

**APPELLANT PENNY J. YOUNG MOTION FOR STAY
AND POST-JUDGMENT RELIEF**

COMES NOW, Appellant Penny J. Young, *pro se* and a layman at law, to move this Supreme Court of Ohio to issue an Order for post-judgment relief, pursuant to Civ.R. 60(B)(3) and 60(B)(5), and a stay of execution of an Order and related subsequent activities by the trial court, pursuant to Civ.R. 62(B). In support thereof, Appellant states the following.

STATEMENT OF THE CASE

This case is currently pending before the Supreme Court of Ohio on discretionary appeal and appeal based on a constitutional issue from the Ohio Fifth District Court of Appeals, Case No. 08CA22, and the Knox County Court of Common Pleas, Case No. 08OT060356.

Appellant filed a motion for reconsideration in the said appeals court on May 15, 2009 with demand for findings of fact and conclusions of law, should said motion be denied. The appeals court denied said motion on July 30, 2009 and failed to produce the facts and law demanded.

Appellant received by mail Appellee's *NOTICE OF COURT PROCEEDING TO COLLECT DEBT*, dated June 22, 2009. In response, thereof, Appellant filed a motion for injunctive relief, by mistake (wrong defense – misunderstanding by Appellant regarding proper use of injunction), in this court on June 26, 2009. Said motion was denied on June 29, 2009.

On August 6, 2009, Appellant received notice at her place of employment Appellee's intent to garnish her wages pursuant the Order appealed from in the Knox County Common Pleas Court. (See attachment)

Appellant seeks relief from all activities by Appellee for settlement of alleged debt which is the subject matter of the instant action until such time Appellant has exhausted all her legal and lawful remedies. Such relief is in the best interests of justice and protection of Appellant's substantive rights of due process and equal protection of the law.

GROUND

(A) Pursuant to Civ.R. 60(B)(3):

(1) To wit:

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party.”

- (2) Appellant contends that such conduct has been clearly demonstrated throughout the course of proceedings in the instant case.
- (3) Appellant claims that said conduct has resulted in deprivation of her rights of due process of law and equal protection of the law.
- (4) Appellant contends that until said matters can be addressed and finally determined by this Supreme Court, Appellee should be denied relief on the said Order by the Knox County Common Pleas Court.
- (5) Appellant contends that said conduct could result in precedence that would adversely affect significant numbers of similar future claims, such matters which are of great public interest in the pursuit of justice and the rule of law.

- (6) Appellant contends that said conduct brings dishonor upon and adversely affects the integrity of the Ohio judiciary.
- (7) WHEREFORE, Appellant respectfully demands this court issue an Order to stay execution of all activities by Appellee, and all other participants, from collection of alleged sums due in the instant case until further notice by this court.

(B) Pursuant to Civ.R. 60(B)(5):

- (1) To wit:

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (5) any other reason justifying relief from the judgment.”

- (2) Appellant has stated facts on the record of the instant case pertaining to violations of Appellant’s rights of due process and equal protection of the law by Appellee, without opposition.
- (3) Appellant has stated facts on the record of the instant case pertaining to misconduct by the Knox County Court of Common Pleas and Ohio Fifth District Court of Appeals pertaining to the compounding of fraud and failure to provide Appellant relief in accordance with clearly establish law which is controlling in the instant case, without opposition.
- (4) Appellant contends that the facts stated, when analyzed in the interest of justice and the rule of law, clearly sustains Appellant’s arguments and defense.
- (5) Appellant contends that providing Appellee relief under such false pretenses prior to Appellant exhausting all her legal and lawful remedies would constitute a severe injustice and set a precedent contrary to the great general interests of the public.

(6) WHEREFORE, Appellant respectfully demands this court issue an Order to stay execution of all activities by Appellee, and all other participants, from collection of alleged sums due in the instant case until further notice by this court.

(C) Pursuant to Civ.R. 62(B):

(1) To wit:

“When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.”

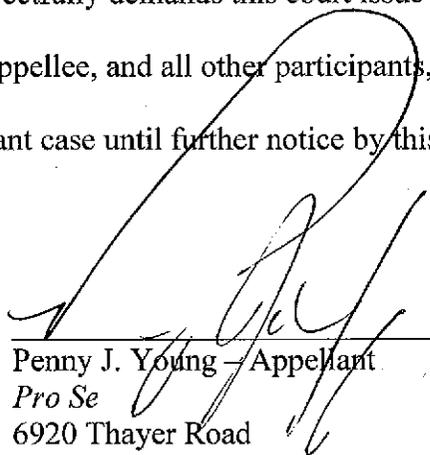
(2) The instant case is currently pending on appeal in this court.

(3) The law provides remedy for the relief sought.

(4) Appellant is prepared to tender a reasonable amount for bonding purposes, as deemed appropriate by this court in compliance with the Order sought.

(5) Appellant proclaims that her purposes for seeking the instant relief are not to unduly delay the instant action or to deny relief which is properly due Appellee.

(6) WHEREFORE, Appellant respectfully demands this court issue an Order to stay execution of all activities by Appellee, and all other participants, from collection of alleged sums due in the instant case until further notice by this court.



Penny J. Young – Appellant
Pro Se
6920 Thayer Road
Mount Vernon, Ohio 43050
(740) 392-9034
mayoung6920@aol.com

STATE OF OHIO
County of Knox County, SS
FIA CARD SERVIC

Docket No.:
FILED
KNOX COUNTY
COURT OF COMMON PLEAS
0807060356 09EXU03
KNOX COUNTY COMMON PLEAS COURT

2009 JUL 20 AM 11:26
117 EAST HIGH ST., STE 201
MT. VERNON, OH 43050
740-393-6788

Judgment Creditor(s)
PENNY YOUNG
6920 THAYER RD
MOUNT VERNON, OH 43050

Against MARY JO HAWKINS
CLERK OF COURTS
ORDER AND NOTICE OF GARNISHMENT
AND ANSWER OF EMPLOYER

THIS LAW FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT THIS DEBT FOR
OUR CLIENT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

Judgment Debtor(s)

SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT

To: STATE OF OHIO, 30 BROAD ST 37TH FLOOR, COLUMBUS, OH 43266 Garnishee

The judgment creditor in the above case has filed an affidavit, satisfactory to the undersigned, in this Court stating that you may owe the judgment debtor money for personal earnings. You are therefore ordered to complete the "ANSWER OF EMPLOYER (GARNISHEE)" in section B of this form. Return one completed and signed copy of this form to the clerk of this Court within five (5) business days after you receive this order of garnishment. Deliver one completed and signed copy of this form and the accompanying documents entitled "NOTICE TO THE JUDGMENT DEBTOR" and "REQUEST FOR HEARING" to the judgment debtor. Keep the other completed and signed copy of this form for your files.

(The total probable amount now due on this judgment is \$11592.00. The total probable amount now due includes the unpaid portion of the judgment in favor of the judgment creditor, which is \$11149.70, interest on that judgment and, if applicable, prejudgment interest relative to that judgment at the rate of 8.00% per annum payable until that judgment is satisfied in full; and court costs in the amount of \$236.50.)

This order of garnishment of personal earnings is a continuous order that generally requires you to withhold a specified amount, calculated each pay period at the statutory percentage of the judgment debtor's personal disposable earnings during each pay period, as determined in accordance with the "Interim Report and Answer of Garnishee", from the judgment debtor's personal disposable earnings during each pay period of the judgment debtor commencing with the first full pay period beginning after you receive the order until the judgment in favor of the judgment creditor and the associated court costs, judgment interest, and, if applicable, prejudgment interest awarded to the judgment creditor as described above have been paid in full. You generally must pay that specified amount, calculated each pay period at the statutory percentage, to the clerk of this Court within thirty (30) days after the end of each pay period of the judgment debtor and must include with that specified amount calculated each pay period at the statutory percentage an "INTERIM REPORT AND ANSWER OF GARNISHEE" substantially in the form set forth in section 2716.07 of the Ohio Revised Code. A copy of the "INTERIM REPORT AND ANSWER OF GARNISHEE" is attached to this order of garnishment of personal earnings, and you may photocopy it to use each time you pay the specified amount to the clerk of this Court. You are permitted to deduct a processing fee of up to three dollars from the judgment debtor's personal disposable earnings for any pay period of the judgment debtor that an amount was withheld for that order (the processing fee is not a part of the court costs). You are not required to file with the court the "INTERIM REPORT AND ANSWER OF GARNISHEE" for any pay period of the judgment debtor for which an amount from the judgment debtor's personal disposable earnings during that pay period was not withheld for that order.

This order of garnishment of personal earnings generally will remain in effect until one of the following occurs:

1. The total probable amount due on the judgment as described above is paid in full as a result of your withholding of the specified amount, calculated each pay period at the statutory percentage, from the judgment debtor's personal disposable earnings during each pay period of the judgment debtor that commenced with the first full pay period beginning after you received the order.
2. The judgment creditor or the judgment creditor's attorney files with this court a written notice that the total probable amount due on the judgment as described above has been satisfied or the judgment creditor or the judgment creditor's attorney files a written request to terminate this order of garnishment and release you from the mandate of this order of garnishment.
3. A municipal or county court appoints a trustee for the judgment debtor and issues to you an order that stays this order of garnishment of personal earnings.
4. A federal bankruptcy court issues to you an order that stays this order of garnishment of personal earnings.
5. A municipal or county court or a court of common pleas issues to you another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor, and Ohio or federal law provides the other order with a higher priority than this order.
6. A municipal or county court or a court of common pleas issues to you another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor and that does not have a higher priority than this order.
7. The judgment creditor or the judgment creditor's attorney files with this court a written request to terminate and release the order of garnishment, and as a result, the order of garnishment will cease to remain in effect.

06642262 C A Gro DIA

Under any of the circumstances listed above, you are required to file with this court a "FINAL REPORT AND ANSWER OF GARNISHEE" substantially in the form set forth in section 2716.08 of the Ohio Revised Code. A copy of the "FINAL REPORT AND ANSWER OF GARNISHEE" is attached to this order of garnishment of personal earnings. Under the circumstances listed in (5) and (6) above, you must cease processing this order of garnishment after the expiration of the full pay period within which the one hundred eighty-second (182) day after you began processing it falls.

Special stacking, priority of payment, and manner of payment rules apply when a garnishee receives multiple orders of garnishment with respect to the same judgment debtor. These rules are set forth in section 2716.041 of the Ohio Revised Code. An employer guide to processing continuous orders of garnishment is included with this order of garnishment. You should become familiar with these rules.

Witness my hand and the seal of this court on this date of 7-20-09

SS No: 209-48-2166 ID Info Judge

GIVE TO DEFENDANT

Attmt - Pg. 1

(An employer is one who is required to withhold payroll taxes out of payments of personal earnings made to the judgment debtor.)

(Answer all pertinent questions)

Now comes _____, the employer (garnishee) herein, who says:

1) This order of garnishment of personal earnings was received on _____ 1) _____

2) The judgment debtor is in my/our employ. _____ 2) YES/NO
If answer is "NO," give date of last employment. _____

3(A) Is the debt to which this order of garnishment of personal earnings pertains the subject of an existing agreement for debt scheduling between the judgment debtor and a budget and debt counseling service and has the judgment debtor made every payment that was due under the agreement for debt scheduling no later than forty-five days after the date on which the payment was due? If the answer to both parts of this question is "Yes," give all available details of the agreement, sign this form, and return it to the court. 3(A) YES/NO

3(B) Were you, on the date that you received this order of garnishment of personal earnings, withholding moneys from the judgment debtor's personal disposable earnings pursuant to another order of garnishment of personal earnings that Ohio or federal law provides with a higher priority than this order of garnishment of personal earnings (such as a support order or Internal Revenue Service levy)? If the answer to this question is "Yes," give the name of the court that issued the higher priority order, the associated case number, the date upon which you received that order, and the balance due to the relevant judgment creditor under that order. Please attach a separate page for additional cases. 3(B) YES/NO
Court: _____ Case No.: _____ Date Received: _____
Balance Due: \$ _____

3(C) Did you receive prior to the date that you received this order of garnishment of personal earnings one or more other orders of garnishment of personal earnings that are not described in question 3(B), and are you currently processing one or more of those orders for the statutorily required time period or holding one or more of those orders for processing for a statutorily required period in the sequence of their receipt by you? If the answer to this question is "Yes," give the name of the court that issued each of those previously received orders, the associated case numbers, the date upon which you received each of those orders, and the balance due to the relevant judgment creditor under each of those orders. List first the previously received order(s) that you are currently processing, and list each of the other previously received orders in the sequence that you are required to process them. Please attach a separate page for additional cases. 3(C) YES/NO
Court: _____ Case No.: _____ Date Received: _____
Balance Due: \$ _____

I certify that the statements above are true. _____
(Print Name of Employer)

(Print Name and Title of Person Who Completed Form On Behalf of the Employer)

Signed: _____
(Signature of Employer or Employer's Agent)

Dated this _____ day of _____

Attmt. Pg 2.

FILED
KNOX COUNTY
COURT OF COMMON PLEAS
DOCKET NO.:

THE STATE OF OHIO

Knox County, SS

2009 JUL 20 AM 11:26

CASE NO.: ~~080T060356~~

09EX163

FIA CARD SERVIC
2727 PACES FERRY RD, #1400
ATLANTA, GA 30339

MARY JO HAWKINS
CLERK OF COURTS

COURT: KNOX COUNTY COMMON PLEAS COURT

117 EAST HIGH ST., STE 201
MT. VERNON, OH 43050

JUDGMENT CREDITOR(S)

PENNY YOUNG

Against

AFFIDAVIT

6920 THAYER RD
MOUNT VERNON, OH 43050

THIS LAW FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT
THIS DEBT FOR OUR CLIENT AND ANY INFORMATION OBTAINED WILL
BE USED FOR THAT PURPOSE.

10051804

JUDGMENT DEBTOR(S)

Before me, the undersigned Notary Public or Deputy Clerk of KNOX COUNTY COMMON PLEAS COURT
personally appeared Raymond F. Moats III, 0071791 who first being duly sworn
according to law, says that the undersigned is the ATTORNEY for JUDGMENT CREDITOR herein and that said judgment creditor
on July 17, 2008 duly recovered judgment before KNOX COUNTY COMMON PLEAS COURT
or transferred a judgment to wit, against said judgment debtor which
remains unsatisfied.

AMOUNT OF JUDGMENT \$ \$11119.76
Including INTEREST TO DATE (interest rate= 8.000%) + \$ \$236.41
Plus COURT COSTS TO DATE including the cost of this proceeding + \$ \$300.00
Minus AMOUNT RECEIVED on Judgment and/or CREDIT ADJUSTMENTS - \$ \$63.50
AMOUNT NOW DUE = \$ \$11592.67

The Garnishee
STATE OF OHIO; 30 BROAD ST 37TH FLOOR; COLUMBUS, OH 43266

is an employer of the judgment debtor who may have personal earnings of the judgment debtor. The Demand in writing required by Section 2716.02 of the Ohio Revised Code has been made and a true copy of said Demand is attached hereto; the payment demanded in the notice required by section 2716.02 of the Ohio Revised Code has not been made, and a sufficient portion of the payment demanded has not been made to prevent the garnishment of personal earnings as described in section 2716.02 of the Ohio Revised Code. The affiant has no knowledge of any application by the judgment debtor for the appointment of a trustee so as to preclude the garnishment of the judgment debtor's personal earnings and has no knowledge that the debt to which this affidavit pertains is the subject of a debt scheduling agreement of a nature that precludes the garnishment of the personal earnings of the judgment debtor under section 2716.05(B) of the Ohio Revised Code.

Affiant's Signature _____
Notary Public or Deputy Clerk Melanie Jackson

Sworn to and subscribed before me July 13, 2009
(Date)

ATTORNEY FOR JUDGMENT CREDITOR
Raymond F. Moats III, 0071791
Weltman, Weinberg & Reis
175 South Third Street Ste 900
Columbus, OH 43215

My commission expires 4/5/11



MELANIE JACKSON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 04-05-11

FAX: 614-801-2601
GROATTY@WELTMAN.COM

Attmt. 993

NOTICE TO JUDGMENT DEBTOR

Knox County, SS

PERSONAL EARNINGS

KNOX COUNTY COMMON PLEAS COURT

FIA CARD SERVIC
2727 PACES FERRY RD, #1400
ATLANTA, GA 30339

2009 JUL 20 AM 11:26
117 EAST HIGH ST., STE 201
MOUNT VERNON, OH 43050

MARY JO HAWKINS
CLERK OF COURTS
724-393-6788

Judgment Creditor

Weltman, Weinberg & Reis
175 South Third Street Ste 900
Columbus, OH 43215

vs.

PENNY YOUNG
6920 THAYER RD
MOUNT VERNON, OH 43050

CASE NO. 0807060356 09EX63

Judgment Debtor

You are hereby notified that this court has issued an order in the above case in favor of the FIA CARD SERVIC, Judgment

Creditor in this proceeding, directing that some of your personal earnings be used in satisfaction of your debt to the Judgment Creditor instead of being paid to you. This order was issued on the basis of the Judgment Creditor's judgment against you that was obtained in the KNOX COUNTY COMMON PLEAS COURT on July 17, 2008 with the above case number.

The law of Ohio provides that you are entitled to keep a certain amount of your personal earnings free from the claims of creditors. Additionally, wages under a certain amount may never be used to satisfy the claims of creditors. The document entitled "**ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER**" (Section B) that are enclosed with this notice show how the amount proposed to be taken out of your personal earnings was calculated by your employer.

If you dispute the judgment creditor's right to garnish your personal earnings and believe that you are entitled to possession of the personal earnings because they are exempt or if you feel that this order is improper for any other reason, you must request a hearing before this court **by disputing the claim in the REQUEST FOR HEARING form accompanying this notice** or in a substantially similar form, and delivering the request for hearing to this court at the above address, **no later than the fifth business day after you receive this notice**. You may state your reasons for disputing the Judgment Creditor's right to garnish your personal earnings in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the Judgment Creditor's right, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. **NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING.** The hearing will be limited to a consideration of the amount of your personal earnings, if any, that can be used in satisfaction of the judgment you owe to the judgment creditor.

If you request hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, it will be conducted no later than twelve days after your request is received by the court, and the **court will send you notice of the date, time and place**. You may indicate in the form that you feel that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and **will send you notice of the date, time, and place**. If you do not request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, some of your personal earnings will be paid to the Judgment Creditor.

If you have any questions concerning this matter, you may contact the office of the Clerk of this Court.

If you want legal representation, you should **contact your lawyer immediately**.

If you need the name of a lawyer, contact the local bar association.

This law firm is attempting to collect this debt for our client and any information obtained will be used for that purpose.

Clerk of KNOX COUNTY COMMON PLEAS COURT

Garnisher/Employer to deliver one copy of the Notice to Judgment Debtor (personal earnings) form to Judgment Debtor/Employee upon receipt.

Attmt. Pg. 4