

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JEFFERY FAVORS,  
Plaintiff,  
v.  
APPLE CREEK MANAGEMENT CO.,  
INC.,  
Defendant.

CIVIL ACTION  
NO. 1:10-CV-1533-CAP

O R D E R

This action, in which the plaintiff seeks to recover monies that were held by his employer pursuant to two garnishment actions, was originally filed in the Magistrate Court of Gwinnett County, Georgia, but was subsequently removed to this court. Pending before the court is the defendant's motion for summary judgment [Doc. No. 14].

The plaintiff works as a server in a restaurant owned by the defendant, and his pay is based on an hourly wage plus tips. The plaintiff was the defendant in two federal student loan garnishment actions and one federal tax income garnishment action. Pursuant to the student loan actions, the defendant withheld certain sums from the plaintiff's paychecks.<sup>1</sup> The plaintiff filed this action, alleging that the defendant had withheld money from his tips, which are not subject to garnishment, in addition to withholding money

---

<sup>1</sup> The IRS garnishment is not at issue in this case.

from his hourly wages, and he seeks reimbursement of the amount allegedly withheld.

The original suit alleged violations of the Consumer Credit Protection Act, 15 U.S.C. § 1673, and was subsequently amended to allege violations of the "Fair Standard Labor Act,"<sup>2</sup> and O.C.G.A. § 18-4-20.

Neither 15 U.S.C. § 1673 nor O.C.G.A. § 18-4-20 provides for a private cause of action for improper garnishment.<sup>3</sup> These code sections simply define what monies are subject to garnishment, setting forth various exemptions, and the maximum amount of earnings that may be garnished. Enforcement of the Federal Consumer Credit Protection Act is left to the Secretary of Labor. There is nothing in the Act creating a private cause of action, and the United States Supreme Court has counseled against implying a cause of action where one is not provided for by statute. See Alexander v. Sandoval, 532 U.S. 275, 286 (2001), wherein the Court

---

<sup>2</sup> This is the title used in the amended complaint. The court assumes that the plaintiff is referring to the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq,

<sup>3</sup> The defendant cited several appellate court decisions for this proposition; however, none of those cases made such a holding. Snapp v. United States Postal Service, 664 F.2d 1329 (5th Cir. 1982), held that the exemption provided for in 15 U.S.C. § 1673(b)(1)(A) was not applicable to the plaintiff's wages in that case. McCabe v. City of Eureka, 664 F.2d 680 (8th Cir. 1981), and Smith v. Cotton Brothers Baking Co., 609 F.2d 738 (5th Cir. 1980), both dealt with 15 U.S.C. § 1674 and held that there was no private right of action under that section for a person discharged because his wages were being garnished. Western v. Hodgson, 494 F.2d 379 (4th Cir. 1974), specifically declined to decide whether a private cause of action existed under 15 U.S.C. § 1673.

stated: "The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. . . . Statutory intent on this latter point is determinative." The plaintiff has not cited a single case where a court has implied a private cause of action under 15 U.S.C. § 1673 or O.C.G.A. § 18-4-20, and this court declines to do so.

Even if the court did conclude that the plaintiff could assert a private cause of action, the evidence before the court shows that all monies withheld from the plaintiff came from his hourly wage, not from his tips. Moreover, the amounts withheld did not result in the plaintiff's being paid less than the minimum wage, in violation of the Fair Labor Standards Act.

For the foregoing reasons, the defendant's motion for summary judgment [Doc. No. 14] is GRANTED, and the clerk is DIRECTED to close this file.

SO ORDERED, this 28<sup>th</sup> day of February, 2011.

/s/ Charles A. Pannell, Jr.  
CHARLES A. PANNELL, JR.  
United States District Judge