

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCv2015/0016

BETWEEN:

BERTYL ERICSON WESTE

Claimant/Judgment Creditor

AND

NATHANIEL MAYNARD

Defendant/Judgment Debtor

SUBWAY SNACKETTE

Garnishee

APPEARANCES:

Kivinee Knight-Edwards for the Claimant/Judgment Creditor

Sherfield Bowen for the Defendant/Judgment Debtor

Kwame L. Simon for the Garnishee

2023: 8th December;
2024: 7th March

DECISION

- [1] **WILLIAMS, J:** This is an application for attachment of debts filed on 30th March 2023 made pursuant to Part 50 of the Civil Procedure Rules 2000 which were then in force. The Judgment Creditor seeks to attach debts owed by “Subway Snackette” to the Judgment Debtor. According to the affidavit in support of the application the Judgment Debtor leases commercial premises to the Garnishee described as Subway Snackette.
- [2] The Judgment Creditor’s affidavit in support of the application states that a Judgment Summons has been obtained against the Judgment Debtor. However, despite several orders of this court, the Judgment Debtor has only made sporadic payments towards the Judgment Debt.
- [3] A provisional attachment of debts order was made on 11th July 2023 and the Garnishee was served with the provisional order on 24th July 2023. On 30th August 2023 an affidavit was filed by Sonja Watkins on behalf of the Garnishee. Ms. Watkins states at paragraph 2 of her affidavit that JMG Holdings Ltd. operates a Subway franchise restaurant in premises located at Old Parham Road owned by the Judgment Debtor. Ms. Watkins further deposes that she is sole director of the company and exhibits the relevant company documents in support. This is important to note and will be examined in further detail shortly.

[4] Apparently, the lease was for a term of three years from 1st July 2020 at a monthly rental of \$3300.00. Although the term of the lease has expired, the company remains in possession. A copy of the lease agreement is exhibited and confirms that the agreement is between Althea Maynard and the Judgment Debtor as lessors and JMG Holdings Ltd as lessee.

[5] The Judgment Debtor for his part by affidavit filed on September 8th 2023 opposes the application. Essentially the Judgment Debtor alleges that a Judgment Summons is in effect against him which requires him to pay the sum of \$3000.00 monthly to the Judgment Creditor. He also states that he has consistently paid this sum to the Judgment Creditor and to date has paid over \$100,000.00. He further states that the present application is an abuse of process as the income received from the lease has already been taken into account by the court.

[6] CPR Rule 50.2(3) provides as follows:

“(3) A debt may be attached if it –

(a) is due or accruing due to the judgment debtor from the garnishee on the date that the provisional order under rule 50.3 is served on the garnishee; or

(b) becomes due or accrues due to the judgment debtor at any time between the service of the provisional order under rule 50.3 and the date of the hearing.”

ISSUES

[7] The issues to be determined are as follows:

1. Whether there is a debt “due or accruing due” from the garnishee to the Judgment Debtor in accordance with CPR Rule 50.2(3)?

2. If so, whether an order for an attachment of such debt should be made?

Debt Due or Accruing Due

[8] At the hearing of the application the question was raised as to whether rent due to a landlord could be attached pursuant to CPR Part 50? I have found no direct authority from the Eastern Caribbean on this point however **Blackstone’s Civil Practice** states:

“It is possible to obtain a third-party debt order only over debts due to the judgment debtor. Examples are money in a bank account, trade debts, judgment debts and debt due to a landlord. Conversely, claims for damages, matrimonial maintenance orders and salary not presently payable are not attachable.”¹

Should an order be made?

[9] Thus, in principle the rent payable to the Judgment Debtor by JMG Holdings Ltd. is attachable. This is especially true in this case since the rent is payable in advance at the beginning of every month.

¹ Blackstones Civil Practice 2020 Paragraph 79.23

[10] However, certain complications arise. The first being that the lease agreement exhibited to the affidavit of Sonja Watkins indicates that the lease is between Nathaniel and Althea Maynard and JMG Holdings Ltd. Althea Maynard has not been served with these proceedings thus rendering it impossible to make an order concerning a lease which she is a party to.

[11] Secondly, the Garnishee is described as Subway Snackette in circumstances where the documents provided by the Garnishee reveal no such entity. JMG Holdings Ltd. through its Director Sonja Watkins has identified itself as operating a franchise restaurant under the Subway brand. Upon receiving this information, it was open to the Judgment Creditor to seek to amend the application to refer to JMG Holdings Ltd. instead of Subway Snackette as the Garnishee. This was not done.

[12] In the circumstances the court has no alternative but to discharge the provisional order made on 11th July 2023. JMG Holdings Ltd. is entitled to costs pursuant to CPR Rule 50.2(5).

[13] During the course of this hearing, it was noted that there are discrepancies between what the Judgment Debtor alleges he has paid towards the judgment debt and what the judgment creditor claims to have received. The instant application is not the appropriate forum to resolve this dispute. Thus, the court will list the judgment summons which is already in effect for further review.

[14] It is ordered as follows:

1. The provisional order made on 11th July 2023 is hereby discharged.
2. JMG Holdings Ltd. is entitled to the costs of this application to be assessed if not agreed within 21 days of this order.
3. The Judgment Debtor is to continue making payments of \$3000.00 to the Judgment Creditor on the last day of every month.
4. The judgment summons filed herein on 20th December 2018 is listed for further hearing on 14th June 2024.
5. The Judgment Creditor shall have carriage of this order.

Rene Williams

High Court Judge

By The Court

Registrar