



### A Judgment Debt

To seek repayment of a monetary debt owed, a creditor (e.g. a banking institution) may commence an action in the Singapore Courts and obtain a Judgment against a debtor. In brief, a Judgment is a legal document issued by the Court to evidence that the creditor now called the '**Judgment Creditor**' is owed a sum of money called a '**Judgment Debt**' payable by the '**Judgment Debtor**'. A copy of the Judgment will be sent to the Judgment Debtor.

### Basis for a Writ of Seizure and Sale

The Judgment Creditor may file a Writ of Seizure and Sale ('**WSS**') against the Judgment Debtor as one of the enforcement options allowed by law to recover an unpaid Judgment Debt. Under a WSS, a Judgment Creditor (now called an '**Execution Creditor**') can request the Court to seize and sell movable property belonging to a Judgment Debtor (now called an '**Execution Debtor**') and utilize the sales proceeds to repay the Judgment Debt

The Court will assess the WSS application filed by the Execution Creditor to determine whether all legal requirements are fulfilled for issuance of the WSS. These include assessing whether there is an appropriate location owned or occupied by the Execution Debtor in which his movable property might be stored e.g. a residential property be it a Housing Development Board flat, a private condominium or

landed property (called the '**Premises**'). Once the WSS is approved by Court, the Court Bailiffs' section will fix a date and time for a first execution attempt (called the '**1<sup>st</sup> Attempt**') for seizure of items. The validity of the WSS is one (1) year from the WSS filing date. This validity period may be extended upon the Execution Creditor's successful application to Court.

### **Procedure for Bailiff's seizure of items**

The Execution Creditor will have to confirm whether they wish to proceed with the 1st Attempt (e.g. if payment has not yet been received). The procedure is summarized as follows:-

- The Execution Creditor's representative and an appointed Court official (known as the '**Bailiff**' who is identified by a distinctive vest and a special identification pass) will attend at the Premises together with the required documents
- The Bailiff will attempt to gain entry into the Premises by ringing the doorbell and/or knocking on the front door upon which the following scenarios may occur :-

**Scenario A:** If an occupant allows the Bailiff to enter the Premises, the Bailiff will proceed to identify and mark seized items with the Court's sticker seal (a '**Seizure**') and leave a notice at the Premises that the occupants are not to remove or tamper with the seized items.

**Scenario B:** If an occupant answers the door but refuses to allow the Bailiff access to the Premises for seizure of items, the Bailiff will usually not effect forced entry into the Premises at this 1st Attempt. Instead the Bailiff would serve a "Notice to the Execution Debtor" on the occupant to inform him of the WSS proceedings.

**Scenario C:** If the Premises are locked (meaning there is nobody home to answer the door or if the occupants refuse to open the door), the Bailiff will post a "Notice for the Execution Debtor" on the front door.

The Execution Creditor's representative will also take note of certain aspects of the Premises e.g. whether there are any pet dogs and what kind of door locks are on the front door.

### **2<sup>nd</sup> and subsequent execution attempts and forced entry**

If the Bailiff was unable to successfully seize items at the 1st Attempt (as per above Scenarios B and C), the Execution Creditor will have to request and satisfy the Court to grant another execution attempt (called an 'Execution Request').

If the Court approves this Execution Request, a second execution appointment date and time (called the '2<sup>nd</sup> Attempt') is fixed by the Bailiff. Again, the Execution Creditor will have to confirm with the Bailiff shortly before the 2<sup>nd</sup> Attempt date whether to instruct the Bailiff to exercise his powers of forced entry, which procedure is summarized as follows:-

- A locksmith is appointed to attend at the Premises together with the Execution Creditor's representative and the Bailiff. The Bailiff will assess the circumstances of the 2<sup>nd</sup> attempt and instruct the locksmith to effect forced entry of the Premises upon which (as per **Scenario A** above), the Bailiff will proceed with the Seizure of items and leave at the premises a notice not to remove or tamper with the seized items.
- If it was noted from the 1st Attempt that there are pet dogs at the Premises, a dogcatcher will also have to be appointed to attend the 2<sup>nd</sup> Attempt to restrain any pet dogs from interfering with the Bailiff's duties.

In the event that the 2<sup>nd</sup> Attempt is aborted or unsuccessful e.g. due to the Execution Creditor's instruction not to proceed with the 2<sup>nd</sup> Attempt or a pet dog suddenly being present at the Premises but the Execution Creditor did not appoint a dogcatcher, the Execution Creditor is able to proceed to file a further Execution Request, subject to the Court's approval. The process for 3<sup>rd</sup> and subsequent attempts are the same as the 2<sup>nd</sup> Attempt as above.

Once the Execution Debtor effects full settlement of the Judgment Debt or successfully negotiates a payment plan which monthly instalments are promptly paid, the Execution Creditor may agree to hold all WSS proceedings at any stage either before or after Seizure has been effected by the Bailiff.

### **Status of seized items**

After items have been seized, the Execution Debtor is given 7 days to settle all sums owing which instructions. This deadline is set out in the documents issued by the Bailiff upon successful Seizure. Thereafter during the validity period of the WSS, the Execution Creditor may request for an auction date.

In some circumstances, the Bailiff may require a valuation of all or some of the seized items and for a valuation report to be prepared and submitted to the Bailiff before fixing the auction date.

After seizure of the items, a third party (who is not the Execution Debtor and who is usually an occupant or co-owner of the Premises, called the '**Claimant**') may file a claim in Court that the seized items belong to him/her and not the Judgment Debtor. If the Claimant provides sufficient documents to support their claim e.g. receipts showing the Claimant's purchase of the items, the Execution Creditor may instruct the Bailiff to release the seized items (called a '**Release**').

However, if the Claimant does not provide satisfactory evidence to support their claim to ownership of the seized items and/or just gives a bare assertion of ownership, the Execution Creditor is entitled to file an Interpleader Summons application (called an '**IPS**') to dispute the Claimant's position at an IPS hearing fixed for the Court to determine the matter.

### **IPS hearing**

At the IPS hearing, the burden is on the Claimant to prove to the Court either by statutory declaration, affidavit or sworn oral evidence that the seized items do not belong to the Execution Debtor and that the items should be released to the Claimant and not auctioned off to pay the Judgment Debt. After hearing the Claimant and the Execution Creditor's submissions, the Court may direct as follows :-

- 1) That all seized items are rightfully owned by Claimant – Court directs the Bailiff to release all seized items,
- 2) That all seized items are rightfully owned by Execution Debtor – all items to be sold at auction and nett sales proceeds to be paid to the Execution Creditor; or
- 3) A combination of the above depending on the evidence provided, for example, half of the items to be released and half sold according to their particular ownership, or all items to be sold at auction but sales proceeds distributed between the Claimant (50%) and the Execution Creditor (50%) according to the Court's percentage determination.

### **Auction sale**

Should there still be an outstanding Judgment Debt after seizure of the items, the Execution Creditor can file a Request to Proceed with Auction. Upon Court approval, the Bailiff will issue a Notice of Sale to both the Execution Creditor and the Execution Debtor of the auction date fixed typically within 3 to 5 weeks' time subject to the Bailiff's availability and the WSS validity period (called an '**Auction date**').

On the Auction date, the Execution Creditor's representative, the Bailiff, the auctioneer and the locksmith (and dogcatcher if required) will attend the Premises together with parties interested to purchase the seized items. Nett proceeds of the sale (after deduction of the Bailiff's expenses) will be forwarded to the Execution Creditor or distributed according to the Court's directions if there was an IPS hearing as above.

If the Execution Creditor does not instruct the Bailiff to proceed on this fixed auction date, the seized items will be released and the Execution Creditor will be unable to request that the Bailiff seizes the items again under the same WSS as this entire WSS is deemed to be aborted.

### **Summary**

From the perspective of an Execution Debtor, enforcement proceedings can be distressing and confusing. It is valuable to keep in mind that the best way to resolve the situation is to keep an open and productive line of repayment discussions between the Execution Creditor and Debtor throughout WSS proceedings. All information set out in this article is strictly not legal advice and is intended only to inform the general public as a layman's guide.

### **References**

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