**IN THE SUPREME COURT OF BELIZE A.D.2014**

**CLAIM NO. 506 OF 2013**

**BETWEEN**

**ATLANTIC BANK OF BELIZE** **CLAIMANT**

**AND**

**CECIL KNOWLES** **1st DEFENDANT**
**AMELITA KNOWLES** **2nd DEFENDANT**

**Before:** Hon. Mde Justice Shona Griffith

**Appearances:** Mr. Michel Chebat of Chebat & Co. of counsel for the Claimant.

Defendants unrepresented.

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**R U L I N G**

**Dated: 2014, May 23**

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**[ Judgment Debt – Application for Attachment of Debts – Employee's Wages- Whether Capable of being Attached - Section 110 Labour Act, Cap. 297 – CPR Part 50 – Debt Due and Accruing.]**

This matter concerns an application for enforcement of a judgment debt obtained by the Claimant Atlantic Bank Limited on 22nd November, 2013 in the sum of $43,778.06 - being arrears and interest owed on a loan extended to the Defendants by the Claimant. Two payments only were made since the date of Judgment, leaving a balance of over $42,000. Accordingly the Claimant has applied to enforce satisfaction of its Judgment.

## The Application

The Application seeks an order directing one Astrum Helicopters of George Price Highway, Belize City, as employer, to deduct one third of the Defendant's salary every month until the Judgment Debt is satisfied. (It is not clear from the Application, which Defendant or whether both, but for the purposes of the Court's consideration that information is irrelevant). The Application further seeks that in the event that the Defendant changes employers, that the order (for monthly deduction of 1/3 salary) be binding and effective on any such further employer, subject to further order of the Court.

The Application is brought pursuant to section **110(1)(b) of the Labour Act, Cap. 297 of the Laws of Belize ('the Act')**. The Application is supported by affidavit of a relevant representative of the Claimant Bank. The relief sought by the Application is very clearly for the Court to order a monthly attachment of the Defendant's earnings from the hands of his employer.

Having been moved pursuant to section 110(1)(b) of Act, the Court's first recourse was to said section whereupon an immediate reservation arose as to the appropriateness of the use of that section in grounding the application for enforcement by attachment of debt.

## The Court's Reservation

Section 110(1) (b) of the Labour Act, Cap. 297 is extracted as follows:

> ***(1) Notwithstanding any other law, the remuneration of a worker shall be liable to attachment or seizure in execution only within the following limits-***
>
> ***(a) up to one-half in respect of maintenance payments;***
>
> ***(b) up to one-third in respect of all other debts of any kind and however contracted.***
>
> ***(2) The proportions prescribed in subsection (1) shall not be applicable cumulatively on the ground that there are several debts or several creditors, the maximum proportion in all cases remaining fifty per centum of the remuneration. The sums attached or seized shall be divided among the claimants in proportion to their established claims.***

The Court's reservation arose because on the face of it, there is no application invited by section 110 to attach earnings. Instead, the section provides on the Court's interpretation, that wherever and however existing, the power to attach an employee's earnings should not exceed the stipulated restrictions of one half for maintenance debts and one third for other debts, respectively. It is not a section which creates or enables an application to attach earnings.

Having expressed this reservation to learned Senior Counsel for the Claimant, the offer was made and accepted for brief submissions regarding the correctness of the application as presented. The Court's view being to the contrary, and being advised that the application as styled is often made, it was felt prudent for the Court to reduce its views and ruling into writing.

## Submissions on behalf of the Claimant and consideration by the Court.

Learned Senior Counsel's submissions in support of the Application were twofold.

## A. Section 110, Labour Act, Cap. 297

The first limb urged the Court that the operative words of section 110(1) were 'the remuneration of a worker shall be liable to seizure and execution…as it thereafter continues. The words 'shall be liable…', it is said, can only mean that once an application is made by a judgment creditor, who satisfies the Court that a worker is gainfully employed, the Court must attach the worker's wages to satisfy the judgment debt, this to be done according to the fractions specified. I am not of the opinion that the words 'shall be liable', nor the section read as a whole, provides any basis for making an application, or in other words, provides any platform from which the Court's power to order attachment of a worker's earnings is invoked.

Legislation is deliberately drafted and schematic. If an application to the Court in respect of rights conferred is enabled by a section, it is usually expressly done and if not, can be reasonably inferred from the context of the section itself or its encompassing Part. Additionally, as is an established principle of statutory interpretation, in determining the purpose and intent of legislative provisions, marginal notes and headings whilst not capable of controlling the language of a section, are useful guides to interpretation. ***Cross on Statutory Interpretation, 3rd Ed. pg. 132; section 64(1)(a) of the Interpretation Act, Cap. 1.***

Section 110 falls under the wider Part X of the Act, – entitled 'Protection of Wages'; the marginal note to section 110 is entitled 'Limitations on attachment or seizure of wages'. It is the Court's view, that whilst the existence of the right to attach earnings is acknowledged by section 110, the exercise of this remedy is to be obtained from elsewhere and the purpose of section 110

is to cap the liability of a worker's salary when used as a means to satisfy a debt. That the section's purpose is to provide some measure of protection to an employee's salary is considered evident by the clear expression of the marginal note – viz – limitation; and the occurrence of the section under the wider Part headed – 'Protection of Wages'.

## B. CPR Part 50

This then brings us to the second aspect of the submission on behalf of the Claimant, which points to the existence of **CPR Part 50** which deals with attachment of debts, as a method of execution. By way of introduction prior to highlighting learned Senior Counsel's submission, the availability of what was previously known or still sometimes referred to as 'garnishee proceedings' is indeed provided under Part 50 and the provision as has long been in existence, is that the Court can order that any debt owed to the Judgment Debtor be paid directly the Judgment Creditor in satisfaction of the Judgment Debt.

Learned Senior Counsel's submission in relation to this CPR 50 is that the only question to be answered is whether the wages of a worker is a debt. The answer to this question, it was submitted, is in the affirmative. Wages, it is said are considered to be a debt on the basis that they become due and payable 'on the day and date he *[the worker]* contracted with the employer to receive payment.' Or in other words, as the Court understands the submission - at the time the employment contract takes effect. It was thereafter submitted, that for as long as the employee becomes (sic) employed, his wages become due and payable at the end of each and every pay period…further – when the wages become due and must be paid, the judgment creditor is entitled to attach the wages and apply the portion [presumably the one third requested] to the judgment debt. (It is noted, that the Application before the Court was not brought pursuant to Part 50 although the draft order set out the applicable procedure and relief under Part 50.

Additionally, the submission being as it is, why with there being a subsisting claim, was the Application for enforcement of the Judgment brought pursuant to the Labour Act and not under Part 50?).

In any event, the Court disagrees with the submission, which it considers contradictory within itself and says thus - The provisions of Part 50 whilst not defining classes of debts capable of attachment, does provide some limitations on attachment in relation to certain debts as regards how and in what circumstances attachment of those debts are to be ordered. These include debts owed by the Crown (redirected to Part 59), debts in the hands of financial institutions, joint accounts and money payable into Court. Short of classes of debts specifically addressed for varying reasons in Part 50, **Rule 50.4 provides that '*an attachment of debts order may be made in respect of <u>any type of debt</u>…*'** but the question remains as to what qualifies or does not qualify as a debt. This question flows from the operative provision of Part 50 - Rule 50.2(4) which provides that the Court may attach *(a) any debt due or accruing on the date of the provisional order; or (b) any debt which becomes due or accruing between the date of service of the provision order and the date of hearing*.

Acknowledging the ordinary and natural meaning of 'debt', as being an amount owed by one person to another, the question of whether an employee's wages is an appropriate subject for satisfaction of a debt is illustrated by legal authority.

Of attachment of salaries and periodic payments, **Halsbury's Laws of England 3rd Ed. Vol. 16, para 126 @ pg 84** says '***salary or other periodic payment of a similar nature as a general rule attachable <u>when it becomes a debt but not before</u>…***' (emphasis mine). Referred in respect of this position is **Hall v Pritchett (1877) 3 Q.B.D. 215** in which it is said as regards the attachment of moneys due as wages to a medical practitioner, that salary, which is not yet fully earned,

cannot be attached as the debt is not yet in existence, it is in the future. This position the Court considers simply rationalized thus – a worker does not become entitled to be paid until he has performed his obligations under his contract of service (not as submitted at the time a contract takes effect). At the time when a provisional order is to be made, or at the date of a hearing, the Court cannot order attachment on earnings that the employee himself is not in a position to sue for. Whilst this authority is ancient, it was restated in **The Caribbean Civil Court Practice, 1st Ed.** under chapter 'Enforcement Proceedings' to the effect that salary accruing but not due is not a debt and not attachable - **Paras 32.8 and 32.11**. The Court also finds it useful to refer to the position in England which is that the High Court has no power to attach earnings - **Blackstone's Civil Practice – Part P pg 1003 @ para. 76.17**. The power so to do is conferred upon the County Court and enabled by statute – **The Attachment of Earnings Act, 1971**.

In Belize there are a few enactments which provide for attachment of earnings in the true sense, one of which is the Family and Children's Act, Cap. 173 section 65. Of note however in this section is use in relation to salary and pension of the words, 'capable of being attached'.

Additionally, just to be clear, 'debts due or accruing' means 'debts due' or 'debts accruing', 'debt' thereby qualifying both 'due' and 'accruing'. **Tapp v Jones 1875 L.R. 10 Q.B. 591**. As relates to 'accruing' the debt must therefore already be in existence but need not be payable until some later date. Unearned salary is not a debt in existence, it is to become a debt after the employee has completed his obligations in service.

Finally, in addition to learned Senior Counsel's own interpretation, he referred the Court presumably to the acceptance of the correctness of section 110 of the Labour Act and CPR 50 in attachment of earnings applications, by virtue of the decision of the Learned Chief Justice in the case of **Atlantic Bank Limited v Bruce Anthony Bennett, Claim No. 1040/09**, Supreme Court

of Belize. As pertains to this decision I am content to say that the correctness or otherwise of the procedure adopted was not adverted to and the decision turned on the restriction against attachment of debts in the hands of the Crown, particularly in the case of an employee entitled to wages or salary from the Crown. That the case was considered in this regard does not give rise to authority that wages and salary of an employee are capable of being attached under CPR Part 50 in the manner sought by learned Senior Counsel. As is illustrated by **Lucas v Lucas and High Commissioner of India [1943] 2 All E.R. 110** which was a case where attachment was sought and a provisional order made, of overseas pay due to the Defendant as a servant of the Indian Government, the provisional order which had been made was discharged. The order was discharged on the same basis as held by the Learned Chief Justice in Bennett above, that wages of an employee of the Crown were not capable of attachment for purposes of third party debt attachment. The historical origin of this position which derives from the nature of employment within service of the Crown is not relevant. What is relevant however is that it was clear in that case, that attachable debt meant where (@ pg 113) the Defendant therein, whilst continuing to hold his appointment in the Indian Civil Service and continuing to discharge his duties, failed to receive his salary, thus raising the question of an action for salary unpaid. The answer turned on the nature of Crown Service preventing a Crown employee from suing the Crown, but the debt clearly envisaged was for wages earned but remaining unpaid. I therefore am not able to draw much assistance from Bennett in respect of the Court's reservations and treatment of the instant case.

## Ruling

For the reasons hereinbefore stated,

(a) I am unable to recognize the application for attachment of earnings of the defendant pursuant to section 110 of the Labour Act, Cap. 297; and

(b) I decline to issue a provisional order pursuant to CPR 50, to attach the earnings of the Defendant in the periodic manner prayed on behalf of the Claimant, on the basis that the salary which would accrue on a monthly basis to the Defendant, is not a debt due or debt accruing at the time of the order, as required by Rule 50.2(4).

The Application is dismissed. There is no order as to costs.

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Shona O. Griffith

High Court Judge.