

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Puppet Killer Productions Inc. v.
IndustryWorks Studios Inc.*,
2024 BCSC 2323

Date: 20241126
Docket: S237250
Registry: Vancouver

Between:

Puppet Killer Productions Inc.

Petitioner

And:

IndustryWorks Studios Inc.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraph 9 on December 18, 2024.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner: J. Zeljkovich

Counsel for the Respondent: D. Babcock

Place and Date of Hearing: Vancouver, B.C.
November 26, 2024

Place and Date of Judgment: Vancouver, B.C.
November 26, 2024

[1] **THE COURT:** On April 28, 2023 the petitioner, Puppet Killer Productions Inc., was granted an arbitral award against the respondent, IndustryWorks Studios Inc., in the amount of \$171,324.61. Petitioner's counsel told me today that various attempts were made thereafter to secure payment. To date, not a nickel of the money owed has been paid to the petitioner.

[2] On February 1, 2024, the petitioner obtained an order from my colleague Sharma J. declaring the arbitral award to be a judgment of this court. On April 10, 2024, the petitioner applied

for and was granted a without-notice post-judgment garnishing order attaching the judgment debt from the respondent's bank account with the CIBC. The full amount of the arbitral award has been paid into court, where it remains to this day pending determination of the petition.

[3] On June 30, 2023, before these steps were taken, and unbeknownst to the petitioner, the respondent obtained a loan from a company called BondIt LLC for \$200,000. By agreement this loan was secured generally by all of the respondent's current and after-acquired assets. This security agreement was entered into after the arbitral award was made, but before it was registered as a judgment, thus BondIt LLC is a secured creditor with priority over the petitioner.

[4] It was not until June 4, 2024 that the petitioner received disclosure of the respondent's CIBC account information. This was, in my view, the sort of financial disclosure that probably should have been made much earlier. The money paid into court from the respondent's account shows on the bank statement as a debit recorded on April 11, 2024. For some reason, it took until April 25, 2024 to arrive in the court account. On the same day, April 25, 2024, the respondent filed an application seeking the release of the funds on the footing that the money forms part of the security for a debt owed to a priority creditor. The respondent claims that the amount presently owed to BondIt LLC is \$213,000.

[5] I note that on the same day the money was debited from the respondent's CIBC account, there remained a balance on deposit of \$263,000. In other words, there were funds available to the respondent that could, there and then, have discharged the entire amount of the alleged debt to BondIt LLC. If this had been done, of course, it would have had the effect of satisfying the general security agreement and eliminating the priority of BondIt LLC over the petitioner. The bank statement further showed that these residual funds were transferred out of the account immediately after the garnishee complied with the post-judgment order.

[6] The respondent's application to release the funds came on for hearing before my colleague Milman J. on May 1, 2024. The matter was adjourned without any orders being made, including on the issue of whether or not there is, in fact, a valid security agreement, although Milman J. made comments on the record to the effect that likely there is such an agreement, and that it would rank in priority to the petitioner's judgment debt.

[7] The petitioner, as counsel said a number of times this afternoon, just wants to get paid. It finally brought an application, which was scheduled to be heard on October 29, 2024, for an order that the funds in court be paid to it. The respondent's objection to this continues to be based on the loan from BondIt LLC which is secured generally by all of its assets, including the cash paid into court. The hearing was adjourned by consent because respondent's counsel was not available on October 29, 2024. It was re-scheduled for December 3, 2024, a week from today.

[8] Now the parties are before the court again, this time on an application by the respondent for an order setting aside a second garnishing order that was issued to the petitioner by the Registrar of the court on November 21, 2024, as a result of which the CIBC has paid into court the further sums of \$46,262.02 CAD and \$4,998.25 USD. The respondent argues that there was material non-disclosure in the affidavit material put before the Registrar in support of this second garnishing order. In particular, it is alleged that the petitioner's evidence wrongfully failed to disclose the respondent's security agreement with BondIt LLC, or that there was an earlier garnishing order, or that \$171,324.62 had already been paid into court, or that there was a hearing scheduled for December 3, 2024 for the release of those funds to the petitioner.

[9] It all comes down to the interpretation and application of the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 75, which at s. 3(2) differentiates the scope and extent of disclosure required for a post-judgment garnishment order from that required for a pre-judgment order. Counsel and I discussed at some length the various reasons why such differentiations exist, and why more nuanced and detailed evidence is required to be adduced in aid of a pre-judgment order. If one is asking to get an advance, as it were, on a judgment before the merits of the case have been determined, then it stands to reason that one is obligated to pass through a lengthier sequence of evidentiary hoops than a person with a valid, subsisting and enforceable judgment already in hand.

[10] Where a post-judgment garnishment order is sought, s. 3(2)(c) of the statute says, quite simply, that it may be granted based on affidavit evidence establishing only that a judgement has been recovered and the amount remains unpaid. This is precisely the evidence, all of it perfectly true, contained in the affidavit material in aid of the second garnishing order. It was all the information that the statute required the petitioner to disclose.

[11] In this connection, I would echo the comments of my retired colleague Crawford J. in *Ohman v. Synq Access + Security Technology Limited*, 2018 BCSC 1001. It is a pre-judgment garnishing order case, but I think para. 24 of his decision applies with even greater force to the present post-judgment situation, because the petitioner is pursuing its right to recover a court-ordered debt, not asking for a remedy before the merits have been determined. I quote:

[24] As counsel says, it is of note that there is no precedent case law on this issue, and the legislation has been in force almost 80 years. I am satisfied that the current practice of issuing the garnishee for the total amount of the debt, despite the fact there are monies paid into court against the debt, is acceptable. The plaintiff is not wrong to seek a garnishing order for the whole amount.

[12] In the present case, one of the contingencies confronting the petitioner is the possibility, indeed the likelihood, that the money in court will not be paid to it because of the respondent's security agreement with BondIt LLC. The petitioner's judgment might well have to be satisfied by funds other than those paid into court. In my view, there is no reason why it should be inhibited or

delayed in the pursuit of other monies available to the respondent until the full amount determined to be owing is paid, particularly in light of the respondent's failure to make voluntary payments in any amount in over 18 months since the arbitral award was made. As far as I am concerned, there is nothing at all wrong or procedurally incorrect with what they have done so far, and the respondent's application to set aside the second post-judgment garnishing order is hereby dismissed.

"Baird J."