



By the order of the court, Judge David A Wiseman

E-FILED
CNMI SUPERIOR COURT
E-filed: Jul 15 2010 2:08PM
Clerk Review: N/A
Filing ID: 32143775
Case Number: 96-1278
N/A



FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SABLAN ENTERPRISES, INC.,)	Civil Action No. 96-1278
)	and consolidated cases
Plaintiff,)	(S.C. Nos. 97-129 and 97-1220)
)	
vs.)	
)	ORDER DENYING PLAINTIFF'S
FELIPE Q. ATALIG dba CASA DE)	MOTION FOR ORDER TO PAY
FELIPE,)	PROCEEDS OF LITIGATION
)	
Defendant.)	
)	
)	

I. INTRODUCTION

THIS MATTER came for a hearing on April 22, 2010 at 1:30 p.m. to address Plaintiff's Motion for Order to Pay Proceeds of Litigation. Counsel Ramon K. Quichocho appeared on behalf of Defendant Felipe Q. Atalig (hereinafter "Defendant"). Plaintiff Sablan Enterprises, Inc., (hereinafter "Plaintiff") was represented by Attorney Michael A. White. Having considered the oral and written submissions of the parties and the applicable law, this Court is prepared to issue its ruling below.

For the foregoing reasons, Plaintiff's Motion for Order to Pay Proceeds of Litigation is **DENIED.**

II. SYNOPSIS

On February 28, 2010, Plaintiff filed an *Ex Parte* Motion for Order to Pay Proceeds of Litigation, asking this Court for an order, "directed to the Defendants ["Department of Public Works and Office of Personnel Management"] in Civil Action No. 06-0302, or those acting on their behalf, to pay

1 to Plaintiffs [“Sablan Enterprises”] all sums to which Atalig may be entitled [to] in Civil Action No. 06-
2 0302, whether Atalig becomes entitled to those funds following a Judgment of the Court in that case, or
3 by settlement, or so much of said funds as shall be necessary to satisfy the balances due upon the
4 Judgments in [those] cases.” Plaintiff claims that the reason for the *ex parte* motion was due to the fact
5 that if Defendant was given prior notice of said Motion, he might attempt to take steps to frustrate
6 Plaintiff’s purpose, “by assigning the proceeds of the litigation...to a third party, thereby impairing or
7 delaying Plaintiff’s efforts to recover the balances due on their Judgments...”

8 On March 22, 2010, the Court issued an Order Declining Consideration of the *Ex Parte* Motion
9 finding that this issue would best be decided after a hearing, whereby Defendant would have the
10 opportunity to oppose the Motion. The Court deemed this the proper method for pursuing Plaintiff’s
11 Motion especially since there had not yet been any decision as to an award of damages which was the
12 subject of Plaintiff’s Motion.

13 On April 9, 2010, Defendant filed an Opposition to Plaintiff’s Motion. In his Opposition,
14 Defendant argues that Plaintiff’s Motion is premature since a decision as to damages has not yet been
15 determined. Defendant further argues that the Judgment in Civil Action No. 06-0302 is interlocutory in
16 nature, and thus cannot be the subject of Plaintiff’s requested relief. Finally, Defendant contends that
17 since damages have not yet been ascertained in Civil Action No. 06-0302, it is impossible for the Court
18 to determine which portions of the award are exempt from attachment pursuant to 7 CMC § 4201(b).

19 On April 21, 2010, Plaintiff filed his Reply arguing: 1) the fact that the debt owing to Defendant
20 in Civil Action No. 06-0302 has not been reduced to judgment is of no import because the only
21 contingency with regard to the claim is the amount; 2) the fact that the judgment in Civil Action No. 06-
22 0302 is interlocutory is immaterial; and 3.) 7 CMC § 4201(b) does not preclude the granting of the
23 requested relief because the Defendant can demonstrate to the Court what he believes is necessary to
24 support himself and his dependents at a later date.

1 **III. DISCUSSION**

2 Plaintiff argues that this Court has the power and authority to issue an Order to Pay Proceeds of
3 Litigation citing 7 CMC § 4206(a) and (b), as well as, 1 CMC § 3202. Plaintiff further argues that 7
4 CMC § 4206(a) obligates this Court, following a hearing on Defendant’s ability to pay, to “make such
5 order in aid of judgment as is just for the payment of any judgment”. In addition, Section 4206(b)
6 empowers the Court to order “any...method of payment which the Court deems just.” While the Court
7 does agree with Plaintiff’s interpretation of the law, the primary issue before the Court is not whether
8 the Court has the power to order a writ of attachment, but instead, whether a creditor can attach a
9 judgment where the amount of damages has not yet been determined.

10 Defendant argues that the judgment in Civil Action No. 06-0302 is contingent and thus, is not a
11 final judgment. Plaintiff counters by arguing that when it is certain that something will be due, and the
12 only contingency with regard to the claim is the amount, the claim is attachable citing *Brunskill v.*
13 *Stutman*, 186 Cal.App.2d 97 (1960). However, *Brunskill* holds that when it is certain that something
14 will be due under a contract and the only contingency in regard to the claim is as to its amount, the claim
15 is garnishable, *at least if the contract contains a statement or a standard or measure by which the*
16 *amount to become due may be determined.* (Emphasis Added). Here, there is no standard to determine
17 the amount Defendant may be awarded in Civil Action No. 06-0302.

18 Additionally, the general rule is that claims for unliquidated damages cannot be reached by
19 attachment or garnishment process. *Able Distributing Co., Inc. v. James Lampe, General Contractor*,
20 733 P.2d 504 (Ct. App. Div. 1 1989); *Chandler v. Doherty*, 314 Ill.App. 3d 320 (4th Dist. 2000).
21 Unliquidated claims are not garnishable because such claims are contingent or uncertain and because the
22 amount due on the claim cannot be determined until it is reduced to judgment. *Weyerhaeuser Co. v.*
23 *Calloway Ross, Inc.*, 137 P.3d 879, 881 (Div. 2 2006). Before such claims have been made certain by a
24 final judgment, they are not attachable or garnishable. *Craig v. Gaddis*, 171 Miss. 379 (1934);
25 *MkKendall v. Patullo*, 52 R.I. 258 (1932). However, after the claim has been reduced to a fixed sum by

1 a final judgment, it is then subject to garnishment. *Arp v. Blake*, 63 Cal. App. 362, 372 (1923). Until
2 then, the claim maintains its character as an unliquidated claim. *Id.* Here, a final judgment has not been
3 entered in Civil Action No. 06-0302, thus, Defendant's claims are not attachable or garnishable.
4 However, once the judgment becomes final Defendant may attach Plaintiff's award, subject to certain
5 exemptions.

6 Therefore, the Court finds that since damages have not yet been ascertained in Civil Action No.
7 06-0302 it is impossible for the Court to determine what portions of the award Plaintiff is entitled to.
8 Moreover, although liability has been established, the fact still remains that Defendant's award in Civil
9 Action No. 06-0302 is an unliquidated claim. However, pursuant to 7 CMC § 4201(b) once damages
10 become final, Plaintiff may garnish Defendant's award subject to Defendant being allowed to present
11 evidence demonstrating what he believes he is entitled to pursuant to 7 CMC § 4201(b). The Court
12 would then "exempt from the attachment so much of any salary or wages as the court deems necessary
13 for the support of the person...or his or her dependents." 7 CMC § 4201(b).

14
15 **III. CONCLUSION**

16 For the foregoing reasons, Plaintiff's Motion for Order to Pay Proceeds of Litigation is **DENIED.**

17
18 **So ORDERED** this 15th day of July, 2010.

19
20 _____ / s / _____

21 David A. Wiseman, Associate Judge
22
23
24
25