

Orders of the Royal Court

II
2010

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

11th day of May, 2010 before Sir Geoffrey Rowland, Bailiff; present:- Alan Cecil Bisson, Michael John Tanguy, Esquires, Susan Mowbray, The Reverend Peter Gerald Lane, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, Terry George Snell, Esquire, Jurats

No. 2 Order, 2010

ENTITLED

THE MAGISTRATE'S COURT (ARREST OF WAGES) RULES, 2010

The Magistrate's Court (Arrest of Wages)

Rules, 2010

THE ROYAL COURT, in exercise of the powers conferred on it by section 20 of the Magistrate's Court (Guernsey) Law, 2008^a, and all other powers enabling it in that behalf, hereby orders:-

Power of Sheriff to make orders as to wage arrests.

1. (1) Her Majesty's Sheriff ("**the Sheriff**") may, subject to the conditions set out in rule 3, on the application of a person who has obtained judgment in the Magistrate's Court for the payment of a sum of money (the "**judgment creditor**"), and in satisfaction of that judgment, order the arrest of the wages of the person against whom the judgment was made (the "**judgment debtor**").

(2) An order of the Sheriff under this rule for the arrest of the wages of a judgment debtor is referred to as a "**wage arrest order**".

(3) For the avoidance of doubt, and subject to the conditions set out in rule 3, more than one wage arrest order may be in force at any time against a judgment debtor.

Power of Sheriff to vary orders as to wage arrests.

2. The Sheriff may, subject to the conditions set out in rule 3, on the application of the judgment creditor or the judgment debtor, or of his own motion, vary a wage arrest order.

Conditions of arrest.

3. (1) The conditions referred to in rules 1 and 2 are -

(a) the proportion of the judgment debtor's wages that can be the subject of -

(i) the wage arrest, and

(ii) any other wage arrest made in respect of the judgment debtor's wages,

must not exceed one half in the aggregate,

(b) the amount of -

(i) the wage arrest, and

(ii) any other wage arrest made in respect of the judgment debtor's wages,

must not exceed £100 per week in the aggregate, and

(c) the Sheriff has used his best endeavours to satisfy himself that the judgment debtor has the means available to pay the amount to be arrested.

(2) For the purposes of paragraph (1)(c), the Sheriff may require the judgment debtor to provide him with such information and documents as are reasonably necessary to enable the Sheriff to ascertain the judgment debtor's available means; and if the judgment debtor refuses or fails to comply with any such requirement the Sheriff may -

^a Order in Council No. XVIII of 2009; amended by Ordinance XXII of 2009.

- (a) subject to the condition set out in paragraph (1)(b), proceed to make the wage arrest order on the basis of the information available to him, or
- (b) refer the matter to the Magistrate's Court.

Appeals from orders of Sheriff as to wage arrests.

4. (1) A person aggrieved by a decision of the Sheriff -
- (a) to make, or not to make, a wage arrest order,
 - (b) to vary, or to refuse to vary, a wage arrest order,
 - (c) as to the proportion of the judgment debtor's wages that are to be the subject of the wage arrest,
 - (d) as to the amount of the wage arrest,
 - (e) that the judgment debtor has, or does not have, the means available to pay any amount to be arrested,

may appeal to the Magistrate's Court.

- (2) The grounds of the appeal under this section are that -
- (a) the decision of the Sheriff was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the Sheriff's decision or such other period as the Magistrate's Court may determine (whether before or after the expiration of the period of 28 days), and
- (b) by summons served on the judgment creditor (where the appellant is the judgment debtor) or the judgment debtor (where the appellant is the judgment creditor), stating the grounds and material facts on which the appellant relies.

(4) A copy of the summons referred to in paragraph (3)(b) shall be served on the Sheriff.

(5) On an appeal under this section the Magistrate's Court may require the Sheriff to produce any documents, information or evidence relevant to his decision (including, without limitation, any statement of means) and may -

- (a) set the decision of the Sheriff aside, in whole or in part, and itself make any decision which the Sheriff could

have made under these rules or which the Magistrate's Court itself could have made under its own powers, or

(b) confirm the decision, in whole or in part.

(6) On an appeal under this section the decision of the Sheriff which is the subject of the appeal shall, if the Magistrate's Court so orders on the application of the appellant, and on such terms as the Court thinks just, be suspended or modified pending the determination of the appeal.

(7) The costs of and incidental to an appeal under this section are determinable, payable and recoverable in accordance with the law for the time being in force governing the determination, payment and recovery of costs and fees in civil proceedings in the Magistrate's Court.

However, costs may only be awarded against the Sheriff in the event of his own bad faith, wilful misconduct or gross negligence.

(8) A decision of the Magistrate's Court on an appeal under this section is final.

Sheriff's costs and fees.

5. For the avoidance of doubt the Sheriff's costs and fees in respect of wage arrest orders are payable and recoverable in accordance with the provisions of the Magistrate's Court (Fees) Rules, 1981^b.

Applicability of existing law relating to wage arrests, etc.

6. (1) These rules have effect notwithstanding the provisions of any

^b Order of the Royal Court No. II of 1981.

enactment or rule of customary law relating to wage arrests ("**arrêts de gages**") in force at the date of the commencement of these rules, including (without limitation)-

- (a) the Ordonnance provisoire relative aux Gages d'Ouvriers of 1860^c, and
- (b) the Ordonnance relative à l'arrêt de Gages des Employés of the 8th July, 1933^d.

(2) However, subject to paragraph (1), these rules are without prejudice to any power vested in the Royal Court, the Magistrate's Court and the Sheriff pursuant to the provisions of any enactment or rule of customary law.

Making of wage arrest order by consent.

7. For the avoidance of doubt, nothing in these rules precludes the Sheriff from making and subsequently varying an order for the arrest of the wages of a judgment debtor -

- (a) with the consent of the judgment debtor, and
- (b) subject to such terms and conditions (including conditions differing from those set out in rule 3) as may be agreed with the judgement debtor.

^c Recueil d'Ordonnances Tome III, p. 459.

^d Recueil d'Ordonnances Tome VIII, p. 298.

Interpretation.

8. (1) In these rules, except where the context requires otherwise -

"**judgment creditor**" means a person who has obtained judgment in the Magistrate's Court for the payment of a sum of money,

"**judgment debtor**" means a person against whom a judgment for the payment of a sum of money is made in the Magistrate's Court,

"**Magistrate's Court**" means the Magistrate's Court constituted under section 1 of the Magistrate's Court (Guernsey) Law, 2008,

"**Sheriff**" -

- (a) in relation to the making, variation or revocation of a wage arrest order, means Her Majesty's Sheriff, the senior Deputy Sheriff or a Deputy Sheriff authorised in that behalf by the Royal Court, and
- (b) in any other case, means Her Majesty's Sheriff or any of his Deputies,

"**wage arrest order**" means an order of the Sheriff under rule 1 for the arrest of the wages of a judgment debtor,

and other expressions have the same meaning as in the Magistrate's Court (Guernsey) Law, 2008.

(2) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of these rules.

(3) References in these rules to an enactment or order of the Royal Court are references thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

Citation.

9. These rules may be cited as the Magistrate's Court (Arrest of Wages) Rules, 2010.

Commencement.

10. These rules shall come into force on the 11th May, 2010.

^e Ordres en Conseil Vol. XIII, p. 355.