

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION**

ERT 163rd STREET MALL, LLC,

Plaintiff,

vs.

CASE NO.: 2013-CA-10209

**NOEL ENTERPRISES, L.L.C.,
LINDA NOEL AND MERCY NOEL,**

Defendants.

and

CITY OF NORTH MIAMI, FLORIDA,

Garnishee.

**PLAINTIFF'S RESPONSE IN OPPOSITION
TO MERCY NOEL'S CLAIM FOR EXEMPTION**

Plaintiff, ERT 163rd STREET MALL, LLC, by and through its undersigned counsel, files and serves this Response in Opposition to Mercy Noel's Claim for Exemption, stating as follows:

1. On April 30, 2014, a Final Judgment Against Mercy Noel was entered in Plaintiff's favor for \$73,465.53.
2. A Continuing Writ of Garnishment directed to City of North Miami ("Garnishee"), was issued and served.
3. In response, Garnishee answered that funds in the amount of \$172.88 were being held from Defendant Mercy Noel's wages beginning July 12, 2014. Garnishee's answer was filed on July 16, 2014.

4. Defendant Mercy Noel filed a claim of exemption on July 30, 2014, asserting, inter alia, that he is exempt from the garnishment as head of household.

5. Plaintiff filed, in response, an Affidavit challenging Defendant, Mercy Noel's claims of exemption.

6. Defendant, Mercy Noel, is not entitled to utilize the head of household exemption.

7. Pursuant to Fla. Stat. 222.11, Plaintiff denies the factual allegations giving rise to Defendant's Claim of Exemption as a head of family wages and disputes the applicability of the claimed exemption. Defendant has failed to provide proof of the facts set forth in his Claim for Exemption. It should be noted that the burden of proving the entitlement to an exemption is on the debtor. *Cadle Co. v. G & G Associates*, 757 So. 2d 1278, 1279 (Fla. 4th DCA 2000).

8. Further, Defendant has not complied with post-judgment discovery required by Rule 1.560(c), Florida Rules of Civil Procedure, by completing under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, said form to be served on Plaintiff's attorney within 45 days from the date of Final Judgment.

WHEREFORE, Plaintiff, ERT 163rd STREET MALL, LLC, requests the entry of an order striking the exemption claimed by Defendant, Mercy Noel, to the extent that Defendant has failed to provide proof of facts set forth in his Claim for Exemption,

Dated: August 15, 2014

[Signature Block on Following Page]

SHUMAKER, LOOP & KENDRICK, LLP

By: /s/ Brian C. Willis

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2014, I served a true and correct copy of the foregoing, via U.S. Mail, to:

Linda Noel and Mercy Noel
275 NW 157 Street
Miami, FL 33169
Defendants

Mercy Noel
700 NE 124 St.
N. Miami, FL 33161
Defendant

Linda Noel and Mercy Noel
1212 NE 117 Street
Miami, FL 33161
Defendants

Regine M. Monestime, Esq.
Office of the City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, FL 33161
Counsel for Garnishee

/s/ Brian C. Willis
Attorney