

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2013/CLE/gen/FP/00144

Between:-

FAMILY GUARDIAN INSURANCE COMPANY LIMITED

Plaintiff
(Judgment Creditor)

AND

1) CHRISTOPHER E. KNOWLES

2) DEBORAH D. KNOWLES

Defendants
(Judgment Debtors)

AND

FREEPORT INSURANCE AGENTS & BROKERS LIMITED

Garnishee

RULING

Before: Mr. R. Dawson Malone
Assistant Registrar (Acting)

Appearances: Mrs. Aisha Stuart Smith
Counsel for the Plaintiff

Hearing dates: 6th and 8th July, 2016

Introduction

1. This ruling is in respect of an ex parte application brought by the Plaintiff, Family Guardian Insurance Company Limited (who is also the Judgment Creditor) (“Family Guardian”) seeking leave to issue a garnishee order nisi requiring Freeport Insurance Agents & Brokers Limited (“FIABL”) to show cause why any funds held by FIABL which are owing to its employee, the 2nd Defendant, Deborah D. Knowles (“Ms. Knowles”) should not be paid to Family Guardian to satisfy 50% of the judgment herein.

Background

2. On 23rd May, 2008, Family Guardian, as lender, entered into a loan agreement with the Defendants, as borrowers.
3. Family Guardian commenced this case by way of a specially indorsed Writ of Summons filed on 25th March, 2013 for the following relief:

- (1) The principle sum of \$301, 2016.31;*
- (2) Interest on the said principle sum to March 19, 2013 in the amount of \$8,757.56;*
- (3) Interest on the said principle sum from [sic] to March 19, 2013 at the rate of 8.50% per annum or \$70.14 per diem until judgment or payment.*
- (4) Such further or other relief as to the Court deems just.*
- (5) Costs.”*

4. The writ was served on Ms. Knowles on the 28th March 2013 (according to the affidavit of service sworn by Wendell Seymour on 5th April, 2013).
5. On 9th April, 2013, an appearance was entered on behalf of the Defendants by Dorsette Law Chambers.

6. Notwithstanding the entry of appearance on behalf of the Defendants, on 30th April, 2013, Family Guardian filed a Summons for leave to enter judgment in default of appearance by the Defendants. The summons was supported by an affidavit sworn by Shirlyn H. Brathwaite also filed on 30th April, 2013.
7. On 14th June, 2013, a Notice of Change of Attorney was filed by the 1st Defendant (“Mr. Knowles”) which provided that he would be acting pro se on behalf of himself and Ms. Knowles in the place of Dorsette Law Chambers.
8. On 17th July, 2013, learned Counsel for Family Guardian and Mr. and Mrs. Knowles appeared before the learned Deputy Registrar, Ms. Stephana J. Saunders, and, leave was granted to Family Guardian to enter judgment in default against the Defendants. The default Judgment was subsequently filed on 7th August, 2013.
9. According to the affidavit of service sworn by Wendell Seymour which was filed on 17th September, 2013, the Defendants were served with *inter alia* the Judgment in Default of “*Appearance*” filed on 7th August, 2013. I have reviewed the file and the only judgment in default I saw was the Judgment in Default of Defence filed on 7th August, 2013.
10. On 19th February, 2015, Family Guardian filed a Notice of Change of Attorney from Messrs. Graham, Thompson & Co to Messrs. McKinney, Bancroft & Hughes and also filed a Notice of Intention to Proceed.
11. On 26th February, 2015, Family Guardian filed an ex parte summons supported by the affidavit of Kimberly Darville seeking *inter alia* leave to examine the Defendants as to their means in order to satisfy the judgment in default of Defence (“the Judgment”). The Order requiring the Defendants to be examined was granted on 10th March, 2015.

12. According to the affidavit of service of Police Constable 3247, Akeem Oliver (filed on 6th May, 2015); Mrs. Knowles was served *inter alia* with an Order for examination on 7th April, 2015.
13. The examination of Mr. and Mrs. Knowles as to their means took place before the learned Deputy Registrar, Ms. Stephana J. Saunders, on 21st May, 2015.
14. Subsequent to the examination of both Defendants, Family Guardian filed a number of applications seeking leave to issue show cause notices to the Defendants' respective employers and bankers as intended garnishees.
15. In relation to Mr. Knowles, a Garnishee Order Absolute was filed on 30th March 2016 and it was issued against his account at Scotiabank (Bahamas) Limited in respect of 50% of the Judgment.
16. In relation to Ms. Knowles, Family Guardian filed the following: (i) an Ex Parte Summons filed 7th July, 2015 against FIABL for seeking to issue a garnishee order nisi in connection with her salary; and (ii) an Ex Parte Summons filed 1st October, 2015 against RBC Royal Bank (Bahamas) Limited for any monies held in her account(s).
17. The hearing of the show cause notice against RBC Royal Bank (Bahamas) Limited took place on 18th May, 2016. It transpired during the hearing that Ms. Knowles' account at RBC was overdrawn. As a result, the hearing was adjourned to allow counsel to confer and revert.
18. Notwithstanding the extant ex parte summons filed 7th July, 2015 seeking a nisi garnishee order against FIABL, on 27th June, 2016 Family Guardian issued a similar application which is the subject of this ruling.

The Application

19. As indicated above, the application is made by way of ex parte Summons seeking, *inter alia*, the following:

“a garnishee order that all debts due or accruing due from Freeport Insurance Agents & Brokers Limited the above named Judgment Debtor/Deborah D. Knowles, be attached to answer fifty percent (50%) of a judgment recovered against the said Judgment Debtor Deborah D. Knowles by the above named Judgment Creditor in the Supreme Court dated the 7th day of August, 2013 which Judgment remains due and unpaid”

20. The application was supported by the affidavit sworn by Nakia Cooper-Williams filed on 27th June, 2016 entitled “Affidavit in support of Application for Garnishee Order” wherein the affiant deposes, *inter alia*, as follows:

“1 That I am a Legal Assistant in the law firm of McKinney, Bancroft & Hughes and I am duly authorized to make this Affidavit on behalf of the Judgment Creditor herein.

2 By an Order dated the 17th day of July A.D., 2013 given in this action by Deputy Registrar Ms. Stephana J. Saunders it was ordered that the Plaintiff be granted leave to enter Judgment in Default of Defence against the Defendants in this action. By a Judgment dated the 7th day of August, 2013 it was adjudged that the Judgment Debtors should pay the above named Judgment Creditor the total sum of \$309,693.87 representing the principal sum of \$301,206.31 together with interest in the amount of \$8,757.56 calculated to the 19th day of March 2013 and continuing to accrue at the rate of \$70.14 per diem until August 7, 2013 and thereafter at the rate of 6.75% per annum pursuant to the Civil Procedure (Award of Interest) Act, 1992 until payment in full and costs to be taxed if not agreed. There is attached hereto and marked “NCW-1” a copy of the said Judgment.

3 That the said judgment remains unsatisfied.

- 4 *That to the best of my information or belief, I verily believe that Freeport Insurance Agents & Brokers Limited will be indebted to the Judgment Debtor/ Deborah D. Knowles from time to time for the duration of the Judgment Debtor's employment with Freeport Insurance Agents & Brokers Limited, as to salary owed to her is within the jurisdiction of this Court.*
- 5 *The grounds of my information and belief are based on the evidence given by the Judgment Debtor/ Deborah D. Knowles, in an oral examination heard on May 21, 2015 where she indicated that the Judgment Debtor/ Deborah D. Knowles, advised that she is employed as a Sales Manager with the Garnishee.*
- 6 *I make this Affidavit to have all debts due or accruing due from the Garnishee, Freeport Insurance Agents & Brokers Limited be attached to a Judgment recovered against the Judgment Debtor.*
- 7 *The contents of this Affidavit are correct and true."*

Counsel's Submissions

21. The application was first heard on 6th July, 2016 and then adjourned to 8th July, 2016 for learned Counsel to provide written submissions and authorities in support of learned Counsel's position that an employer may be compelled to be garnished in respect of its employee's salary. In other words, to assist in determining whether salary falls within the category of "debts" which may become the subject of a garnishee order.
22. By letter dated 8th July, 2016 learned Counsel wrote to the Court wherein it was submitted as follows:

"We refer to hearing set for the Garnishee Nisi Application in the captioned matter on July 5, 2016 [sic].

We had undertaken to provide authority for the Court's consideration to garnish the salary of the 2nd Defendant from her employer to cover 50% of a Judgment debt.

Order 49 rule 1(1) of the RSC states:

'Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.'

We submit that the said provisions are clear and does not specify that the garnishee must be a financial institution.

In the case of Mapleson v. Sears (1911) 105 L.T 639 cited in the Supreme Court Practice 1999 Volume 1 at page 840. It was held that a salary not yet payable could not be attached to a judgment debt until the whole of the performance had been given. Further, if at the time of granting a Garnishee Order Nisi it is discovered that there is no salary payable to the judgment debtor, then there would be no debt, either payable or accrued to attach to a Garnishee Order: Hall v. Pritchett (1877) 3 Q.B.D. 215. The debt must exist at the time of the granting of the Order Nisi.

It is our submission, that salary owed to the 2nd Defendant would be deemed debt owed to her by her employer the Garnishee.

Therefore, it is submitted that as long as the 2nd Defendant/Judgment Debtor remains in the employ of the Garnishee, she will continue to be owed her salary until the employment contract comes to an end, such being capable of attaching to the judgment debt.

It is further submitted that details can be provided by the Garnishee during the Garnishee Absolute hearing as to the

deposit account where such attachments will be held for the purpose of finalizing the Garnishee Order. The respective Bank can subsequently be served with the said Order.

Respectfully submitted.”

23. Enclosed in the letter was an extract from the Supreme Court Practice 1999, Volume 1 (“the White Book”), page 840, paragraph 49/1/48.

24. Learned Counsel’s submissions, by way of letter, is largely a re-cap of her oral submissions save for learned Counsel did take the Court through the chronology of events in this action as outlined above under the rubric “Background”.

25. The court adjourned to consider the application.

Discussion

26. Counsel has correctly identified the rule which is in operation in respect of this application – Order 49 of the Rules of the Supreme Court.¹

27. The examination of Ms. Knowles revealed that she has been employed with FIABL since 1st December, 2014 earning a gross salary \$3027.35 for her role a Sales Manager. She also outlined her various saving accounts, expenses, bills, and assets. Contrary to the oral evidence of Ms. Knowles, FIABL wrote

¹ For completeness, the garnishee proceedings is twofold. A judgment creditor who desires to take garnishee proceedings must first obtain leave to issue a notice – referred to as a nisi order – by satisfying the requirements set out in this rule. This is the stage in which the application before this court is concerned. Upon conclusion of the hearing, if successful, a notice is issued to the garnishee to appear on the day fixed (not within 7 days of service) to show cause why he should not be ordered to pay the judgment creditor the debt due from the garnishee to the judgment debtor, or so much as will satisfy the judgment and the costs entered on the garnishee summons. After the hearing, if the court is so satisfied that the debt is owing to the judgment debtor then the court make an order absolute by which the garnishee would be required to pay the debt directly to the judgment creditor in satisfaction of the judgment.

a letter dated 10th April, 2015 to Family Guardian advising it that Ms. Knowles was currently employed by the company earning a gross salary of \$3,333.33 per month and, after National Insurance payments and medical insurance, her monthly salary is \$2,933. None of this was contained in the affidavit in support of the application.

28. The issue which is causing this Court concern is that the ultimate goal under the garnishee process is to have debts owing to a judgment debtor paid to a judgment creditor and, although the process is simply seeking an order for Ms. Knowles' employer, the intended Garnishee - FIABL, the purpose as submitted by learned Counsel is for Ms. Knowles' future salary/wages to be garnisheed.

29. The question that arises therefore is whether a judgment debtor's salary/wages is a debt and whether it can garnished.

30. Learned Counsel is indeed correct that Order 49 of the Rules of the Supreme Court do not expressly prohibit an employer from being a Garnishee and wages/salary from being an attachable debt for the purposes of Garnishee proceedings however, Order 49 refers to a debt that is due implying an existing debt. This is further supported the rules requirement that the affidavit in support of the application must state that a garnishee is indebted to the judgment debtor which again suggests an existing debt.

31. The Supreme Court Practice 1999, Volume 1, (the "White Book") provides guidance as to the operation of the garnishee proceedings.

32. Upon review of the extract from the White Book provided by learned Counsel it is noteworthy that the paragraph relied upon concerns "*Cases where there is no attachable debt*" in garnishee proceedings (see White Book, page 839).

33. Learned Counsel referred to the case of *Mapleson v Sears* (1911) 105 L.T. 639 to support her submission “*that as long as the 2nd Defendant/Judgment Debtor remains in the employ of the Garnishee, she will continue to be owed her salary until the employment contract comes to an end, such being capable of attaching to the judgment debt.*” Counsel did not provide a copy of the case however the Court obtained and reviewed the same.

34. With respect to learned Counsel, the Court does not agree that the case supports the proposition upon which it is advanced. The Court’s reading is that the case simply supports the proposition that an employer can be the subject of a garnishee order but ONLY in respect of salary due at the date in which the order is made. That rationale is sound in this Court view’s because that is a “debt” owing as at the time the order is made. This is consistent with Bankes LJ in *O’Driscoll v Manchester Insurance Committee* [1915] KB 499 at 516; and also Scott LJ in *Heppenstall v Jackson, Barclays Bank, Limited (Garnishees)* [1939] 1 KB 585 at 592.

35. The White Book also referred to additional cases which the Court went on to consider and, the Court found those cases to be of particular assistance in preparing this ruling.

36. In *Hall v Pritchett* (1878) 3 Q.B.D 215, the court held that salary not yet payable can not be the subject of a garnishee order. Most emphatically, albeit *per curiam*, Cockburn CJ and Mellor J, at 217, held “*We think that the future salary cannot be attached, . . .*”

37. In *Holmes v Millage* [1893] 1 QB 551 at 557, Lindley LJ in considering an application for the appointment of a receiver for the purpose of the enforcement of a judgment, made the following observation: “*the difficulty arises from the fact that future earnings are not by law attachable by any process of execution direct or indirect.*” This statement by his Lordship of the

English Court of Appeal is, in this Court's humble view, of general import and equally applicable as it relates to garnishee proceedings.

38. The foregoing authorities applied eerily similar provisions to the Order 49 of the Rules of the Supreme Court and amplify that future salary, future wages, and future earning are not within the meaning of "debts" capable of being the subject of a garnishee order.

39. This conclusion is further fortified by the learned author and Professor, Gilbert Kodilyne, co-author of the text *Commonwealth Caribbean Civil Procedure*, 2ed, 2005, wherein the authors examined the Rules of the Supreme Court in relation to garnishee proceedings, and opined (p. 211) that "*[a] future debt (such as salary) cannot be garnished.*"

40. For completeness, although not discussed above, the Court also considered a number of additional authorities including and, not limited to, *Jones v Thompson*, E.B. & E 63; 27 L.J. (Q.B.) 234; *Wenn v Stenton and others* [1883] 6 QB 518; and *Moore v Peachy* (1891-92) 8 TLR 406 which are helpful in considering the legal principles in relation garnishee proceedings however, they were not specially required to be discussed based on the key issue before the Court.

Conclusion and Disposition

41. The application seeks to recover Ms. Knowles' salary payments from FIABL by way of garnishee to satisfy the 50% of the Judgment.

42. As to Learned Counsel's submission as to the debt that FIABL holds in favor of Ms. Knowles, the evidence adduced provides that "*from time to time for the*

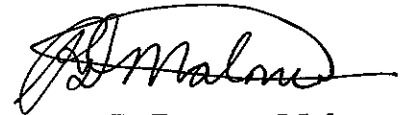
duration of [Ms. Knowles'] employment with [FIABL], as to salary owed to her". This is not a debt within the meaning of Order 49.

43. Accordingly, the Court holds that future salary/wages are not capable of being an attachable debt within the ambit of garnishee proceedings.

44. In light of the foregoing, the application is dismissed.

45. There is no order as to costs.

Dated the 28th day of July, 2016

A handwritten signature in black ink, appearing to read "R. Dawson Malone", with a large, sweeping flourish above the name.

R. Dawson Malone
Assistant Registrar (Acting)