

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TRIPLE J SAIPAN, INC., d.b.a. TRIPLE J MOTORS,
Plaintiff-Appellee,

v.

MATEO V. NORITA and ZOSIMA C. NORITA,
Defendants-Appellants.

SUPREME COURT NO. CV-06-0031-GA
SUPERIOR COURT NO. 99-819

Cite as: 2007 MP 26

Decided November 16, 2007

Omar P. Calimbas, Saipan, Northern Mariana Islands, for Appellants.
Michael A. White, Saipan, Northern Mariana Islands, for Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

DEMAPAN, C.J.:

¶ 1 Appellants, Mateo V. Norita (“Mr. Norita”) and Zosima C. Norita (“debtor”) (collectively “appellants”), appeal the trial court’s order in aid of judgment requiring debtor to make monthly payments on a consumer debt to appellee Triple J Saipan, Inc., d/b/a Triple J Motors (“Triple J”). Appellants contend that the federal garnishment provisions of the Consumer Credit Protection Act (“CCPA”), 15 U.S.C. §§ 1671-1677, prohibit garnishment of debtor’s wages. Because the order in aid of judgment in the instant case is not a garnishment, we affirm the trial court’s decision.

I

¶ 2 On October 17, 1997, appellants bought a new vehicle from Triple J. Shortly thereafter, appellants defaulted on the vehicle contract, and Triple J brought an original action to recover the outstanding balance due on the vehicle. The trial court entered judgment in favor of Triple J. After post-judgment hearings, the trial court also established a payment schedule to satisfy appellants’ debt. At the hearing in aid of judgment, the trial court presented appellants with the option to repay their debt to Triple J at a rate of \$100 per month or \$50 per month until full satisfaction of the judgment. Appellants chose the latter.

¶ 3 Appellants then filed a motion for reconsideration claiming all of their household income, wages earned at a garment factory, was exempt from the trial court’s order under, *inter alia*, the CCPA’s garnishment provisions. The trial court denied the motion on the basis that the payment schedule did not constitute a garnishment under the Commonwealth Code or the federal garnishment restrictions.

II

¶ 4 Appellants contend that the CCPA applies to an order in aid of judgment in the Commonwealth. We review *de novo* statutory interpretation. *N. Marianas Coll. v. Civil Serv. Comm’n*, 2006 MP 4 ¶ 6. At an aid of judgment hearing, the trial court determines the debtor’s ability to pay and determines the fastest manner in which the debtor can reasonably pay a judgment. 7 CMC § 4205. The trial court further determines what part of the debtor’s income is necessary to provide the debtor with reasonable living expenses. *Id.* After the trial court hears evidence, it makes an order in aid of judgment for the payment of any judgment. 7 CMC § 4206(a). Pursuant to 7 CMC § 4206(b):

This order in aid of judgment may provide for the transfer of particular assets at a price determined by the court, or for the sale of particular assets and payment of the net proceeds to the creditor, or for payments, in specified

installments on particular dates or at specified intervals, or for any other method of payment which the court deems just.

¶ 5 “Garnishment is a statutory proceeding whereby the property, money, or credits of one person in the possession of, or owing by another are applied to the payment of the debt of a debtor by means of proper statutory process issued against the debtor and the garnishee.” *Beggs v. Fite*, 106 S.W.2d 1039, 1042 (Tex. 1937); see *Randone v. Appellate Dep’t*, 5 Cal.3d 536, 544 n.3 (1971) (“‘Garnishment’ constitutes a sub-category of ‘attachment,’ referring to the seizure or attachment of property belonging to or owing to the debtor, but which is presently in the possession of a third party.”); see also *Frank F. Fasi Supply Co. v. Wigwam Inv. Co.*, 308 F. Supp. 59, 61 (D. Haw. 1969) (“Garnishment . . . generally pertains to the satisfaction of an indebtedness out of property or credits of the debtor in the possession of, or owing by, a third person.”). “Thus defined, garnishment necessarily involves three parties: a creditor, a debtor, and a third person who has some obligation to the debtor. Garnishment is a creditor’s action against his debtor’s debtor to obtain payment of what is owed the creditor.” *Orange County v. Ware*, 819 S.W.2d 472, 474 (Tex. 1991).

¶ 6 The trial court’s order in aid of judgment resulted from a hearing conducted pursuant to 7 CMC § 4205. It properly examined appellants’ financial situation and took into consideration appellants’ total financial situation. After considering reasonable living requirements, the trial court based its order on debtor’s ability to pay either \$100 or \$50 per month. Debtor chose to pay \$50 of her wages. In *Usery v. First National Bank of Arizona*, 586 F.2d 107, 110-11 (9th Cir. 1978), the Ninth Circuit held that CCPA provisions, which impose restrictions on garnishments, are limited to the garnishment of an employer’s payments, and do not protect wages once out of the employer’s control and placed into the employee’s hands.¹ Similarly, debtor’s wages are not in a third party’s possession. Rather, debtor receives a paycheck from her employer, and once the money is in her possession, she is responsible for forwarding \$50 per month to Triple J.² The

¹ “[C]ourts are not unanimous in concluding that disposable earnings exemption statutes do not continue to apply to wages once they have taken another form, such as by being placed in an account or being held in a retirement fund.” *In re Sinclair*, 417 F.3d 527, 531 (5th Cir. 2005).

² If payments are unreasonable, 7 CMC § 4207 provides a procedure for modifying orders in aid of judgment. Section 4207 states that, “[a]ny order in aid of judgment made under this chapter may be modified by the Court as justice may require, at any time, upon application of either party and notice to the other, or on the Court’s own motion.” 7 CMC § 4207. If debtor cannot afford to pay \$50 per month, she can ask the trial court to amend its order. A modification of the payment order is appropriate if the trial court finds that “justice may require” it.

trial court's order in aid of judgment requiring that debtor pay \$50 per month, therefore, does not fall within the definition of a garnishment.³

III

¶ 7 We hold that the trial court's order in aid of judgment is not a garnishment. Based on the foregoing, we AFFIRM the trial court's decision.

Concurring:
Castro, Manglona, JJ.

³ Accordingly, we need not look at whether the CCPA's garnishment provisions apply to the Commonwealth.