



**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge**

Date Nov. 28, 2017

Case No. 13CJ065024

OHIO DEPT. OF TAXATION
Plaintiff

Alyson C. Tanebaum
Plaintiff's Attorney

VS

VINCENT P. BIRTH, ET AL.
Defendant

Pro Se
Defendant's Attorney

This matter is before the Court on Plaintiff's Affidavit of Current Balance Due on Garnishment of Personal Earnings, filed October 30, 2017.

For the following reasons, the Court *sua sponte* GRANTS the relief sought and allows the requested aid in execution of judgment to proceed.

See Judgment Entry.

IT IS SO ORDERED.

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JUDGE D. Chris Cook

cc: Tanebaum, Esq.
Stone, *Pro Se*



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Hon. D. Chris Cook, Judge**

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OHIO DEPT. OF TAXATION
Plaintiff

Alyson C. Tanenbaum
Plaintiff's Attorney

VS

VINCENT P. BIRTH, ET AL.
Defendant

Pro Se
Defendant's Attorney

INTRODUCTION

This matter is before the Court on Plaintiff's Affidavit of Current Balance Due on Garnishment of Personal Earnings, filed October 30, 2017.

Non-oral hearing had November 28, 2017.

PROCEDURAL HISTORY

According to Plaintiff, the Ohio Department of Taxation ("ODT"), on January 15, 2013, ODT "... duly recovered a judgment before this court against said judgment debtor . . ." in the amount of \$2,334.38 together with costs and interest. This statement is not completely accurate. ODT did not recover a judgment in the traditional sense but filed a certified copy of the Tax Commissioner's Entry Making the Assessment Final with the Clerk of this Court, which is then, by operation of law, deemed a "judgment" and results in the production of a certificate of judgment from a tax lien.

On October 30, 2017 ODT filed its Affidavit of Current Balance Due on Garnishment of Personal Earnings in the Lorain County Court of Common Pleas in order to execute on its judgment against the personal earnings of Defendants, Vincent P. Birth, *et al.* ("Defendants").



This matter is ripe for decision because ODT and a number of other judgment creditors have proceeded to enforce judgments obtained from other courts or enforce tax assessments reduced to liens by executing through certificates of judgments filed with this Court's Clerk of Courts.¹

This process has caused considerable confusion for the bench and bar and mandates judicial resolution.

STANDARD OF REVIEW – TRANSFER OF JUDGMENTS; FILING OF CERTIFICATES OF JUDGMENT; EXECUTION ON CERTIFICATES OF JUDGMENT

RC 2329.04, "Judgments of Inferior Courts – Stay of Execution – Certificate in Lieu of Transcript," states, in pertinent part, "Judgments of probate courts, municipal courts, county courts, and other courts inferior to the court of common pleas may be made liens upon lands and tenements of a judgment debtor within any county of this state only in the manner provided in section 2329.02 of the Revised Code . . . **execution may be issued out of such court of common pleas upon such judgment . . . as if the same had been rendered in such court of common pleas.**" (Emphasis added.)

RC 2329.02, "Judgment Lien – Certificate of Judgment – Filing – Transfer," states, in pertinent part, "Any judgment or decree rendered by any court of general jurisdiction, including district courts of the United States, within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there is filed in the office of the clerk of the court of common pleas . . . Notwithstanding any other provision of the Revised Code, any judgment issued in a court of record may be transferred to any other court of record. **Any proceedings for collection may be had on such judgment the same as if it had been issued by the transferee court.**" (Emphasis added.)

Finally, RC 5739.13(C), "Liability of Vendor and Consumer – Assessment – Petition For Reassessment – Penalties – Appeal – Judgment – Execution," states, in pertinent part, "After an assessment becomes final . . . a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas . . . **and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner . . .**" (Emphasis added.)

¹ See also: *Ohio Dept. of Taxation v. Janet E. Stoops, et al.*, Lorain County Court of Common Pleas, Case No. 13CJ070565, filed July 13, 2017.



STANDARD OF REVIEW – DOMESTICATION OF JUDGMENTS

It is apparent to this Court that some of the confusion surrounding this issue is borne of the subtle difference between transferring “intra-state” judgments to a common pleas court for filing and filing tax liens verses “domesticating” judgments from out-of-state courts or federal courts.

In the matter of *State ex rel. Ford v. Ruehlman*, 149 Ohio St.3d 34, 2016-Ohio-3529, the Ohio Supreme Court stated, “Ohio has adopted the Uniform Enforcement of Foreign

Judgments Act, R.C. 2329.021 *et seq.* The purpose of the act is to give full faith and credit to foreign judgments as required by Article IV, Section 1 of the U.S. Constitution * * * The act sets forth the procedure for domesticating foreign judgments, i.e., filing the judgment in Ohio to ensure its recognition and enforcement.” *Id.* at ¶ 64.

“A common pleas court has jurisdiction over a foreign judgment once that judgment is filed in accordance with R.C. 2329.022.” *Id.* at ¶ 68.

Regardless, the filing in common pleas court of a judgment “transferred” from an Ohio court of record, the filing of a tax lien, or the “domestication” of a foreign judgment in common pleas court all end up at the same place . . . that is, a valid lien that may be executed upon.

ANALYSIS

The matter at bar, obviously, involves the filing a certified copy of the Ohio Tax Commissioner’s entry making a tax assessment against defendants final – a tax lien. For purposes of this decision, the results would be the same if the judgment creditor (ODT) filed a certificate of judgment from an actual judgment taken from another court of record (or this court) or domesticated a foreign judgment.

In *Tyler v. Stonick*, 3 Ohio App.3d 167 (1981), the Ninth District Court of Appeals stated, “The law in Ohio is quite clear that when a certificate of judgment is filed with the office of the clerk of the court of common pleas, a lien is immediately created upon the lands of the judgment debtor * * * The lien’s existence is not predicated upon its execution, and a stay of execution will not postpone the lien’s creation, nor destroy one already in existence * * *” *Id.* at pg. 169.

The court also noted, “It is clear, therefore, that the judgment of the Akron Municipal Court was effective to create a valid lien . . .” *Id.* at pg. 168.



Similarly, in this matter, the filing of a certificate of judgment by ODT based upon a tax lien creates a valid judgment lien against the Defendants real property located in Lorain County (if they have any). And, based upon RC 2329.04, ". . . such further proceedings to enforce said judgment may be had as if the same had been rendered in such court of common pleas."

CONCLUSION

For the foregoing reasons, the Affidavit of Current Balance Due on Garnishment of Personal Earnings is well taken and the garnishment of personal earnings may proceed forthwith.

IT IS SO ORDERED.



JUDGE D. Chris Cook