WAGE GARNISHMENT AND THE CONSUMER CREDIT PROTECTION ACT – THE CURSE OR SAVIOR OF THE WORKING CLASS?

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INTRODUCTION

The phenomenal growth of consumer credit in recent years has been a significant factor in the continued expansion of the American economy. Based on the latest available statistics from the STATISTICAL ABSTRACT OF THE UNITED STATES, the outstanding credit market debt in the year 2001 totaled over 28 trillion dollars. Of this total, 2.58% of this debt was delinquent. (1) One of the primary methods used to collect this delinquent debt is through wage garnishment, best defined as the process whereby an employee's salary in possession of the employer is held and applied to the satisfaction of a debt to a third party judgment creditor. (2) Although there are various forms of garnishment, wage has been singled out for special treatment. The reason that it is distinguished from other forms of garnishment is that "[we] deal here with wages – a specialized type of property presenting distinct problems in our economic system." (3)

Prior to 1970 garnishment was a field of law that was limited only by state or local regulation. Fifty states, fifty different sets of rules and regulations- an unruly and unmanageable situation to say the least. (4) On July 1, 1970 Congress passed the Consumer Credit Protection Act, which, in effect, brought the entire field of garnishment law under federal regulation. (5) The purpose of this paper will be to look at the federal intervention into the field of wage garnishment, examine the provisions of the federal regulations and the effect that this has had on some individual states.

FEDERAL LEGISLATION

In order to understand the reasons for Federal intervention in wage garnishment, one must look to the purposes and sources of authority for the Act itself. The Federal Statute cites two disruptions of interstate commerce which Congress believed were sufficient causes for invoking the Commerce Clause of the Constitution as authority for this intervention. (6) The Act begins by giving the Congressional findings and declares the purpose of the Statute. The first section states, in part:

> (a) Disadvantages of garnishment. The Congress finds:
>
> (1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.
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> (2) The application of garnishment as a creditor's remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.
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> (3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many

areas of the country….. (7)

Challenges to the Congress entering into this once sacred field of state domain were launched immediately, but none were successful. Based on Section Eight of the United States Constitution the Federal Courts held that Congress was well within its powers - in respect to interstate commerce and the bankruptcy laws - to adopt restrictions on garnishment. (8) The provisions of the Consumer Credit Protection Act did not offend the due process of the Fifth Amendment by unconstitutionally impairing those obligations created by contract and the Congress may constitutionally encroach upon vested contractual interests if it does not act arbitrarily and capriciously and if it adopts methods reasonably suited to the accomplishment of its purposes. (9) The Federal Statute was not an attempt to establish or create garnishment proceedings; it was only meant to preempt state laws which were less restrictive. (10) Finally, and it is believed that this is where the courts threw the "fat in the fire," it was held that the thrust of the Act was directed toward abuses of garnishment procedures by consumer financial lenders such as *loan companies* (emphasis added) (11)

The Congress then proceeded to place uniform restrictions on wage garnishment throughout the country. Section 1673 of the Consumer Credit Protection Act set a *maximum* (emphasis added) amount of wages that could be taken by a seizing creditor. States were free to impose their own rules on garnishment as long as they did not exceed those set by the Federal legislation. This Section provides:

> (a) Maximum allowable garnishment. Except as provided in subsection (b) and in section 305 [15 USCS sec. 1675], the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed
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> (1) 25 per centum of his disposable earnings for that week, or
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> (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a) (1) of the Fair Labor Standards Act of 1938 [29 USCS sec. 206(a) (1) in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set fourth in paragraph (2). (12)

Thus, whenever there is a conflict between the Consumer Credit Protection Act and state law (applicable to garnishment), the one that is more restrictive and results in the smaller garnishment is the one which must be applied in any given situation. (13) But the Act made provisions for certain very important exceptions that must be noted. The restrictions as stated above in Section 1673 of the Act subsection (a) did not apply in the following cases:

> (A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.
>
> (B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code [11 USCS sec. 1301 et seq.]

(C) any debt due any State or Federal tax. (14)

These exceptions made it clear that the Congress did not want to interfere with the important yet controversial areas of child support, back taxes and bankruptcy. These three areas were left strictly up to the State and Federal authorities to do as they deemed constitutionally fit.

The Act then addressed a blatant abuse of civil rights that had been around in the work force since the system of garnishment began; that is, the discharge of an employee when his wages were garnished. It was common practice for an employer to fire an employee when the employer was served with a judgment of garnishment. In fact, many employers informed their employees at the time they were hired that should an order of garnishment be served that morning, the employee would be out the door that evening with a pink slip – he was fired. Employers hate garnishments. It is the employer who must appear in court as the defendant in a wage garnishment proceeding and who must bear the paperwork expenses involved in complying with the garnishment order. As stated, the employer simply eliminated this problem by firing the employee. This practice resulted in gross injustices in the work place since the employer was more likely to take this action when it involved an unskilled or semi-skilled worker - there was much less expense involved in finding a replacement. Unfortunately, these are the workers who are most likely to have their wages garnished. If the debtor is unable to find new employment, the result is likely to be a financial crisis having widespread effect - "effects on the creditors, effects on the legal machinery of society, effects often enough in terms of unemployment insurance, welfare payments, personal tensions and even family break-up." (15) Section 1674 of the Act sought to remedy this practice by placing restrictions on discharge from employment by reason of garnishment. This section provides:

> (a) Termination of employment. No employer may discharge any employee by reason of the fact that his earnings have been subject to garnishment for any one indebtedness.
> (b) Penalties. Whoever willfully violates subsection (a) of this Section shall be fined not more than $1,000, or imprisoned not more than one year, or both. (16)

Congress has now not only stopped the practice of discharging an employee simply because that employee's wages are being garnished, but they have now made it a crime to do so. But this section of the Act posed an interesting scenario. It prohibited an employer from discharging an employee where that employee's wages were being garnished for any "one indebtedness". (17) What about the case of multiple garnishments? Did the employer have a right to discharge an employee where two or more garnishments were levied against the embattled employee? Apparently the employer can, as long as the discharge is not the result of discrimination because of the employee's race, color, creed, sex, religion or national origin. (18) Thus, one garnishment and you keep your job. Two or more and you get the pink slip.

What about the unfortunate employee who lost his job because his wages were garnished? Did he have a cause of action against the guilty employer for wrongful discharge? Was he entitled to damages for this wrongful discharge? The Consumer Credit Protection Act apparently does not offer such a remedy. The courts have held that a former employee who was discharged because his wages were subjected to garnishment *has no* (emphasis added) private right of action against his former employer under the Act for damages, since neither the expressed language nor the legislative history of the Act indicate that the intent of Congress was to grant a private right of action for violation of Section 1674 of the Act.

Responsibility for the enforcement of the provisions of the Act is placed solely in the hands of the United States Secretary of Labor. (19) Thus, the wrongfully discharged employee has no action against the guilty employee under Federal law, but must instead seek his remedies under applicable state regulations.

STATE STATUTES

Since the Consumer Credit Protection Act set the outside limits for garnishment of wages, it was up to the various states to either comply with those limits or face the wrath of the United States Secretary of Labor and the penalty provisions of the Act. The state garnishment laws are as varied as there are states and it would be too burdensome to address all fifty states. Therefore, this paper will examine the garnishment laws of five different states and how they are similar to or different from the Federal statute.

California

Two states are at the far end of the spectrum when it comes to garnishment and, not surprisingly, California is one of them. Except for an earning assignment order for support, California law does not require an employer to deduct any payment from the employee's wages under any judicial procedure. The specific California statute reads:

> "Except for an earning assignment order for support, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this Chapter." (20)

For all practical purposes, California does not provide for garnishment of an employee's wages by a seizing creditor. Lending creditors (finance companies, banks, and consumer credit lenders for example) must get a contractual agreement from the employee at the time the credit is extended in order to have any chance of garnishment. Even at that, the employer is limited as to the amount to be deducted. The employer is bound by the Consumer Credit Protection Act when the garnishment is based on an income assignment or a support order from a competent court. (21)

California also grants a private right of action to an employee who has been wrongfully discharged by reason of his wages being garnished. Section 2929 of the California Labor Code provides, in part:

> (c) No employer may discharge any employee by reason of the fact that the garnishment of his wages has been threatened. No employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment for the payment of one judgment. A provision of a contract of employment that provides an employee with less protection than is provided by the subdivision is against public policy and void. (22)

The employee who has been wrongfully discharged because of a garnishment proceeding shall have his wages continued for a period of time not to exceed 30 days at which time the employee must notify his employer of the fact that he intends to pursue a claim against the employer with the California Labor Commissioner. The employee then has 60 days from the date of discharge to file the claim. The employee does not have to file this claim but, in his judgment, he may allow the Labor Commissioner to pursue his actions for him. Otherwise, he is free to pursue any and all other rights granted to him by this statute. (23)

Texas

Texas is another state that basically prohibits garnishment of wages except for limited exceptions. The Texas Civil Practice and Remedies Code, section 63.004 states:

> Except as otherwise provided by state or federal law, current wages for personal service are not subject to garnishment. The garnishee shall be discharged from the garnishment as to any debt to the defendant for current wages. (24)

This prohibition is reinforced in the Texas Property code that sets out the property of an individual that is exempt from garnishment, attachment or seizure and where an exception is made for court-ordered child support payments. This amount is still subject to the limitations set out in the Consumer Credit Protection Act. (25)

Illinois

Illinois is another state that allows garnishment under very limited circumstances. Under Illinois Law an employee's wages, salaries and commissions may be taken for family support, such as child support and alimony, certain student loans and back rent on a residential lease. Except for these kinds of debts, no other debt or legal obligation can give rise to wage attachment by the State of Illinois. (26) This provision does not apply to federal court procedures involving IRS garnishments. (27)

Under Illinois law wages, salaries, commissions and bonuses are subject to collection. The collection cannot exceed the lesser of two things: One, 15% of the gross amount paid to the employee for that week, or, two, when the employee's net pay (net amount of pay after employment taxes are deducted) exceeds 45 times the Federal Minimum Hourly Wage Law in existence at the time the amount is payable. (28) Illinois Law also exempts certain income from garnishment, such as benefits and refunds payable by a pension or retirement fund or system and any assets that an employee holds in these types of funds. (29) But this exemption does not extend to bank accounts. Once a judgment has been obtained by the judgment creditor, bank accounts are fair game. The moral to this story is, "Don't deposit your money in the bank."

Florida

This state has a unique approach to garnishment proceedings. There are special provisions for person's who come under the definition of the "head of family" when you seek to garnish that persons wages. A "head of family" is defined as "…any natural person who is providing more than one-half of the support for a child or other dependant." (30) Once you meet this definition all disposable earnings of a head of

family which are less than or equal to $500 a week are exempt from attachment or garnishment. (31) Those sums of the disposable earnings of the head of family which are greater than $500 a week may not be attached or garnished unless the head of family member has agreed to this in writing. (32) However, this amount and the garnishment of wages of those who are not "head of family" are still subject to the provisions of the Consumer Credit Protection Act. (33) As to depositing your earnings in a financial institution in Florida, these funds are exempt from seizure for a period of 6 months after they are deposited and then they may be garnished. Moral: Don't leave your money in one financial institution too long.

Louisiana

Louisiana tracks the federal statute except where it applies to child support payments. Louisiana Law states the following:

> A. The following income or property of a debtor is exempt from seizure under any writ, mandate or process whatsoever:
>
> (1)(a) Seventy-five percent of his disposable earnings for any week, but in no case shall this exemption be less than an amount in disposable earnings which is equal to thirty times the federal minimum hourly wage in effect at the time the earnings are payable or a multiple or fraction thereof …. However, the exemption from disposable earnings for the payment of a current or past due support obligation, or both, for a child or children is fifty percent of disposable earnings…" (34)

This statute comes in the back door where the federal act and the other states pass through the front. When the math is done, however, the same results are achieved. As an example, assume that Harvey works for the ABC Hardware Store and he makes $6.00 per hour, works 5 days a week, 8 hours a day for a total of 40 hours per week. His gross pay would be $240 per week. Assume now that $20 a week are taken out for taxes leaving him a net take-home pay of $220. Harvey has to take home at least 30 times the prevailing federal minimum wage which, at this time, is $5.15 per hour, or a total exemption of $154.50. To determine how much a seizing creditor can actually get from Harvey, the $154.50 exemption is subtracted from his net take-home pay of $220 leaving $65.50. Under the Louisiana statute 75% of this amount is exempt from seizure, or $49.12. Deduct this from the $65.50 and the seizing creditor receives a total of $16.38. The balance goes back to Harvey to live on. Using the federal act you would multiply 25% of $65.50 to arrive at the sum of $16.38, the amount the seizing creditor receives.

The State of Louisiana has expressly waived any immunity from suit insofar as the garnishment of the nonexempt portion of the wages, salaries, commissions, or other compensation of public officials, whether elected or appointed, public employees or contractors is concerned. (35) Although this looks good in print, the Louisiana courts have held that this exemption does not apply to Louisiana State senators who, for some reason, are not considered public officials and are not subject to the immunity waiver. (36) Only in Louisiana can such a thing happen.

CONCLUSIONS

Although the use of wage garnishment as a collection device has been highly exploited in the consumer credit field the Consumer Credit Protection Act has sought to protect the rights of the judgment debtor. It is regrettable that federal intervention into an obviously state matter was necessary to insure that the abuses in this area would not continue. This act has established a national minimum wage which can not be reached by garnishment and has provided limited protection from the loss of employment as a result of garnishment. It is the responsibility of each state to enforce the federal act and keep their state regulations within the guidelines of the Act. If they do not, they only invite further federal intervention into their state's sovereignty.

ENDNOTES

[1] Statistical Abstract of the United States, 122 edition, U.S. Dept. of Commerce, Economics and Statistics Administration, U.S. Census Bureau, Tables #1142 and 1152;

[2] *Wage Garnishment Under the Consumer Credit Protection Act: An Examination of the Effects on Existing State Laws,* 12 Williams and Mary L. Rev. 357;

[3] Soladach v family Finance Corp., 395 U.S. 337, at 340 (1968);

[4] *Garnishment – State v Federal Procedures,* 20 Clev. L. Rev. 134;

[5] Consumer Credit Protection Act, 15 USCA 1671 – 1677;

[6] Constitution of the United States (Section 8);

[7] 15 USCA 1671;

[8] Hodgson v Cleveland Municipal Court, 326 F. Supp. 419, 14 ALR 416 (1971);

[9] Supra;

[10] Evans v Evans, 429 F. Supp. 580, WD Okla. (1976);

[11] Brown v Liberty Loan Corp., 392 F. Supp. 1023, cert. denied 430 US 949 (1971);

[12] 15 USCS 1673, 29 USCS 206 (a)(1);

[13] Willhite v Willhite, 546 P2d 612 (2976);

[14] 15 USCA 1673 (b)(A)(B) and (C);

[15] Brunn, *Wage Garnishment in California: A Study and Recommendation, 53 Cal. L. Rev. 1214 (1965),* Johnson, *The Uniform Commercial Credit Code and the Credit Problems of Low-Income Consumers,* 37 Geo. Wash. L. Rev. 1117 (1969);

[16] 15 USCA 1674;

[17] Ibid.;

[18] Johnson v Rik Corp. of America, 332 F. Supp. 490 (CD, Cal. 1971);

[19] 15 USCA 1976, LeVick v Skaggs Cos., 701 F2d 777 (CA, Ariz. 1983);

[20] Cal. CCP sec 706.020;

[21] Cal. CCP sec 706.010;

[22] California Labor Code, sect. 2929(b);

[23] California Code, sect. 2929(c) and (d);

[24] Texas Civil Practice and Remedies Code, sect. 63.004;

[25] Texas Property Code, sect. 42.001;

[26] 735 ILCS 5/12-803;

[27] 735 ILCS 5/1109;

[28] See Endnote #26;

[29] 735 ILCS 5/12-701;

[30] Fla. Stat., Title 15 sect. 222.11;

[31] Fla. Stat., Title 15 sect. 222.11(2)(a);

[32] Fla. Stat., Title 15 sect. 222.11(b);

[33] Fla. Stat., Title 15 sect. 222.11(b) and (c); see Endnote #12;

[34] La. R.S. 13:3881 (A)(1);

[35] La. R.S. 13:3881(C);

[36] Weinstein, Bronfin and Heller v LeBlanc, 249 La. 936, 192 So2d 130, (La. App., 1966);