



# Hamel-Smith

ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

# FORUM

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## THE ROAD TO DEBT RECOVERY ENFORCEMENT OF A JUDGMENT DEBT

*Cherie Gopie*

The road to debt recovery might be for some creditors, a bumpy one. If you have instituted legal proceedings against the debtor and successfully obtained a Court order in your favour, you may think that your legal journey has come to end. For some it has, when the debtor pursuant to the Court order pays to the judgment creditor (the successful party in the litigation), the sum owed in addition to any applicable interest and costs. However, what happens if despite this Court order, the judgment debtor and losing party still does not budge? In these circumstances, the judgment creditor can look to enforce a judgment to realise payment of any damages or costs which have been awarded.

### When enforcement can be triggered

Generally speaking, the Court order may specify a time-period for which the debtor has to pay. The judgment creditor should ensure that the judgment is served on the judgment debtor without delay. If payment is not made within the time specified in the judgment, then the judgment creditor can seek to enforce the judgment. If the judgment provides for payment by instalments, then a missed instalment can also be a prompt to enforcement action.

### Stay of Execution

It should be noted that the judgment debtor can ask the court to “stay” the execution of the judgment if they choose to appeal the judgment. If such a stay is granted, then the judgment creditor would not be able to enforce the judgment pending the outcome of the judgment debtor’s appeal. However, judgment debtors should note that enforcement of a judgment is not automatically stayed when a judgment is appealed. A separate legal application to the Court will become necessary, which will be determined by the Court, if the judgment debtor wishes for a stay of execution pending an Appeal.

### Writ of Fieri Facias

If there is no issue of appeal (and stay of execution), there are many different ways of enforcing a judgment through the Courts in Trinidad and Tobago and the best method may often depend on the type of assets the judgment debtor has to enforce against. If for example, the judgment debtor is known to own considerable personal chattels, for example, machinery or cars, a writ for levy of property/seizure and sale order or writ of fieri facias may be appropriate. With this method of enforcement, the judgment creditor will need to apply to the court for a writ which authorises a bailiff to seize and sell goods of a sufficient value to satisfy the judgment debt. In some circumstances, the unfortunate threat of this action prompts the judgment debtor to liquidate the debt owed to avoid the sale of their goods.

### Attachment Orders

Another common method of enforcement is that of an attachment order or a garnishee order. If a judgment creditor knows that the judgment debtor earns a regular income or has cash assets in a financial institution, a garnishee order may be more effective in enforcing a judgment debt. This method allows a judgment creditor to recover the judgment debt from a third party who holds funds for the judgment debtor, for

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## WORKPLACE HEALTH AND SAFETY: THE LAWS ALL EMPLOYERS SHOULD KNOW

*Catherine Ramnarine*

There are several laws and legal regimes governing workplace health and safety in Trinidad and Tobago. It is important for employers to understand the full scope of their duties and potential liabilities under each of these regimes, as they are not mutually exclusive and often operate concurrently and in parallel with each other.

In this Article, we will provide a basic primer on the different laws and legal regimes that employers should be aware of.

### **Workmen's Compensation:**

Under the Workmen's Compensation Act, an employer is liable to pay compensation to any workmen who are injured during the course of their employment.

The purpose of Workmen's Compensation is to compensate the injured employee for his inability to work, and by extension earn income. The value of the Workmen's Compensation payment is calculated using a prescribed formula based on the employee's earnings and a medical assessment of his disability.

Workmen's Compensation claims are typically covered by insurance, which is compulsory under the Act. However, it is important to note that Workmen's Compensation only compensates an employee for lost earnings up to a prescribed amount. It does not prevent an employee from claiming under any of the other legal regimes governing workplace health and safety, where they apply.

### **The Occupational Safety and Health Act:**

The Occupational Safety and Health Act sets out a legislative framework governing workplace health and safety.

Section 6 of the Act imposes a general statutory duty on every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all its employees.

In addition to this general duty, the Act also imposes more specific duties on employers.

One of the most notable of these duties concerns the preparation of annual risk assessments. Section 13A of the Act requires employers to make a suitable and sufficient annual assessment of the risks that its employees and others might be exposed to whilst at work, and to identify the measures that it should put in place to ensure workplace health and safety in the context of these risks.

Employers also have an obligation to review and update this risk assessment where there is reason to believe that it is no longer valid or where there has been a significant change in the matters to which it relates. Notably, this duty could arise during the course of the ongoing Covid-19 pandemic, as employers are required to adjust their working arrangements to meet the evolving trajectory of the pandemic and the government's response to same.

An employer's potential liability under the Act is twofold. The Act itself imposes penal sanctions and penalties for breaches of the Act, and the employee may also bring civil proceedings against the employer for breach of statutory duty.

Under the penal regime established under the Act, each breach is punishable by a maximum fine of TT\$20,000.00 while breaches resulting in death, critical injury or occupational disease are punishable by an additional fine of TT\$100,000.00 or an amount equivalent to 3 years' pay of the deceased or injured person.

Notably, this fine is without prejudice to any other liability or cause of action and does not prevent an employee from claiming under any of the other legal regimes governing workplace health and safety, where they apply.

### **Common Law Negligence/Employer's Liability:**

At common law, employers have a duty to take reasonable care for the safety of their employees during the course of their employment, including a duty to provide competent staff, proper plant and equipment, a safe place of work and a safe system of work. The employer's duty is not an absolute one to prevent any and all injury to the employee. Rather, the standard of care required of an employer is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation.

Where an employer breaches this duty and an employee suffers injury, loss and/or damage as a result, the employee is entitled to claim against the employer for monetary damages, including payment for pain and suffering, loss of amenity, loss of past and future earnings and the cost of past and future medical and other expenses.

Common law claims are often covered by Employer's Liability insurance.

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*Cherie Gopie*

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example a bank, where the judgment debtor holds an account.

### **Application for Oral Examination – in aid of Enforcement**

If the judgment creditor is uncertain as to what assets the judgment debtor holds, he can compel the judgment debtor to attend Court to give evidence on his financial status, assets and liabilities. This Application is referred to an application for oral examination in aid of enforcement.

### **Charging Order**

Other methods of enforcement can include a charging order – by this method, a creditor can obtain a charge on the debtor's holding of Government stock, funds or annuities and the stocks and shares of any company. However, the judgment creditor will also rank behind prior charge holders on the property (e.g. any mortgagee of the property) so this method may not yield in full satisfaction of a judgment debt.

### **Corporate Debtors**

If a judgment debtor is a company, under the provisions of the Companies Act, a creditor may apply to wind up a company which is unable to pay its debts. Generally, the directors of a company are not personally liable for the debts of the company. However, the Court, on hearing a petition to wind up a company, may declare that a director, whether past or present, is personally responsible for all or any of the debts or other liabilities of the company if it appears to the Court that the business of the company has been carried on (i) with intent to defraud creditors of the company; (ii) with reckless disregard of the company's obligations to pay its debts; or (iii) with reckless disregard of the sufficiency of the company's assets to satisfy its debts and liabilities.

The above methods are not exhaustive, and much would depend on the debtor's financial position. It is generally advisable however, to embark upon enforcement action without too much delay to minimise the risk of dissipation of the debtor's assets. In conclusion, obtaining a judgment in your favour is noteworthy milestone but it may not be the end of the road. Fortunately, there are legal processes that you can employ to recover a judgment debt.

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*Catherine Ramnarine*

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However, it is advisable for all employers to ensure that they understand the nature and scope of their insurance coverage, and any reporting and other requirements that they may have. It is not uncommon for employers to confuse Workmen's Compensation and Employer's Liability claims. While there is some overlap, the employer's potential liability under the latter is much greater.

### **Other:**

In addition to the above, employers also have duties:

- To employees with disabilities, under the Equal Opportunities Act.
- To employees recovering from injuries, or employees that may be medically unfit to work, under the principles of good industrial relations practice and the Industrial Court regime.
- To persons who are not their employees, under the common law principles of occupiers' liability.

Additionally, it is important to note that many of the duties set out above may apply, not only to employees defined as such under the terms of an employment contract, but also to persons who may be engaged through agencies or subcontractors. This will depend on the specific circumstances of each individual case.

There are several laws and legal regimes governing workplace health and safety in Trinidad and Tobago, some of which overlap in complex and nuanced ways and which can be difficult to navigate. Now, more than ever, it is advisable for employers to have at least a basic understanding of the nature and differences between these regimes, and the full scope of their duties and potential liabilities.

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