

IN THE COUNTY COURT OF INDIAN RIVER COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 31-2010-CA-010969

Randy Heimler, Plaintiff

vs

Leonard Krenek, etal, Defendants

**PLAINTIFF'S RESPONSE TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS AND
PLAINTIFF'S AMENDED MOTION TO DISMISS WRIT OF GARNISHMENT**

The Plaintiff requests that the Court dismiss the Writ of Garnishment caused by Defendants to be issued on March 14, 2018.

1. According to Florida Statute 77.041(2), which is strictly construed, the Defendants were required to mail to Plaintiff, by first class mail, a copy of the Writ, a copy of the motion for Writ and a notice advising Plaintiff he could object and claim exemptions.

2. The required mailing by Defendants was required to be made within 5 business days of the issuance of the writ or 3 business days after noticing the garnishee, whichever was later.

3. Because the Writ was issued on March 14, 2018, Defendants were required to make the required mailing no later than March 21, 2018. It is believed that the garnishee received notice of the writ no later than March 16, 2018 and therefore Defendants were required to make the required mailing also no later than March 21, 2018.

4. Plaintiff has not received the required mailing of a copy of the Writ, a copy of the motion for Writ or a notice advising Plaintiff he could object and claim exemptions. In addition, Defendants' certificate of service does not indicate it was mailed to Plaintiff as required.

BY KA
COURT CLERK
INDIAN RIVER COUNTY
2018 APR 16 AM 8:32

FILED RECORD
PROBATE/GARNISHMENT
COUNTY COURT

5. Clearly, once Defendant was aware of Audrey Heimler's name on the safe deposit box, he was legally bound to notify her of the garnishment on a timely basis. He has violated her rights to notification, as per 77.15, and the garnishment on the safe deposit box should be dissolved as well.

6. Defendant's faulty proof of mailing also shows cause for dissolving the writ. The return address of defendant is inaccurate and since the mail never reached Randy Heimler, it must have been attempted to be returned to Defendant. Defendant's lack of obtaining a proper tracking method, which would have cost pennies, has completely voided the validity of his proof of mailing. There is no proof that the letter was actually placed in the mail by the defendant. The two envelopes that Plaintiff did receive from Defendant arrived tattered and torn. Very possibly the so-called mailing, did not arrive due to faulty mailing and since the return address of defendant was inaccurate, probably led to the post office not being able to return it to the defendant.

7. Defendants states in # 3 of his response, that Plaintiff advised him that he received a copy of the writ on March 23, 2018, This a complete falsehood. The first notice that Plaintiff received concerning the garnishment of the accounts was on March 23rd,2018, when he received a letter from Sun Trust bank, dated 3/19/18. See Exhibit C. Plaintiff clearly asked the defendant for his email address, see attached letter from SunTrust. If Plaintiff had received the writ, he would have had defendant's email address. The defendants are continuing to mislead the court with that statement.

8. The Defendant's affidavit, from his secretary that is attached to "DEFENDANTS RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS WRIT OF GARNISHMENT", as Exhibit A, clearly shows that fs77.041(2), was not fully complied with and the writ must be dissolved. #5 of the affidavit, clearly states, "On March 19,2018, I caused a copy of the writ to be mailed to plaintiff in this case." See Exhibit ~~A~~. This clearly violates 77.041(2), which states: "The plaintiff must mail by first class mail, a copy of the writ of garnishment, a copy of the motion for writ of garnishment, and the notice to

defendant". The affidavit clearly states that the only document mailed was a copy of the writ. See attached Exhibit B.

9. The response itself contains a ground for dismissal as well. #2 clearly shows that the defendant did not mail the mandatory "COPY OF THE MOTION FOR THE WRIT", to the plaintiff. The defendant clearly states that he only mailed the copy of the writ and the notice to defendant.

10. The defendant continues to admit his violation of 77.041(2) in his MOTION FOR INVENTORY OF SAFE DEPOSIT BOX, see exhibit C. Clearly stated by defendant in #2, "defendant served a copy of the writ of garnishment on plaintiff on March 19, 2018 ". Blatantly missing is the Mandatory copy of the motion for the writ of garnishment. This again causes the writ to be dissolved.

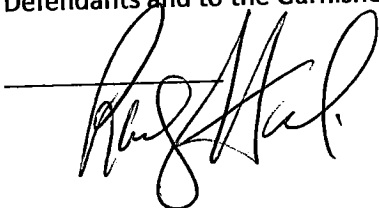
11. #4 in the same motion violates 77.055. It clearly states that "On March 30th, 2018, the Defendants served a notice of garnishment on Plaintiff. Clearly missing is the copy of the answer of the garnishee, which is required.

12. The defendant again misleads the court when he says that he actually contacted Plaintiff to verify that he received the writ and other documents and that plaintiff affirmed that he did. This is a complete falsehood. That never happened. Defendant would have no reason to do this, if he was so sure that he complied with the statute 77.041. *See exhibit D.*

13. Cases that support my position are: Regions vs Hyman, Marquez vs Blue Care, Zivitz Vs. Zivitz and Branch Banking and Trust vs. Capital Center.

14. Therefore, according to Statute 77.041 and 77.055, which are strictly construed, the writ of garnishment against Plaintiff Randy Heimler should be dissolved immediately.

15. I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to the Defendants and to the Garnishee, at their addresses set forth below this 16 day of April 2018.



Randy Heimler

Attorney for Defendants
Jacob J. Linhart, Esq.
6586 Hypoluxo Rd, #261
Lake Worth, Fl 33467
561 632 6982

Garnishee
SunTrust Bank
Corporation Service Co.

1201 Hays St.

Tallahassee, Fl 32301-2525



Receipt

Print Date: Apr 03, 2018

RETURN TO
 LAW OFFICES OF JACOB J. LINHART
 # [REDACTED]
 Lake Worth, FL 33467

SHIP TO
 Randy Heimler
 2620 Little Eagle Ln SW
 Vero Beach, FL 32962-8622

REFERENCE

Mail Date: Mar 19, 2018
 Ship from ZIP: 33467
 Weight: 0 lbs. 1 oz.
 User: mxravelo
 Cost Code: Enforcepay
 Refund Type: E-refund
 Reference #:
 Printed on: Shipping label
 Tracking #: 00040899563010292529

SERVICE

First Class ® Envelope
 Tracking
 Insurance (N/A)

UNIT PRICE

First Class ® Envelope	\$0.47
Tracking	\$0.00
Insurance (N/A)	
Subtotal	\$0.47
Label Quantity	1
Total Cost	\$0.47

Exhibit A

IN THE CIRCUIT COURT IN AND FOR INDIAN RIVER COUNTY, FLORIDA

CASE NUMBER 31-2010-CA-10969

RANDY HEIMLER.

Plaintiff.

vs.

LEONARD KRENEK, SAL DECARO,
RAPHAELLA PATERNOSTER, DELAYNE
KRENEK, and ALBERT GINOCCHIO;

Defendants.

**AFFIDAVIT IN SUPPORT OF DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS WRIT OF GARNISHMENT**

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME the undersigned authority, duly authorized to administer oaths, personally appeared

• MARITZA RAVELO, who, after been duly sworn, deposes and says:

1. My name is Maritza Ravelo.
2. I am a Paralegal for attorney Jacob J. Linhart, who is attorney of record for Defendants, LEONARD KRENEK, and DELAYNE KRENEK in the above-styled cause, and as such, I have knowledge of the facts surrounding this matter.
3. On March 14, 2018 Attorney Linhart filed a Motion for Issuance of Writ of Garnishment After Judgment.
4. A Writ of Garnishment (the "Writ") was issued on March 14, 2018.
5. On March 19, 2018, I caused a copy of the Writ to be mailed to the Plaintiff in this case, Randy Heimler at 2620 Little Eagle Ln SW, Vero Beach, FL 32962-8622.
6. A copy of the receipt of mailing is attached hereto as Exhibit "A."

FURTHER AFFIANT SAYETH NAUGHT

Dated April 5, 2018



MARITZA RAVELO, Affiant

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 5 day of April, 2018, by MARITZA RAVELO who is personally known to me or who has produced as identification and who did/did not take an oath.



Jacob J. Linhart
Commission # 6609443
Expires: August 1, 2021
Bonded thru Aaron Notary

Notary Public
My Commission Expires:

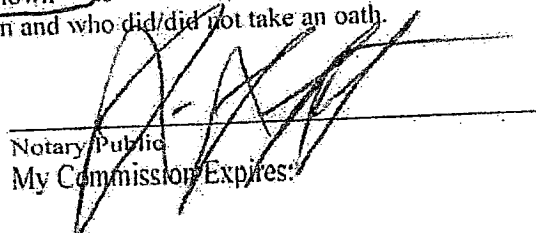


EXHIBIT
(B)

3/16/18
SunTrust

①



561
632
6982

→ \$ 196,000 →

RANDY M HEIMLER
2620 LITTLE EAGLE LN SW
VERO BEACH, FL 32962-8622

1800 -
447
8994

SunTrust Bank
Garnishment and Levy Processing
MC: FL-ORLANDO-7136
PO Box 620577
Orlando, FL 32862-0577
3/19/2018

IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Why am I receiving this notice?

On 3/16/2018, SunTrust Bank received a garnishment order from a court to remove funds in your account. The amount of the garnishment order was for \$420,796.22. SunTrust Bank is sending you this notice to let you know what we have done in response to the garnishment order.

\$ 210,398.

What is a garnishment?

Garnishment is a legal process that allows a creditor to remove funds from your bank account to satisfy a debt that you have not paid. In other words, if you owe money to a person or company, they can obtain a court order directing your bank to take money out of your account to pay off your debt. If this happens, you cannot use that money in your account.

What has happened to my account?

SunTrust is required to withhold all funds in your account(s), up to the total balance due as indicated on the legal order. SunTrust is also required to disburse these funds in accordance with the issuing Court or Agency. Your account(s) will be held until (1) receipt of further court order, (2) the return/ hearing date has been reached, or (3) the full amount has been collected. During this time, checks presented to SunTrust for payment against funds withheld from your account(s) will be returned unpaid. SunTrust encourages you to notify any joint account holders of the legal order and its consequences.

In compliance with the legal order, SunTrust has withdrawn/frozen funds from the following account(s)

Account #(s)	Balance(s)	Amt protected	Subject to garnishment	Fee charged
	\$16,981.24	\$0.00	\$16,881.24	\$100.00
	\$0.00	\$0.00	\$0.00	\$0.00

222.01

EXHIBIT C

4 AAAA

Who garnished my account?

The creditor who obtained a garnishment order against you is:
LEONARD KRENEK, SAL DE CARO, RAPHAELA PATERNOSTER,
DELAYNE KRENEK, AND ALBERT GINOCCHIO

By: Attorney for Plaintiff/Creditor
JACOB J. LINHART, ESQ.
6586 HYPOLUXO ROAD, #261
LAKE WORTH, FL 33467
Phone Number: 561.632.6982

You may also consult an attorney to help you prove to the creditor who garnished your account that additional funds are from Federal benefit payments and cannot be taken. If you cannot afford an attorney, you can seek assistance from a free attorney or a legal aid society.

SunTrust Bank has no control over the issuance of, or compliance with this legal order, nor any knowledge of the underlying facts of this dispute. Any concerns regarding this matter must be settled between you and the creditor or creditor's attorney. In the event the creditor decides to rescind the legal order against you, SunTrust will only accept a written or faxed release, @ 844-408-4431.

Sincerely,

IB
Garnishment and Levy Processing
Our Ref: 336725

SunTrust is unable to provide you with legal information regarding this garnishment.
Please consult your state statutes, legal clerk or attorney for further information.

11.040

2) The plaintiff must mail, by first class, a copy of the writ of garnishment, a copy of the motion for writ of garnishment, and, if the defendant is an individual, the "Notice to Defendant" to the defendant's last known address within 5 business days after the writ is issued or 3 business days after the writ is served on the garnishee, whichever is later. However, if such documents are returned as undeliverable by the post office, or if the last known address is not discoverable after diligent search, the plaintiff must mail, by first class, the documents to the defendant at the defendant's place of employment. The plaintiff shall file in the proceeding a certificate of such service.

Exhibit D