



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

(cont'd from page 1)

CONTENTS

- The Road To Debt Recovery: Enforcement of a Judgment Debt
- Workplace Health and Safety: The Laws All Employers Should Know