

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 1040 OF 2009

BETWEEN: ATLANTIC BANK LIMITED **Claimant**

AND

BRUCE ANTHONY BENNETT **Defendant**

BEFORE: The Hon. Mr. Justice Kenneth Benjamin, Chief Justice.

Appearance: Mr. Michel Chebat SC for the Claimant.

Dated: The 18th day of October, 2011.

JUDGMENT

[1] The Claimant obtained judgment in default of acknowledgment of service against the Defendant on February 15, 2010. The judgment was entered for the sum of \$10,530.42 together with interest at the rate of 10% per annum on the principal sum and costs.

[2] By a Notice of Application filed on September 15, 2011, the Claimant applied for the following orders:

- “1. An Order directing the Respondent/Defendant’s current employer, Government of Belize, to deduct one third of the Respondent/Defendant’s salary every month and to pay the said deduction to the Applicant/Claimant in satisfaction of the debt owed by the Respondent/Defendant to the Applicant/Claimant.
2. An Order that should the Respondent/Defendant change employers that this Order shall be binding and effective on any such employer, subject to any further Order of this Court.

3. Liberty to either party to apply.
4. Costs.
5. Any other Order the Court deems just.”

The application was stated to be made pursuant to section 110(1)(b) of the Labour Act, Cap. 297 on the ground that the Defendant is employed as a teacher at ITVET, Pomona Branch, Stann Creek District.

[3] The said application was supported by an affidavit sworn to by an officer of the Claimant Bank. It was deposed that the Defendant has no other means of satisfying the judgment debt other than by way of monthly deductions.

[4] Part 50 of the Civil Procedure Rules 2005 deals with the procedure for the payment of a judgment debt by means of an attachment of debts order in favour of the judgment-creditor, styled “the garnishee”. Rule 50.3(2), (3) and (4) provide for an application for such an order to be made without notice and for the court to first make a provisional order (historically referred to as a ‘nisi order’) without a hearing.

[5] Upon a perusal of the application, the Court invited learned Counsel for the Claimant to address the question of whether an attachment of debts order can be properly made payable by the Crown in respect of wages or salary payable to any officer of the Crown. When the matter came up for hearing, learned Senior Counsel applied for permission to withdraw the application citing section 27 of the Crown Proceedings Act, Cap. 167.

[6] The fundamental object and purpose of proceedings for the attachment of debts is the recovery by a judgment-creditor of a judgment-debt by way of an order for the payment of money owed by a third party to the judgment-debtor (see: Rule 50.1). The first step in the procedure is for an application to be made by the judgment creditor for a provisional order, which order is made

by the Court, on an interim basis, on the strength of the evidence set out in the affidavit required to be filed in support of the application (see: Rule 50.3(2) and (3)).

[7] In the present case, there is, prima facie, sworn evidence that there is a judgment-debt which remains unpaid and that the judgment-debtor is gainfully employed as a teacher by the Government of Belize. However, Rule 50.2(3) specifically provides that an attachment of debt order may not be made in respect of debts due from the Crown. Rule 59.4(1) goes on to state that Parts 44 to 53 do not apply to any order against, or money due or accruing due, or alleged to be due or accruing due from the Crown. Accordingly, the attachment of debts procedure is not available for use against the Crown as garnishee. Indeed an alternative procedure is prescribed by way of application for an order restraining the judgment-debtor from receiving money payable to him or her by the Crown and directing payment to the judgment-creditor (see: Rule 59.4(3)).

[8] The combined effect of Rules 50.2(3) and 59.4(3) is that a judgment-debt cannot be recovered from the Crown qua garnishee. This legal conclusion provides a complete answer to the query raised by the Court and would result in the inevitable denial of the application for a provisional order. However, the attachment of moneys payable by the Crown is specifically provided for in section 27 of the Crown Proceedings Act, Cap. 167. The said section states:-

“27.(1) Where any money is payable by the Crown to some person who, under any order of any court, is liable to pay any money to any other person, and that person would, if the money so payable by the Crown were money payable by a subject, be entitled under rules of court to obtain an order for attachment thereof as a debt due or accruing due, or an order for the appointment of a sequestrator or receiver to receive the money on his behalf, the Supreme Court may, subject to this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person, or to the sequestrator or receiver.

Provided that no such order shall be made in respect of –

- (a) any wages or salary payable to any officer of the Crown as such; or
- (b) any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution; or
- (c) any money payable by the Crown to any person on account of a deposit in the Government Savings Bank,.

(2) The provisions of the preceding subsection shall, so far as they relate to forms of relief falling within the jurisdiction of a district court, have effect in relation to district courts as they have effect in relation to the Supreme Court, but with the substitution of a reference to district court rules for any reference in the said subsection to rules of court.”

Sub-section (1) operates to enact statutory authority for the procedure in Rule 59.4(3). The proviso to the sub-section goes on to preclude a restraining order from being made in respect of, inter alia, “any wages or salary payable to any officer of the Crown.”

[9] The Notice of Application seeks an order against the Government of Belize giving rise to the clear acceptance that the judgment-debtor is an officer of the Crown. Therefore, the salary of the Defendant is not attachable pursuant to Part 50 nor can the Government of Belize be restrained from paying over the said salary or any part thereof to the Defendant under the alternative procedure set out in Rule 59.4(3).

[10] For the reasons set out above, the Court is not empowered to grant the application. The application made by learned Senior Counsel on behalf of the Claimant is acceded to and permission is granted to withdraw the application. Given that no service was required, there is no order as to costs.

KENNETH A. BENJAMIN
Chief Justice