

CASE UPDATE



4 June 2019

ELVIS PRESLEY IMPERSONATOR'S CREDITOR FAILS IN BID TO GARNISH ALLEGED DEBT DUE FROM COUNTRY CLUB

Introduction

1. A garnishee order is one form of enforcing a judgment debt. Upon the application of the judgment creditor, the court may direct a third party that owes money to the judgment debtor to instead pay the judgment creditor. The third party is called a 'garnishee'.
2. In the recent decision of *Sunny Metal & Engineering Pte Ltd v Lee Xin Ben Jimmy (Serangoon Gardens Country Club, garnishee)* [2019] SGHC 135, the Singapore High Court dismissed two such garnishee applications and held that:-
 - (a) The legal burden is on the judgment creditor to prove that there is a debt due and accruing from the garnishee to the judgment debtor, even if a provisional garnishee order has been obtained; and
 - (b) A garnishee who has handed a cheque to the judgment debtor to discharge a debt that is due to the latter, and who is subsequently served with a garnishee order, is not obliged to stop payment on the cheque upon receiving notice of the garnishee order.

Facts

3. Serangoon Gardens Country Club ("SGCC") is a members' club located in Serangoon Gardens. Jimmy Lee, who goes by the stage moniker "Jimmy Preslee", is a freelance Elvis Presley impersonator.
4. Since 2016, SGCC had engaged Jimmy Lee to produce performances. In 2018, SGCC engaged Jimmy Lee to produce the following performances:
 - (a) *Beatlemania & Saturday Night Fever* (renamed to the *Fabfour Show*) on 27 July 2018 ("the July Performance"); and
 - (b) *Elvis is Alive* on 16 & 17 August 2018 ("the August Performances").
5. Unknown to SGCC, Sunny Metal & Engineering Pte Ltd ("Sunny Metal") had a judgment dated 14 February 2012 against Jimmy Lee for the sum of \$519,358.95. It appears that this judgment sum together with interest amounting to \$93,814.87 (as at 19 July 2018) remained unpaid.

For any queries relating to this article, please contact:

Toh Kok Seng
tohkokseng@leenlee.com.sg

Authors:
Toh Kok Seng
Michelle Chua
Kelley Wong

Lee & Lee
50 Raffles Place, #06-00 Singapore
Land Tower, Singapore 048623
Tel: +65 6220 0666

For more legal updates, please visit the News & Publication Section of Lee & Lee's website at www.leenlee.com.sg or follow Lee & Lee's facebook page at www.facebook.com/leenlee.com.sg/

Disclaimer: The copyright in this document is owned by Lee & Lee. No part of this document may be reproduced without our prior written permission. The information in this update does not constitute legal advice and should not form the basis of your decision as to any course of action.

CASE UPDATE



6. On 23 July 2018, Sunny Metal obtained a provisional garnishee order ("First GO") to show cause for the sum of \$616,173.82. The First GO was served on SGCC after the July Performance, on Monday 30 July 2018 at about 12 noon.
7. On 16 August 2018, Sunny Metal obtained a second provisional garnishee order ("Second GO") to show cause for the sum of \$618,000.00. The Second GO was served on SGCC on the second night of the August performances, on 17 August 2018 just after 11 pm when the performance ended.
8. On 25 October 2018, the Assistant Registrar, after hearing arguments from counsel from Sunny Metal and SGCC, discharged both provisional garnishee orders with costs to SGCC. Sunny Metal filed an appeal to the High Court.

SGCC's Case

9. SGCC claimed that there were no debts due or owing from it to Jimmy Lee at the time of service of both the First GO and the Second GO.
10. For the July Performance, SGCC produced a quotation dated 12 October 2017 ("First Quotation") showing Jimmy Lee had agreed to produce the performance for \$9,200.00, with half the sum payable on confirmation by SGCC and the balance on performance night. SGCC produced documents to show that \$4,600.00 was paid in February 2018 and the balance \$4,600.00 by way of a cheque dated 10 July 2018 and made out to Judy Chong, Jimmy Lee's wife. The cheque was handed to Jimmy Lee on performance night on 27 July 2018.
11. When the First GO was served on SGCC on 30 July 2018 (Monday) at about 12 noon, the matter was immediately escalated to senior management who sought legal advice that evening. The next day, SGCC tried to stop payment of the cheque but before any instructions were issued to the bank, SGCC discovered by checking its electronic records with the bank that the cheque had been cleared on 30 July 2018.
12. For the August Performances, SGCC produced a quotation dated 25 January 2018 ("Second Quotation") showing Jimmy Lee had agreed to produce the performances for \$18,000.00, again with half the sum payable on confirmation by SGCC and the balance on performance night. SGCC produced documents to show that \$9,000.00 was paid in May 2018.
13. On 1 August 2018, Jimmy Lee informed SGCC that he would not be able to deliver the August Performances due to the garnishee proceedings against him. Due to his breach, SGCC terminated the agreement with him.
14. However, the show had to go on because SGCC's members had already bought tickets. SGCC thus engaged one Abdul Ghani (at Jimmy Lee's recommendation) to carry out the works to ensure that August Performances would proceed. SGCC paid Abdul Ghani \$9,000.00 by cheque on the second performance night on 17 August 2018 at about 7 pm.
15. It was not in dispute that although his contract with SGCC had been terminated, Jimmy Lee continued to perform as a "curtain raiser" at the August Performances. This was evident from his Facebook posts. Sunny Metal's solicitor also saw him performing when she was at SGCC on 17 August 2018 to serve the Second GO.

CASE UPDATE



Sunny Metal's Case

16. Sunny Metal, relying on a statement by Judy Chong in an interpleader summons in Sunny Metal's proceedings against Jimmy Lee, claimed that there is an overarching master agreement ("the 2016 Agreement") setting out terms regarding Jimmy Lee's provision of services to SGCC.
17. Sunny Metal claimed that the First Quotation was only in respect of reimbursement by SGCC to Jimmy Lee for his costs and expenditure for the July Performance, rather than for his performance fees, commission or share of profits (which Sunny Metal alleged Jimmy Lee was entitled to separately under the 2016 Agreement) and which Sunny Metal alleged to be at least \$20,000.00.
18. Sunny Metal argued that the attachable debt under the First GO was at least S\$20,000.00 as well as expenditure already incurred by Jimmy Lee for the upcoming August Performances.
19. Sunny Metal alleged that the \$4,600.00 cheque was not payment for Jimmy Lee's work. Sunny Metal pointed out that the cheque was dated 10 July 2018 when the July Performance only took place on 27 July 2018. In any event, Sunny Metal argued that SGCC was obliged to stop the cheque from being cleared (and encashed) and failed to do so.
20. As regards the Second Quotation, Sunny Metal also alleged that it was only for costs and disbursements for the August Performances. Sunny Metal claimed that for the August Performances, SGCC was due to pay Jimmy Lee another \$40,000.00 under the 2016 Agreement.
21. Sunny Metal alleged that SGCC had helped Jimmy Lee to evade payment of monies due to it by making cheque payments to Judy Chong. Sunny Metal also alleged that SGCC's termination of its contract with Jimmy Lee and appointment of Abdul Ghani in lieu was a sham and that Abdul Ghani was Jimmy Lee's agent appointed to receive the remaining \$9,000.00.

Decision of the High Court

22. The learned Judicial Commissioner, following her decision in a previous case which was upheld by the Court of Appeal (*The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372), held that the legal burden is on the judgment creditor to prove that there is a debt due and accruing from the garnishee to the judgment debtor, even if the provisional garnishee order has been obtained.
23. She found that Sunny Metal had not been able to prove this in relation to both the First and Second GOs.

Existence of the 2016 Agreement

24. The Court rejected Sunny Metal's claim of the existence of a 2016 Agreement or master agreement as a bare assertion unsupported by evidence, and its reliance on Judy Chong's statement misplaced.
25. On the contrary, the evidence showed on balance that no such 2016 Agreement existed. The supporting documents pertaining to the July and August Performances were issued and signed long before the garnishee orders were served on SGCC. If there was a master agreement or 2016 Agreement, SGCC would not need to issue a quotation each time it wished to engaged Jimmy Lee.

July Performance

26. The Court rejected Sunny Metal's attempt to distinguish between reimbursement for costs and expenditure incurred by Jimmy Lee (supposedly provided for in the First Quotation) and payment for performing or producing the show (supposedly governed by the 2016 Agreement). In any event, the Court rejected Sunny Metal's claim for at least \$20,000.00 under the 2016 Agreement as pure conjecture as it did not provide any basis to support this figure.
27. The Court accepted SGCC's explanation that it was common practice for SGCC to issue cheques that are dated and signed sometime before the schedule date of payment, because its cheques had to be signed by two signatories, who were members of SGCC's General Committee, and who only went to its premises about once a week.
28. The Court also accepted SGCC's explanation that the cheque dated 10 July 2018 was issued in Judy Chong's name because Jimmy Lee had informed SGCC on 29 January 2018 (long before the cheque was prepared) that his bank account had been compromised and requested SGCC to issue cheques in Judy Chong's name. After all, SGCC was not arguing that its contractual relationship was with Judy Chong.
29. The Court also found Sunny Metal's claim that Jimmy Lee would have been entitled to a commission and a share of the net profits from the ticket sales for the July Performance (because he actively advertised the performance on Facebook and stated that it was sold out) to be without basis and to have involved a leap of logic. Jimmy Lee's motive for posting on Facebook was unclear. The Court felt it could equally be said that he wanted to publicise himself to gain more work for future events.
30. Sunny Metal also alleged that SGCC could and should have stopped payment of the cheque dated 10 July 2018, especially in modern banking where cheques can be easily stopped. In support of this proposition, Sunny Metal relied on the case of *Cohen v Hale* (1878) 3 QBD 371 ("*Cohen*").
31. However, the Court pointed out that in *Cohen*, it was held that a garnishee order could be enforced against a garnishee who stopped payment of a cheque upon being served with a garnishee order, and before the cheque was presented by the judgment debtor. *Cohen* did not deal with whether the drawer of a cheque has an obligation to stop payment after receiving notice of a garnishee order pertaining to the drawee of the cheque. On the contrary, *Cohen* suggests that there was no such obligation.
32. The Court considered various English authorities such as *Cohen*, *Re Palmer, ex parte Richdale* (1882) 19 Ch D 409 and *Elwell v Jackson* (1885) 1 TLR 454, as well as the Canadian case of *Bobell Trucking Ltd v Trin-Can Enterprises Inc* [1983] 2 WWR 232, and concluded as follows:-
 - (a) Where a cheque is given by the drawer to the drawee, there is payment of the debt subject to the debt reviving if the cheque is subsequently dishonoured;
 - (b) Where the drawee of the cheque (the judgment debtor) has accepted the cheque, there is no debt due or accruing due to him from the drawer of the cheque (the garnishee) that can be garnished; and

(c) Where the garnishee is subsequently served with a garnishee order, the garnishee is not obliged to stop the cheque.

33. The Court pointed out that should the position be otherwise, the garnishee would be in an unenviable position of having to decide between, on the one hand, stopping payment on the cheque and running the risk of being sued on it by the debtor or the *bona fide* holder of the cheque for value (as the case may be) and, on the other hand, doing nothing and running the risk of a claim against it by the judgment debtor. Either way, the garnishee risks having to pay twice.
34. Applying the above to the facts of the case, the Court held that SGCC had no obligation to stop payment on the cheque dated 10 July 2018, which was given to Jimmy Lee before it received notice of the First GO.

August Performances

35. Similarly, the Court also rejected Sunny Metal's claim that the sum of \$18,000.00 under the Second Quotation was merely for reimbursement of Jimmy Lee's costs and disbursements and that SGCC was due to pay him another \$40,000.00 for the August Performance under the purported 2016 Agreement. In any event, the Court found that the sum of \$40,000.00 claimed was wholly speculative and unsupported by evidence.
36. The Court found that there was no debt due or accruing due from SGCC to Jimmy Lee that could be garnished under the Second GO as the agreement between them had already been terminated. The Court rejected Sunny Metal's assertion that SGCC was attempting to mislead Sunny Metal and helping Jimmy Lee evade payments due under the Second GO.
37. SGCC's account of how it terminated Jimmy Lee's agreement was found by the Court to be supported by contemporaneous documentary evidence. The Court rejected Sunny Metal's allegation that the contract with Jimmy Lee was never terminated, as it did not make sense. If the allegation were true, SGCC would potentially be exposing itself to double liability by entering into an agreement with Abdul Ghani whilst the contract with Jimmy Lee remained afoot.
38. The Court also rejected Sunny Metal's allegation that Abdul Ghani was Jimmy Lee's agent to receive the \$9,000.00 from SGCC, as there was no evidence to suggest this was the case. On the contrary, the Court found that the documents were cogent evidence of Abdul Ghani's appointment to replace Jimmy Lee.
39. In any event, the Court pointed out that as the cheque had been issued by SGCC (at about 7 pm on 17 August 2018) to Abdul Ghani prior to being served (just after 11 pm) the garnishee order (and this would equally apply to the judgment debtor's agent who receives the cheque on his behalf), SGCC was not obliged to stop payment on the cheque.

Conclusion

40. In conclusion, the Court found that Sunny Metal had failed to show that there was a debt due or accruing due at the time of the First or Second GO. Sunny Metal's appeal was therefore dismissed with costs to SGCC.

CASE UPDATE



41. Sunny Metal was represented by Ms Alyssa Lee of Alyssa Lee & Co while SGCC was represented by Mr Toh Kok Seng and Ms Michelle Chua of Lee & Lee.

About Lee & Lee

Lee & Lee is one of Singapore's leading law firms being continuously rated over the years amongst the top law firms in Singapore. Lee & Lee remains committed to serving its clients' best interests, and continuing its tradition of excellence and integrity. The firm provides a comprehensive range of legal services to serve the differing needs of corporates, financial institutions and individuals. For more information: visit www.leenlee.com.sg.

The following partners lead our departments:

Kwa Kim Li
Managing Partner
kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg