

JOS HANSEN & SOEHNE (LIBERIA) LTD., by and thru its Managers, **E. AYOMANOR** and **B. SILLA**, Petitioner/Appellant, v. **HER HONOUR CHARLENE A. REEVES**, Judge, Debt Court, Montserrado County, and **CITIBANK, N.A.**, by and thru its Vice President, **LEONARD MAESTRE**, Respondents/Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE ISSUANCE OF THE WRIT OF CERTIORARI.

Heard March 24, 1988. Decided July 29, 1988.

1. The property security to an attachment bond is defective and renders the entire bond defective if the property valuation certificate shows that taxes have not been paid on the property for the taxable year in which the attachment bond is executed.
2. When taxes have not been paid on the property offered to secure an attachment bond for the taxable year in which the bond is executed, the property is deemed to have a lien on it and it cannot therefore be used to secure the bond.
3. A party attacking an attachment bond on the ground that the taxes have not been paid on the property offered as security, and that therefore a lien exist on the said property, is not required by the statute to file exceptions to the bond or to file for a justification of sureties.
4. Justification of and exceptions to sureties are distinguishable from an attack on a bond because taxes have not been paid on the property offered as security to the bond.
5. Notice is of two grades: Actual and constructive. Actual notice is defined as the notice expressly and actually given, and brought home to the party directly. Constructive notice, on the other hand, is defined as information or knowledge of fact imputed by law to a person, although he may not actually have it, because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.
6. A party filing an attachment bond must give actual notice by serving on his adversary a copy of the bond, together with the security attached to the sureties affidavit.
7. The statute does not require the opposing party in whose favour an attachment bond is filed to seek information relating to the filing of such bond.

8. Certiorari will not lie to review a ruling of the debt court denying and dismissing a defendant's attachment bond for reason that the said bond was secured by real property on which taxes had not been paid up to date.

Co-respondent Citibank, N. A. instituted an action of debt by attachment in the Debt Court for Montserrado County against Appellant/petitioner Jos Hansen & Soehne (Liberia) Ltd. for payment of the amount of \$137,646.56 which the co-respondent claimed was due it by the appellant/petitioner. Thereafter, the petitioner filed an attachment bond secured by real property to the value of \$188,200.00, which was approved by the trial judge. The petitioner's warehouse, which had been closed as a result of the attachment placed on it, was ordered opened and petitioner's parts released to it in the light of the attachment bond filed by it. However, the appellee challenged the order as being irregular in that the petitioner had not filed a motion to dissolve the attachment, and that there was a lien on the property offered as security to the bond since the taxable year on which taxes for the property had been paid had expired when the property was offered as security. The challenge was sustained by the trial court.

Subsequently, the appellant filed a motion to dissolve the attachment. That motion was resisted by Citibank, heard and denied by the trial judge. From this denial, petitioner applied to the Justice in Chambers for a writ of certiorari. A hearing was had on the petition and the same was denied by the Justice. Whereupon, a further appeal was taken to the Full Bench.

The Supreme Court upheld the ruling of the Justice in Chambers, noting that under the new taxable year, taxes were due and had not been paid, thus creating a lien on the property. The Court rejected the contention that Co-respondent Citibank should have filed exceptions to or justification of sureties within the three-day period allowed by statute and not wait until the filing by petitioner of its motion to dissolve. The Court noted that the statutory provisions relating to exceptions to and justification of sureties did not apply in the instant case because they related to the sufficiency of the bond rather than to tax liens held on the property by the government.

The Court also rejected the contention that Citibank had notice of the irregular approval of the bond and therefore should have taken action against the judge. The Court observed that the statute did not impose on the opposite party the obligation to seek and find out information regarding the bond which had been filed; rather, it

was the responsibility of the petitioner to give notice of the filing of the bond by serving a copy on the opposing party. This, the Court said, the petitioner had failed to do.

Lastly, the Court ruled that certiorari could not lie to review the ruling of the debt court judge denying and dismissing petitioner's attachment bond on the ground that the attachment bond was secured by real property on which taxes had not been paid up to date. Accordingly, the petition to the writ of certiorari was denied.

M Fabnulleh Jones appeared for appellant. *H Varney G. Sherman* of the Maxwell & Maxwell Law Offices appeared for appellees.

MR. JUSTICE BELLEH delivered the opinion of the Court.

This is an appeal from a ruling of the Chambers Justice on a petition for a writ of certiorari. The records certified to this Court on appeal reveal that Co-respondent/appellee Citibank, on March 5, 1986, instituted an action of debt by attachment against Petitioner/appellant Jos Hansen in the Debt Court for Montserrado County to recover the amount of \$137,646.56, being the outstanding balance due from a certain overdraft credit facility which, according to the records submitted to us, Appellant Jos Hansen is alleged to have enjoyed from Co-appellee Citibank from July 1, 1982, to November 1983. The records further show that upon the service of the writ of summons and the writ of attachment by the sheriff of the Debt Court for Montserrado County, Appellant Jos Hansen identified its warehouse containing spare parts. The warehouse was attached by the sheriff. On July 29, 1986, Appellant Jos Hansen filed its attachment bond which was secured by real properties to the value of \$188,200.00. The bond was approved by the debt court judge.

Immediately upon the approval of appellant's attachment bond, the sheriff proceeded to the premises to open the warehouse. However, counsel for Co-appellee Citibank brought to the attention of the court, through an application made on the minutes of the court, that the procedure was irregular, in that Appellant Jos Hansen had not filed a formal motion to dissolve the attachment. Co-appellee counsel's application was granted by the court and the sheriff was ordered not to release the spare parts to Appellant Jos Hansen.

Subsequently, Appellant Jos Hansen filed a motion to dissolve the attachment, the relevant portions of which we hereunder quote word for word:

"MOTION TO DISSOLVE ATTACHMENT"

1. Because defendant says that it has filed a verified answer to the complaint and requests court to take judicial notice of its records.
2. Because defendant says that it has filed an approved defendant's attachment bond which is one and a half times the amount sued for, in keeping with law. The law specifically provides that if a defendant files an approved attachment bond equal to the amount sued for, the attachment shall be dissolved or discharged. Defendant requests court to take judicial notice of its records."

Co-appellee Citibank filed its resistance to appellant's motion to dissolve the attachment, count three of which reads:

"COUNT 3. That plaintiff/respondent also says that according to the certificate from the Ministry of Finance for the payment of taxes on the properties posted as security for the defendant/movant's attachment bond, said certificate states that taxes on the properties have been paid only up to and including June 1986. Since the bond was filed July 29, 1986, the taxes for the 1986/1987 taxable year has already accrued and therefore the property has the lien of the tax on it and could never be sold to satisfy any judgment of this Honourable Court or any other order of this Honourable Court without first settling the lien of the tax."

The debt court judge, having heard the motion and its resistance, denied and dismissed the same, thereby sustaining the resistance. Appellant Jos Hansen, being dissatisfied with the ruling, excepted to same and fled to the Chambers Justice of this Court on a petition for a writ of certiorari containing 14 counts. Because of the importance we attach to counts 8 and 10 of the petition, the rest of the counts contained in the petition not being relevant and therefore not worthy of our consideration for the final determination of this case, we shall deal only with counts 8 and 10. Counts 8 and 10 read as follows, to wit:

COUNT 8. Your petitioner says that in keeping with the records made by the judge, Co-respondent Citibank had full knowledge of the approval and filing of petitioner's attachment bond on the 29th of July 1986, the date on which the bond was approved and filed, for reason that it challenged the procedure adopted by the judge in approving the bond without notice to it in the absence of petitioner. This being the case, Co-respondent Citibank, having had knowledge and notice of the filing of the approved bond on the 29th of July 1986, should have either filed exceptions to the

sureties, in keeping with section 63.5, or justification of sureties in keeping with section 63.6, and not wait until your petitioner had filed his motion to dissolve. Especially so, in the Civil Procedure Law, Rev. Code 1:63.3, it is expressly provided that the bond shall become effective when approved by the court. And if Co-respondent Citibank felt that the co-respondent judge had approved petitioner's attachment bond irregularly and illegally which was prejudicial to its interest, it should have then proceeded by remedial process against the co-respondent judge. But the bond having been approved and therefore became effective, and the Co-respondent Citibank having failed to except to the bond or file justification of sureties, it was *estopped* from resisting petitioner's motion to dissolve the attachment. But the respondent judge did not take these legal and factual issues into account when she denied petitioner's motion to dissolve the attachment. This was greatly prejudicial to petitioner's interest and therefore certiorari will lie, and for which petitioner so prays. Copy of the ruling is hereto attached and marked exhibit "P15."

COUNT 10. Your petitioner says that in the resistance Co-respondent Citibank contended that because the revenue certificate stated on its face that taxes on the real properties offered as security to petitioner's attachment bond had been paid up to June 1986, there was a lien of taxes on the property as of July 1, 1986, which position the co-respondent judge upheld in her ruling and denied the motion. Your petitioner says that this was gross error and prejudicial to its interest for reason that if taken, the fiscal year of the Government taxes are not due and collectable for fiscal 86/87 until at the end of June 1987. Therefore, for payment of real taxes and liability for the same, the government uses the calendar year January 1 to December 31. Besides the revenue would not have given a certificate to your petitioner for a bond if there were only, any lien of taxes on the properties. Recourse to the certificate shows on its face "Attachment Bond in favour of Jos Hansen & Soehne (Lib) Ltd." The co-respondent judge's ruling sustaining this count of the resistance and thereby denying the motion was therefore illegal, improper and prejudicial, for which certiorari will lie."

Co-respondent Citibank filed its returns to the petition for a writ of certiorari. Although there are many issues raised in the said re-turns, we however consider only counts 5 and 16 of the returns to be worthy of our consideration for the final determination of this case. We hereunder quote, word for word, the said counts.

"COUNT 5. That as to count 3 of the petition, Corespondent Citibank says that it is false and misleading for petitioner to allege that inability to pay taxes caused the delay in the posting of bond because, as a matter of law, the taxes have not yet been paid. According the Revenue & Finance Law, Rev. Code 36:13.3, taxes on real property

become due on July 1 of each year; and according to the same Revenue and Finance Law, Rev. Code 36:13.8, the taxes become a lien on the property on the due date (July 1). So since the Statement of Property Valuation says that taxes have been paid only up to June 30, 1986, then the taxes which became due on July 1, 1986 had not been paid when the bond was filed on July 29, 1986.

COUNT 16. That also as to count 10 of the petition, Corespondent Citibank says that when the Government of Liberia's fiscal year was from January 1 December 31, the real property tax became due on January 1, of each year. (Section 35:444, Revenue & Finance Law, III LCL, 1956). The Government of Liberia's fiscal year was changed in 1972 from the calendar year (January - December) to July 1 of one year to June 30 of the following year. Revenue & Finance Law, Rev. Code 36:81.4 (1979). It was in consonance with this change of the fiscal year of Liberia that real property taxes became due on July 1 (the date of the commencement of the fiscal year). Revenue and Finance Law, Rev. Code 36:13.3 (1979); and that taxes on real property automatically constitute a preferred lien on due date. Revenue & Finance Law, Rev. Code 36:13.8 (1979). Co-respondent Citibank again reiterates its challenge to the petitioner to show any law to the contrary."

Immediately upon the filing of the petition for a writ of certiorari, the Chambers Justice ordered the issuance of the alternative writ. He further ordered the co-respondent judge to release the spare parts to Petitioner Jos Hansen, and directed that the judge stay all further proceedings until otherwise ordered.

There are two main issues presented for our consideration and final determination of this case, and they are:

- (1) Whether or not there is a tax lien on the properties posted as security to petitioner's attachment bond; and
- (2) Whether or not Co-respondent Citibank had knowledge regarding the approval and filing of petitioner's attachment bond.

In count 10 of the petition, petitioner contended that the debt court judge grossly erred when she upheld Co-respondent Citibank's contention that "because the revenue certificate stated on its face that taxes on the real properties offered as security to petitioner's attachment bond had been paid up to June 30, 1986, there was a lien of taxes on the properties as of July 1, 1986," and thereby denied the motion to dissolve the attachment.

Co-respondent Citibank, on the other hand, contended in count 16 of its returns that as to count 10 of the petition, when the Government of Liberia's fiscal year was from January 1 December 31, the real property tax became due on January 1, of each year. Revenue & Finance Law, 1956 Code 35:444; and that the Government of Liberia's fiscal year was changed in 1972 from the calendar year (January-December) to July 1 of one year to June 30 of the following year (Revenue and Finance Law, Rev. Code 36:81.4); that it was in consonance with this change of the fiscal year of Liberia that real property taxes "became due on July 1, the date of the commencement of the fiscal year (Revenue and Finance Law, Rev. Code 36:13.3; and that it was also under the Revenue and Finance Law that taxes on real property automatically constitute a preferred lien on the due date. Revenue & Finance Law, Rev. Code 13.8 (1979). Co-respondent Citibank therefore reiterated its challenge to the petitioner to show any law to the contrary.

For the benefit of this opinion, we hereunder quote verbatim the Statement of Property Valuation attached to Petitioner Jos Hansen's attachment bond, dated July 22, 1986:

"TO WHOM IT MAY CONCERN. STATEMENT OF PROPERTY VALUATION "LOT NO:LOCATION: VALUATION: ACREAGE: PROPERTY OWNER "N/N Paynesville, Mont. C 1111,700.00 N/N Noah, Mac S. "N/N Paynesville, Mont. Co. 76 500,00 N/N Nimley, David B188,200.00-Q.

"(ONE HUNDRED EIGHTY-EIGHT THOUSAND TWO HUNDRED DOLLARS)" THIS IS TO CERTIFY THAT THE REAL ESTATE OF THE AFOREMENTIONED PERSONS ARE REGISTERED AND VALUED AS SHOWN ABOVE. TAXES THEREON ARE PAID UP TO AND INCLUDING JUNE 30, 1986."

ATTACHMENT BOND IN FAVOR OF: JOS HANSEN & SOEHNE, (LIB) LTD."

Certified By:

ACCOUNT SUPERVISOR Signed:

DEPUTY COMMISSIONER, R. L.

T.D. APPROVED:

ASST. MINISTER FOR REVENUES, R. L.

Section 13.3 of the Revenue and Finance Law, Rev. Code 36, with respect to *payment date, interest, and penalty on late payment*, reads: "The real property tax prescribed by this chapter covers the period from January 1 to and including December 31 of each year and shall become due on July 1 of the year in which it is levied. It may be paid without the imposition of interest or penalty at any time prior thereto from January 1. Interest at the rate of 6 percent per annum, in accordance with section 4.4 shall be charged thereon if the tax is not paid on or before July 1 of the year in which it is levied and if it is not paid on or before July 31 of the year in which it is levied, the Minister, in addition, shall assess and add to the amount due, or to any underpayment thereof, an administrative penalty of 5 percent per month for each month or part of a month elapsing after July 31 that it remains unpaid, but not to exceed 25 percent in the aggregate."

According to the above Section of our Revenue and Finance Law, taxes on the properties posted as security to the attachment bond had not been paid up to date, and therefore, there was a tax lien on the properties. This rendered the attachment bond materially defective for the purpose of indemnification. Therefore, the debt court judge did not err when she upheld Corespondent Citibank's contention regarding the defectiveness of petitioner's attachment bond.

In Count 8 of the petition, petitioner contended that because Co-respondent Citibank had knowledge of the approval and filing of petitioner's attachment bond on the 29th day of July, 1986, Co-respondent Citibank should have either filed exceptions to the sureties in keeping with section 63.5, or justification of sureties as specified by section 63.6, and not wait until petitioner had filed its motion to dissolve; that if Co-respondent Citibank felt that the respondent judge had approved petitioner's, attachment bond irregularly and illegally, Co-respondent Citibank should then have proceeded by remedial process against the co-respondent judge; that the bond having been approved, it became effective; and that therefore Co-respondent Citibank was *estopped* from resisting petitioner's motion to dissolve the attachment.

Section 63.5 and section 63.6 of the Revenue and Finance Law, Rev. Code 36, provide as follows:

"SECTION 63.5, EXCEPTION TO SURETY; ALLOWANCE WHERE NO EXCEPTION TAKEN:

1. *Exceptions.* A party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice

of filing of the bond. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs."

"SECTION 63.6, JUSTIFICATION OF SURETY.

1. Motion to justify. Within three days after service of notice of exception, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party. The surety shall be present upon the hearing of such motion to be examined under oath. If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond."

In keeping with the above mentioned provisions of our statute, exceptions to sureties and justification of sureties are inapplicable in the instant case, in that both sections 63.5 and 63.6 relate to the sufficiency of the bond. The contention of Corespondent Citibank is not against the sufficiency of the bond; rather, it is against the tax liens on the properties posted as security to the bond.

According to the respondents, taxes on the properties posted as security had not been paid when the bond was submitted and approved. As we have stated earlier in this opinion, we have carefully perused the Statement of Property Valuation obtained by petitioner from the Bureau of Internal Revenues and have found that the contention of the respondents to the effect that the bond has a tax lien on it is supported by the Statement of Property Valuation attached to the petitioner's attachment bond.

Under these circumstances, we can not uphold the contention of petitioner regarding the failure of Co-respondent Citibank to file a motion for justification of sureties or exceptions to the sureties.

The next point to be considered is petitioner's contention regarding notice. Petitioner contended that Co-respondent Citibank had notice of the approval and filing of the bond and therefore it should have taken the necessary steps against the judge for approving the bond irregularly. Regarding this contention, we must define the word "notice."

Notice, according to Black's Law Dictionary 1210 (4 th ed.), is of two grades, namely, actual and constructive. *Actual notice* is defined as "the notice expressly and actually given, and brought home to the party directly." *Constructive notice*, on the other hand, is defined as "information of knowledge of fact imputed by law to a person, although

he may not actually have it, because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it." BLACK'S LAW DICTIONARY 1210 (4 th ed.)

Section 7.26 of the Civil Procedure Law, Rev. Code 1, provides "a defendant whose property has been levied upon under an order of attachment may move upon notice to the plaintiff and the sheriff for an order discharging the attachment as to all or a part of the property upon payment of the sheriff s fees and expenses. On such a motion, the defendant shall give a bond in an amount equal to the value of the property sought to be discharged, that the defendant will pay to the plaintiff the amount of any judgment which may be recovered in the action against him, not exceeding the amount of the bond."

From the wordings of the above quoted statutory provision, it can clearly be seen that the party filing an attachment bond must give an actual notice by serving on his or her adversary a copy of the bond, together with the security attached to the sureties' affidavit. The statute does not require the opposing party in whose favour the bond is filed to seek the information relating to the filing of such bond.

In the instant case, petitioner's attachment bond was filed on July 29, 1986, without any notice to appellee and without a motion to dissolve the attachment predicated upon which Corespondent Citibank objected to the procedure. The court, after conducting an investigation, sustained the objection and ordered the sheriff not to release the spare parts to the petitioner.

It is worthy to mention that after the application and/or, objections interposed by Corespondent Citibank was granted, the petitioner, it would seem, conceded that the application of the co-respondent was in consonance with law and, therefore, petitioner subsequently filed its motion to dissolve. That motion, after a hearing, was denied and dismissed by the trial court.

As we have earlier said in this opinion, the principal issue in this case is that Co-respondent Citibank attacked petitioner's attachment bond on the ground that taxes on the properties posted as security had not been paid. This attack was not sufficiently rebutted by petitioner by a showing of *prima facie* evidence to the effect that the bond was valid and that there was no tax lien on the same. *See* Civil Procedure Law, Rev. Code 1:63.3.

Under these circumstances, petitioner's contention regarding notice is unwarranted

and cannot therefore be upheld by this Court.

Certiorari will not lie to review a ruling of the debt court denying and dismissing a defendant's attachment bond for reason that the defendant's attachment bond was secured by real properties on which taxes had not been paid up to date.

In view of what we have narrated and the laws cited, it is our considered opinion that the ruling of the Chambers Justice be, and the same is hereby affirmed, with costs against Petitioner Jos Hansen. The Clerk of this Court is hereby ordered to send a mandate to the Debt Court for Montserrado County, with instructions to it to resume jurisdiction over the cause and to continue with the trial thereof. And it is hereby so ordered.

Petition denied.