

Date Corrigendum Filed: 2014 05 09  
Original Filing Date: 2014 05 09  
Docket: S 1 CV 2014 000055

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOZSEF (JOE) PINTARICS

Plaintiff

-and-

THE HEALING DRUM SOCIETY

Defendant

<p><b>Corrected judgment:</b> A corrigendum was issued on May 9, 2014; the corrections have been made to the text and the corrigendum is appended to this judgment.</p>
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**RULING ON *EX PARTE* APPLICATION TO ISSUE PRE-JUDGMENT  
GARNISHEE SUMMONS**

[1] This is an application for leave to require the Clerk to issue a garnishee summons before judgment. In his action the Plaintiff seeks damages for wrongful dismissal and breach of contract as well as punitive and aggravated damages.

[2] Pre-judgment garnishees are expressly permitted in actions for debt or liquidated demand under subrule 523(1) of the *Rules of the Supreme Court of the Northwest Territories*.

[3] Subrule 523(2) sets out what must be included in the Plaintiff's affidavit in an application to have a pre-judgment garnishee summons issued:

- (2) An application under subrule (1) must be supported by the affidavit of the plaintiff or the plaintiff's solicitor or agent
- (a) setting out the nature and amount of the claim against the defendant;
  - (b) stating that, to the best of the deponent's information and belief,
    - (i) the proposed garnishee is indebted to the defendant, or
    - (ii) if the moneys sought to be attached are wages and salary, the defendant was or is employed by the garnishee and where and in what capacity the defendant was or is so employed;
  - (c) stating that the proposed garnishee is within the Northwest Territories and, where the garnishee has more than one office or place of business within the Territories, the place at which or the office through which the indebtedness is alleged to be payable;
  - (d) setting out the facts establishing the cause of action;
  - (e) exhibiting the plaintiff's undertaking that if moneys are paid into court under a garnishee summons issued pursuant to leave granted on the application, the plaintiff will proceed with the action without delay; and
  - (f) establishing a reasonable possibility that the plaintiff will be unable to collect all or part of the claim or will be subjected to unreasonable delay in the collection of the claim unless permitted to issue the garnishee summons.

[4] In his affidavit, the Plaintiff deposes he was dismissed from his position as the Defendant's Chief Executive Officer in October of 2013 and that the Defendant is thereby indebted to him for \$105,597.00. The Plaintiff indicates that there is a possibility that he will be unable to collect on the judgment, should he succeed in the suit and obtain one, due to the Defendant's financial difficulties. This is based on the following:

1. Media reports that the Defendant's "major funders" have withdrawn their support.
2. The process server was unable to serve the Statement of Claim at the Defendant's place of business because the doors were locked and it appeared no one was there during office hours. The process server finally managed to effect service by serving one of the Defendant's directors at her home;
3. The Plaintiff attended at the Defendant's place of business during regular business hours and observed the doors were locked.

[5] The Plaintiff has not made out a case for the relief he seeks.

[6] A pre-judgment garnishee summons is an extraordinary remedy. It effectively grants a plaintiff security for realization on a potential judgment, in whole or in part, before having to prove its case. It ties up at least a portion of the defendant's liquid assets before adjudication has occurred. That can easily lead to unfairness or injustice. Accordingly, courts must grant such relief sparingly and with caution, the ordinary rule being that every plaintiff must bear the burden of the inherent delays and risks of litigation: *Westmills Canada Inc. v. Harvey & Pulton Warehouse Carpet Sales Ltd.* (1989), 94 AR 57; 65 Alta. LR (2d) 355 (CA); *Gem Industries Inc. v. Target Industries*, 1994 CanLII 8963 (AB QB); *Macfarlane v. Owen*, [1917] 3 WWR 371.

[7] The Plaintiff's assertion that the Defendant is indebted to him, thus bringing the matter within the ambit of Rule 523, is an incorrect characterization of the nature of the suit. In his Statement of Claim, the Plaintiff does not seek recovery of unpaid salary and wages currently due for work already done. He does not seek to recover a debt, *per se*. Rather, he seeks *damages* for breach of employment contract which will be determined, in part, based on the Plaintiff's rate of remuneration under the employment contract and the amount of notice that the Court ultimately determines he should have received, if any.

[8] Moreover, the Plaintiff has not established a reasonable possibility that he will be unable to collect the claim if successful, nor that he will be subjected to unreasonable delay in collection as required by subrule 523(2)(f).

[9] As stated by the Alberta Court of Appeal in *Westmills, supra*:

[14] Inability to collect will be shown where there is an insufficiency of other exigible assets and a reasonable possibility that the money sought to be attached will be dissipated unless paid into court.

[15] Unreasonable delay in collection might result from the fact that the defendant's other exigible assets are hidden or so held or shielded, or will probably become so before judgment, and thereby delay normal execution after the anticipated judgment.

[10] The source of the Plaintiff's information respecting cuts to the Defendant's funding is, as noted, media reports. This is entirely hearsay and thus highly unreliable. Further, the impact of the funding cuts on the Defendant and, in particular, on its ability to satisfy a judgment, is unknown. There is nothing that specifically states, nor any information from which it a reliable inference can be

drawn, that the Defendant has no other exigible assets which could be used to satisfy a judgment, should the Plaintiff succeed, nor that the Defendant has hidden, shielded or dissipated its assets. In short, what is presented is insufficient to justify granting such extraordinary and drastic relief.

[11] The Plaintiff seems to suggest that the Defendant is, or is on the verge of becoming, insolvent. If that is the case, then it is even less appropriate for the Court to grant leave for the Clerk to issue a pre-judgment garnishee summons. Doing so would give the Plaintiff an unfair advantage *vis-à-vis* other creditors by placing him in a preferential position to collect his judgment: *Westmills, supra*, para. 20.

[12] Accordingly, the application is dismissed.

“K. Shaner”

K. Shaner

J.S.C.

Dated in Yellowknife, NT this  
9th day of May, 2014

Agent for Counsel for the Plaintiff: Cynthia Levy

No one *contra*

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**Corrigendum of the Ruling on Ex Parte Application to Issue Pre-Judgment Garnishee Summons**

**of**

**The Honourable Justice K. Shaner**

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1. An error occurred on page 4, identifying Cynthia Levy as Counsel for the Plaintiff. This has been corrected to read

Agent for Counsel for the Plaintiff: Cynthia Levy

2. The citation has been amended to read:

*Pintarics v. The Healing Drum Society* 2014 NWTSC 36.cor1

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**RULING ON *EX PARTE* APPLICATION TO ISSUE  
PRE-JUDGMENT GARNISHEE SUMMONS OF  
THE HONOURABLE JUSTICE K. SHANER**

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