

# Attachment of Salaries and Wages in Singapore — Recent Developments

The article discusses the garnishment of salaries and wages.

For many years, lawyers have taken the position that salaries and wages were debts that could be garnished or restrained in Singapore pursuant to O 49 of the Rules of Court 1996 ('RC') or s 33 of the Government Proceedings Act (Cap 121) respectively. The courts have indeed also granted orders to attach the salaries and wages of the judgment debtor for a long time.

With the onset of economic recession and in the face of mounting debts and increasing repayment delinquency, most financial institutions in Singapore resort to attachment of salaries and wages of recalcitrant debtors who are gainfully employed and yet refuse to offer any form of repayment of their debts.

In March 2003, the learned Deputy Registrar, Mr Earnest Lau, refused applications to garnish the salary of the judgment debtors to satisfy the judgment on the ground that s 13 of the Supreme Court of Judicature Act (Cap 322) ('SCJA') read in its historical context, exempts salaries and wages from garnishment or restraint.<sup>1</sup>

Three banks, the American Express Bank, Standard Chartered Bank and United Overseas Bank appealed against the learned Deputy Registrar's decision. The appeals were dismissed by the learned District Judge, Mr Jeffrey Sim.<sup>2</sup> On further appeal, the learned High Court Judge, Mr Lai Kew Chai, also dismissed all three appeals.<sup>3</sup>

It would be pertinent to examine the grounds of decision which brought the attachment of salaries and wages to a grinding halt.

The primary issue was whether pursuant to s 13(c) of the SCJA, the subordinate courts and the High Court were prohibited from issuing garnishee orders under O 49 of the RC.

Section 13 of the SCJA provides:

## Writs of execution

A judgment of the High Court for the payment of money to any person or into court may be enforced by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except:

- (a) the wearing apparel and bedding of the judgment debtor or his family, and the tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed \$1,000;
- (b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such animals and seed-grain or produce as may in the opinion of the court be necessary to enable him to earn his livelihood as such;
- (c) the wages or salary of the judgment debtor;
- (d) any pension, gratuity or allowance granted by the Government; and
- (e) the share of the judgment debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under any provision of any written law relating to partnership. (emphasis added)

The courts ruled that s 13 of the SCJA applies equally to garnishee orders for two main reasons. Firstly, the historical context of its antecedent legislation suggests such a reading. Secondly, any other reading would lead to the RC derogating from its parent legislation, the SCJA.

## Purposive Approach to s 13 of the SCJA

The courts studied the legislative history behind s 13 (c) of the SCJA and concluded that parliament had always regarded a writ of seizure and sale as a generic term encompassing all modes of seizing the property of a judgment debtor, including the garnishment of his salaries or wages. They accorded a wider meaning and purposive reading of the phrase 'writ of seizure and sale' and considered that it was in substance, albeit not in name, the same as garnishment which is a direction of the court to the garnishee to pay the judgment creditor.

The honourable Justice Lai relied on the ruling in *Planmarine AG v Maritime and Port Authority of Singapore*<sup>4</sup> and s 9A of the Interpretation Act (Cap 1) and concluded that a purposive approach can be adopted even when there is a clear and unambiguous meaning to the words.

## Legislative History of the SCJA and Related Provisions

To determine the proper construction of s 13 of the SCJA, the courts also noted that the statute is primarily a consolidating statute. At the second reading of the Supreme Court of Judicature Bill, it was explained by the then Minister for Law and National Development<sup>5</sup> that:

The Bill generally does no more than to revert to the position obtaining before we joined Malaysia. The powers of jurisdiction of the Supreme Court of Singapore are the same as heretofore, before we joined Malaysia ...

In order, therefore, to come to a proper interpretation of the SCJA, the courts looked to its precursors, particularly the Civil Procedure Ordinance of 1878

('CPO 1878') and the Civil Procedure Code of 1907 ('CPC 1907').

Section 407 of the CPO 1878 provides:

Where the judgment debtor is beneficially interested in any moneys, securities for money, goods, chattels, or other property, or rights or claims whatsoever, in the custody or under the control of or against any other person within the Colony, or where such other person (hereinafter called the Garnishee) is indebted to the defendant, the Sheriff, in executing a writ of seizure and sale, shall seize the same, by giving a notice in writing, in the prescribed form, to the garnishee, which notice shall bind the property of the judgment-debtor in the hands of such garnishee, as hereinafter mentioned, in satisfaction of the decree. (emphasis added)

The courts held that garnishment in Singapore was a creature of the CPO 1878 and all succeeding local legislation.

In the context of CPO 1878, the courts also considered the case of *MPLA Peyna Carpen Chitty v Max J D'Souza*<sup>6</sup> where Wood, ACJ stated in his brief judgment as follows:

On the supposition that the wages of the clerk are his sole means of living, I think that the salary of such a clerk is not attachable taking into consideration the provisions of the Ordinance (ie the Civil Procedure Ordinance 1878) as to the examination of Judgment Debtors and the power given to order payment of the debt by instalment, provisions which in my judgment point to the policy of the Law in not permitting a man to be stripped of all means of livelihood and entirely pauperized.

The Courts were of the view that it was implicitly accepted by the Chief Justice that attachment of a debt was the same as 'seizure' of a debt.

The CPO 1878 was subsequently repealed by the CPC 1907. Section 617 of the CPC 1907 provides:

(1) the following property is liable to be seized under a writ of seizure and sale, viz: lands, houses, goods, money, Government and bank notes, cheques, bills of exchange, promissory notes, ... debts, and, except as hereinafter mentioned, all other saleable property, moveable or

immovable, belonging to the judgment debtor, ... whether the same be held in the name of the judgment debtor, or by another person in trust for him, or on his behalf.

(2) The following property shall not be liable to seizure under such writ viz:

(b) the wages or salary of the judgment debtor. (emphasis added)

Section 617 of the CPC 1907 is in many respects in *pari materia* with s 407 of the CPO 1878. It was consolidated as s 13 of the Courts Ordinance 1934, which was the precursor to our present s 13 of the SCJA.

Section 13 of the Courts Ordinance 1934 provides:

(1) A judgment of the High Court for the payment of money to any person or into Court, may be enforced by a writ, to be called a writ of seizure and sale, under which all the property, moveable or immovable, of whatever description, of a judgment debtor may be seized except:

(c) the wages or salary of the judgment debtor. (emphasis added)

Section 13 of the Courts Ordinance 1934 remained the same in substance and form until today as s 13 of the SCJA.

The Courts also turned their attention to Rules of the Supreme Court 1970 ('RSC 1970') which replaced the Civil Procedure Rules of Supreme Court 1934. The RSC 1970 adopted the English garnishee procedures and introduced new garnishee procedures as well as confined the kind of seizable property in Singapore to debts.

It was held that the RSC 1970 did not confer new rights to attach salaries and wages on the judgment creditors. The RSC 1970 and the Rules of the Subordinate Courts 1986 were subsequently consolidated into the present Rules of Court 1996 ('ROC 1996'). Eventually, the RSC 1970 provision on garnishment became O 49 of our ROC 1996 which prescribes the mode of executing a writ of seizure and sale on debts.

## Conclusion

The decision of the honourable Justice Lai finally puts an end to any suggestion that the decision of FA Chua J in the case of *Hong Kong and Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, Garnishee)*<sup>7</sup> impliedly stands for the binding principle that the wages or salary of judgment debtor can be garnished in Singapore. The courts held that as Chua J did not address his mind to s 13(c) of the SCJA, his decision is therefore not binding authority for that proposition.

In conclusion, with the clear ruling that s 13(c) of the SCJA exempts the wages or salary of a judgment debtor from being garnished, what creditors have now to grapple with is that they can no longer have access to one of the most effective modes of enforcement of judgment, something to which they have been accustomed in the past two decades or so. Ultimately, there are only a few remaining modes of enforcement of judgment which are effective. It is indeed an unfortunate timing for creditors since this coincides with an era of record-breaking bad debt write-off. Perhaps it is timely for legislature to look into the provision of attachment of earnings which already exists in various forms in other jurisdictions.

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## Endnotes

- 1 MC Suit No 24159 of 2002, MC Suit No 37125 of 2002 and MC Suit No 4707 of 1999 amongst others.
- 2 [2003] SGMC 16.
- 3 [2003] SGHC 256.
- 4 [1999] 2 SLR 1.
- 5 Mr EW Barker at the Second Reading of the Supreme Court of Judicature Bill as quoted by Ernest Lau DR in his written grounds of decision in MC 24159 of 2002 and Jeffrey Sim DJ in [2003] SGMC 16.
- 6 [1892] 1 SSLR 64. Another Straits Settlement case, *CK Peria Jurpen Chitty v Rodrigues* [1891] SLR (NS) 45] was also considered. In that case, Goldney J held there was no applicable statute exempting salaries from garnishment. However, he conceded there were conflicting decisions as to whether salaries could be attached and made no order as to costs. Jeffrey Sim DR was of the view that Goldney J's decision did not assist the judgment creditors as it was decided before the CPC 1907 which introduced s 617(2)(b) which was the precursor to s 13(c) of the SCJA.
- 7 [1984-1985] SLR 804.