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Florida Wage Garnishment: An Anachronistic Remedy

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NOTES

FLORIDA WAGE GARNISHMENT: AN ANACHRONISTIC REMEDY*

One point stands out from our long weary struggle with this case and that is the complex and confusing state of the law relative to garnishment. It occurs to us that it need not be so and that the whole subject should have a thorough legislative overhauling.

THE SUPREME COURT OF FLORIDA[1]

Consumer credit is big business in America today. While credit was initially utilized to enhance the sale of merchandise, businesses now use sophisticated merchandising techniques in order to increase their credit accounts and thereby, increase their profits from income derived from financed purchases.[2] At least fifty per cent of the adult population of the United States is now paying on some form of installment credit.[3] While most observers readily agree that credit has been a boon to the economy, it is also apparent that there are undesirable social aspects that may be incident to expanded credit.[4]

With an increased use of consumer credit there is a notable increase in wage garnishments. Municipal courts throughout the country are inundated with such actions.[5] However, the social consequences of wage garnishments, such as unemployment, bankruptcy, and the diminution of respect for the judicial system by a large segment of society are even more significant problems. With an increasing awareness of these problems. Congress and the judiciary have begun to respond by reviewing the statutes and practices that have been controlling in the area of wage garnishment.[6] The result of this awareness has been reflected in the enactment of the Consumer Credit Protection Act[7] and the United States Supreme Court's landmark decision in *Sniadach v. Family Finance Corporation.*[8] These two developments should

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1. Nash v. Walker, 78 So. 2d 685, 687 (Fla. 1955).

2. 22 PERSONAL FINANCE L.Q. 11, 12 (1967). Testimony of David Caplovitz before committee hearing on "Truth-in-Lending" held by the attorney general of New York. *See also* 53 FED. RESERVE BULL. 2122 (1967). Total consumer installment credit outstanding in the United States increased from $42.8 billion in 1960 to $76.2 billion in October 1967. *Id.*

3. *See* 55 FED. RESERVE BULL. at A 54 (Sept. 1969). Consumer debt outstanding rose to $95.850 billion by July 1969, an increase of $19.6 billion over October 1967. *See also* G. KATONA, C. LININGER & E. MUELLER, 1963 SURVEY OF CONSUMER FINANCES 59, 65 (1964).

4. *See, e.g.*, P. CROWN, LEGAL PROTECTION FOR THE CONSUMER 16 (1963).

5. *See Hearing on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess., pt. 2, at 1036 (1967).

6. *See* Consumer Credit Protection Act, 15 U.S.C. §§1671-77 (Supp. V, 1969) (effective July 1, 1970). *See also* Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

7. 15 U.S.C. §§1671-77 (Supp. V, 1969).

8. 395 U.S. 337 (1969).

effect sweeping changes in garnishment procedures. However, state action must be forthcoming in order to implement the federal proscriptions and to correct the continuing imperfections in existing state garnishment procedures.[9]

This note will analyze wage garnishment in Florida in light of the Consumer Credit Protection Act, the *Sniadach* decision, and actual practices as reflected by data collected from Florida courts.[10] Finally, proposals will be made in order to suggest methods of facilitating compliance with recent legislation and Supreme Court decisions, alleviating the present caseload of the courts, and assuring a measure of due process of law to the creditor, employer, and debtor alike.

WAGE GARNISHMENT

Florida's garnishment provisions are typical of those in other states where garnishment has not undergone recent substantial revision. A writ of garnishment may issue for one of two principal reasons:[11] in execution of a judgment; or, where the plaintiff sues for a debt that he alleges to be due and unpaid, and alleges that the writ applied for is not being sought in order to injure either the debtor or the garnishee. Moreover, the plaintiff must allege that he does not believe the defendant has sufficient property in his possession which may be attached, to satisfy the debt. [12]

An analytical model is helpful in analyzing the relationships between the parties involved in a wage garnishment. Essentially, it may be viewed as a triangle with each side representing a different relationship and each angle

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9. Florida as well as other states must reform its statutes in order to solidify the effects of the Consumer Credit Protection Act and *Sniadach*. There are present difficulties in the Florida provision that hinder the enforcement of these new restrictions. *See* FLA. STAT. ch. 77 (1969). For example, since Florida does not allow a continuing writ of garnishment, successive writs must be filed for each subsequent pay period. This procedure will cause difficulty in determining whether a garnishment is for one indebtedness or several. Hence, the burden will be shifted to employers to determine when there is a garnishment on more than one indebtedness in order to comply with the provisions of 15 U.S.C. §1674 (Supp. V, 1969), which provides that an employer may not discharge an employee for garnishment on any one indebtedness. In addition to the burden imposed upon the employers and the courts by this procedure, it is conceivable that the Department of Labor, entrusted with the enforcement of §1674, will be deluged with alleged violations as a result of a misunderstanding regarding more than one garnishment.

10. *See* Appendix; Survey of clerks of Florida's circuit courts and civil courts of record.

11. FLA. STAT. §77.03 (1969). *See also* Gorman Corp. v. Bethell Constr. Co., 77 So. 2d 449 (Fla. 1954).

12. FLA. STAT. §77.031 (1) (1969). While Florida courts had required an additional averment by the plaintiff stating that the property sought to be garnished or attached "is not due for the personal labor or services of the head of a family residing in this state," Virginia Mirror Co. v. Hall, 181 So. 2d 6, 7 (2d D.C.A. Fla. 1965), this requirement was abrogated by the legislature in 1967. The statute now requires the plaintiff to "file a motion (which shall not be verified or negative defendant's exemptions) . . . ." FLA. STAT. §77.03 (1969).

denoting a party who operates in two separate capacities.[13] In such a model the base line represents the main action on the debt owed to the plaintiff by the defendant and from which the ancillary writ of garnishment is issued.[14] The right side of the triangle represents the employment relationship.[15] The left side represents a debtor-creditor relationship between the garnishee employer and the plaintiff creditor who is subrogated to the defendant's rights.[16] Only the relationship represented by the left arm of the triangular model, which provides for suit by the creditor against the debtor's employer, is treated by Florida's garnishment statutes. The matters involved in the main action of the creditor against the debtor, as well as the debtor-employee's relationship with his employer, are left for the court's determination in the principal suit.[17] Therefore, while the garnishment process is founded upon the debtor-creditor relationship in the principal suit, the actual garnishment procedure revolves around the artificially created relationship between the garnishee-employer and the plaintiff-creditor.

In Florida, the writ of garnishment is usually served upon the employer prior to service of the complaint upon the defendant.[18] At present, there are no provisions regarding the time of service of the complaint upon the defendant in relation to the time of service of the writ upon the garnishee. While the complaint and the writ will usually be executed on the same day,[19]

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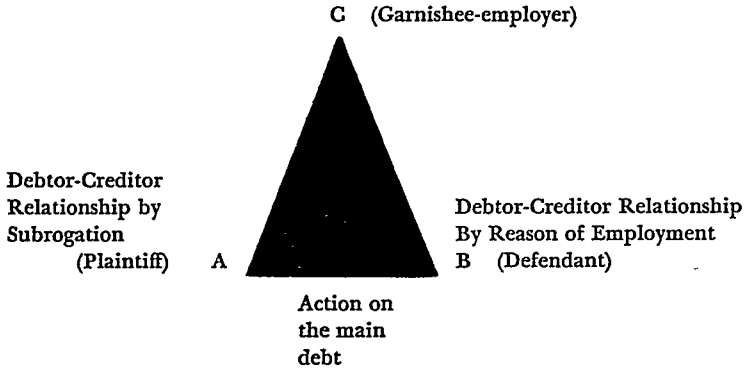
13. *See* Note, *Garnishment in Florida: Analysis, Assessment, and Proposals*, 19 U. FLA. L. REV. 99, 100 (1966).

Illustration:



14. Williams v. T. R. Sweat & Co., 103 Fla. 461, 137 So. 698 (1931).

15. *See* Huot, Kelly & Co. v. Ely, Candee & Wilder, 17 Fla. 775 (1880).

16. Pleasant Valley Farms & Morey Condensery Co. v. Carl, 90 Fla. 420, 106 So. 427 (1925); Seaboard Surety Co. v. Acme Wellpoint Corp., 156 So. 2d 688 (2d D.C.A. Fla. 1963).

17. FLA. STAT. §77.04 (1969).

18. *See* Appendix (6)b. Survey of clerks of Florida's circuit courts and civil courts of record.

19. FLA. STAT. §77.01 (1969). The statute provides that the right to a writ of garnishment accrues to one who either has sued to recover or has recovered a judgment. Thus, if no judgment has been recovered at the time of filing the motion necessary for the issuance of the writ, a complaint must have been filed. In that way the affiant has sued to recover a debt and complies with the statutory requirement.

the employer is normally served first since he is commonly at an established place of business and service is more easily accomplished.[20] Service upon the defendant is usually more difficult and often is effected at a later date.[21] Regardless of the time of service of the complaint upon the defendant, service upon the garnishee constitutes an effective freezing of the debtor's wages.[22]

The garnishee must answer for the amount owed by him to the defendant, if any, and provide information concerning any person indebted to the defendant.[23] However, only those debts that are due without any contingency at the time of service are within reach of the creditor.[24] Under present Florida statutory law[25] and a well-defined line of cases,[26] a writ of garnishment is required for each new pay period.[27] No provision is made for a continuing writ if the debt owed is larger than the debtor's wages for that pay period.[28]

A Creditor's Sword

Wage garnishment is the principal legal remedy in the creditor's arsenal of collection devices.[29] Creditors generally maintain that garnishment is primarily important as a coercive device since the threat of wage garnishment results in the collection of more money than is collected through actual use of the remedy in the courts.[30] In fact, collection agencies make most of their

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20. *See* Appendix, *supra* note 18.

21. While no data on this point was available from the Florida courts, a survey in the state of Washington revealed that in 37 out of 44 garnishment cases, the writ was served on the employer at least one day before the notice of the suit was served on the defendant. The median difference between the two dates of service was five days. *See* Note, *Wage Garnishment in Washington—an Empirical Study*, 43 U. WASH. L. REV. 743, 760 n.97 (1968) [hereinafter cited as *Wage Garnishment*].

22. Chaachou v. Kulhanjian, 104 So. 2d 23, 25 (Fla. 1958). In reply to a questionnaire, 93.7% of the clerks of the Florida courts polled answered that the assets were legally frozen at the time of the service of the writ upon the garnishee. *See* Appendix.

23. FLA. STAT. §77.04 (1969).

24. FLA. STAT. §77.06 (1969). Chaachou v. Kulhanjian, 104 So. 2d 23, 25 (Fla. 1958) (holding that the garnishee-employer is answerable only for any earnings of the defendant that were accrued and unpaid at the time the writ was served and "thereafter earned by defendant, up to the date of the filing of the garnishee's answer, but not beyond that date.") Such a practice imposes an enormous burden upon the courts, creditors, and employers.

25. FLA. STAT. §77.06 (1969).

26. *See, e.g.*, Cobb v. Walker, 144 Fla. 600, 198 So. 324 (1940); West Florida Grocery Co. v. Teutonia Fire Ins. Co., 74 Fla. 220, 77 So. 209 (1918).

27. Chaachou v. Kulhanjian, 104 So. 2d 23, 24 (Fla. 1958).

28. Because the wages due in a particular pay period may not satisfy the debt, the lack of a continuing writ can result in considerable administrative difficulties for the employer. *See infra* note 41. This problem will be particularly acute under the new percentage limitations on disposable earnings that may be garnished. 15 U.S.C. §1673 (Supp. V, 1969). At present, however, Florida has no restrictions on the portion of a person's wages that may be garnished. Therefore, the problem of a limited writ will be magnified as the Consumer Credit Protection Act limitations are imposed. *See generally* Appendix.

29. *See Wage Garnishment, supra* note 21, at 749.

30. *See, e.g.*, Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214, 1229 (1965); Conard, *An Appraisal of Illinois Law on the Enforcement of Judgments*, 1951 U. ILL. L.F. 96, 100 (1951). *See also, Wage Garnishment, supra*

collections without recourse to legal action at all.[31] The acute awareness of garnishment among minority groups,[32] analysis of factors leading to the filing of bankruptcy,[33] and the number of people leaving their jobs in fear of wage garnishment[34] lend credence to such claims of the effectiveness of the threat of garnishment.

Creditors will usually resort to legal action when methods of informal persuasion fail. The action taken will generally involve garnishment,[35] and often garnishment prior to judgment.[36] Prejudgment garnishment was originally designed as an extraordinary remedy to be used for the purpose of preventing a debtor from leaving the jurisdiction.[37] However, because of the ease with which a prejudgment writ may be procured in Florida,[38] the remedy is often abused and utilized as a coercive tool rather than as an extraordinary remedy to protect the creditor. Consequently, most creditors favor the present Florida garnishment laws, arguing that prejudgment garnishment is neccessary in order to insure a quick and relatively inexpensive method of enforcing collections.[39]

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note 21, app. table 5 (revealing that Seattle creditors do not utilize the actual writ of garnishment to collect money but rather use it as a coercive device).

31. *Cf. Wage Garnishment, supra* note 21, at 749 (collector survey).

32. *Hearings on H.R. 7179 Before a Subcomm. of the House Comm. on Government Operations*, 89th Cong., 2d Sess. at 180 (1966). *See also* U.S. OFFICE OF ECONOMIC OPPORTUNITY (LEGAL SERVICES DIVISION), THE POOR SEEK JUSTICE 16 (1967).

33. *See* L. STABLER, THE EXPERIENCE OF BANKRUPTCY 7 (1966). *See generally* Dolphin, *An Analysis of Economic and Personal Factors Leading to Bankruptcy*, 18 Bureau of Business and Economic Research (Mich. State U. Graduate School of Business Administration, Occasional Paper No. 15 (1965)).

34. *Cf. Wage Garnishment, supra* note 21, at 751 (employer survey).

35. *Id.* at 795 (collector survey).

36. *Id.* at 796 (app. table 2).

37. *Cf.* Note, *Wrongful Attachment*, 52 IOWA L. REV. 543, 547-48 (1966).

38. *See* text accompanying note 12 *supra* and FLA. STAT. §77.031 (1969). However, it is unlikely that most debtors whose wages are garnished prior to judgment are in reality attempting to leave the jurisdiction. *Cf. Wage Garnishment, supra* note 21, at 752. Instead, creditors probably initiate the majority of suits for prejudgment garnishment because that form of action applies sufficient pressure to bring the debtors into the creditor's office to arrange a new method of satisfying a debt. Unfortunately, once a debt is in the hands of a collection agency a debtor seldom escapes by paying the original debt alone. Additional charges, including attorney fees, collection charges, interest, and service fees may be added to the original obligation without the supervision of the judiciary (for example, one creditor added $58 in collection and carrying fees to a $16 debt). *See Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess., pt. 2, at 1025 (1967) [hereinafter cited as *Hearings*]. The debtor whose wages are tied up by a writ of garnishment, and who is in need of money is in no position to resist demands for collection fees. If the debt is small, the debtor will be under considerable pressure to pay the debt and collection charges in order to get back his wages. If the debt is large, he will often sign a new contract that includes the additional charges and fees. However, the main action on the debt will usually be continued to judgment. Creditors realize that having an enforceable judgment gives them security against the debtor's defaulting on the renewal obligation. *Cf. Wage Garnishment, supra* note 21, at 753.

39. Appendix (6)c.

An Employer's Headache

As Florida's industrial sector grows, the effect of wage garnishment on the employer will become an increasingly important consideration. Although the employer may incur substantial expense as a result of wage garnishment, his interests as the middleman in the garnishment process are often ignored.[40] In some cases, writs of garnishment may be "delivered to big firms in bundles,"[41] resulting in expenses that can be quite substantial.[42]

Employers have frequently adopted the policy of discharging an employee after one garnishment in order to reduce the expenses and nuisance incident to garnishment procedures.[43] Some employers have adopted more flexible policies and take into consideration such factors as time of service, financial need, and family size.[44] Still others have taken more constructive action such as providing credit counseling to their employees, in order to reduce the number of garnishments.[45] However, employers must now conform to the limitations of the Consumer Credit Protection Act, which prohibits the discharge of employees for a garnishment on any one indebtedness.[46] Consequently, employers are now under an increased pressure to attempt to find positive methods of aiding their employees in solving credit problems.

The Debtor's Burden

Garnishment laws have generally been the product of the state's attempt to achieve a balance between the duty of enforcing the creditor's lawful claims and protection of the debtor's right to procedural due process. A review of the effects of wage garnishment, however, reveals that the solution has not always been satisfactory, especially in the case of the low-income wage earner. Gener-

40. The United States Supreme Court in Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285, 290 (1924), said: "The suggestion that a substantial constitutional right of the garnishee is impaired because he may be put to some additional expense of bookkeeping in keeping his account with the judgment debtor is plainly without merit."

41. *Hearings, supra* note 38, at 1017. *E.g.*, Boeing's Commercial Airplane Division was served with over 500 writs per month in Washington alone. *See Wage Garnishment, supra* note 21, at 755. The company employed five clerks and a supervisor to check payroll records and answer the writs. The accounts of those employees whose wages were garnished were calculated by hand as opposed to the computer procedure normally followed. Such practices were necessary because a writ frequently catches only a portion of the wages due in a particular pay period. Washington, like Florida, has no continuing writ of garnishment.

42. *Hearings, supra* note 38, at 30. Boeing spent over $200,000 in 1967 as a direct result of garnishment against its employees. Of that amount, $120,000 represented direct expenses for clerical costs, et cetera, and the balance represented indirect expenses such as loss of time by employees. *Id.*

43. *See* Felsenfeld, *Some Ruminations About Remedies in Consumer-Credit Transactions*, 8 B.C. IND. & COM. L. REV. 535, 565 (1967).

44. *Hearings on S. 750 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 88th Cong., 1st Sess., pt. 1, at 287 (1963).

45. *Cf. Wage Garnishment, supra* note 21, at 759.

46. 15 U.S.C. §1674 (Supp. V, 1969).

ally, the employee's wages are garnished before he is served with notice of the main action,[47] he is unaware of his right to available exemptions,[48] and subsequently commits himself to a larger indebtedness in the form of a new contract.[49] In most cases, he responds to the claim without seeking the advice of counsel, which would involve still another expense. These inequities stem largely from prejudgment garnishment and an over-all lack of information.

To the many families that are dependent upon the immediate use of wages to buy the staples necessary for subsistence, a temporary freezing of funds may cause serious harm. Loss of the ability to purchase necessities for one week is not wholly counterbalanced by the recovery of the funds at some time thereafter if the creditor's claim is not vindicated.[50]

The collection of small debts is the most objectionable feature of the present garnishment system. Regardless of the amount of the debt owed, once the writ is issued all wages owed to the defendant at the time of service are encumbered until after judgment.[51] For most wage earners, weekly wages are their only significant asset.[52] Where there are neither savings, friends, nor relatives to provide support, the loss of wages for even a short time may be financially crippling.[53] Moreover, if the defendant denies the debt and has a defense to the claim, which he wishes to assert at trial, he can be expected to be without his wages for an additional thirty to sixty days or longer.[54]

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47. *See* notes 18-22 *supra* and accompanying text.

48. FLA. STAT. §222.11 (1969) (exempting the wages of a head of a family from garnishment).

49. *See Hearings, supra* note 38, at 1025.

50. Even though most families can obtain necessities without cash by means of credit arrangements of various kinds, the argument advanced in the text retains considerable force. There are many wage-earning families with a credit rating so low that no credit is available. Moreover, many other families will have already reached the limit of credit available to them. Indeed, for the wage earner whose wages are a likely target of garnishment, credit will be *necessarily* limited. The plight of the defendant in a wage garnishment case may be more easily understood through an illustration. Assume that a spurious claim is brought. Assume further that the defendant must forego, instead of half of his wages, half of the goods and services for which he normally exchanges them. What can he do without: housing? groceries? transportation? Surely it is not unrealistic to assume that a significant number of wage earners—particularly those most susceptible to wage garnishment—have their entire paychecks budgeted in advance. If these goods and services are not made available to the defendant until months later when his claim is vindicated, they will hardly be of equal value.

51. Chaachou v. Kulhanjian, 104 So. 2d 23, 25 (Fla. 1958). *See also* note 22 *supra*.

52. *Hearings, supra* note 38, at 794.

53. It may well mean eviction for failure to pay rent, repossession of a car needed for transportation to work, arrest for failure to meet support payments, or any number of hazards that afflict the man who is unable to meet his obligations when due.

54. For example, assume that *A* is sued by *X* on a debt of $80. *X* demands $100 plus interest since 1964. Besides his defense of the statute of limitations of which *A* is probably unaware, he has a possible defense of discharge in bankruptcy. *A* is already two payments behind on his used car and must travel 20 miles to work each day. The writs have tied up $200 in *A*'s wages. *X* will settle for $120 but will not recognize any of *A*'s defenses. Usually *A* in such a situation will pay the demanded amount to have his wages released.

Florida has attempted to alleviate the severity of wage garnishment upon the family by providing a complete exemption from wage garnishment for a person who is the "head of a family residing in the state."[55] Although it is difficult to prove a direct cause-and-effect relationship empirically, most authorities agree that there is a negative correlation between the exemption of wages from garnishment and the rate of personal bankruptcies.[56] Referees in bankruptcy have described wage garnishment as "the most important" cause of personal bankruptcies.[57]

As a result of the head of the family exemption from garnishment, Florida has experienced one of the smallest number of personal bankruptcies among the fifty states.[58] This would seem to indicate that the exemption has had desirable social and economic consequences. However, there remains considerable inconsistency in the application of the exemption. While the purpose of the exemption is to assure a debtor's family the necessities of life,[59] it does not afford protection when the wage earner is divorced but is nonetheless supporting his family.[60] Florida does protect the family from an irresponsible supporting spouse,[61] but there is no provision to prevent the garnishment of the wages of the divorced debtor who continues to support his family out of moral or legal obligation. While there is some indication of judicial recognition of this problem,[62] it will require legislative reform to correct this flaw in the Florida garnishment process.

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55. FLA. STAT. §222.11 (1969). This exemption appears to have proved successful. *See* Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214, 1234-37 (1965); Note, *Garnishment of Wages Prior to Judgment Is a Denial of Due Process: The* Sniadach *Case and Its Implication for Related Areas of the Law*, 68 MICH. L. REV. 986, 987 (1970). Figures on bankruptcy filings for the fiscal year ending June 30, 1968, yielded an important comparison between the number of filings in states that have harsh garnishment laws and the number of filings in those states that prohibit or strictly limit garnishment of wages.

The states with harsh garnishment laws had the following number of bankruptcy filings during that year: Alabama 10,214; California 38,327; Colorado 4,306; Michigan 7,492; Minnesota 3,175; Ohio 17,680; Oregon 4,685; Tennessee 9,384.

The states with mild garnishment law, on the other hand, had significantly fewer filings: Alaska 208; *Florida* 1,416; Pennsylvania 1,601; South Carolina 160; South Dakota 182; Texas 1,330.

56. *Hearings, supra* note 38, at 794. *See also* P. BROSKY, A STUDY OF PERSONAL BANKRUPTCY IN THE SEATTLE METROPOLITAN AREA 39 (1965); R. MISBACH, PERSONAL BANKRUPTCY IN THE UNITED STATES AND UTAH 33 (1964).

57. Lee, *An Analysis of Kentucky's New Exemption Law*, 55 KY. L.J. 618, 630 (1967); Snedecor, *Consumer Credit and Bankruptcy*, 35 REF. J. 37, 38 (1961).

58. *See* note 55 *supra.*

59. Patten Package Co. v. Houser, 102 Fla. 603, 136 So. 353 (1931) (holding that the purpose of the statute is to preserve to the debtor and his family the means of living without becoming a charge upon the public).

60. *See* Healey v. Toolan, 227 So. 2d 55, 56 (4th D.C.A. Fla. 1969).

61. FLA. STAT. §61.12 (1969).

62. *See* Healey v. Toolan, 227 So. 2d 55 (4th D.C.A. Fla. 1969) (holding that a husband's exemption from wage garnishment remains in effect regarding a pre-divorce contract for child support).

FEDERAL LEGISLATIVE LIMITATION ON WAGE GARNISHMENT

Congress, concerned that the exploitation of consumers by unscrupulous creditors was a contributing cause of such diverse phenomena as consumer bankruptcies,[63] urban riots,[64] and even suicide,[65] passed the Consumer Credit Protection Act[66] (CCPA) to "safeguard the consumer."[67] The constitutional basis for the Act, as stated in the CCPA,[68] is the necessity for the establishment of uniform banking laws and the regulation of commerce. Factors advanced in support of the Act include the correlation between the number of consumer bankruptcies and the harshness of state garnishment laws;[69] the fact that wage garnishment often results in loss of employment;[70] the need to alleviate the burden on the courts as a result of the overwhelming number of garnishment cases;[71] and the theory that availability of the remedy promotes improvident extension of credit on attractive terms to people who are unable to repay voluntarily.[72]

The wage garnishment provisions of the CCPA,[73] as finally enacted, are a compromise measure.[74] The Act exempts a minimum of 75 per cent of the debtor's weekly disposable earnings from garnishment.[75] Additionally, it prohibits an employer from discharging an employee whose wages have been garnished to satisfy any single indebtedness.[76]

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63. *Hearings, supra* note 38, at 502. Regarding bankruptcies it was concluded: "As is well known, there are more consumer bankruptcies today, than in the big depression of the 1930's. Such personal bankruptcies . . . have jumped 240 per cent in the past ten years."

64. *Id.*, pt. 2, at 661: "Numerous newspaper accounts have quoted ghetto residents as rationalizing the looting on the grounds that they have been victimized and robbed by the merchants for many years."

65. Gannon, *Seizing Pay—Unions, Firms, Lawyers Seek To Curb Garnishing as Its Incidence Rises*, Wall Street J., March 15, 1966, at 1, col. 6, *reprinted in Hearings, supra* note 38, pt. 1, at 71.

66. 15 U.S.C. §1671-77 (Supp. V, 1969).

67. *Id.* §1671 (b).

68. *Id.* It should be noted that the Act has not been challenged.

69. *Hearings, supra* note 38, pt. 1, at 419, 506. *See also* note 55 *supra* and accompanying text. Florida's relatively mild garnishment laws correlate well with its rank as one of the states with the smallest number of bankruptcy filings.

70. *Hearings, supra* note 38, at 443. The effect of a garnishment can be devastating to a debtor. Most employers dislike garnishments because of the extra work and cost, and frequently will discharge an employee after the second garnishment. For a discussion on the relationship of wage garnishment to job loss, see Kerr, *Wage Garnishment Should Be Prohibited*, 2 PROSPECTUS 371 (1969).

71. *Hearings, supra* note 38, at 104.

72. *Id.* at 195, 264, 302.

73. 15 U.S.C. §§1671-77 (Supp. V, 1969).

74. *See* 2 U.S. CODE CONG. & AD. NEWS 1962 (1968).

75. The Consumer Credit Protection Act, 15 U.S.C. §1673 (a) (Supp. V, 1969) provides that garnishment may reach the lesser of 25% of the debtor's weekly disposable earnings or the amount by which his disposable earnings exceed thirty times the current federal minimum wage.

76. *Id.* §1674. Section 1674 provides: "(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness. (b) Whoever willfully violates subsection (a) of this section shall be fined

Section 1673 — Restriction on Maximum Allowable Garnishment

The thrust of section 1673 of the CCPA is to provide a limitation upon the portion of a debtor's weekly disposable earnings[77] that can be reached by a creditor. The statutory ceiling is set at the *lesser* of 25 per cent of disposable earnings or the amount of disposable earnings in excess of 30 times the federal minimum wage.[78] Since the current applicable minimum wage is $1.60 per hour, the latter figure would amount to 48 dollars per week. Thus, the effect of the limitation is to prohibit garnishment in situations where the earnings in a workweek are 48 dollars or less. The 25 per cent limitation becomes applicable where disposable earnings are in excess of 64 dollars.[79]

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not more than $1,000, or imprisoned not more than one year, or both."

77. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld, 15 U.S.C. §1672(b) (Supp. V, 1969). For example:

Salary Deductions		*Take Home Pay*	*Disposable Earnings*	
		$150.00		$150.00
Federal income tax	$17.90		17.90	
Soc. Sec. & medicine	7.19		7.19	25.09
Union dues	6.00			
Health insurance	3.87			
Total	34.96	34.96		
		115.04		124.91

Only those deductions required by law, federal income tax and social security, are deducted from take home pay to arrive at disposable earnings.

78. 15 U.S.C. §1673(a) (Supp. V, 1969).

79. The following examples help to illustrate the application of §1673 of the CCPA:

Disposable earnings—$60

Section 1673(a)(1): $60 x 25% = $15 (subject to garnishment)

Section 1672(a)(2): $60 less 48 (30 hr. x $1.60) = $12 (subject to garnishment)

Since the amount of the employee's earnings that would be subject to garnishment is less under the provisions of §1673(a)(2), that subsection will control. Hence, not more than $12 of the employee's disposable earnings may be garnished in that particular workweek.

Disposable earnings — $90

Section 1673(a)(1): $90 x 25% = $22.50 (subject to garnishment)

Section 1673(a)(2): $90 less 48 (30 x $1.60 per hr.) = $42 (subject to garnishment)

Since the amount of the employee's earnings that would be subject to garnishment is less under the provisions of §1673(a)(1), that section will be controlling. Therefore, not more than $22.50 of the employee's disposable earnings may be subjected to garnishment in that workweek.

The discussion of the applicability of the $48 figure is confined to an employee paid on a weekly basis. The Secretary of Labor prescribes multiples of the minimum that are equivalent in effect to the weekly base whenever the employee is paid on a biweekly or monthly basis. 29 C.F.R. §870.10 (1971). Thus, for biweekly, semi-monthly, and monthly pay periods the applicable amounts are $96, $104, and $208 respectively instead of the weekly $48 figure. The multiple of the federal minimum hourly wage equivalent to that applicable to the disposable earnings for one week is represented by the following formula: the number of workweeks, or fractions thereof, multiplied by 30 times the applicable federal minimum wage (presently $1.60). In this formula, a calendar month is considered to consist of 4.33 workweeks.

There are three exceptions to the application of section 1673. Section 1673 (b) specifies that the provisions of section 1673 (a) do not apply to: (1) court orders for support[80] of any person; (2) court orders of bankruptcy under chapter XIII of the Bankruptcy Act;[81] and (3) debts due for either federal or state taxes.[82] In addition, those states having garnishment laws determined by the Secretary of Labor to be "substantially similar" to the restrictions imposed by the Act may be exempted from the garnishment provisions of the CCPA.[83]

To date only two opinion letters have been issued defining the term "substantially similar."[84] In regard to whether a state statute exempting 80 per cent of an employee's earnings was substantially similar, the Wage-Hour Administrator noted that the state law applied to total earnings while the relative provisions of the CCPA applied to disposable earnings and exempted 75 per cent of those earnings. Since the amount exempted under the state law would vary directly with such factors as the amount of earnings and tax status of the employee, it was not possible to determine that the provisions of the state statute would meet the federal standard in every case. Consequently, the state statute was deemed not to be "substantially similar."[85] In another opinion,[86] the Kentucky garnishment statute[87] was ruled not to be "substantially similar" because it did not define the term "earnings" and afforded no basis for deriving the disposable earnings of the debtor. Moreover, the Kentucky statute significantly differed from the self-executing provisions of the CCPA[88] by requiring that an exemption from garnishment be specifically claimed by the debtor.

The definition of "substantially similar" remains unclear and has to date been couched only in negative terms. When a state statute is not exempted as being substantially similar, the CCPA supersedes only those provisions of state law that place a lesser restriction on wage garnishment than do the analogous provisions of the federal law.[89] Therefore, state statutes must yield to the provisions of the CCPA when not exempted under the "substantial similarity" test unless such state statutes are more stringent than the federal provisions.

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80. CCH LAB. L. REP. ¶30,663, Wage-Hour Opinion Letter No. 1099 (July 6, 1970). The term "support" includes allowances of alimony to a divorced spouse.

81. 11 U.S.C. §21 (Supp. V, 1969).

82. 15 U.S.C. §1673 (b) (Supp. V, 1969).

83. U.S. Dep't of Labor, *The Federal Wage Garnishment Law* (WHPC publication 1279, Washington, D.C., Jan. 1970).

84. CCH LAB. L. REP. ¶30,597, Wage-Hour Opinion Letter No. 1039 (Jan. 7, 1970); CCH LAB. L. REP. ¶30,625, Opinion Letter No. 1062 (March 16, 1970).

85. CCH LAB. L. REP. ¶30,597, Wage-Hour Opinion Letter No. 1039 (Jan. 7, 1970).

86. CCH LAB. L. REP. ¶30,625, Wage-Hour Opinion Letter No. 1062 (March 16, 1970).

87. KY. REV. STAT. ANN. §427.010 (Supp. 1970).

88. 15 U.S.C. §1673 (a) (Supp. V, 1969).

89. CCH LAB. L. REP. ¶30,624, Wage-Hour Opinion Letter No. 1061 (March 16, 1970).

Section 1674 — Restriction on Discharge from Employment by Reason of Garnishment

The CCPA prohibition of discharge of an employee for any one indebtedness[90] has been construed by the Wage-Hour Administrator to mean that an employee cannot be dismissed because of a single garnishment proceeding.[91] However, the CCPA does not prohibit discharge if the employer has been subject to garnishment of the employee's wages by more than one creditor or a single wage garnishment has been brought for collection of more than one debt.[92] Essentially, the prohibition of discharge is an attempt to ease the disruption in employment, production, and consumption that has frequently resulted from garnishment.[93]

Additional protection is offered the debtor by the fact that the restriction against discharge is renewed with each employment.[94] This seems to be an equitable ruling since a new employer would not have suffered any inconvenience or expense as a result of a garnishment action against a previous employer.[95] Additionally, the Administrator has ruled that discharge for a second garnishment after a considerable period of time has elapsed may be unlawful since the lapse of time could render the first garnishment an immaterial consideration.[96] Further, the Act protects an employee who is ordered to forward certain sums to a designated trustee under employee plans drawn up by referees in bankruptcy. Such payments cannot be used as an excuse for discharge because the CCPA defines "garnishment" as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."[97]

These restrictions on discharge notwithstanding, the effectiveness of section 1674 remains to be seen. It is doubtful that such restrictions will produce the desired effect without substantial employer cooperation and necessary state statutory reform. It will be difficult, at best, to insure the enforcement of the restriction. Perhaps widespread public education as to the provisions of the CCPA will aid in the successful implementation of this program.[98]

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90. 15 U.S.C. §1674(a) (Supp. V, 1969). This provision is an attempt to prevent the employer from discharging an employee summarily upon a garnishment, thereby increasing the burden on welfare agencies.

91. CCH LAB. L. REP. ¶30,627, Wage-Hour Opinion Letter No. 1064 (June 12, 1969). However, under present Florida law this may entail the service of several writs of garnishment as Florida has no continuing writ.

92. *See* 15 U.S.C. §1674(a) (Supp. V, 1969).

93. *See Hearings, supra* note 38, at 43.

94. CCH LAB. L. REP. ¶30,627, Wage-Hour Opinion Letter No. 1064 (June 12, 1969).

95. *Id.* The previous garnishment may, if known, affect the later employment, of course.

96. *Id.* However, this seems susceptible to challenge. There have been no actual controversies on this matter as yet. The ruling was merely a reply to a request for an opinion.

97. 15 U.S.C. §1672(c) (Supp. V, 1969).

98. Recently, spot commercials on radio and television have been used to inform the public of the garnishment provisions of the CCPA.

Effects on Florida Wage Garnishment

Florida garnishment statutes do not contain a limitation on the portion of a person's wages that may be garnished.[99] The only exemption provided by Florida law is the "head of a family" exemption of all the wages of the head of a family residing in the state.[100] Since this applies only to a specific class of wage earners, the provision does not meet the "substantial similarity test" required by the CCPA for recognition by the Secretary of Labor.[101] Although the Florida provision would be a greater restraint on garnishment of those persons qualifying under it, such a provision is clearly not substantially similar to section 1673 (a) of the CCPA, which exempts 75 per cent of the wages of all wage earners.[102] Therefore, Florida must abide by the provisions of section 1673 (a) and allow the exemption from garnishment of at least 75 per cent of a person's wage or 30 times the current federal minimum wage, whichever is greater.[103]

A survey of the clerks of the Florida circuit courts and civil courts of record was conducted in conjunction with this note.[104] The clerks were asked to reply to a questionnaire and enclose a copy of the writ of garnishment used in their jurisdictions.[105] The data gathered from the survey indicated that a majority of the circuits responding in Florida have included the limitations imposed by section 1673 (a) in their standardized forms for writs of garnishment.[106]

The regional office of the Department of Labor has sent a directive to all Florida courts informing them of the restrictions of the CCPA.[107] On the basis of the number of circuits that are now including the section 1673 (a) restrictions in their writs and the letter sent by the Department of Labor, it can be concluded that all Florida courts are aware of the CCPA restrictions. However, the data is insufficient to determine whether the remaining circuits are enforcing the Act.[108]

Florida's garnishment laws do not contain provisions dealing with employee dismissal subsequent to a single garnishment comparable to section

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99. *See generally* FLA. STAT. §§77, 222 (1969).

100. FLA. STAT. §222.11 (1969).

101. *See* Wage-Hour Opinion Letter Nos. 1039, 1062, note 84 *supra* and accompanying text.

102. *See* notes 84-89 *supra* and accompanying text.

103. 15 U.S.C. §1673 (a) (Supp. V, 1969). *See also* notes 73-79 *supra*.

104. *See* Appendix.

105. The clerks were also asked to identify the step in the garnishment procedure at which the wages of the employee were frozen. Additionally, they were asked for suggestions that would lighten the case load of the courts.

106. Sixteen of Florida's 20 judicial circuits replied (80%). Many circuits were represented by responses from the various counties contained within the circuit. All but the 8th, 13th, 15th, and 16th circuits were represented. *See* Appendix.

107. Copies of this directive were forwarded by various clerks with form writs in response to the survey.

108. In most cases, these circuits did not submit form writs, and therefore it is not clear whether they are enforcing the provisions of the Act.

1674(a). This provision will, therefore, have an even greater impact upon the Florida garnishment process than the maximum garnishable wage restrictions.[109] For the vast majority of Florida employers the CCPA will come as an entirely new situation to which they must adapt themselves. It remains to be seen, however, whether such adaptation will take the form of positive action intended by Congress.[110]

Two points become clear upon examination of the present Florida garnishment provisions. First, no point of reference exists from which disposable earnings may be calculated.[111] The absence of such provisions was fatal to the Kentucky garnishment statute[112] when that state sought exception from the CCPA.[113] Second, Florida garnishment statutes contain no percentage limitations on maximum garnishable wages. While Florida statutes do provide for a "head of family" exemption,[114] this does not apply to all persons as do the provisions of the CCPA.[115] This difference between Florida law and the CCPA is also analogous to the Kentucky case, although the Florida situation appears to be even more inconsistent with the CCPA standard.[116] In the opinion issued on the Kentucky statute, the Administrator ruled that since the Kentucky exemption provisions were not self-executing but required specific claims of exemption by a defendant, the provisions were not substantially similar to the provisions of the CCPA.[117] In addition to being applicable to the limited class determined to qualify as the "head of a family," Florida laws similarly require the garnished employee to claim his exemption by making an affidavit concerning his status.[118] Consequently, it is clear that Florida will be unable to gain exemption under the substantial similarity test. These findings lead to the conclusion that there must be substantial revision of Florida's present statutory framework in order to comply with federal standards.

JUDICIAL LIMITATIONS ON WAGE GARNISHMENT — THE *Sniadach* CASE

In 1969 the United States Supreme Court decided the case of *Sniadach v. Family Finance Corporation*.[119] The Court held the interim freezing of

109. *See* 15 U.S.C. §1673(a) (Supp. V, 1969).

110. *See* 2 U.S. CODE CONG. & AD. NEWS 1962 (1968).

111. *Cf.* CCH LAB. L. REP. ¶30,625, Wage-Hour Opinion Letter No. 1062 (March 16, 1970).

112. KY. REV. STAT. ANN. §427.010 (Supp. 1970). The Kentucky statute is much closer to the provisions of the CCPA than Florida provisions. It contains an exemption from garnishment of 75% of earnings. Its failure was that earnings are not equivalent to disposable earnings. *See* text accompanying notes 86-88 *supra*.

113. *See* CCH LAB. L. REP. ¶30,625, Wage-Hour Opinion Letter No. 1062 (March 16, 1970).

114. FLA. STAT. §222.11 (1969).

115. *See*, e.g., text accompanying notes 58-62 *supra*.

116. *See* CCH LAB. L. REP. ¶30,625, Wage-Hour Opinion Letter No. 1062 (March 16, 1970).

117. *Id.*

118. FLA. STAT. §222.12 (1969).

119. 395 U.S. 337 (1969).

wages "absent notice and a prior hearing" violative of the "fundamental principles of due process."[120] The case arose in Wisconsin, which allowed prejudgment garnishment under a statute[121] similar to Florida's prejudgment garnishment provision.[122] Weighing the desirability of a final adjudication prior to the deprivation of a person's property against extraordinary situations requiring special protection for a state or creditor interest,[123] the Court concluded that wage garnishment without a hearing is violative of constitutional requirements of due process.[124]

Essentially, the Court focused on "the right to be heard"[125] in order to protect one's property and the special nature of the property right involved in the garnishment of wages.[126] Addressing itself to the requirements for a hearing, the Court reflected upon the nature of wages and held that when property that is vital to everyday life is involved, a hearing on the merits[127] is necessary before the property may be legally frozen. In such a hearing a creditor would have to establish the validity or probable validity of his claim against the defendant.[128] The Court emphasized the unique character of a person's wages and the excessive hardship that can result when earnings are withheld from those who depend upon them from week to week for their necessities.[129]

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120. *Id.* at 342.

121. WIS. STAT. ANN. §267.02 (Supp. 1970).

122. *Compare* FLA. STAT. §77.031 (1) (1969), *with* WIS. STAT. ANN. §267.02 (Supp. 1970).

123. Sniadach v. Family Fin. Corp., 395 U.S. 337, 339 (1969).

124. *Id.* at 342.

125. *Id.* at 339 (*citing* Schroeder v. New York, 371 U.S. 208, 212 (1962)). The Court relied on this principle at least as early as 1863 when, in Baldwin v. Hale, 68 U.S. (1 Wall.) 223 (1863), it held that a discharge under a state insolvency law was ineffective against an out-of-state creditor: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence." *Id.* at 233. Since that time, notice and an opportunity for a hearing have frequently been held to be fundamental requirements of procedural due process. *See, e.g.*, Anderson Nat'l Bank v. Luckett, 321 U.S. 233, 246 (1944): "The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950): "[T]he Due Process Clause . . . at a minimum . . . require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."

126. 395 U.S. at 340-41.

127. *Id.* at 343. The majority did not discuss the nature of the hearing required. However, Mr. Justice Harlan, concurring, suggested that such hearings must deal with the merits of the creditor's claim.

128. *Id. See also* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950); Opp Cotton Mills v. Administrator, 312 U.S. 126, 152-53 (1941); United States v. Illinois Cent. R.R., 291 U.S. 457, 463 (1934); Landover v. City & County of Denver, 210 U.S. 373, 385-86 (1908).

129. 395 U.S. at 340-41.

The Sniadach *Exceptions*

In *Sniadach* the Court indicated that due process would be satisfied in proceedings to seize products without a hearing,[130] or proceedings to attach property of a resident[131] or a nonresident[132] defendant prior to judgment.[133] Additionally, the Court sanctioned proceedings in which a receiver was appointed prior to a finding of misconduct[134] and in which the stockholders of an undercapitalized corporation were assessed without a hearing.[135]

Two factors probably influenced the approval of those summary procedures. First, the proceedings were used by an officer or agency of the state for the welfare of the general public. A "compelling state interest" was relatively easy to find in such cases. Second, in none of the cases was there pressure on the victim of the attachment to forego his opportunity for a hearing. The property attached was not crucial for day-to-day living, and the parties attached were not likely to be poor, uneducated, or lacking legal assistance. The garnished parties owned property, held stock, or ran commercial enterprises and generally were the type of individuals who were able to utilize available defenses in order to have their property returned. Lower federal court decisions following *Sniadach* have distinguished the cases cited by the Court and have continued to apply *Sniadach* where property essential to daily subsistence is seized without notice and a hearing.[136] Therefore, the *Sniadach* requirement of notice and hearing prior to garnishment of wages clearly precludes the continued use of prejudgment garnishment. Since wages are of a different nature than other types of property and are especially essential to the low-income wage earner, the *Sniadach* exceptions do not restrict application of the *Sniadach* due process requirements in the area of wage garnishment.

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130. Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950); Fahey v. Mallonee, 332 U.S. 245 (1947); McKay v. McInnes, 279 U.S. 820 (1929); Coffin Bros. & Co. v. Bennett, 277 U.S. 29 (1928); Ownbey v. Morgan, 256 U.S. 94 (1921). In *Ewing* the Court found that the seizure of the products was merely a statutory prerequisite to the action and that the claimant had a right to a hearing and thus there was no violation of due process. In *Fahey* the Federal Home Loan Bank Administration had named a receiver to take possession of a savings and loan association prior to a hearing to determine the validity of the Administration's charges of misconduct. The Court held the summary procedure valid on the ground that the impossibility of preserving credit during an investigation would frustrate the interest of the savers. The facts in *Coffin Bros.* and *Ownbey* were substantially similar in nature and the Court found such procedures to be in compliance with due process requirements.

131. Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950).

132. McKay v. McInnes, 279 U.S. 820 (1929).

133. Ownbey v. Morgan, 256 U.S. 94 (1921).

134. Fahey v. Mallonee, 332 U.S. 245 (1947).

135. Coffin Bros. & Co. v. Bennett, 277 U.S. 29 (1928).

136. *See, e.g.*, Laprease v. Raymours Furniture Co., 315 F. Supp. 716, 724 (N.D.N.Y. 1970) (distinguishing the cases cited by the Court as complying with due process).

Implications of Sniadach *for Other Forms of Attachment and Garnishment*

Prejudgment seizures may be divided into three categories: attachment or garnishment of tangible real and personal property, garnishment of intangibles, and foreign attachment. With regard to the first of these categories, the chief public interests in favor of summary seizure of tangible real and personal property are the promotion of the extension of credit and assurance of a fund from which to collect valid claims.[137] In order for a court to hold that prejudgment attachment of tangible property is a constitutional deprivation of a defendant's protected property interest, it must be persuaded that the debtor's interests outweigh the alleged public interest supporting seizure.[138] At least one court has indicated its unwillingness to determine such a question in the absence of a specific factual context.[139] Although the Supreme Court of California has held in two cases that its prejudgment wage garnishment procedures were not in compliance with the requirements of procedural due process,[140] it has refused to decide a case in which the state attorney general sought to have all prejudgment attachments declared unconstitutional.[141]

However, a three-judge federal district court in New York has applied *Sniadach* to seizure of property under a state replevin procedure, which did not require a hearing.[142] The court held prejudgment seizure of chattels without a hearing to be an unconstitutional denial of due process.[143] Thus, it is apparent that attachment or garnishment of tangible property prior to a hearing will be held to be violative of procedural due process whenever the property seized is property that is important to the debtor's daily life.[144]

The second category of prejudgment seizure concerns the garnishment of intangible assets. *Sniadach* established the rule that wages, one form of intangible assets, can be garnished only after the defendant has had an opportunity to appear and contest the validity of the debt.[145] *Sniadach* should

137. Goldberg v. Kelly, 397 U.S. 254, 263 (1967).

138. *Id.*

139. People *ex rel.* Lynch v. Superior Court, 1 Cal. 3d 903, 464 P.2d 126, 83 Cal. Rptr. 670 (1970).

140. Cline v. Credit Bureau, 1 Cal. 3d 903, 464 P.2d 125, 83 Cal. Rptr. 669. (1970); McCallop v. Carberry, 1 Cal. 3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).

141. In People *ex rel.* Lynch v. Superior Court, 1 Cal. 3d 903, 464 P.2d 126, 83 Cal. Rptr. 670 (1970), the court held that since the case presented neither a party in interest nor a concrete set of facts, the attorney general's complaint constituted a request for an advisory opinion.

142. Laprease v. Raymours Furniture Co., 315 F. Supp. 716 (N.D.N.Y. 1970). *But see* Fuentes v. Faircloth, 317 F. Supp. 954 (S.D. Fla. 1970).

143. 315 F. Supp. at 725.

144. "Beds, stoves, mattresses, dishes, tables and other necessities for ordinary day-to-day living are, like wages in *Sniadach*, a 'specialized type of property presenting distinct problems in our economic system,' the taking of which on the unilateral command of an adverse party 'may impose tremendous hardships' on purchasers of these essentials." Laprease v. Raymours Furniture Co., 315 F. Supp. 716, 722 (N.D.N.Y. 1970).

145. The Supreme Courts of Arizona and California have recently held, on the basis of *Sniadach*, that prejudgment garnishment is unconstitutional. Termplan, Inc. v. Superior

be controlling in cases where intangible funds are the defendant's sole or primary liquid assets and are garnished prior to a hearing. In such instances, the debtor's significant interest in the use of the funds is not outweighed by the public interest in debt collection and economic expansion.[146] Thus, in general, prejudgment garnishment of intangible assets denies a defendant due process when the defendant has both an immediate expectation of, and an immediate need for, the garnished fund.[147]

The third category of prejudgment attachment is that involving the immediate seizure of a defendant's property for the purpose of establishing quasi in rem jurisdiction when the defendant resides outside the court's territorial jurisdiction. Quasi in rem jurisdiction extends to any attachable tangible or intangible property of the defendant that is located in the forum state.[148] This method of obtaining jurisdiction over a debtor has been accepted with rare exception as a valid means of maintaining a judgment against a nonresident.[149] Since due process requires the plaintiff to give adequate notice of his action to the defendant,[150] and the garnishee as a practical matter must also notify the defendant of the garnishment proceeding,[151] the *Sniadach* rule would appear to have little applicability in this area. In addition, the sort of property attached for quasi in rem purposes is usually tangible and seldom would fall into the "daily necessity" category of assets protected under *Sniadach*.[152]

Court, 105 Ariz. 270, 463, P.2d 68 (1969); Cline v. Credit Bureau, 1 Cal. 3d 903, 464 P.2d 125, 83 Cal. Rptr. 669 (1970); McCallop v. Carberry, 1 Cal. 3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970). In *Termplan*, however, the court carefully limited its decision to wage garnishment.

146. The Supreme Court of Wisconsin, in a recent opinion based on *Sniadach*, held unconstitutional the prejudgment garnishment of bank accounts. Larson v. Fetherston, 44 Wis. 2d 712, 172 N.W.2d 20 (1969). The court included in its opinion dicta to the effect that all prejudgment garnishments violate the due process clause: "[W]e think that no valid distinction can be made between garnishment of wages and that of other property." *Id.* at 718, 172 N.W.2d at 23.

147. Resolution of this situation by statute will be most difficult. One solution may be to provide the defendant with notice at the same time it is provided to the garnishee, and allow the release of the garnished fund upon the defendant's showing that he meets the criteria for the exception.

148. The location of such an intangible is any place at which the garnishee is subject to in personam jurisdiction. Harris v. Balk, 198 U.S. 215 (1905). *See also* Ownbey v. Morgan, 256 U.S. 94 (1921).

149. *See* Ownbey v. Morgan, 256 U.S. 94 (1921). *See also* Harris v. Balk, 198 U.S. 215 (1905).

150. McDonald v. Mabee, 243 U.S. 90, 92 (1917).

151. Harris v. Balk, 198 U.S. 215 (1905).

152. Property seized for quasi in rem purposes generally is not the *Sniadach* type of asset. "Daily necessity" property would probably be secured by the defendant prior to leaving the jurisdiction. In addition, considering the breadth of most state long-arm statutes, in personam jurisdiction usually will be obtained over a defendant who has had any substantial contact with the forum. *Cf.* Note, *In Personam Jurisdiction—Florida's Short Long Arm*, 23 U. FLA. L. REV. 336 (1971).

The Effect of Sniadach *on Florida Wage Garnishment*

The Florida statute that provides for prejudgment wage garnishment has no provision for a hearing in which the defendant may challenge the alleged debt before the interim freezing of his assets.[153] In the survey of the clerks of the circuit courts of Florida, 93.7 per cent of those responding answered that the procedural step at which the wages are effectively frozen is the time of service of the writ of garnishment upon the employer.[154] The practical result is that a defendant often is not served with notice of the complaint and summons in the principal action until after the writ of garnishment has been served upon the garnishee.[155] This procedure clearly offends the notice requirements established in *Sniadach* and constitutes a violation of procedural due process applicable to the states through the fourteenth amendment.[156]

Data compiled in Florida indicated: (1) the defendant often is not served with the complaint in the main action until after service of the writ upon the garnishee;[157] (2) there is no opportunity for a hearing afforded the defendant before the freezing of his wages;[158] (3) a debtor's wages are frozen immediately upon service of the writ on the employer;[159] and (4) a number of Florida's circuit courts are not including the CCPA restrictions in their form writs.[160] Consequently, Florida is denying its residents due process of law by failing to afford proper notice and hearing prior to the freezing of wages of alleged debtors. Moreover, Florida has not acted either to enforce the provisions of the CCPA or to reform its statutes in order to gain an exemption under the Act. It is obvious there is an immediate need for statutory reform.*

Suggested Reform

The impact of abolishing wage garnishment completely has not been documented.[161] Such a proposition could possibly result in the replacement of current social and legal problems with others[162] of perhaps greater magnitude. Hence, rather than abolishing wage garnishment completely, an attempt must

153. *See* Fla. Stat. §77.031 (1969).

154. *See* Appendix (5).

155. *See generally* Appendix and note 21 *supra*.

156. Sniadach v. Family Fin. Corp., 395 U.S. 337, 338 (1969).

157. *See* Appendix (6)b.

158. *Id.* (4).

159. *Id.* (5); Fla. Stat. §77.06 (1969).

160. Appendix (3). This statistic is incomplete since all circuits did not return a form writ.

*Editor's Note: Other statutes providing for garnishment of wages prior to judgment have been declared unconstitutional. *See, e.g.*, Reeves v. Motor Contract Co., 324 F. Supp. 1011 (N.D. Ga. 1971); Hodgson v. Cleveland Municipal Court, 326 F. Supp. 419 (N.D. Ohio 1971).

161. *Hearings, supra* note 38, at 433.

162. For example, if garnishment is abolished, it is highly probable that creditors will further restrain the extension of credit. *See Wage Garnishment, supra* note 21, at 771-75.

be made to reform present law. Since Florida garnishment procedures are not substantially similar to the CCPA,[163] Florida must enact legislation either adopting the provisions of the CCPA or establishing similarly stringent restrictions on the garnishment of wages. Such reform cannot be left to court enforcement of the existent provisions of the CCPA. Even a superficial review of present Florida judicial implementation of the requirements of *Sniadach*[164] impels the conclusion that reform simply cannot be left to judicial discretion.[165] Remedial legislation such as Florida's "head of a family exemption"[166] can be utilized as a basis for solving the problems connected with Florida's wage garnishment provisions. However, significant positive legislative action must be taken to expand present law to provide the substantive and procedural protections now required.

Abolition of Wage Garnishment Before Judgment

Florida statutes, section 77.031, when utilized to effect wage garnishment provides no opportunity for a debtor to be heard and is contrary to procedural due process requirements as set forth in *Sniadach*. Present procedures may have a coercive effect upon debtors—causing them to forego the assertion of valid defenses in order to retain a steady income. Section 77.031 must either be repealed or substantially amended if it is to conform to present federal standards. The following amendment is proposed as an alternative to abolition or repeal and a satisfactory method of compliance with present needs and conditions:

> *This subsection shall not apply to the garnishment of wages, salary, commissions, or bonuses as compensation for personal services.*

An amendment to this effect would not preclude prejudgment garnishment of tangible or intangible personal property that is not in the nature of wages. However, it would protect the debtor's expectation interest in property necessary for normal subsistence, as required by *Sniadach*.

Continuing Writ of Garnishment

One problem with present Florida garnishment procedures is the limited effect of a writ of garnishment.[167] Florida statutes, section 77.06, provides that the writ, when served, renders the garnishee liable for any debt due by him to the defendant at the time of service or at any time between service and

163. *See* text accompanying notes 111-118 *supra*.

164. *See* Appendix (4)-(6).

165. While Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969), was decided in June 1969, the vast majority of the courts of Florida were allowing procedures violative of *Sniadach* in Dec. 1970.

166. FLA. STAT. §222.11 (1969).

167. *See* Appendix 6 (a).

the time of the garnishee's answer.[168] The Florida supreme court has interpreted this to mean that a writ attaches only those assets owed without contingency by the garnishee to the defendant and not those that may become due at a future date.[169] This poses particular problems in the garnishment of wages since normally they do not become due until the lapse of specified pay periods. Under present Florida law, several writs of garnishment may be needed to garnish one debt if the debt exceeds the pay due the defendant for the period within which the garnishee is served. Hence, the following provision is proposed:

> *Service of the writ shall make the garnishee liable for all debts due by him to defendant and for any tangible or intangible personal property of defendant in the garnishee's possession or control. Such writ shall have continuing effect upon any debts, tangible or intangible personal property, which shall become due to defendant by the garnishee after the service of such writ. However, at the time such property or debts that have been garnished shall have become sufficient in value to satisfy the judgment, such writ shall be of no effect.*

Wage Exemption

Florida statutes, section 222.11, provides a complete exemption from the garnishment of wages for persons who are the "head of a family residing in the state." While its purpose is to protect a debtor's family by securing an uninterrupted income for the family with which necessities may be purchased, it does not protect the family when the supportive spouse is divorced. Moreover, Florida has made no provision to comply with the requirements of the Consumer Credit Protection Act.[170] In order to rectify both of these conflicts in Florida law, the following provision is proposed:

> *(1) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction for federal income tax and social security but before all other deductions.*
>
> *(2) The maximum part of the aggregate disposable earnings of an individual that is subject to garnishment may not exceed 25 per centum of his disposable earnings for that week or the amount by which his disposable earnings exceed thirty times the current federal minimum hourly wage, whichever is less.*

CONCLUSION

The adoption of these provisions or those of a similar nature will rectify the four most significant defects in Florida garnishment procedures: the

168. *See* FLA. STAT. §77.04 (1969) (requiring a garnishee to answer within 20 days).
169. Chaachou v. Kulhanjian, 104 So. 2d 23, 25 (Fla. 1958).
170. 15 U.S.C. §1673 (a) (Supp. V, 1969).

failure to comply with procedural due process, the lack of a continuing writ, the failure to offer equal protection to a wage earner's family regardless of marital status, and a need for compliance with or exemption under the provisions of the Consumer Credit Protection Act. Reform has become mandatory in order for Florida to comply with federal statutory and judicial requirements. The statutes herein proposed are designed to initiate necessary compliance as well as to remedy problems brought to light by the clerks and attorneys of the Florida judicial system. Fair and just garnishment procedures will not only assure due process of law, but will also aid the availability of credit and thereby benefit the economy of the state.

A. AUGUST QUESADA

APPENDIX

A questionnaire was distributed, in connection with this note, to the clerks of the Florida circuit courts and civil courts of record. They were asked to identify the procedural steps involved in the freezing of the wages of an employee by garnishment in their jurisdictions. In addition, the clerks were asked to identify in chronological order the procedural steps involved in the wage garnishment process. They were requested to submit any form writs used in their jurisdictions and to offer any suggestions as to problems that they perceived in the present garnishment procedures.

Sixteen of Florida's twenty judicial circuits responded as well as several civil courts of record. Many of these circuits were represented by replies from the various county divisions contained within the particular circuit. Of the total 67 questionnaires sent to the clerks of each county division, 53 responses were received.

The clerks as well as several attorneys who learned of the project offered many suggestions with respect to perceived defects in the Florida framework and solutions to these problems. Several clerks forwarded material distributed by the Secretary of Labor in connection with the Consumer Credit Protection Act.

The following statistical distribution of information was compiled as a result of the responses received:

(1) *Number of responses*: 16 of 20 circuits — 80% response

(2) *Total percentage of clerks responding*: 53 of 67 questionnaires returned — 78%

(3) *Circuits that include the CCPA restrictions in form writs issued by the clerks*:
(a) 10 of 16 circuits included CCPA restrictions — 62%
(b) 3 of 16 circuits did not include CCPA — 19%
(c) Others did not return a form writ and therefore information was inadequate. However, letters from the office of the Secretary of Labor indicate that all courts have been apprised of the new restrictions.

(4) *Circuits indicating whether an answer by defendant is required*:
(a) 13 of 16 — no answer required — 81%
(b) Other circuits related information from which no conclusion as to the requirement of an answer could be determined.

(5) *Indication of procedural step at which assets are frozen*:
(a) Frozen upon service of the writ upon the garnishee — 15 of 16 — 93.7%
(b) Other circuits responded in uncertain terms.

(6) *Additionally, the following criticisms were offered by several clerks*:
(a) Seven clerks stated that the lack of a continuing writ in Florida imposes a burden upon both the courts and the employer.
(b) Three clerks in alluding to *Sniadach* stated that, as a practical matter, the writs of garnishment were normally served before the complaint because of the difficulty in locating the defendant relative to the facility with which an employer can be served.
(c) Four clerks replied that creditors with whom they had contact had expressed the view that garnishment is necessary in order to insure a quick and relatively inexpensive method of enforcing collections. These four clerks concurred in that opinion. A tabular breakdown follows:

County Division	Circuit	CCPA Restrictions Included on Writ	Answer Required by Defendant Before Freezing of Assets	Point of Freezing of Assets
Miami	Civil Court of Record	Yes	No	Service of writ
Brevard	Civil Court of Record	Yes	No	Service of writ
Okaloosa	1st	Yes	No	Service of writ
Santa Rosa	1st	Yes	No	Service of writ
Pinellas	6th	Yes	No	Service of writ
Flagler	7th	Yes	No	Service of writ
Volusia	7th	Yes	No	Service of writ
Dade	11th	Yes	No	Service of writ
Brevard	18th	Yes	No	Service of writ
Seminole	18th	Yes	No	Service of writ
Indian River	19th	Yes	No	Service of writ
Collier	20th	Yes	No	Service of writ
Hendry	20th	Yes	No	Service of writ
Lee	20th	Yes	No	Service of writ
Orange	9th	?	No	Service of writ
Jefferson	2nd	?	No	Service of writ
Sarasota	12th	?	No	Service of writ
Wakulla	2nd	Yes	?	Service of writ
Nassau	4th	Yes	?	Service of writ
Okeechobee	19th	Yes	?	Service of writ