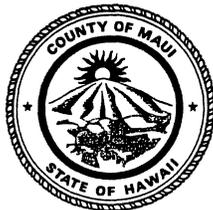


ALAN M. ARAKAWA  
Mayor



BRIAN T. MOTO  
Corporation Counsel

**DEPARTMENT OF THE CORPORATION COUNSEL**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740 FAX 270-7152

March 18, 2005

MEMO TO: Kalbert K. Young, Director  
Department of Finance

F R O M: Richard B. Rost, Deputy Corporation Counsel

*RBR*

SUBJECT: Schindler Elevator Corp. v. Maui Master Builders, Inc.  
Garnishment

The Department of Finance has inquired as to whether the Department is required to comply with a Garnishee Order as to Garnishee County of Maui ("Order"), dated December 17, 2004, and filed on December 20, 2004, in the Circuit Court of the Second Circuit, Judge Joseph E. Cardoza, presiding. The Order requires the County of Maui to release funds owed to Defendant Maui Master Builders, Inc., to Plaintiff Schindler Elevator Corporation. The Department of Finance has apparently been relying upon Attorney General Opinion No. 72-12 ("Opinion No. 72-12") which indicates that the State of Hawaii is not subject to garnishee orders which mandate the withholding of funds owed to a contractor of the State of Hawaii. For the reasons set forth below, Opinion No. 72-12 is not controlling and the Department of Finance should honor the Order issued in the above-captioned matter.

Opinion No. 72-12 was issued in 1972 to the Department of Accounting and General Services and analyzed the garnishment law as it pertains to Chapter 653, Hawaii Revised Statutes, entitled "Garnishment of Government Beneficiaries". Based primarily upon Morse v. Robertson, 9 Haw. 195 (1893), the Attorney General concluded that the State of Hawaii "cannot be subjected to garnishment" for monies owed to a vendor under a State of Hawaii contract.

Although Opinion No. 72-12 correctly summarized the Morse decision, it addressed neither Chapter 652, Hawaii Revised Statutes, nor Teves v. Reade, 23 Haw. 564 (1916). Like Chapter 653, Chapter 652 deals exclusively with garnishment. However, unlike Chapter 653, Chapter 652 is not limited to "government beneficiaries".

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In Teves v. Reade, 23 Haw. 564 (1916), the Court held that the City and County of Honolulu was subject to the process of garnishment. In Teves, the plaintiff obtained a judgment against the defendant and sought to garnish payments due under a contract between the defendant and the City and County of Honolulu. The City and County of Honolulu argued that it was not subject to garnishment.

The Court disagreed and noted that the Hawaii legislature had provided that the City and County of Honolulu "may sue and be sued in all courts".<sup>1</sup> The Court also noted that the garnishment statute was applicable to "any person" and, therefore, it was broad enough to apply to the City and County of Honolulu. Likewise, the current statute, HRS § 652-1 includes the term "any person" within the definition of "garnishee" (i.e., those who may be garnished against).

The Court further reasoned that the legislature gave express authority to subject the wages and salaries of its own officers and employees to garnishment and therefore, there was "no good reason for holding . . . that it would not be liable to such a proceeding where it owes an ordinary debt to a third person (citation omitted)." Id. at 567.

Similar to the case in Teves, the Plaintiff in the present case, Schindler Elevator Corporation, has obtained a Default Judgment Against Defendant Maui Master Builders, Inc. Pursuant to Chapter 652, Hawaii Revised Statutes, the Plaintiff moved for the issuance of a garnishee summons and the Court ultimately issued the Order requiring the County of Maui to provide the Plaintiff with garnished funds in the amount of \$32,512.24.

It should be noted that Maui Master Builders has defaulted on the underlying action and has not opposed the garnishment. Moreover, there is nothing indicating that the Order is defective or otherwise unlawful. Under these circumstances, there is no compelling reason or legal basis for the County of Maui to disobey the Court's Order or seek court relief from it. In addition, it should be noted that if the County of Maui does not obey the Court's Order, it may be liable pursuant to §652-2, Hawaii Revised Statutes.

Finally, in Teves the Court addressed the legitimate concern that work may not be completed if the contractor becomes aware that payment will be diverted. The Court noted that in the Teves matter, the "work under the contract [had] been completed, and accepted by the city and county, and that nothing [remained] to be

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<sup>1</sup>H.R.S. §46-1.5(22) provides the following: "Each county shall have the power to sue and be sued in its corporate name."

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done except to pay over to the [contractor] or his creditor under garnishment proceedings . . ." Id. at 568. Therefore, in a situation where the work under contract has not yet been completed, there may be a basis for the County of Maui to wait to pay funds to a garnishor. If the County of Maui wishes to wait until all work is completed, an agreement from the garnishor (i.e., Schindler Elevator Corporation) should be obtained. If the garnishor refuses, the County of Maui must comply with the Order or seek Court approval of a stay or amendment of the Order.

Accordingly, under the circumstances of the above captioned case, the Department of Finance should obey the Order and release the funds covered by the Order in the manner the Order prescribes.<sup>2</sup>

If you have any questions or concerns, please do not hesitate to contact me.

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO  
Corporation Counsel

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<sup>2</sup>This opinion should not be read as necessarily applying to any garnishment actions other than the above captioned matter, as different factual circumstances may alter the analysis.