



**IT IS ORDERED as set forth below:**

**Date: September 3, 2013**

**Barbara Ellis-Monro  
U.S. Bankruptcy Court Judge**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:

ConectL Corp.,

CASE NO. 10-00607-BEM

Debtor.

CHAPTER 7

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Gary L. Rainsdon, Trustee,

Movant,

v.

Contested Matter

Anestel Corporation, f/k/a Conectl Test  
Corporation, Inovin, Inc., f/k/a Exact  
Research, Inc. R-Tec Corporation, et al.,

Respondent.

Audiovox Electronics Corporation,

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Garnishee.

**ORDER DENYING REQUEST FOR DEFAULT JUDGMENT**

This matter comes before the Court to consider the “Default Judgment Against Garnishee” filed by Maurice Bailey, assignee of Gary L. Rainsdon, Trustee (“Movant”). [Doc.

No. 13]. Movant appears in this proceeding, *pro se*. The Court construes the paper filed by Movant as a “Request for Entry of Default Judgment” (the “Request”).

On or about June 10, 2013, Movant filed an Affidavit and Request for Writ of Execution which resulted in the issuance of a Writ of Execution on June 12, 2013, by the Clerk of the Bankruptcy Court. [Doc. No. 7]. Thereafter, on July 19, 2013, a one page “Affidavit of Service of: Writ of Execution To The United States Marshall; Affidavit And Request For Issuance Of Writ Of Execution Memorandum (5)” was filed with this Court. [Doc. No. 8]. The proof of service states that Lee Gauthreaux of Gwinnett County Georgia delivered one copy of the documents identified in the proof of service on the CSC Coordinator of Audiovox Electronic Corporation on June 21, 2013. Copies of the documents delivered were not included with the proof of service. On August 19, 2013, a proof of service was filed with this Court stating that Movant sent the “Writ of Execution and Affidavit and Application for Writ of Execution and Memorandum of Garnishee” by certified mail to Lin Shiung Enterprise Co. Ltd. in Taiwan. [Doc. No. 11]. Copies of the United States Postal Service Return Receipt for International Mail were included with this proof of service, but no copies of the papers mailed were included with the proof of service. On or about August 29, 2013, Movant delivered the Request to the Court.

Pursuant to Fed.R.Civ.P. 69(a), applicable in this Court pursuant to Fed.R.Bankr.P. 7069, execution on federal money judgments is to be accomplished in compliance with the law of the state in which the court assisting with execution is located. *See Apostolic Pentecostal Church v. Colbert*, 169 F.3d 409 (6<sup>th</sup> Cir. 1999); Fed. R. Bankr. P. 7069(a)(1). Thus, Georgia law applies to the Request. In the Request, Movant seeks entry of a default judgment pursuant to O.C.G.A. 18-4-90 based upon service of “a Memorandum of

Garnishment . . . as provided by law, and no response or answer to the garnishment has been filed.” [Doc. No. 13].

In order for the Request to be granted Movant must serve a garnishment summons on the garnishee and provide notice to the judgment debtor of such service. OCGA §§ 18-4-62, 18-4-64; *See also, Cook v. NC Two, LP*, 289 Ga. 462 (2011). Here, no garnishment summons has been issued. Movant has not filed any pleading seeking issuance of a garnishment summons. To the extent Movant is relying on the Affidavit and Request For Issuance Of Writ Of Execution, the Affidavit fails to comply with O.C.G.A. §18-4-61 because it does not contain the name of the Court issuing the judgment, the case number in that court or the approval required by O.C.G.A. §18-4-61.

The Writ of Execution issued in this proceeding does not constitute a garnishment summons and cannot form the basis for issuance of a default judgment against a third party garnishee, for among other reasons, because the Writ does not state “that if the garnishee fails to file a garnishee’s answer to the summons, a judgment by default will be entered against the garnishee for the amount claimed by plaintiff against the defendant.” *See* O.C.G.A. §18-4-62. Further, the proof of service filed on August 19, 2013, references mailing of a “Memorandum of Garnishee.” This document is not of record. Thus, the Court cannot determine if it satisfies the requirements of O.C.G.A. §18-4-61. Finally, the Request was not accompanied by a motion and memorandum of law as required by Bankruptcy Local Rule (BLR) 7007-1.

There being no evidence in the record that Movant has complied with the requirements of Georgia law as set forth in O.C.G.A. 18-4-60 *et. seq.* it is hereby

ORDERED that the Request for Default Judgment Against Garnishee is  
DENIED.

**END OF ORDER**

### **Distribution List**

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