LITIGATION - NETHERLANDS

More restraint required in granting permission for pre-judgment seizure

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Introduction

As opposed to some other jurisdictions, the Netherlands has traditionally been known as a country in which it is easy to seize before judgment – but is that still the case?

Preliminary relief judges seem to be increasingly strict when it comes to granting permission to levy a pre-judgment seizure. The exacting requirements imposed on an application for seizure are listed in the attachment syllabus, which has become progressively strict in recent years with regard to such applications. For example, creditors must now properly indicate the specific basis of a claim and preliminary relief judges often expect evidence to be submitted. Judges will then critically assess whether the claim has a chance of succeeding on the merits.

Although in the past permission was generally granted even on brief applications for seizure, preliminary relief judges and court clerks now appear to contact an attaching party's attorney with further questions. In a recent case, the preliminary relief judge of the Noord-Holland District Court ruled, in so many words, that restraint is required.(1)

Facts

On February 5 2018 a creditor filed an application for seizure with the Noord-Holland District Court, seeking to impose a pre-judgment seizure on immovable property owned by the debtor for an estimated claim of €57,200 (including interest and costs).

Decision

In assessing the application for seizure, the preliminary relief judge took as a starting point the notion that more restraint should be exercised when granting permission for an attachment. This notion has been prompted by increasing criticism in the relevant literature on the way in which leave is granted by the domestic courts, especially compared with the way in which it is granted in the countries surrounding the Netherlands.

The preliminary relief judge then rejected the request for the attachment of pre-judgment seizure, stating that it could not be said that it was a "solid" claim. Further, the judge considered that the creditor had insufficiently substantiated that the taking of precautionary measures was necessary. The fact that the debtor had not responded to the formal notice of default and that the creditor had therefore been compelled to bring the debtor to court was insufficient. In addition, the judge considered the sole fact that the debtor had put the immovable property up for sale to be insufficient substantiation for the statement that the debtor would withdraw his property from his assets. Lastly, the judge ignored the creditor's claim that he knew of no other means of recovery which would be less burdensome for the debtor (who wanted to sell his immovable property). After all, the

correspondence provided in the procedure referred to the debtor's income and even mentioned his employer's name.

Comment

Under certain circumstances, it may be desirable to levy a pre-judgment seizure on a debtor's assets in order to secure their recovery before legal proceedings. It is clear that such a request is not automatically assigned and is judged not only strictly (in terms of content), but also cautiously. For this reason, it is advisable to follow and comply with the requirements in the attachment syllabus when drafting an application for seizure.

For further information on this topic please contact Romy Smit at AKD by telephone (+31 88 253 50 00) or email (rsmit@akd.nl). The AKD website can be accessed at www.akd.nl.

Endnotes

(1) Noord-Holland District Court, February 7 2018, ECLI:NL:RBNHO:2018:910.
