

ENFORCEMENT OF JUDGMENTS AND ORDERS

Division 1 – General

Definitions for this Part

14.1 (1) In this Part:

“enforcement conference” means a conference referred to under rule 14.3 or 14.37;

“enforcement creditor” means a person entitled to enforce a money order;

“enforcement debtor” means a person required to pay money under a money order;

“enforcement officer” means the sheriff or a police officer;

“enforcement order” means an order made under rule 14.3, 14.4, 14.7 or 14.37;

“exempt property” means property that cannot be divided among a bankrupt’s creditors under the bankruptcy laws of Vanuatu as in force from time to time;

“judgment debt” means the amount payable under a money order and the costs of gaining the order;

“money order” means an order of the court for the payment of an amount of money;

[14.1.1] Whether order for costs a “money order” Presumably an order for the payment of specified costs under Part 15 is a money order. Indeed there is authority to suggest that a party in whose favour a costs order has been made and who has delivered a bill of costs which has not yet been determined is entitled to an order for the payment of money: *Wilkie v Wilkie (No2)* [1905] VLR 104 at 106; *Tubby Trout v Sailbay (No 2)* (1996) 63 FCR 530 at 533.

“non-money order” means an order of the court other than a money order.

(2) In the application of this Part to the Magistrates Court, a reference to an enforcement conference is a reference to an enforcement hearing.

Enforcement of judgments

14.2 (1) Judgments are enforced by enforcement orders and enforcement warrants as set out in this Part.

[14.2.1] Enforcement a matter of procedure Enforcement is, generally speaking, a matter of procedure and, therefore, a proper matter for rules of court: *WT Lamb v Rider* [1948] 2 KB 331 at 337; [1948] 2 All ER 402 at 407. On the other hand, a number of the procedures in this part purport to affect third party rights and, to that extent, their validity should not be assumed absent any specific enabling provision in legislation.

- [14.2.2] Difference between enforcement and other orders Enforcement is designed to enforce judgments, not to obtain additional or merely ancillary orders: *Iaiofa v Natapei* [2010] VUSC 16; CC 11 of 2010.

- (2) An enforcement order must be in Form 21.**
- (3) An enforcement warrant to enforce a money order must be in Form 22.**
- (4) An enforcement warrant to enforce a non-money order must be in Form 23.**

- [14.2.3] Separate warrants for money/non-money components It appears that separate warrants might be required in order to enforce a judgment which contains both money and non-money components.

Division 2 – Enforcement of judgments to pay money (money orders)

Procedure after judgment for claimant – money orders

- 14.3 (1) Immediately after giving a judgment that includes a money order, the court must ask the enforcement debtor how he or she proposes to pay the money and must either:**

- [14.3.1] General observations It is unfortunate that the court seldom complies with this obligation, a failure which inevitably leads to a wasteful later application for an enforcement order, rather than one being made immediately under paragraph (a). Judges have also been observed to be highly resistant to requests to immediately convert their awards (especially for fixed costs) into enforcement orders. No reasons have ever been given for this disinclination.

- (a) make an enforcement order for the payment of the judgment debt; or**
- (b) fix a date for an enforcement conference to examine the enforcement debtor about how he or she proposes to pay the amount of the judgment debt.**

- [14.3.2] Costs assessment at enforcement conference It is common (and it is certainly convenient) for the enforcement conference and an assessment of costs to occur simultaneously: See for example the orders in *Dinh v Kalpoi* [2005] VUSC 10; CC 19 of 2003; *Silas v A-G* [2003] VUSC 51; CC 68 of 2002.

- [14.3.3] General observations See further r.14.5(2) as to fixing the date for an enforcement conference. In practice, enforcement conferences are seldom convened unless a party requests one.

- (2) When the court fixes the date for the enforcement conference, the court must tell the enforcement debtor to:**
 - (a) come to court on the date fixed for the conference; and**
 - (b) bring with him or her sufficient documents to enable him or her to give a fair and accurate picture of his or her financial circumstances.**

- (3) If the enforcement debtor is not present, the court must:**

- (a) fix a date for an enforcement conference; and
- (b) issue a summons in Form 24 against the enforcement debtor requiring the enforcement debtor to:
 - (i) come to court on the date fixed for the enforcement conference; and
 - (ii) bring with him or her sufficient documents to enable him or her to give a fair and accurate picture of his or her financial circumstances.

Agreement about payment

14.4 (1) If the parties agree about paying the judgment debt, the court may make an enforcement order in the terms of the agreement.

(2) The order may:

- (a) fix a date by which the enforcement debtor will pay the judgment debt; or
- (b) if the parties have agreed on payment by instalments, set out the dates and amounts of the instalments; or
- (c) make another order about payment.

[14.4.1] Consequences of agreement about payment This is a useful provision which confers the status of an enforcement order upon any compact between the parties. This means that if a party defaults the other party can proceed directly to seek a warrant without further ado.

Enforcement conference

14.5 (1) The purpose of the enforcement conference is to find out how the enforcement debtor proposes to pay the amount of the judgment debt.

[14.5.1] See further [14.7.2].

(2) The date fixed for the enforcement conference must be:

- (a) within 28 days after the date of the money order; or
- (b) if it is not possible to fix a date within that period, as soon as practicable after that period.

[14.5.2] General observations In practice, enforcement conferences are seldom convened unless a party requests one. There appears to be no time limit within which a party might seek an enforcement conference.

(3) The enforcement debtor must attend the conference.

[14.5.3] Corporate debtors It is not clear who must attend if the enforcement debtor is not a natural person.

- (4) The court may issue a summons to another person to attend the conference and give evidence about the enforcement debtor's affairs.**

[14.5.4] **Scope of power** Presumably this power could be used to require officers (and even former officers) of a company or other entity to be examined. It is uncertain to what extent this subrule could or should be used to compel the examination of third parties otherwise. that the usual rule is that where the enforcement debtor is a natural person, he or she is the only person who may be examined: *Irwell v Eden* (1887) 18 QBD 588 at 589; *Hood Barrs v Heriot* [1896] 2 QB 338 at 342. See further r.14.7(2).

Enforcement conference warrant

- 14.6 If the enforcement debtor does not appear at the conference in answer to a requirement under rule 14.2 or a summons, the court may issue a warrant for his or her arrest if the court is satisfied that the enforcement debtor:**

- (a) was present when the court fixed the date for the enforcement conference, or was personally served with, or otherwise received, the summons; and**
- (b) did not have sufficient cause for not attending the conference.**

Examination of enforcement conference debtor

- 14.7 (1) At the enforcement conference, the enforcement creditor may ask the enforcement debtor about his or her financial affairs and how he or she proposes to pay the judgment debt.**

[14.7.1] **Nature of examination** The examination is likely to take the form of a cross-examination and may be very severe. The enforcement debtor will be required to answer all relevant questions and provide details which might enable the enforcement creditor to recover the judgment debt: *Republic of Costa Rica v Strousberg* (1880) 16 Ch D 8 at 12. The examination may extend to overseas assets: *Interpool v Galani* [1988] QB 738 at 742; [1987] 2 All ER 981 at 984; [1987] 3 WLR 1042 at 1045.

[14.7.2] **Ambit of examination** The ambit of the examination is likely to be fairly wide, but is not without limits. It is not proper to seek information which may be useful in an action between the enforcement creditor and third parties: *Watkins v Ross* (1893) 68 LT 423 at 425. In *McCormack v NAB* (1992) 106 ALR 647 at 649 it was said that the examination is concerned only with the manner in which the enforcement debtor might satisfy the debt, not with other methods by which the debt might be satisfied.

[14.7.3] **Legal representation** It is uncertain whether legal representation of the enforcement debtor at an examination would be permitted: See for example *Jensen & Harwood v Registrar of the Magistrate's Court* [1977] 1 NZLR 165 at 168.

[14.7.4] **Further examination** A further examination may perhaps be ordered in special circumstances, subject to considerations of oppression: *Sturges v Countess of Warwick* (1914) 30 TLR 112; *Brown v Stafford* [1944] 1 KB 193 at 198, 199; [1944] 1 All ER 172 at 176.

- (2) The enforcement creditor may also examine any other person summonsed to attend the conference.**

[14.7.3] See further r.14.5(4).

- (3) The court must then:**

- (a) if the parties have agreed on payment, make an enforcement order in the terms of the agreement; or
- (b) make an enforcement order about how the enforcement debtor will pay; or
- (c) issue an enforcement warrant; or
- (d) make another order about the payment.

Amount recoverable on enforcement

14.8 (1) The costs of enforcing a money order are recoverable as part of the order.

(2) Interest on the amount of the order is recoverable as part of the order.

[14.8.1] Post-judgment interest Simple interest may be recovered on judgment debts under s.17, 1 & 2 Vic c.110, *The Judgment Act*, 1838. This Act applies under art.95(2) of the *Constitution: Naylor v Foundas* [2004] VUCA 26; CAC 8 of 2004. As to pre-judgment interest see [9.2.5]-[9.2.7]. The rate is, apparently, the same: *Commissioner of Police v Garae* [2009] VUCA 9 at [31]; CAC 34 of 2008.

Enforcement period

14.9 (1) An enforcement creditor may enforce an enforcement order at any time within 6 years after the date of the order.

[14.9.1] Scope of time limit This limitation is expressed to operate only in relation to *enforcing* an order. As there appears to be no limitation upon *obtaining* an order, and as r.14.7(3) does not appear to import any discretion in the making of an enforcement order, and as the court seldom makes an enforcement order within the time specified by r.14.5(2), it follows that the true limitation period on the enforcement of judgments may be much longer, subject of course to s.3(4), *Limitation* [Cap 212].

(2) An enforcement creditor must get the court's leave to enforce an enforcement order if:

- (a) it is more than 6 years since the enforcement order was made; or
- (b) there has been a change in the enforcement creditor or enforcement debtor, by assignment, death or otherwise.

(2) The court may grant leave if it is satisfied:

- (a) that the amount is still owing; and
- (b) if more than 6 years has passed, about the reason for the delay; and

[14.9.2] Nature of reason for delay Note that this rule does not, in terms, require that the court be satisfied that there was some *good* reason for the delay – only that the court be satisfied what the reason was. It is suggested that a purposive interpretation should apply to require the party to satisfy the court of some good reason for the delay.

- (c) if there has been a change, that the change has happened; and
- (d) that the enforcement creditor is entitled to enforce the order; and
- (e) that the enforcement debtor is liable to pay the money.

Suspension of enforcement

14.10(1) An enforcement debtor may apply to the court for an order suspending the enforcement of an enforcement order.

(2) The application must be:

- (a) supported by a sworn statement; and
- (b) be filed and served on the enforcement creditor at least 7 working days before the application is to be heard.

(3) The court may:

- (a) suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and

[14.10.1] Fresh evidence This may enable the court to consider matters which would have prevented the original order being made: *London Building Society v De Baer* [1969] 1 Ch 321 at 334; [1968] 2 WLR 465 at 474; [1968] 1 All ER 372 at 379.

[14.10.2] Discretion There is a broad discretion to suspend enforcement for such period (see for example *Marine & General Mutual Life Assurance Society v Feltwell Drainage Board* [1945] KB 394 at 398) and on such terms (eg. as to repayments) as is just. The well-established general rule, however, is that the court should not deprive a person of the fruits of victory: *The Annot Lyle* [1886] 11 P 114 at 116. The circumstances said to justify a suspension and the balance of convenience will be closely examined. Delay is likely to be an important consideration: *Hehei v ANZ* [2004] VUCA 7; CAC 35 of 2003.

[14.10.3] Partial suspension A partial suspension may be appropriate where, for example, there is a cross-demand for a sum less than the judgment: See for example *Re Sgambellone* (1994) 53 FCR 275 at 282; (1994) 126 ALR 71 at 78.

[14.10.4] Suspension on terms A suspension may be granted upon terms. Examples include payment of part of the judgment (*Doyle v White City Stadium Ltd* [1935] 1 KB 110), the provision of security (*Rosengreens Ltd v Safe Deposit Centres Ltd* [1984] 3 All ER 198), the repayment of costs paid (*Attorney-General v Emerson* (1889) 24 QBD 56).

[14.10.5] Suspension after execution A suspension may be granted even if the warrant has been executed: *Hehei v ANZ* [2004] VUCA 7; CAC 35 of 2003.

- (b) make other orders it considers appropriate, including another enforcement order.

Division 3 – Enforcement warrants generally (money orders)

Enforcement warrant

14.11(1) An enforcement creditor may apply for the issue of an enforcement warrant if the enforcement debtor does not comply with the enforcement order.

- (2) However, if an enforcement warrant is in force to enforce payment under a money order, no other enforcement warrant may be issued for the money order.**

[14.11.1] No division An enforcement creditor cannot usually divide the judgment and proceed on several instances of enforcement for separate amounts: *Forster v Baker* [1910] 2 KB 636 at 641-2. See further r.14.11(2).

Procedure to apply for Enforcement Warrant

14.12(1) The enforcement creditor must file:

[14.12.1] Service The rule does not mention service and it seems that the application may be *ex parte*: *ANZ v Gaua* [2003] VUSC 95; CC 2 of 2001.

- (a) an application in Form 25; and**
 - (b) a copy of the enforcement order; and**
 - (c) 2 copies of the form of warrant; and**
 - (d) a sworn statement made not earlier than 2 business days before the application and setting out:**
 - (i) the date of the enforcement order; and**
 - (ii) the amount payable under the order; and**
 - (iii) the date and amount of any payment made under the order; and**
 - (iv) the costs of previous enforcement; and**
 - (v) the interest due at the date of the statement; and**
 - (vi) any other details needed to work out the amount payable under the enforcement order at the date of the statement, and how the amount is worked out; and**
 - (vii) the daily amount of future interest; and**
 - (viii) any other information needed for the warrant.**
- (2) The court may require the enforcement debtor and enforcement creditor to attend a conference if the court is of the view that a hearing is required.**

Form of warrant

14.13(1) An enforcement warrant must state:

[14.13.1] Strict adherence required Despite r.18.9, deficiencies of form in matters of coercive enforcement are more likely to be fatal: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.

- (a) the enforcement debtor's name; and
 - (b) the date the warrant ends; and
 - (c) the amount recoverable under the warrant, including:
 - (i) costs of the enforcement; and
 - (ii) the amount of interest; and
 - (d) anything else these rules require; or
- (2) If the warrant is for seizure and sale of property, the court must give the warrant to an enforcement officer.
- [14.13.2] It is difficult to see what this subrule might add to r.14.16(1), (2).
- [14.13.3] Choice of enforcement officer This choice is for the court, however the Sheriff should usually be appointed, particularly where real property is concerned, unless there were circumstances suggesting that a particular police officer should be so appointed: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.
- [14.13.4] Enforcement warrant given under subsection (3) A warrant purportedly issued to the enforcement creditor for seizure and sale of property will not be valid: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.
- (3) In any other case, the court must give the warrant to the enforcement creditor.

Enforcement throughout Vanuatu

- 14.14(1) An enforcement warrant is enforceable throughout Vanuatu.
- (2) An enforcement warrant issued in one district of the Magistrates Courts is enforceable in any other district.
- (3) However, before enforcing the warrant in another district, the person enforcing it must take the warrant to the office of the Magistrate's Court in that district for sealing by that office.

Deceased enforcement debtor

- 14.15 If the enforcement debtor has died, only the assets of his or her estate can be the subject of the warrant.

Division 4 – Enforcement warrant for seizure and sale of property

Property that may be seized under enforcement warrant

- 14.16(1) The court may issue an enforcement warrant authorising an enforcement officer to seize and sell all real and personal property (other than exempt property) in which an enforcement debtor has a legal or beneficial interest.
- (2) The court must give the warrant to an enforcement officer to be enforced.

- [14.16.1] It is difficult to see what this subrule might add to r.14.13(2).
- [14.16.2] Choice of enforcement officer This choice is for the court, however the Sheriff should usually be appointed, particularly where real property is concerned, unless there were circumstances suggesting that a particular police officer should be so appointed: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.
- [14.16.3] Enforcement warrant given under subsection (3) A warrant purportedly issued to the enforcement creditor for seizure and sale of property will not be valid: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.

(3) The enforcement officer may seize the property listed in the warrant and must store it safely until it is sold.

- [14.16.4] When property may be seized The enforcement officer may seize property at any time of the day or night (*Brown v Glenn* (1851) 16 QB 254 at 257; 117 ER 876 at 877) and from any place (*Quinlan v Hammersmith* (1988) 153 JP 180; [1989] RA 43). There is uncertainty as to the enforcement officer's rights of entry upon private premises which, according to general principle, must be strictly in accordance with authority: *Great Central Rwy Co v Bates* [1921] 3 KB 578 at 582. The common law rule was that an enforcement officer has a right of entry but not a right to force entry: *Curlewis v Laurie* [1848] 12 QB 640 at 646; 116 ER 1009 at 1012. There is much older case law of doubtful continued application on the subject of rights of entry in different circumstances and it is difficult to be satisfied of what exactly is lawful. There may be a trend against all but the most regular means of entry: See for example *Southam v Smout* [1964] 1 QB 308 at 329; [1963] 3 All ER 104 at 113; [1963] 3 WLR 606 at 619.
- [14.16.5] Extent of search for property In finding items suitable for seizure, an enforcement officer ought to use "reasonable diligence" in searching: *Mullet v Challis* [1851] 16 QB 239 at 242-3; 117 ER 870 at 871. It may be necessary to make repeat visits if insufficient property is able to be seized on a first visit or if more property is later discovered.
- [14.16.6] How much should be seized The enforcement officer should seize only enough to cover the debt: *Pitcher v King* [1844] 5 QBD 758 at 766-7; 114 ER 1436 at 1439.
- [14.16.7] Enforcement officer may receive payment and return property The enforcement officer can receive the enforcement debt and if the enforcement debtor tenders the whole sum before goods are sold, the enforcement officer should return the seized property: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008; *Taylor v Baker* (1677) 3 Keb 788 at 788; 89 ER 338 at 338; *R v Bird* (1679) 2 Show 87 at 87; 89 ER 811 at 811; *Brun v Hutchinson* (1844) 2 D&L 43; 13 LJQB 244. A failure to do so could amount to a conversion: *West v Nibbs* (1847) 4 CB 172 at 187; 136 ER 470 at 476. This is because neither an enforcement officer nor an enforcement creditor has any interest in the property of the enforcement debtor – only an authority to deal with it: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.

(4) If there are several enforcement warrants against the same enforcement debtor, the enforcement officer must deal with them in the order they were issued.

Order of seizing and selling property

14.17 The enforcement officer must seize and sell property:

- (a) in the order that appears to the enforcement officer to be best for promptly enforcing the warrant without undue expense; and**

- [14.17.1] Whose expense to be considered It is not clear whether the rule is directed to the expense of the debtor or the enforcement officer/creditor.

- (b) subject to paragraph (a), in the order that appears to the enforcement officer to be best for minimising hardship to the enforcement debtor and his or her family.**

Sale by public auction

14.18(1) Unless the court orders otherwise, the enforcement officer must sell the seized property by public auction.

- [14.18.1] Observations on property in hands of enforcement officer The purpose of seizure is to sell the property seized, which the enforcement officer must promptly prepare to do. If the enforcement debtor is unwilling or unable to sign any necessary documentation, the Court may authorise the enforcement officer (or some other person) to do so on behalf of the enforcement debtor: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008. The enforcement officer does not become the owner of the seized property: *Marchand v BHP* [2000] VUSC 49; CC 12 of 2000. Neither does the enforcement officer have any interest in the property (as would a mortgagee) – merely an authority to deal with it: *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008. The goods cannot be handed over to the enforcement creditor and the court has no power to make such an order: *VCMB v Dornic* [2010] VUCA 4 at [14]-[16]; CAC 2 of 2010. Both the judgment creditor and the judgment debtor may, however, buy seized property at the sale: *Re Rogers* (1874) 9 Ch App 432 at 444, 445. The enforcement officer cannot retain the goods and pay the enforcement creditor with his own money: *Waller v Weedale* (1604) Noy 107 at 107; 74 ER 1072 at 1072.
- [14.18.2] Once sufficient funds are realised Once the sale has realised sufficient funds to discharge the whole of the debt and associated costs (plus perhaps a small margin for error), the sale should probably cease, despite the mandatory words of the rule: *Batchelor v Vyse* (1834) 1 M & Rob 331 at 333; 174 ER 113 at 114; *Gawler v Chaplin* (1848) 2 Exch 503 at 507; 154 ER 590 at 592.

(2) The auction must be held:

(a) as soon as is practicable; and

- [14.18.2] Liability for delay The enforcement officer could become liable in damages for an unreasonable delay: *Aireton v Davis* (1833) 9 Bing 740 at 745; 131 ER 792 at 794.

(b) at the place, and in the circumstances, most likely to get the best price for the property.

- [14.18.3] Reserve price There is probably no requirement to set a reserve price: *Bealy v Sampson* (1688) 2 Vent 93 at 95; 86 ER 328 at 329. Other unduly restrictive conditions should not be imposed: *Hawkins v Walround* (1876) 1 CPD 280; 24 WR 824.
- [14.18.4] Advice regarding circumstances of sale The circumstances most likely to obtain the best price might be a subject on which the enforcement officer should take advice in the case of specialist property: *American Express v Hurley* [1985] 3 All ER 564 at 574.

(3) The enforcement officer must do everything practicable to ensure the property is sold for the best price obtainable.

- [14.18.5] Highest bidder not necessarily the best price The best price is not necessarily that offered by the highest bidder where this is well under value: *Keightley v Birch* (1814) 3 Camp 520 at 523-4; *Neumann v Bakeaway* [1983] 1 WLR 1016 at 1023. It may be necessary for sale to be attempted several times before a proper decision can be made to accept a bid well under the known value of the property. An enforcement officer may become liable in damages for negligence in the conduct of a sale: *Bales v Wingfield* (1843) 4 A&E 580; 114 ER 1016n.

Advertising sale

14.19(1) The enforcement officer must arrange for an advertisement of the auction:

- (a) to be published in a newspaper circulating in the area, if there is one, or to be broadcast on the radio; and
- (b) to be available at the nearest court office and police station.

[14.19.1] Rule establishes minimum advertising requirements. These should be read as minimum requirements and a more extensive advertising campaign may be required to discharge the duty to obtain the best possible price: See for example *American Express v Hurley* [1985] 3 All ER 564 at 574 (advertising in specialist press).

- (2) Unless the property is perishable, the advertisement must be published between 2 and 4 weeks before the auction.

Postponing sale

- 14.20(1) The court may order that the sale be postponed to a date the court specifies, on application by the enforcement creditor or the enforcement officer.
- (2) The postponement extends the enforcement warrant if it would otherwise end before that date.

Accounting for proceeds of sale

- 14.21(1) As soon as practicable after the sale, the enforcement officer must pay the proceeds of the sale to the court.
- (2) The court must:
 - (a) first, pay the enforcement officer the costs of enforcing the warrant; and
 - (b) then pay any balance, up to the amount of the enforcement warrant, to the enforcement creditor; and
 - (c) then pay any balance remaining to the enforcement debtor.

[14.21.1] Method of sale. The provisions of this rule apply regardless of the method of sale: *VCMB v Domic* [2010] VUCA 4 at [16]; CAC 2 of 2010.

Division 5 – Enforcement warrants for redirection of debts and earnings

Debts that may be redirected

- 14.22(1) A court may issue an enforcement warrant requiring a third person to pay to an enforcement creditor a debt that is:

[14.22.1] History. These provisions are elsewhere called “attachment” or “garnishee” proceedings (from the Norman French, a “garnishee” referring to someone obliged to provide a creditor with money to pay off a debt: *Choice v Jeronimon* [1981] QB 149 at 154; [1981] 1 All ER 225 at 226).

[14.22.2] **Absence of clear statutory basis** The jurisdictional basis for making such an order usually lies in statute and the effectiveness of this rule should not be assumed absent a clear statutory mandate. The effect of the warrant would seem to be to create a legal relationship, whether of debtor/creditor or *sui generis* between the judgment creditor and third parties; see also r.14.23(2).

[14.22.3] **Meaning of “debts”** The rule can be invoked only in relation to “debts” which term probably does not include wages/salary accruing (*Hall v Pritchett* (1877) 3 QBD 215 at 217) or income from trust funds (*Webb v Stenton* (1883) 11 QBD 518 at 524-5, 528; [1881-5] All ER 312 at 315, 316) but see r.14.28 in relation to earnings.

(a) certain and payable; and

(b) payable to the enforcement debtor; and

(c) specified in the warrant.

(2) In deciding whether to issue the warrant, the court must consider whether, if the debt is paid to the enforcement creditor:

(a) the enforcement debtor has adequate means to pay:

(i) the necessary living expenses of the enforcement debtor and his or her family; and

(ii) any other known liabilities; and

[14.22.4] **Preference** The warrant may not be issued if it will have the effect of preferring one creditor over another: *Prichard v Westminster Bank* [1969] 1 WLR 547 at 549; [1969] 1 All ER 999 at 1001.

(b) unreasonable hardship would be imposed on the enforcement debtor ; and

[14.22.5] **Example** An example might be where the judgment debtor might be forced to pay the debt a second time in a foreign jurisdiction: *Martin v Nadel* [1906] 2 KB 26 at 30.

(c) it is appropriate to issue the warrant, having regard to the nature and the amount of the debt.

Service of warrant

14.23(1) The warrant does not take effect until it is served on the third person.

(2) When the warrant is served, the third person must pay the debt to the enforcement creditor, in accordance with the warrant.

Other debtor disputes liability

14.24 If the third person claims the debt is not payable to the enforcement debtor, the third person may apply to the court for directions.

[14.24.1] **Applicant not to question validity of the warrant** This rule should not permit the other debtor to dispute the validity, etc of the warrant, only the debt to which it

relates.. The other debtor could, presumably, raise any matter which might have been raised against a claim by the enforcement debtor, such as set-off: See for example *Tapp v Jones* (1875) LR 10 QB 591 at 593.

Regular redirection of debts

14.25(1) If:

- (a) the enforcement debtor has an account with a financial institution; and**

[14.25.1] Joint accounts The rule makes no provision for joint accounts. At common law a joint account was not attachable to satisfy a debt of one joint account-holder: *Hirschorn v Evans* [1938] 2 KB 801 at 813, 815; [1938] 3 All ER 491 at 496, 498.

- (b) another person ("the depositor") regularly pays money into the account:**

the court may issue an enforcement warrant directing the institution to make regular payments to the enforcement creditor of amounts equal to the amounts paid into the account by the depositor.

- (2) As well as the matters required to be in a warrant by rule 14.13, an enforcement warrant issued under this rule must state:**

- (a) the institution's name; and**
- (b) details of the enforcement debtor's account; and**
- (c) the amount to be paid; and**
- (d) the enforcement creditor's name and address; and**

[14.25.2] Importance of accuracy The above details must be stated accurately: *Koch v Mineral Ore* (1910) 54 SJ 600. The general strictness applying to matters of enforcement was well illustrated by the Court of Appeal in *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4; CAC 5 of 2008.

- (e) how the amount is to be paid to the enforcement creditor.**

Service of warrant for regular redirection

- 14.26(1) An enforcement warrant for the regular redirection of debts must be served personally on the enforcement debtor and the financial institution.**

- (2) The enforcement warrant does not come into effect until 7 days after service on the financial institution.**

Payment under warrant

- 14.27(1) The financial institution must:**

- (a) deduct the amount specified in the warrant within 2 days after each regular deposit is made; and
 - (b) pay the amount as specified in the warrant; and
- (2) The enforcement debtor:
- (a) must ensure sufficient funds are in the account to cover the deduction; and
 - (b) must not encourage the depositor to stop making the deposits, or do anything else to hinder the regular redirections.
- (3) The enforcement debtor must tell the enforcement creditor if:
- (a) the depositor fails to make a deposit; or
 - (b) the enforcement debtor changes his or her account.

Enforcement warrant for redirection of earnings

- 14.28(1) A court may issue an enforcement warrant requiring particular earnings of the enforcement debtor to be paid by the enforcement debtor's employer to the enforcement creditor.
- (2) When it issues the warrant, the court must also fix:
- (a) the amount of each deduction; and
 - (b) the minimum amount to be available to the employee as take-home pay.
- (3) In deciding whether to issue the warrant and fixing the amount of each deduction and the amount of take-home pay, the court must consider whether:
- (a) the enforcement debtor is employed by the employer; and
 - (b) the enforcement debtor has adequate means to pay:
 - (i) the necessary living expenses of the enforcement debtor and his or her family; and
 - (i) any other known liabilities; and
 - (c) unreasonable hardship would be imposed on the enforcement debtor.
- (4) In deciding whether to issue the warrant and fixing the amount of each deduction and the amount of take-home pay, the court

must consider whether:

- (a) the enforcement debtor's name; and
- (b) the name of the employer; and
- (c) the total amount to be deducted under the warrant; and
- (d) the amount to be deducted each pay day; and
- (e) the minimum amount to be available to the employee as take-home pay; and
- (f) the name and address of the enforcement creditor, and how the amount is to be paid to the creditor.

Service of warrant for redirection of earnings

- 14.29(1)** The enforcement warrant must be served personally on the enforcement debtor and on his or her employer.
- (2) The enforcement creditor must also serve on the employer a notice in Form 26 telling the employer of the effect of the order and what the employer must do.

Payment under warrant for redirection of earnings

- 14.30(1)** On each pay day while the enforcement creditor is employed by the employer, the employer must:
- (a) deduct the amount specified in the warrant from the enforcement debtor's earnings (unless the amount remaining to be paid is less); and
 - (b) pay the amount to the person specified in the warrant; and
 - (c) give the enforcement debtor a notice giving details of the deduction.
- (2) In spite of subrule (1), if the amount to be deducted would leave the employee with less than the take-home pay fixed by the court, the employer must deduct a lesser amount that will leave the employee with the take-home pay the court fixed.
- (3) A deduction made under a warrant satisfies, to the extent of the deduction, the employer's obligation to pay the enforcement debtor's wages.

If person is not enforcement debtor's employer

- 14.31** If a person served with a warrant for the redirection of an

enforcement debtor's earnings is not, or stops being, the debtor's employer, the person must notify the court as soon as practicable.

Setting aside an enforcement warrant for the regular redirection of debts or earnings

- 14.32(1)** The enforcement creditor or enforcement debtor may apply for an enforcement warrant for the redirection of debts or earnings to be set aside, suspended or varied.
- (2)** The order setting aside, suspending or varying the warrant must be served on:
- (a)** the enforcement creditor, unless he or she is the applicant; and
 - (b)** the enforcement debtor, unless he or she is the applicant; and
 - (c)** the debtor, the institution or the enforcement debtor's employer, as the case requires.

Division 6 – Other enforcement warrants for money orders

Enforcement warrants for charging orders

- 14.33** The Supreme Court may issue an enforcement warrant charging all or part of the enforcement debtor's legal or equitable interest in any of the following property:

[14.33.1] Absence of clear statutory basis The jurisdictional basis for making such an order usually lies in statute and the effectiveness of this rule should not be assumed absent a clear statutory mandate.

- (a)** the enforcement debtor; and
- (b)** each other person who has an interest in the property; and
- (c)** the person who issued or administers the property; and
- (d)** for partnership property, each of the partners.

Service of enforcement warrant charging property

- 14.34** To have effect on a person, the warrant must be served personally on:
- (a)** the enforcement debtor; and
 - (b)** each other person who has an interest in the property; and

- (c) the person who issued or administers the property; and
- (d) for partnership property, each of the partners.

Effect of warrant

- 14.35(1)** An enforcement warrant charging property entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge over the property had been made by the enforcement debtor in favour of the enforcement creditor.
- (2) However, the enforcement creditor must not do anything to enforce the remedies until 3 months after the latest service under rule 14.34.
 - (3) After being served with the warrant, the enforcement debtor must not sell, transfer or otherwise deal with the property.
 - (4) The court may set aside or restrain a sale, transfer or other dealing in contravention of subrule (3), unless this would prejudice the rights or interests of a genuine purchaser without notice.
 - (5) After being served with the warrant, the person who issued or administers the property must not sell, transfer or otherwise deal with the property.

Appointment of receivers

- 14.36(1)** The Supreme Court may issue an enforcement warrant appointing a receiver.

[14.36.1] Absence of clear statutory basis. The jurisdictional basis for making such an order usually lies in statute and the effectiveness of this rule should not be assumed absent a clear statutory mandate. The power to appoint a receiver to a company in certain circumstances is contained in the *Companies Act* [Cap 191].

- (2) In deciding whether to appoint a receiver, the court must consider:
 - (a) the amount of the enforcement debt; and
 - (b) the amount likely to be obtained by the receiver; and
 - (c) the probable costs of appointing and paying a receiver.
- (3) A person must not be appointed as a receiver unless the person consents to the appointment.
- (4) The court may require the receiver to give security acceptable to the court for performing his or her duties.

- (5) As well as the material required by rule 14.13, the enforcement warrant must:
- (a) specify the receiver's duties; and
 - (b) state the period of the receiver's appointment; and
 - (c) specify what the receiver is to be paid; and
 - (d) require the receiver to file accounts and give copies to the parties, and at the times, the court requires; and
 - (e) contain anything else the court requires.
- (6) While the receiver is appointed, his or her powers operate to the exclusion of the enforcement debtor's powers.

Division 7 – Enforcement of non-money orders

Procedure after judgment for claimant – non-money orders

14.37(1) Immediately after giving a judgment that includes a non-money order, the court must ask the person against whom the order is made how he or she proposes to comply with the order and must either:

[14.37.1] See [14.3.1].

- (a) make an enforcement order; or
 - (b) fix a date for an enforcement conference to examine the person about how he or she proposes to comply with the non-money order.
- (2) When the court fixes the date for the enforcement conference, the court must tell the person to:
- (a) come to court on the date fixed for the conference; and
 - (b) bring with him or her sufficient information to enable him or her to tell the court how he or she proposes to comply with the order.
- (3) If the person is not present, the court must:
- (a) fix a date for an enforcement conference; and
 - (b) issue a summons in Form 27 against the person requiring the person to:
 - (i) come to court on the date fixed for the enforcement conference; and

- (ii) bring with him or her sufficient information to enable him or her to tell the court how he or she proposes to comply with the order.

Agreement about compliance

- 14.38** If the parties agree about how the person required to comply with the order proposes to do so, the court may make an enforcement order in the terms of the agreement.

Possession of customary land

- 14.39** The court must not make an enforcement order for the possession of customary land except after hearing a claim under rule 16.25.

Suspension of enforcement

- 14.40(1)** A person against whom an enforcement order is made may apply to the court for an order suspending the enforcement of the order.

[14.40.1] By whom application may be made Only the person against whom the order is made may apply to have it suspended: *Panketo v Natuman* [2005] VUSC 131; CC45 of 2002.

(2) The application must be:

- (a)** supported by a sworn statement; and
- (b)** be filed and served on the person in whose favour the order is made at least 7 working days before the application is to be heard.

(3) The court may:

[14.40.2] See further annotations to r.14.10(3).

- (a)** suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and
- (b)** make other orders it considers appropriate, including another enforcement order.

Enforcement throughout Vanuatu

- 14.41(1)** An enforcement warrant is enforceable throughout Vanuatu.
- (2)** An enforcement warrant issued in one district of the Magistrates Court is enforceable in any other district.
 - (3)** However, before enforcing the warrant in another district, the

person enforcing it must take the warrant to the office of the Magistrate's Court in the second district for sealing by that office.

Deceased enforcement debtor

- 14.42** If the enforcement debtor has died, only the assets of his or her estate can be the subject of a warrant.

Issue and service of enforcement warrant

- 14.43(1)** A person applying for an enforcement warrant to enforce a non-money order must file:
- (a) an application that has with it 2 copies of the warrant; and
 - (b) a sworn statement stating that the person against whom the order was made has not complied with the order, and in what way he or she has not complied.
- (2) Unless the court orders otherwise, the warrant must be issued without a hearing.
- (3) The court must give the warrant to an enforcement officer to be enforced.
- (4) If there are several enforcement warrants under different non-money orders, the enforcement officer must deal with them in the order in which they were issued.

Form of warrant

- 14.44** An enforcement warrant for a non-money order must state:
- (a) the name of the person who must comply with the order; and
 - (b) the date, within 1 year of the date of the warrant, that the warrant ends; and
 - (c) what the warrant authorises; and
 - (d) any other details these rules require.

Return of enforcement warrant

- 14.45** If the enforcement officer:
- (a) enforces the warrant; or
 - (b) is unable after doing all that is practicable to enforce the warrant, the enforcement officer must:

- (c) write on the warrant what has been done; and
- (d) file a copy of the endorsed warrant in the court; and
- (e) give a copy to the person who obtained the warrant.

Enforcement warrant for possession of land

- 14.46(1)** A court may issue an enforcement warrant for possession of land.
- (2) The warrant authorises an enforcement officer to enter on the land described in the warrant and deliver possession of the land to the person named in the warrant as being entitled to possession of the land.
 - (3) The warrant must:
 - (a) be served personally on the person against whom the order was made, and on anyone else who seems to be in possession of the land; and
 - (b) be displayed prominently at the entrance to the land.
 - (4) The warrant cannot be enforced until 7 days after the display and the latest service.

Enforcement warrant for delivery of goods

- 14.47(1)** A court may issue an enforcement warrant for the delivery of goods if:
- (a) the order for the delivery of the goods does not give the person against whom the order is made the option of keeping the goods and paying the assessed value of the goods; or
 - (b) the order does give the person that option but the person does not choose to pay for the goods.
- (2) The warrant authorises an enforcement officer to seize the goods and give them to the person who is entitled to them under the order.
 - (3) If the order gives the person the option for keeping the goods and paying the assessed value of the goods and the person chooses to do that, the order may be enforced in the same way as a money order.

Order to do or not do an act

14.48(1) This rule applies to an order if:

- (a) it is a non-money order; and**
 - (b) it requires a person to do an act within a specified time; and**
 - (c) the person does not do the act within the time.**
- (2) This rule also applies to an order that requires a person not to do an act and the person does not comply with the order.**
- (3) The order may be enforced in one or more of the following ways:**
- (a) by punishing the person for contempt;**
 - (b) seizing the person's property;**
 - (c) if the person is a body corporate, punishing an officer for contempt or seizing the officer's property.**
- (4) The court may also enforce an order to do an act by:**
- (a) appointing another person to do the act; and**
 - (b) ordering the person required to do the act to pay the costs and expenses caused by not doing the act.**
- (5) The costs and expenses may be recovered under an enforcement warrant for a money order.**

Division 8 – Claim by third party

Notice of Claim

- 14.49(1) A person (the “third party”) who claims ownership of goods or money seized under an enforcement warrant must notify the sheriff in writing of the claim.**
- (2) The notice may be given to the sheriff personally or by filing it in an office of the court.**
- (3) The sheriff must not sell or otherwise dispose of the goods or money for 7 days after being given the notice.**

Application by third party

14.50(1) The third party must file an application within 7 days of giving

notice to the sheriff.

(2) The application must:

- (a) describe the goods or money; and**
- (b) state where they were when they were seized; and**
- (c) state why the third party claims the goods or money; and**
- (d) have with it a sworn statement in support of the application.**

(3) The application and sworn statement must be served on the person on whose behalf the enforcement warrant was issued.

(4) The court may require the third party to give security for the costs of the proceeding.

(5) An enforcement debtor may not make an application under this Division.

THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK
THE NEXT PAGE IS 193