on August 26, 2022.

The United States demanded payment of the debt from Defendant more than 30 days before the application for the writ of garnishment was filed. As of August 24, 2023, the sum of \$762,385.03 remains owing on the judgment.

The Clerk of Court, through one of his deputies, issued the Writ of Continuing Garnishment on June 22, 2023. The Application, the Writ, and all related documents (collectively referred to hereafter as the garnishment package) were served upon the Garnishee, as reflected on the Court's docket by the notice of service filed on August 4, 2023. [Doc. 23.] The garnishment package was also served on the Defendant, as reflected on the Court's docket by the return of service filed on August 4, 2023. [Doc. 24.]

The Defendant has not requested a hearing or objected to the garnishment. Therefore, all prerequisites to entry of a disposition order have been satisfied.

II. STATEMENT OF APPLICABLE LAW

The provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 - 3307 (“the FDCPA”), govern this garnishment action. The FDCPA provides the “exclusive civil procedure for the United States to recover a judgment on a debt[.]” 28 U.S.C. § 3001(a)(1). Post-judgment remedies to collect a debt owed to the United States are enforced pursuant to Subchapter C of the FDCPA. The two sections which set forth the requirements for garnishment proceedings are found at 28 U.S.C. §§ 3202 and 3205.

A. Procedures Generally Applicable Under 28 U.S.C. § 3202

Applicable to all post-judgment collection actions brought by the United States under the FDCPA, 28 U.S.C. § 3202 requires the United States to prepare and the Clerk of Court to issue a notice to the defendant which contains information about the defendant’s rights under the FDCPA. The notice, as outlined in 28 U.S.C. § 3202(b), informs the Defendant of the action, provides information for the Defendant regarding property which may be exempt from the collection activity, and advises the Defendant that the underlying judgment debt itself may be attacked only if the judgment was entered by default (the “§ 3202 Notice”).

If upon receipt of the § 3202 Notice, the Defendant objects or claims an objection, and seeks a hearing, the FDCPA limits the issues to be addressed at a hearing to the following:

1. the probable validity of the Defendant's claimed exemptions;
2. compliance with the statutory requirements for the issuance of the post-judgment remedy; and
3. if the judgment being enforced was a default judgment, the validity of the underlying debt or whether good cause exists to set aside the default. 28 U.S.C. § 3202(d).

B. Procedures Applicable to Garnishments under 28 U.S.C. § 3205

The more specific FDCPA procedures applicable to a garnishment action are found at 28 U.S.C. § 3205. This section requires that the application for the writ include certain personal identifiers of the defendant. 28 U.S.C. §§ 3204(b)(1)(A), 3205(b)(1)(A). Section 3205 also requires that the application provide information to the garnishee about the debt and its current balance and establish that the garnishee is believed to have possession of property in which the Defendant has an interest. 28 U.S.C. § 3205(b)(1)(c).

Under § 3205(c), the Clerk of Court is to issue the writ if the requirements of the section have been satisfied.¹ 28 U.S.C. § 3205(c)(1). The United States is required to serve the writ on the garnishee and the Defendant, along with (1) instructions explaining the requirement that the garnishee must file an answer and (2) instructions to the Defendant for objecting to the garnishee's answer and for requesting a hearing on that objection.² 28 U.S.C. § 3205(c)(3). An objection to the garnishee's answer may be filed by either the United States or the Defendant within 20 days after receipt of the garnishee's answer. 28 U.S.C. § 3205(c)(5).

In this case, all of these items were properly prepared, filed with the court, and served on Defendant and Garnishee. Garnishee and Defendant have stated no objection to the form of the garnishment, the issuance of the writ, service of process or notice of this proceeding.

¹ 28 U.S.C. § 1691 provides that "All writs and process issuing from a court of the United States shall be under the seal of the court signed by the clerk thereof." Therefore, the proper court official to issue and sign the Writ of Continuing Garnishment is the clerk of court, whose duties may be assigned to a deputy.

Under 28 U.S.C. §3205(c)(7), a disposition order shall be entered as follows:

After the garnishee files an answer and if no hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor's non-exempt interest in such property. If a hearing is timely requested, the order shall be entered within 5 days after the hearing, or as soon thereafter as is practicable.

In this case, the Defendant has not requested a hearing, or claimed any exemptions. No other party raised an objection or requested a hearing. All prerequisites for entry of a final disposition order under 28 U.S.C. § 3205(c)(7) have therefore been met.

C. Entry of Final Disposition Order is Warranted

Under the FDCPA, 28 U.S.C. § 3205(c)(7), the court may enter an order directing the garnishee as to the disposition of the Defendant's interest in the garnished property. For the reasons set forth above it is appropriate for the Court to enter the Final Disposition Order in the Garnishment action as to Garnishee and Defendant. Furthermore, the government indicates that a continuing garnishment is not necessary under the facts of this case. Accordingly, the United States requests that the court issue a Final Disposition Order in Garnishment.

The United States requests that the Court instruct payment of \$12,812.14 by certified check or money order made payable to Clerk of Court for the Northern District of Georgia, 2211 U.S. Courthouse, 75 Ted Turner Drive S.W., Atlanta, GA 30303 with reference made on the negotiable instrument to the case number, 1:21-CR-206-01-JPB.

III. CONCLUSION

For the reasons stated herein, the United States respectfully requests that the Court issue a Final Disposition Order in Garnishment, pursuant to 28 U.S.C. § 3205(c)(7), that orders the Garnishee to turn over Defendant's interest in the property it holds in accordance with the Court's instructions. A proposed order is attached for the Court's convenience. The United States also requests that the Court grant such further relief as may be just and proper.

Respectfully submitted,

RYAN K. BUCHANAN
UNITED STATES ATTORNEY

/s/Vivieon K. Jones
VIVIEON K. JONES
Assistant United States Attorney
Georgia Bar No. 143033
75 Ted Turner Drive, S.W., Ste 600
Atlanta, GA 30303
Phone: (404) 581-6350
Fax: (404) 581-6167
vivieon.jones@usdoj.gov

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1B and 7.1D, that the foregoing
brief has been typed using 13-point Book Antiqua font.

/s/Vivieon K. Jones
VIVIEON K. JONES
ASSISTANT UNITED STATES ATTORNEY
Vivieon.jones@usdoj.gov