

Attachment of Assets in the Netherlands

Foreign businessmen and lawyers are surprised by how easily attachment of assets is granted in the Netherlands. Anyone who submits a claim can simply disrupt the running of a business or the personal life of someone, by seizing assets. Unlike other countries, the Netherlands is widely acknowledged to have a swift procedure in place for laying an attachment of assets, prior to a court ruling on the underlying claim. However, is this still the case? Preliminary relief judges appear to have become more restrictive in allowing pre-judgment attachments.

Pre-judgment attachments

Dutch law allows for a petition to an interlocutory court to attach the assets of a debtor prior to the main court proceedings. To this end, a petition for leave must be filed providing details of the creditor's claim, including the grounds for the claim, the identity of the debtor and what assets are involved. In order to retain the element of surprise, the debtor is not usually heard in these proceedings. If the judge grants leave, the court will assess the claim and, as condition, set a date by which the main proceedings for the claim relating to the attachment must be instituted.

Attachment Syllabus

Relevant legislation has not changed in recent years. However, the courts have issued guidelines for preliminary relief judges who deal with petitions for leave. These are set out in the so-called Attachment Syllabus. The rules for petitions of leave have become increasingly restrictive in recent years. Therefore, the creditor has to state very specific grounds for the claim, and present the judge with evidence thereof. It is the judge's task to assess critically if the claim has a realistic chance of being granted in the main proceedings. Whereas previously leave was granted even in summary petitions, it is now increasingly common for the judge or his clerk to contact the lawyer of the petitioner with further questions.

Types of attachment

Different types of pre-judgment attachments exist. The general form of a pre-judgment attachment (*verhaalbeslag*) serves as security for a financial claim that the creditor has against the debtor. Another form of pre-judgment attachment (*leveringbeslag*) secures the right of the delivery of goods that the creditor has bought and paid for, which the debtor refuses to deliver. A subsequent judgement on the transfer of the asset (be it paying the purchase price or not) is secured through laying the attachment. A claim for the return of property (recovery) can also be secured with a pre-judgment attachment for delivery (*leveringbeslag*). Pre-judgment attachments where the attachment

secures a monetary claim (*verhaalsbeslag*), are the most common. It is possible to lay an attachment on debtor's assets, such as vehicles, real estate, plot of land and even outstanding claims, including his bank accounts, since a bank balance is simply a claim from the account holder to the bank. This is called a third-party attachment. It is also possible to lay an attachment on salary. When petitioning for a pre-judgment attachment on debtor's salary (*loonbeslag*), debtor has the right to be heard. This constitutes an exception to the rule. In its ruling the court will take into consideration the income and assets and the remaining attachment-free amount of debtor. The attachment-free amount is the minimum income remaining at debtor's disposal for basic living expenses, such as food, clothing and rent.

Attachment in execution

If the court rules in favour of the creditor in the main proceedings, the judgment creditor may serve notice of the judgement. The pre-judgment attachment automatically converts into attachment in execution. The judgment creditor may publicly, or, with the permission of the judge, privately sell the attached assets and recover from the proceeds the amount owed to him. This is called executing the judgment.

Withdrawal of a pre-judgment attachment

Because of the ease with which the creditor can lay an attachment, Dutch law allows debtor to start summary proceedings for the withdrawal of a pre-judgment attachment. The judge can set aside the pre-judgment attachment, if it is proven that it is without merit (that is to say that the claim on which the attachment was based does not exist), or the attachment is found to be unreasonable, or if the debtor offers adequate replacement as security to guarantee the claim. This replacement usually takes the form of a bank guarantee. It is common legal practice to replace a pre-judgment attachment with a bank guarantee. Other forms of guarantee offered may include a lien or a mortgage. The judge in the summary proceedings will assess whether the replacement guarantee offered is sufficient. Should a pre-judgment attachment turn out to be groundless, the judgment creditor will be liable towards the judgment debtor. The question then becomes what damages judgment debtor has incurred. For instance, if his place of domicile was involved in the attachment, but it has not been sold and the judgment debtor had no plans to sell it, then in principle no damage has been incurred, as he has been allowed to remain in his house.

Costs incurred

The court fees in civil cases in The Netherlands have recently substantially increased. These are the costs that the creditor has to pay to the court in order to have his case heard. As of January 1, 2015, the court fees are set at € 613 for companies, and € 285 for private citizens. Presumably, the increased costs might raise the threshold considerably for seeking pre-judgment attachments. However, pre-judgment attachments do not have to be costly.

Conclusion

Pre-judgment attachments are often used to force parties to reach an amicable settlement. If the debtor is severely hampered by the attachment for instance on his bank account, he will be more willing to cooperate with the creditor to seek a solution outside of the courts. Although laying a pre-judgment attachment is easy, it is not without risk. If the claim underlying the attachment is ultimately rejected, the judgment creditor is liable for any damages the other party has incurred as a result of the attachment.

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