

EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCv2011/0413

BETWEEN:

[1] THE ATTORNEY GENERAL

[2] COMMISSIONER OF POLICE

Applicants/Judgment Creditors

And

MELVIN DAVID ANDERSON

Respondent/ Judgment Debtor

And

FINANCIAL SERVICES REGULATORY COMMISSION

BOARD OF TRUSTEES

Garnishee

Appearances

Mr. Carla Brookes- Harris for the Applicants

Dr. David Dorset for the Respondent

2016: October 2016: 2017: June 27

DECISION IN CHAMBERS

Introduction and brief background

[1] **LANNIS, J. [AG]:** This is an application by the applicants, the Attorney General and the Commissioner of Police filed on the 15th July 2016 for an attachment of debt order. The application is vigorously opposed.

[2] On the 15th August 2013, Justice Jennifer Remy handed down a judgment in this matter in which the respondent Melvin David Anderson claimed various reliefs including damages for breach of contract of employment, and damages for salaries withheld from September 2004 to July 2005

[3] At paragraph 81, the learned judge made the following orders:

[1] Judgment is hereby entered for the Claimant against the Defendants on the Claim as follows:

(a) The Defendants shall pay to the Claimant the sum of EC\$27,500.00 for salary withheld for the period September 2004 to July 2005;

(b) Interest on the sum of \$27,500.00 at the rate of 5% per annum from the 23rd day of June 2011 (the day of filing the claim form) to the 15th day of August 2014 (the date of judgment);

(c) Prescribed costs in accordance with rule 65.5, Civil Procedure Rules 2000 (CPR)

[2] That there be Judgment for the Defendants on their Counterclaim as follows:

(a) The Claimant shall pay to the Defendants the sum of EC\$152,400.00 being the amount due as damages for breach of the two bonds executed on 13th August 1999 and 1st August 2003;

(b) Interest on the above sum of EC\$152,400.00 at the rate of 5% per annum from the 26th day of July 2011 (the date of filing the defence and counterclaim) to the 15th day of August 2013 (the date of judgment);

(c) Prescribed costs in accordance with rule 65.65 of the CPR."

[4] By virtue of the judgment, as at 15th July 2016, (when the application was filed) Mr Anderson was entitled to \$34, 576.65 inclusive of interest and costs, and the Attorney General was entitled to \$189, 565.78 inclusive of interest and costs. After a reduction of the judgment sum in favour of the judgment debtor, the judgment debtor owed the judgment creditors the sum of \$154,991.13

[5] Mr Anderson failed to settle the debt, hence the applications for an attachment of debt order.

[6] On the 14th January 2016, this court ordered the Financial Services Regulatory Commission (FSRC) to pay to the judgment creditors the sum of EC\$66,609.12, towards satisfaction of the outstanding judgment' debt. That sum (\$66, 609.12) represented a voluntary severance package in favour of the judgment debtor.

[7] In July 2013, the FSRC and trustees appointed for the purpose executed a 'Trust Deed' creating a thrift fund referred to as the FSRC Staff Contributing Fund (the fund} for the benefit of its employees. The trustees were to be trustees of the fund¹.

[8] The judgment creditors discovered that the judgment debtor was entitled to the sum of \$17,024.00 under the fund established by the FSRC.

[9] In their present application before the court, the judgment creditors ask the court to order that the Board of Trustees (the Board) pay to the judgment creditors all debts due and owing from the Board to the judgment debtor to satisfy the judgment of Remy J.

The issue

[10] The main issue which arises on the application is whether the sum of \$17,024.00 which represents the thrift fund are trust funds held by virtue of a trust, and do not constitute a debt which can be attached.

Discussion and decision

[11] Learned counsel for the judgment debtor Dr David Dorset· (Dr Dorset) relied on the case of **In re Kayford Ltd [1975]** 1 WLR 279 for his submissions that: (a) funds designated and set aside upon trust between a trustee (in this case the FSRC) and a beneficiary of the trust (in this case Mr Anderson) are not funds available to pay debts; (b) The beneficiary of the trust is entitled to be put in funds and creditors must look elsewhere; (c) Creditors cannot look to the trust funds for satisfaction; (d) Trust funds are not monies arising out of contract creating a debt - a contractual relationship. Only debts may be attached under CPR 50. Trust funds arise out of a fiduciary relationship, which is a relationship wholly different from a contractual relationship; (e) In the circumstances, the provident fund monies held on trust by the FSRC cannot be garnished in order to satisfy the judgment debt

1 The fund is administered by a Board of Trustees. An agreement was signed between the FSRC and the Board of Trustees, which agreement is embodied in a document called a Trust Deed. dated 1st July 2013

[12] Mrs. Carla Brookes-Harris, (Mrs. Brookes-Harris) learned counsel for the judgment creditors, relied on the cases of **Sampson v Sampson 1 Ch 1860 630**; and **Greenwood Sutcliffe v Gledhill 1 Ch 1901 887** for her submission that the sum of \$17;024.00 is subject to an attachment of debt order.

[13] In **Sampson v Sampson** the court had to determine if money held under a trust for the beneficiary of a testator's son was subject to an attachment of debt order. The court held: (a) that the trusts of the income during the son's life were valid in law; (b) that the time at which the destination of any installment of income was to be determined was the moment at which that

installment either became due or was in the hands of the trustees ready for application under the trusts of the will; (3) that the son's title to the money accrued on April 16th 1895 and that the plaintiff (the son's wife who claimed an entitlement to his income) consequently never became entitled to the benefit of the discretionary trust in her favour.

[14] In **Greenwood Sutcliffe v Gledhill**, Farewell J stated at page 890:

"[I]t is plain from the decisions on the rules that a creditor can only garnish a debt after it has become due. Lindley LJ in *Webb v Stenon* says: "but is a trustee a debtor to his cestui que trust? You cannot say he is unless he has got in his hands money which is his duty to hand over to the cestui que trust; then of course he is debtor and there is no difficulty in attaching such a debt under this order."

[15] The learned judge continued at page 891:

"A Garnishee order therefore proceeds on the footing that a trustee is not only a trustee, but also by operation of the true construction of the will and the rules of law and equity a debtor as well. It is by virtue, not a continuing trusteeship, but of a new relation of debtor and creditor that a garnishee order can be obtained at all."

[16] Based on the principles set out in **Sampson's** case and **Greenwood's** case, Mrs. Brookes-Harris submitted that the sum of \$17, 024.00 became due and payable to the judgment debtor when his contract of employment with the FSRC was determined; further that the Board of Trustees not only is the trustee for the judgment debtor but also became a debtor by virtue of the Trust Deed and rules of law and equity. As the Board of Trustees is a debtor to the judgment debtor in respect of the thrift fund, to which he is entitled under the trust deed, these funds in the possession of the Board of Trustees are subject to an attachment of debt under CPR 50.1 (1), submitted Mrs. Brookes-Harris.

Disposition

[17] Upon reading the notice of application filed on the 15th July 2016, together with affidavits in support, and documents exhibited thereto;

And upon reading the affidavits in reply to the application;

And upon hearing the oral submissions, arguments and contentions of counsel for the respective parties

And upon reading the submissions in support of and in opposition to the said application filed on 15th July 2016;

And upon reading the authorities cited and relied on by counsel for the parties;

And whereas the court accepts the submissions of counsel for the applicants in preference to those of counsel for the judgment debtor; And the court, being of the opinion that the principles

enunciated by their Lordships in the authorities cited by Mrs. Brookes-Harris are applicable to the main issue raised in the instant application.

And whereas the court takes the view that the benefits to which Mr Anderson is entitled under the thrift fund are part of the remuneration for his services, and are thus available to pay debts from the 31st March 2015, the time his employment with the FSRC was determined;

THIS COURT HEREBY DECLARES that:

1. The sum of \$17,024.00 which represents the judgment debtor's entitlement under the thrift fund is subject to an attachment of debt order

AND IT IS HEREBY ORDERED that

1. Unless sufficient cause to the contrary be shown, all monies now standing to the credit of any account of the respondent /judgment debtor Melvin David Anderson, held by the Board of Trustees, the second named garnishee in the sum of EC17, 024.00, be attached to answer a judgment obtained against the respondent/judgment debtor by the above named applicants/judgment creditors on 15th August 2013, on which judgment, more than \$17,024.00 remain due and unpaid;

2. The second named garnishee Board of Trustees for the time being do attend before a sitting judge of the High Court on a date in July or September 2017 to be fixed and notified by the court office for the hearing of this application;

3. The respondent/judgment debtor or anyone notified of this order may apply to the court at any time to vary or discharge this order (or so much of it that affects that person), but anyone wishing to do so, must first inform the applicants/judgment creditors' solicitor, upon 3 days' notice.

4. The applicants/judgment creditors do comply with CPR 50.8 in respect of service of provisional orders.

5. The costs of the application for this order be paid by the respondent/judgment debtor in the sum of EC\$1000.00.

Pearletta E. Lanns

High Court Judge [Ag]