IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-03946

BETWEEN

ROOFMAN LIMITED

Claimant/Judgment Creditor

AND

RAYFORD CONSTRUCTION LIMITED

Defendant/Judgment Debtor

AND

NATIONAL INSURANCE PROPERTY DEVELOPMENT COMPANY

Garnishee

AND

ADAM'S PROJECT MANAGEMENT & CONSTRUCTION LIMITED

Intervener

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Before: Master Alexander

Appearances:
For the judgment creditor: **Theresa Hadad Maraj**
For the garnishee: **Shobna Persaud**
For the intervener: **Mervyn Campbell and Keston McQuilkin**

DECISION

GARNISHEE PROCEEDINGS

1. The application before the court is to enforce judgment by garnishee proceedings[1]. The monies to be garnished are held by the **garnishee** ("NIPDEC") on account of Rayford Construction Limited ("Rayford), **the judgment debtor** in this matter. The instant application involves competing claims of the **judgment creditor** ("Roofman") and the **intervener**, Adam's Project Management & Construction Limited ("APMCL") to the funds held by NIPDEC. To ensure clarity, it is necessary at this point to reproduce the history of this matter.

[1] Under Part 51 of the CPR

Background

2. On 23rd October, 2008 the judgment debtor, Rayford, and NIPDEC entered into a contract for the renovations and roof upgrade of the North Block Roof of the Port of Spain General Hospital for a period of 12 months from the date of the agreement for the sum of $12,423,652.08 ("the roof upgrade contract"). On 8th December, 2008 Rayford entered into an agreement with the judgment creditor, Roofman (the first sub-contracting agreement), which provided *inter alia* that Roofman would provide sub-contracting services for the supply and installation of the said roof upgrade. On 26th June, 2009 a written assignment was effected between Rayford and Intercommercial Bank, assigning all monies payable under the roof upgrade contract to the said bank.

3. Subsequently, Roofman and Rayford encountered issues with the completion of this agreement, resulting in the institution of proceedings by Roofman, by claim form and statement of case filed on 27th October, 2009, seeking damages for breach of contract. Due to the non-appearance of Rayford, default judgment was entered on 9th February, 2010. By this judgment Rayford was ordered to pay Roofman the sum of **$1,201,707.47** plus interest.

4. Since the entire contract for the roof upgrade was not completed, Rayford entered into an agreement with the intervener, APMCL, on 13th April, 2010 to complete the said roof upgrade and conduct any remedial works (the second sub-contracting agreement). On 17th May, 2010 Intercommercial Bank notified NIPDEC that it had terminated the original assignment as at that date and released the assignment of Rayford's future invoices. By this written release, the bank specifically maintained the assignment in respect of invoices prior to that date. This meant that for future invoices, NIPDEC would pay Rayford directly or to another person indicated by it.

5. On 27th May, 2010 NIPDEC was notified, via letter from Rayford, of the agreement made between Rayford and APMCL, which also confirmed the release of the original assignment and release of all future invoices. The said letter instructed and "authorized" NIPDEC to pay APMCL directly for the works conducted by it in completing the roof upgrade contract as Rayford's main sub-contractor. <u>The invoices were, however, to be submitted under the name of Rayford</u>. NIPDEC acquiesced to this request. APMCL discharged its obligations under the

agreement and was paid by NIPDEC in the sum of $931,460.00 on 4th April 2011 and $2,082,999.00 on 24th May, 2011. On 19th April, 2011 a statement of completion was submitted to NIPDEC for the sum of $1,259,972.97 representing the outstanding balance due and owing to APMCL. This sum remains outstanding and is yet to be paid to APMCL by NIPDEC. In addition, NIPDEC holds the sum of $298,408.57 retention, which is repayable to Rayford subject to deductions. These sums are now in issue in the present proceedings.

6. To be stated upfront is that the factual scenario (set out above) is not in dispute among the parties. They also held the common grounds that: the funds claimed by the judgment creditor and the intervener are in the possession and control of the garnishee, NIPDEC; there is no contract between the intervener, APMCL and NIPDEC and; the obligation of NIPDEC to pay monies is owed to Rayford, its contractor.

The garnishee proceedings

7. The present garnishee proceedings were instituted on 13th April, 2011 to enforce the default judgment against Rayford. A provisional order, inter alia, attaching the debts due and accruing to Rayford, was issued by this court on 16th May, 2011. By this provisional order, NIPDEC was called on to attend the hearing of the application (as garnishee) for the final order, set for 15th June, 2011. NIPDEC filed its affidavit on 15th June, 2011 in response to the application stating that: in fact, what was owed to Rayford was a maximum of $298,408.57 (retention funds); it was in possession of an authorization letter to pay APMCL for certain portions of the work under its contract with Rayford; the remaining monies under the said contract in the sum of $1,259,972.97 was due to APMCL and; NIPDEC was awaiting release of funds to make that payment. Roofman filed submissions on 31st October, 2011 seeking the final attachment order.

8. By order dated 18th January, 2012 APMCL was added as a party to the proceedings and ordered to file and serve a response. This was done by affidavit of Ronald Aqui, Managing Director of APMCL, filed on 8th June, 2012. In this affidavit, Mr Aqui confirmed that the outstanding sum of $1,259,972.97 was owed to APMCL, not Rayford. It was also confirmed that NIPDEC was awaiting the release of funds from the Ministry of Health to issue this payment to APMCL. As the competing claims of Roofman and APMCL to the funds held by NIPDEC are central to the instant proceedings, I will now turn to the various submissions.

9. APMCL's counsel has submitted that Roofman is only entitled to such funds held by NIPDEC that are due and owing to Rayford (admitted to be the sum of $298,408.57) and not what are due and owing to APMCL (admitted by NIPDEC to be $1,259,972.57). Counsel based his position on the fact that the sum of $298,408.57 is all that Rayford can honestly deal with since the other sum due and owing under the roof upgrade contract is due to APMCL: see ***In re General and Horticultural Company ex parte Whitehouse***[2]**.** In that case, which concerned a debt subject to charges, it was established that an attachment of debts order can only bind so much of the debt due and owing to the judgment debtor from a third party as the judgment debtor can honestly deal with at the time the attachment order *nisi* is obtained and served. In that case, a debt was charged by a judgment debtor to 2 companies and a judgment creditor obtained an attachment of debts order *nisi*. It was held that it was settled law that an attachment of debts order charges only what the judgment debtor could honestly deal with himself and that to do otherwise would mean that a judgment creditor would obtain, not the property of the judgment debtor, but that of someone else. It was held further that the assignment by the judgment debtor to the second company was valid and the judgment creditor could only obtain what the judgment debtor could honestly give him. Of note is that counsel for Roofman adopted the submissions of APMCL's counsel that the garnishee would only be liable to hand over so much of the property that the judgment debtor could honestly deal with without interfering with the interest of third parties, the principle laid out in **In re General Horticultural Company (supra)**. She has taken issue, however, with what exactly constituted the sum that the judgment debtor, Rayford, can honestly deal with and so is within the reach of the attachment order.

10. In issue, therefore, is whether it is only the sum of $298,408.57, subject to any deductions by NIPDEC for corrections of defects, that is due and owing to Rayford and that is available to facilitate garnishment. Also in issue is whether the excess or balance of monies being held by NIPDEC under the roof upgrade contract invoiced to be paid to APMCL is out of the reach of the attachment order. The determination of these issues as well as the sums to form part of the final attachment of debts order would hinge on whether an effective and legally binding assignment had taken place between Rayford and APMCL. The main issue for resolution,

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2 *In re General and Horticultural Company ex parte Whitehouse* (1886) LR 32 Ch D 512

therefore, related to the law as regards assignment, as gleaned from the documents in evidence. I will now turn to examining these legal issues.

Whether there was an effective assignment of the benefit of the main contract from Rayford to APMCL?

11. The crux of this case falls on the determination of whether the benefit of the contract between NIPDEC and Rayford was **assigned** to APMCL. It is clear that monies that are validly assigned lie beyond the reach of a garnishee order. An assignment is by definition irrevocable, demonstrating an intention to permanently part with and transfer ownership of the assigned matter[3]. To be determined first, therefore, would be the conditions that must exist to make an assignment valid.

12. **Section 23[7] of the Supreme Court of Judicature Act, Chap 4:01** sets out the conditions to be met for a valid legal assignment as:
    a) The assignment must be of a debt or other legal thing in action.
    b) The assignment must be absolute, and not purporting to be by way of charge only.
    c) The assignment must be in writing under the hand of the assignor.
    d) Express notice in writing of the assignment must be given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or thing in action.

13. Apart from the above formalities, the learning is clear that for an assignment of a chose in action to be valid, certain other conditions must be satisfied:
    a) The assignor must have manifested an intention to transfer the chose.
    b) The thing assigned must be a chose in action, in present existence, certain or capable of being ascertained.
    c) The identity of the assignee must be clear.
    d) The appropriate forms and formalities must have been satisfied[4].

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[3] Smith, Marcus, The Law of Assignment, 2007, Oxford University Press 7.03 states that fundamental to an assignment is the manifestation of a "final and settled" intention by the assignor to make an immediate and irrevocable transfer of the chose to the assignee.

[4] Smith, Marcus, The Law of Assignment, 2007, Oxford University Press 7.02

14. In the instant case, there are 2 instruments in issue with respect to the assignment: a memorandum dated 27th May, 2010 and the 13th April, 2010 second sub-contracting agreement. I will treat first with the memorandum dated 27th May, 2010, since if this was purportedly used to create the assignment, it must identify the true intention of the parties. The construction of a memorandum relied upon to establish a purported assignment is a question of law and the first principle is to give effect to the expressed words of the memorandum. Each case turns on its own facts so a court must have regard to the wording of the document used in the context of the factual matrix.

15. The law as set out above is clear and provides that to create a legal assignment, notice in writing of the assignment must be given to the debtor or other person liable to make the payment, in order to entitle the assignee to bring a claim for the money or the debt. It is also clear that the rights of the assignee are subject to all equities having a priority over the rights of the assignor. A contractor can assign his beneficial rights under the contract including: the right to receive payment of money due or to one due whether by installments or otherwise; the right to payment of installments of the agreed price on the production of certificates from the architect and; the right to any retention money held by the employer, see ***Re Tout and Finch Ltd***[5]. When a contract prohibits assignment, an assignment of the benefit of that contract is of no effect and, therefore, unenforceable against the debtor, although it may create rights between the assignor and the assignee.

The memorandum dated 27th May, 2010

16. The memorandum dated 27th May, 2010 used to create the purported assignment stated:

… Rayford Limited is authorizing NIPDEC to pay Adam's Project Construction Management Limited (APCML) (sic) to finish the Zones numbered 3 and 4 – under the contract as Rayford Limited main contractor.

Invoices will be submitted under Rayford Limited but paid directly to Adam's as per our agreement.

This constituted the entirety of the notice in writing of the purported assignment. Counsel for Roofman has asked this court not to accept this as a "written assignment" on the bases that:

5 *Re Tout and Finch Ltd* [19541 All ER 127

(a) This document is not the instrument creating the assignment but mere notice of an assignment to NIPDEC (as employer).

(b) The "agreement" referred to therein was ambiguous and could refer to an agreement between Rayford and NIPDEC or Rayford and APMCL and that, without more, this ambiguity cannot be resolved.

17. To my mind, for an assignment to be valid it must be and intended so to be irrevocable[6]. There are instances when a letter can be used to create a legal assignment: see ***Intercommercial Bank Limited*** **v** ***PTSC***[7] where Moosai J found that the assignment was created given the clear intention of the parties to create an assignment that was irrevocable and not to be cancelled without the assignee's written consent. All the relevant parties were signatories to this letter, wherein the terms for cancelling were clearly spelt out. That case can be distinguished from the present one at bar with respect to the standard and quality of evidence used to establish that an assignment had taken place. In the present case, the memorandum dated 27th May, 2010 is not a written agreement between the assignor (Rayford) and assignee (APMCL) establishing a clear intention to create an assignment that is irrevocable. I accept that there are no fixed words that must be used to create an assignment but, to my mind, the words used in the memorandum to NIPDEC did not show a clear intention to irrevocably transfer the debt to the assignee. On the face of the memorandum, it is not clear that the instructions cannot be cancelled without the assignee's written consent. In my view, the memorandum was at best an informal direction to NIPDEC to pay APMCL, with the implication that this can be superseded or overridden by a further authorization letter to NIPDEC to pay another third party, without any release being required from APMCL. It was mere notice or instructions to NIPDEC (as employer) of how future invoices are to be settled or future payments assigned under the contract. This position is to my mind bolstered by the confirmation in the said memorandum that invoices will continue to be submitted under Rayford's name. NIPDEC merely paid APMCL "out of the money" owed to Rayford. I will now turn to the issue of whether an assignment can be of part of a debt before looking at the other instrument purportedly used to create the assignment.

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6 Ibid, The Law of Assignment

7 *Intercommercial Bank Limited* v *PTSC* HCA 1500 of 2007

Whether an assignment can be of part of a debt

18. Another essential element to establish a legal assignment is that it must be absolute. In the instant matter, what was required to be paid to APMCL was part only of the debt; that is the part of the monies remaining with respect to "zones numbered 3 and 4". This points to an attempted "assignment" of only part of the debt to APMCL, with the remainder to be made payable to Rayford. Of note is that section **23(7) of the Supreme Court of Judicature Act** does not allow for an assignment of part of a debt. The implication of NIPDEC holding the retention (i.e. a percentage of the monies payable for the construction works) to pay to Rayford was that there was no intention for the direction/instruction to pay APMCL to be an absolute assignment as permitted under **section 23(7) of the Supreme Court of Judicature Act**. On this basis, the direction to pay APMCL also falls outside the statute and/or cannot be considered a legal assignment within the meaning of the Act.

19. Having found that the essential elements to found an assignment are entirely absent on the facts, it is my view that the purported assignment via this memorandum was invalid and amounted to a mere direction to pay APMCL and not that of an absolute or irrevocable transfer of rights to a portion of the debt. This memorandum authorizing payment to APMCL was revocable instructions to pay APMCL for a specific portion of the works. I now turn to the second instrument allegedly used to create the assignment.

The 13th April, 2010 second sub-contracting agreement

20. Counsel for APMCL in his submissions claimed that the actual assignment was executed on the 13th April, 2010 between Rayford and APMCL. The document executed on 13th April, 2010 was the second sub-contracting agreement. Did this second sub-contracting agreement create a legal assignment? Counsel for APMCL has asked this court to hold that this agreement was indeed a valid legal assignment of the debt which was due and owing to APMCL or alternatively, an equitable assignment. The main points of his submissions are as follows:

    a) An attachment of debt order can only bind so much of the debt due and owing to the judgment debtor from a third party as the judgment debtor can honestly deal with at the time the order *nisi* is obtained and served.

b) The monies held by the garnishee are due to both the judgment debtor and the intervener.

c) By virtue of the second sub-contracting agreement on 13th April, 2010 the judgment debtor became a mere trustee of any funds it received for works performed by the subcontractor/intervener: see ***Re Tout and Finch Ltd***[8].

d) The legal assignment of the debt due to Rayford was by way of the second sub-contracting agreement on 13th April, 2010.

e) Alternatively, the equitable assignment of the debt due to Rayford was by way of the second sub-contracting agreement on 13th April, 2010.

21. By large the submissions of counsel for APMCL at (b) and (c) above were debunked as misconceived and were by his own admissions (e.g. that both the first and second sub-contracting agreements did not differ and neither could be said to have been assignments pursuant to **section 23 of the Supreme Court of Judicature Act**) **rendered of no effect**.

22. On the other hand, the claim in the alternative, that the 13th April, 2010 sub-contracting agreement was a valid legal and/or equitable assignment, was based on the argument that the 4 conditions stipulated by Moosai J (as he then was) in ***Intercommercial Bank Limited*** **(supra)** were met in the instant matter. It was also submitted that there was no requirement for either one of the notices to be expressed in particular words, once the relevant parties were notified it would be sufficient. His submissions were made in reliance on the following dicta by Moosai J:

… equity looks to the intent rather than the form, no particular form of words is necessary for the equitable assignment, so long as the words clearly show an intention that the assignee is to have the benefit of the chose.
… there must, however, be some act by the assignor showing that he is passing the chose in action to the supposed assignee. … An agreement amounting to an equitable assignment may be express and written or even may be made out from a course of dealing between the parties.

23. Based on the above, counsel submitted that there was a clear intention on the part of Rayford for APMCL to have a benefit from the chose, which chose was passed to APMCL. Alternatively, an equitable assignment was created that cannot now be defeated by the

8 *Re Tout and Finch Ltd* [1954] 1 AER 127

attachment of debts order. The attachment of debts order should relate only to the sum of $298,408.57 and not the sum of $1,259,972.57 which NIPDEC has admitted is due and owing to APMCL. This latter sum was out of the reach of an attachment of debts order and can expose NIPDEC to further action based on its admission. Further, the sums held by NIPDEC in excess of the $298,408.57 were assigned to APMCL before the filing and service of the garnishee proceedings and NIPDEC (as garnishee) also had notice of the assignment well in advance of these proceedings so, therefore, these monies were out of reach of any attachment of debts order: see ***Holt* v *Heatherfied***[9]. Additionally, these sums were never due and owing to Rayford alone, but also to APMCL, so the sum of $298,408.57 is all that Rayford can honestly deal with. He submitted further that an attachment of debts order may be refused if it is inequitable to grant it or where a debt is due and owing jointly to the judgment debtor and another: see ***Macdonald v Tarquah Gold Mines Co***[10]. In the instant case at bar, there should be no attachment of the global funds being held by the garnishee, NIPDEC, given the competing claims and the fact that the funds are due and owing jointly to Rayford and APMCL. For the court to prioritize which debt should be favoured over the other would be inequitable. Finally, the fact that Roofman is unable to realize from these proceedings the full extent of the judgment debt does not preclude it from availing itself of any remedy that is available to enforce its judgment.

24. I was unable to accede to the submission that the monies are due to both Rayford and APMCL and that by the second sub-contracting agreement on 13th April, 2010 Rayford became a mere trustee of any funds it received for works performed by APMCL, as the sub-contractor. To my mind, this agreement falls far below what is required to create a charge or security and proved of little assistance to the intervener, APMCL. To characterize something as a charge would depend on the proper construction of the instrument creating it, as it is the relevant intentions of the parties contained in the instrument creating the charge that matters. In the instant case, it is clear that the instrument being relied upon by APMCL is not a charge but merely an agreement to do works and for Rayford to direct NIPDEC to pay monies directly to APMCL. Rayford remained the main contractor of NIPDEC.

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9 *Holt* v *Heatherfied* [1942] 2 KB 1

10 *Macdonald* v *Tarquah Gold Mines Company* 13 QBD 535

25. I also considered as misconceived the submission that the monies are due jointly to both Rayford and APMCL, with Rayford being mere trustee. The intervener relied on the case of ***Macdonald* v *Tacquah Gold Mines* (supra)** for the principle that the court should not prioritize competing claims which are jointly owed. This case can also be distinguished from the present matter. In that case there were 2 parties (Horton and Fitzgerald) who jointly held rights as mortgagees against Tacquah Gold for their mine rights. Macdonald sought to garnish the funds of Tacquah Gold in respect of a debt owed by Fitzgerald. The court properly found that the monies were owed jointly to both Horton and Fitzgerald and that accordingly Horton could not be prejudiced by a claim against Fitzgerald. The factual matrix of that case is in stark contrast with the claim at bar. Roofman has a claim against Rayford that has crystallized and for which it has secured judgment. It is independent to any claim of APMCL against Rayford and reflects different entitlements, though linked to the same monies held by NIPDEC. I am of the view also that Roofman has prioritized its claim by filing it in 2009 and obtaining judgment on 9th February, 2010. After judgment it initiated enforcement proceedings on 16 May, 2011. It was only after this that APMCL chose to make its claim against NIPDEC. Apart from the fact that Roofman has no joint claim with APMCL, there is no equivalency between the parties; one has the benefit of a judgment; the other a mere claim which has yet to be determined and which is denied by NIPDEC. Further, to my mind, the issue of a trust being created simply does not arise. I could find no fiduciary obligations or other evidence to support this and I concluded that Rayford was not a trustee in this matter.

26. Additionally, it is clear that there is no enforceable legal relationship between APMCL and NIPDEC in this matter. First, there is no privity of contract between the intervener, APMCL, and NIPDEC as NIPDEC was not a party to the second sub-contracting agreement of 13th April, 2010 and no permission was sought from NIPDEC approving any assignment to the intervener. Secondly, APMCL has no proprietary right in the funds payable to Rayford so as to bind NIPDEC. The second sub-contracting agreement points to payment only arising as a claim for compensation and does not satisfy the requirements for a proper assignment. Thirdly, the language of the agreement indicated that payment to APMCL was contingent upon appropriation, allocation and availability of funds from NIPDEC. It also included a requirement on the part of Rayford to pay over to the intervener monies due to it from NIPDEC to make up the 20% profit. A reading of the document pointed to it being a mere

agreement between Rayford and APMCL to direct the garnishee, NIPDEC, to pay and not a valid assignment. APMCL was paid on the direction of Rayford, who remained the contractual partner of NIPDEC and who was required to submit the necessary invoices in Rayford's name. Counsel for APMCL's submissions that the 13th April, 2010 second sub-contracting agreement constituted a valid legal and/or equitable assignment are rejected as misconceived and unsupportable in law. I concluded that the monies due to Rayford, not having been assigned, were within the reach of the garnishee order. For completeness, I will now turn to review briefly the learning on sub-contracting.

Sub-contracting

27. It is clear from the facts that Rayford made use of what is referred to as domestic sub-contracting, in which the employer (NIPDEC) had no relationship with the sub-contractors (Roofman and APMCL). This meant that the obligations of the parties to the main contract (NIPDEC and Rayford) were unaffected by the method by which the main contractor (Rayford) elected to perform its obligations. The learning on sub-contracting as set out in **Halsbury's Laws of England**[11] reads:

> *There is no privity of contract between the employer and the subcontractor.... Acceptance by the employer of work done by a sub-contractor will in no way bring about an implication that the employer has made any contract with the sub-contractor. A sub-contractor has no lien upon the money payable under a building contract to the contractor by the employer for the price of goods supplied by the sub-contractor the property in which has passed to the contractor*: see ***Pritchett and Gold and Electrical Power Storage Co***[12]**.**

28. Further as stated in ***JA Milestone & Sons Ltd*** **v** ***Yates Brewery Ltd***[13] per Singleton J, a condition in a contract which enables a building owner to pay someone other than the contractor must be strictly interpreted. If the contract authorizes payment either to the contractor or alternatively directly to the sub-contractors appointed by the architect, the building owner may elect which right to exercise. If he elects to pay the contractor amounts including sums owing for work done by the sub-contractors, he may not in the case of future

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11 Halsbury's Laws of England Volume 6 (2011) 5th Edition paragraph 245

12 *Pritchett and Gold and Electrical Power Storage Co v Currie* [1916] 2 Ch 515, CA

13 *JA Milestone & Sons Ltd* v *Yates Brewery Ltd* [1938] 2 All ER 439 at 443

payments be permitted to pay the sub-contractors directly and deduct such payments from sums owing to the contractor if it turns out that the contractor has not paid over to the sub-contractors money owed to them**: *British Steamship Investments Trust Ltd* v *Foundation Co Ltd* (15 December 1930, unreported)** per Maugham J, cited in ***Milestone*** **(supra)**[14].

29. The case of ***Stevenson's Trustee*** **v** ***Campbell & Sons***[15] makes it clear that if an employer promises to pay a sub-contractor 'out of the money' that he has to pay the main contractor, that is a direct promise, and not a guarantee to be liable for the main contractor's debt. Thus in the instant case, this instruction to pay APMCL directly does not amount to an assignment of any debt due and owing to Rayford. APMCL was simply being paid for work done under the second sub-contracting agreement and was so paid by NIPDEC directly. APMCL's right to payment arises only as a claim for compensation.

30. Having concluded that neither the notice of 27th May, 2010 nor the second sub-contracting agreement of 13th April, 2010 was a legal assignment, the necessary conclusion to be drawn from the absence of an assignment is that APMCL has no lien on the monies owed to Rayford. Further, as noted in ***Stevenson's Trustee*** **(supra)**, NIPDEC is not now liable to the debt owed to APMCL by Rayford as there was no privity of contract between NIPDEC and APMCL. The monies owed by NIPDEC remain payable to Rayford, as either retention funds or the balance for works completed under the roof upgrade contract, and to be disbursed only upon Rayford issuing its invoices and pursuant to its revocable instructions as to payment. These outstanding sums are, therefore, available for garnishment.

What is the effect of the garnishee order?

31. Having found that both instruments in issue did not satisfy the requirements for a proper assignment, it is my view that this authorization to NIPDEC was cancelled as soon as service of the garnishee order *nisi* was effected. Instructive on this issue is the case of ***Retskin*** **v** ***Severo Gosudastvenoe Akcionernoe Obschestvo Komerseverputj***[16] where judgment debtors instructed a bank to transfer their currency account to another body which they owed nothing and to close their account. The transaction was duly entered in the bank's books but, before

14 *Milestone & Sons Ltd* v *Yates Castle Brewery Ltd* [1938] 2 All ER 439 at 442-443
15 *Stevenson's Trustee* v *Campbell & Sons* (1896) 23 R 711, Ct of Sess
16 *Retskin* v *Severo Gosudastvenoe Akcionernoe Obschestvo Komerseverputj* [1933] 1 KB 47

notice had been given to the proposed transferees or the transfer was accepted by them, a garnishee order *nisi* was served on the bank by the judgment creditor. The Court of Appeal held that the instruction to transfer was not an assignment, but merely a revocable instruction to the bank. The effect of the service of the garnishee order *nisi* was to revoke any order of transfer that had not been fully carried out.

32. It is, therefore, my judgment that the alleged assignment constituted no more than a mere direction to pay, which was at all times revocable, and which was revoked by the service on the garnishee, NIPDEC, of the provisional attachment order granted by this court on 16th May, 2011. There is no basis for refusing to grant the order sought by Roofman.

Order

33. It is therefore ordered that the Garnishee Order Nisi made on 16th May, 2011 be and is hereby made absolute and final.

Dated 20th February, 2014

Martha Alexander
Master