

STATE OF INDIANA
COUNTY OF LAKE

SS:

IN THE LAKE _____ COURT

CAUSE NO. _____

STATE OF INDIANA *ex rel.*
GREGORY F. ZOELLER,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

MANUEL MONTALVO,

Defendant.

**STATE OF INDIANA'S VERIFIED MOTION FOR
TEMPORARY RESTRAINING ORDER**

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the "State"), by counsel, Luke P. Hodgin, Deputy Attorney General, respectfully moves this Court pursuant to Ind. Code § 5-11-5-1(e) and (f), Ind. Code § 34-25-2-1, and Ind. Trial Rule 65 to issue a Temporary Restraining Order against the Defendant, Manuel Montalvo ("Montalvo"), and his agents, representatives, successors, and assigns to temporarily restrain and enjoin from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing of any monies or assets owned by or in the possession of the Defendant pending hearing on the State's Motion for Prejudgment Attachment and Garnishment. In support of its Motion, the State shows the following:

1. Montalvo served as the Library Director for the East Chicago Public Library (hereinafter "Library") from 2005 until he was removed on March 16, 2011.
2. The State Board of Accounts (the "SBOA") is in the process of performing an examination of the books, accounts, and records of the Library, pursuant to Ind. Code § 5-11-1-9.

3. A preliminary report of the examination was referred by the SBOA to the Attorney General under Ind. Code § 5-11-5-1(d), which disclosed that Montalvo had wrongfully or negligently failed to properly account for, expend, and/or receive public funds of the Library, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation or diversion of public funds.

4. The Library has suffered a substantial loss of funds in excess of \$12,000.00 in reimbursements made to Montalvo for expenses which had no discernable library purpose. *See* Affidavit of Michelle Janosky, attached to and incorporated herein as Exhibit A. The Defendant is personally liable for the public funds he received, which were improperly approved or not authorized by statute, and were not properly expended or accounted for pursuant to Ind. Code § 5-11-5-1(a).

5. A cause of action is not required to be filed in order to pursue a prejudgment attachment in this matter pursuant to Ind. Code § 34-25-2-1(c).

6. If the Defendant is not restrained from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise dissipating property in his possession or control, including, but not limited to, real estate located at 5612 Wegg Avenue, East Chicago, Indiana 46132; bank accounts; vehicles, including but not limited to, (1) Buick Park Avenue, VIN JN1HT2118HT037727; (2) 1995 Ford Escort LX, VIN 1FASP11J1SW314232; (3) 1995 Honda Passport, VIN 4S6CG58V2S4404826; (4) 2002 Audi A4 1.8 Turbo, VIN WAUJC68E62A313031; (5) 2003 Lexus ES 300, VIN JTHBF30G330139774; and (6) 2005 Saab 9-3 Linear, VIN YS3FB49S351015876; and any deferred compensation or retirement plans in Montalvo's name, the State of Indiana and the East Chicago Public Library will be irreparably harmed.

7. There is the likelihood that such property has been or may be sold, conveyed, or otherwise disposed of with the fraudulent intent to cheat, hinder, or delay the State of Indiana and the East Chicago Public Library.

8. A temporary restraining order is necessary to preserve the status quo until the issues raised in the State's Motion for Prejudgment Attachment and Garnishment can be heard and considered at a hearing.

9. Pursuant to T.R. 65(B)(1) the State verified its Motion and attached an affidavit.

10. Pursuant to T.R. 65(B)(2) the State gave oral notice to the Defendant in the morning of March 22, 2011, of the State's intention to file this Motion, and will provide personal service in the afternoon of March 22, 2011.

11. The State of Indiana is a governmental organization and is not required to offer security pursuant to T.R. 65(C).

12. The State requests the Court to set the State's Motion for Prejudgment Attachment and Garnishment for a hearing within ten (10) days; specifically, on or before April 1, 2011.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests the Court to (1) issue an order restraining the Defendant, Manuel Montalvo, and his agents, representatives, successors, and assigns from disposing in any manner or by any means property including, but not limited to, real estate located at 5612 Wegg Avenue, East Chicago, Indiana 46132; bank accounts; vehicles, including but not limited to, (1) Buick Park Avenue, VIN JN1HT2118HT037727; (2) 1995 Ford Escort LX, VIN 1FASP11J1SW314232; (3) 1995

Honda Passport, VIN 4S6CG58V2S4404826; (4) 2002 Audi A4 1.8 Turbo, VIN WAUJC68E62A313031; (5) 2003 Lexus ES 300, VIN JTHBF30G330139774; and (6) 2005 Saab 9-3 Linear, VIN YS3FB49S351015876; and any deferred compensation or retirement plans in Montalvo's name pending hearing on the State's Motion for Prejudgment Attachment and Garnishment, and (2) grant the State all other just and proper relief.

I affirm under the penalties of perjury that the foregoing representations are true and correct to the best of my knowledge

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgkin
Deputy Attorney General
Attorney No. 27162-49

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was duly served upon the party listed below by personal service on this 22nd day of March, 2011:

Manuel Montalvo
5612 Wegg Avenue
East Chicago, IN 46132

Luke P. Hodgins
Deputy Attorney General

Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, Fifth Floor
Indianapolis, IN 46204-2770
Telephone: (317) 232-6356
Facsimile: (317) 232-7979

STATE OF INDIANA

COUNTY OF LAKE

STATE OF INDIANA *ex rel.*
GREGORY F. ZOELLER,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

MANUEL MONTALVO,

Defendant.

SS:

IN THE LAKE _____ COURT

CAUSE NO. _____

TEMPORARY RESTRAINING ORDER

This cause having come before the Court on the Plaintiff's Motion for Temporary Restraining Order, and the Court, having considered the Plaintiff's Motion and the allegations contained in the Affidavit of Michelle Janosky, now finds as follows:

1. On March 22, 2011, the Plaintiff filed a Motion for Prejudgment Attachment and Garnishment requesting that the Court enter an order for prejudgment attachment of property in the name of Manuel Montalvo, and restrain Montalvo and his agents, representatives, successors, and assigns from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant's possession or control.

2. Unless restrained, Montalvo may dispose of property held in his name prior to the hearing on the Plaintiff's Motion for Prejudgment Attachment and Garnishment.

3. Unless Montalvo is restrained from spending, transferring, delivering, or otherwise disposing of funds and property, the Plaintiff will be irreparably harmed due to the likelihood that such funds and property will be disposed or dissipated.

4. A temporary restraining order is necessary to preserve the status quo until the issues raised in the Plaintiff's Motion for Prejudgment Attachment and Garnishment can be heard and considered at hearing.

5. The Plaintiff is a governmental organization and is not required to offer security pursuant to Rule 65(C) of the Indiana Rules of Procedure.

6. The Plaintiff's Motion for Temporary Restraining Order should be granted.

IT IS THEREFORE ORDERED by the Court that the Defendant, Manuel Montalvo, and his agents, representatives, successors, and assigns is restrained from transferring, delivering, or otherwise allowing the disposition of real estate located at 5612 Wegg Avenue, East Chicago, Indiana 46132; bank accounts; vehicles, including but not limited to, (1) Buick Park Avenue, VIN JN1HT2118HT037727; (2) 1995 Ford Escort LX, VIN 1FASP11J1SW314232; (3) 1995 Honda Passport, VIN 4S6CG58V2S4404826; (4) 2002 Audi A4 1.8 Turbo, VIN WAUJC68E62A313031; (5) 2003 Lexus ES 300, VIN JTHBF30G330139774; and (6) 2005 Saab 9-3 Linear, VIN YS3FB49S351015876; and any deferred compensation or retirement plans in Montalvo's name pending hearing on the Plaintiff's Motion for Prejudgment Attachment and Garnishment.

Date: _____

Judge, Lake _____ Court

Distribution:

Manuel Montalvo
5612 Wegg Avenue
East Chicago, IN 46132

Luke P. Hodgin
Office of the Indiana Attorney General
302 West Washington Street
Indiana Gov't Center South, 5th Floor
Indianapolis, IN 46204-2770

SUMMONS

STATE OF INDIANA

IN THE LAKE _____ COURT

COUNTY OF LAKE

SS:

CAUSE NO. _____

STATE OF INDIANA *ex rel.*,
GREGORY F. ZOELLER,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

MANUEL MONTALVO,

Defendant.

To Defendant: Manuel Montalvo
5612 Wegg Avenue
East Chicago, IN 46132

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above. The Court's Address and Phone are: Lake Circuit/Superior Court, 2293 North Main Street, Crown Point, IN 46307, (219) 755-3461

The nature of the suit against you is stated in the Motions which are attached to this document. It also states the demand which the Plaintiff has made and wants from you.

You may answer the Motions in writing, or judgment will be entered against you for what the Plaintiff has demanded.

If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Date _____

Clerk, Lake Superior/Circuit County Court (Seal)

GREGORY F. ZOELLER, ATTORNEY GENERAL OF INDIANA
BY: LUKE P. HODGIN, DAG, ATTY NO. 27162-49
302 WEST WASHINGTON STREET, FIFTH FLOOR
INDIANAPOLIS, IN 46204
(317) 232-6356

STATE OF INDIANA
COUNTY OF LAKE

SS:

IN THE LAKE _____ COURT

CAUSE NO. _____

STATE OF INDIANA *ex rel.*
GREGORY F. ZOELLER,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

MANUEL MONTALVO,

Defendant.

**STATE OF INDIANA'S MOTION FOR
PREJUDGMENT ATTACHMENT AND GARNISHMENT**

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the "State"), by Luke P. Hodgin, Deputy Attorney General, pursuant to Ind. Code § 34-25-2-1, Ind. Code § 5-11-5-1(f), and Rule 64 of the Indiana Rules of Trial Procedure, moves this Court for an Order of Attachment and Garnishment, and directing the Sheriff of Lake County to seize and hold, without bond, pending action on the State's claim for the recovery of public funds and costs, the following property belonging to the Defendant, Manuel Montalvo ("Montalvo"):

A. Any and all checking and savings accounts currently in possession, control, or containing the name of Manuel Montalvo.

B. Any proceeds from the sale of real property located at 5612 Wegg Avenue, East Chicago, Indiana 46312.

C. Any benefits and/or contributions made on behalf of Manuel Montalvo by the Public Employees Retirement Fund (PERF).

D. Any proceeds from the sale of any vehicles, including, but not limited to: (1) Buick Park Avenue, VIN JN1HT2118HT037727; (2) 1995 Ford Escort LX, VIN 1FASP11J1SW314232; (3) 1995 Honda Passport, VIN 4S6CG58V2S4404826; (4) 2002 Audi

A4 1.8 Turbo, VIN WAUJC68E62A313031; (5) 2003 Lexus ES 300, VIN JTHBF30G330139774; and (6) 2005 Saab 9-3 Linear, VIN YS3FB49S351015876.

The State makes this Motion on the following grounds:

1. On March 22, 2011, the State filed its Verified Motion for Temporary Restraining Order against the Defendant, Manuel Montalvo.

2. The State's Motion for Temporary Restraining Order is based on the recovery of public funds due the State of Indiana and the East Chicago Public Library from the Defendant as set forth in Ind. Code § 5-11-5-1(d), which were disclosed in a preliminary report prepared by the State Board of Accounts and sent to the Office of the Attorney General pursuant to Ind. Code § 5-11-5-1(e).

3. Indiana Code § 5-11-5-1(f) gives the Attorney General the authority to attach the Defendant's property under Ind. Code § 34-25-2-1.

4. The basis of the allegations in the State Board of Accounts' preliminary report is contained in the Affidavit of Michelle Janosky, Field Examiner for the State Board of Accounts, which is attached to the State's Motion for Temporary Restraining Order as Exhibit A. The Defendant is personally liable for the public funds he received, which were improperly approved or not authorized by statute, and were not properly expended or accounted for pursuant to Ind. Code § 5-11-5-1(a).

5. A cause of action is not required to be filed in order to pursue an attachment and garnishment under Ind. Code § 34-25-2-1(c).

6. There is a likelihood that the property identified in Paragraphs A, B, C, and D above have been or may be sold, conveyed, or otherwise disposed of with the fraudulent intent to cheat, hinder, or delay the State of Indiana and the East Chicago Public Library. *See* Ind. Code § 34-25-2-1(b)(5) and (6).

7. Unless the property is attached, the State will be precluded or inhibited in the collection of any judgment that might be entered in this action.

8. Pursuant to Ind. Code § 4-6-3-2(b) and Ind. Code § 34-25-2-5, the State is exempt from any bond, surety, or written undertaking.

WHEREFORE, pursuant to Ind. Code § 34-25-2-1 and Ind. Code § 5-11-5-1(f), and Rule 64 of the Indiana Rules of Trial Procedure, the State respectfully requests the Court to: (1) issue an Order of Attachment and Garnishment directing the Sheriff of Lake County to attach or garnish the property of the property currently in possession of the Defendant, and serve the Defendant with notice of the attachment of property, and (2) grant the State all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgin
Deputy Attorney General
Attorney No. 27162-49

Office of the Attorney General
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204
Phone: (317) 232-6356
Fax: (317)232-7979

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was duly served upon the party listed below by personal service on this 22nd day of March, 2011:

Manuel Montalvo
5612 Wegg Avenue
East Chicago, IN 46312

Luke P. Hodgin
Deputy Attorney General

Office of the Attorney General
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204
Phone: (317) 232-6356
Fax: (317)232-7979

STATE OF INDIANA
COUNTY OF LAKE

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GREGORY F. ZOELLER,
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MANUEL MONTALVO,

Defendant.

**ORDER SETTING HEARING ON STATE OF INDIANA'S MOTION FOR
PREJUDGMENT ATTACHMENT AND GARNISHMENT**

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, having filed its Motion for Prejudgment Attachment and Garnishment in the above cause, and the Court being duly advised in the premises, now sets a hearing on the State's Motion for Prejudgment Attachment and Garnishment for the ____ day of _____, 2011, at _____ a.m. / p.m.

Dated: _____

Judge, Lake _____ Court

Distribution:

Manuel Montalvo
5612 Wegg Avenue
East Chicago, IN 46312

Luke P. Hodgin
Office of the Attorney General
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

STATE OF INDIANA
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SS:

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STATE OF INDIANA *ex rel.*
GREGORY F. ZOELLER,
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Defendant.

**AFFIDAVIT IN SUPPORT OF
PREJUDGMENT ATTACHMENT AND GARNISHMENT**

I, Luke P. Hodgin, make the following statement based upon my personal knowledge of the following facts:

1. I am a Deputy Attorney General, and serve as counsel for the State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the "State"), in this cause.

2. I have personal knowledge of the facts set forth herein.

3. On or about March 22, 2011, the State filed a Motion for Temporary Restraining Order against the Defendant, Manuel Montalvo ("Montalvo"), which disclosed that Montalvo wrongfully or negligently failed to properly account for, expend, and/or receive public funds of the East Chicago Public Library, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation or diversion of public funds in violation of Ind. Code § 5-11-5-1(d).

4. The State Board of Accounts submitted a preliminary report to the Office of the Attorney General pursuant to Ind. Code § 5-11-5-1(e).

5. I reviewed the preliminary report submitted by the State Board of Accounts as well as the workpapers prepared by Field Examiner Michelle Janosky.

6. I reviewed the document prepared by Field Examiner Michelle Janosky that summarizes the inappropriate travel reimbursement and other reimbursements and forms the basis for this action.

7. The State of Indiana's claim is just.

8. The State of Indiana is seeking damages in this cause, including the loss of public funds to the East Chicago Public Library in an amount in excess of Twelve Thousand Dollars (\$12,000.00), plus costs and attorney fees.

9. One or more grounds for an attachment is present and articulated in the State's Verified Motion for Temporary Restraining Order, including the Plaintiff believes that the Defendant, Manuel Montalvo, is about to sell, convey, or otherwise dispose of the Defendant's property subject to execution with the fraudulent intent to cheat, hinder, or delay the State of Indiana and the East Chicago Public Library from recovering public funds that were unlawfully misappropriated or diverted. *See* Ind. Code § 34-25-2-1(b)(5) and (6).

I affirm under the penalties of perjury that the foregoing representations are true.

Luke P. Hodgkin
Deputy Attorney General

State of Indiana

County of Marion

SS:

Before me, a Notary Public for said County and State, personally appeared Luke P. Hodgin on this 22nd day of March, 2011, and being first duly sworn by me upon his oath, says that the facts alleged in the foregoing instrument are true.

Commission Expires: _____

County of Residence: _____

Signature

Printed Name