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## **Unlawful Execution Proceedings and Damage to Reputation**

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### **A. Introduction**

A person finds himself in a situation, where his property is attached even though he is not guilty of any offence. He does not owe anything to the beneficiary, who initiated execution proceedings against him. As a result of the beneficiary's actions, third parties receive messages attributing debts to the respective person. These messages portray said person as somebody who fails to settle his debts and whose property has to be located and attached. What is the law when a beneficiary acts in such a manner and will said person be entitled to a compensation for damages to his reputation?

It shall be emphasized that today, in the era of technology, which finds expression even at the execution offices, sometimes action is easily triggered, and the beneficiary, by simply pressing a button, causes attachment orders to be sent to third parties and to seize the property of a person, who does not owe anything. Matters will even be worse, if an administrative authority carries out attachments without filing a claim against the debtor, simply by using its lawful authority to do so.

This paper will examine the significance of the unlawful imposition of an attachment for various reasons, as committing an act of injustice of defamation.

### **B. Defamation:**

In Israel, a person's right to his good reputation, is anchored in legislation, by the Prohibition against Defamation Law, whereas the recognition of a person's good reputation as his asset, stems as far back as numerous eras, as stated in Ecclesiastes: "A good name is better than good oil"; and "the day of death is from the day of birth".

In court rulings, much is said about balancing to be applied in matters of defamation: between a person's right to his good name and the right to freedom of expression. This paper will not deal with this subject, but it will be mentioned already now that imposing an attachment on a person's property will not be considered as the right to freedom of expression, and therefore, we will deal with the legal relevance of imposing an attachment as damage to the good reputation.

### **C. Execution Proceedings and Damage to the Reputation:**

The purpose of the traditional compensation in the case of tort is returning the injured party to the state he would have been in, were it not for the injustice committed. This is also the compensation on which a defamation claim is based, namely, removing the damage. On the other hand, the Prohibition of Defamation Law provides compensations without the need to prove any damage, for the purpose of deterring potential wrongdoers and punishing them for their behavior<sup>1</sup>, while it is claimed by others that the compensation is meant to raise the spirit of the injured party and to enhance his right to a good reputation, which was damaged by the defamation<sup>2</sup>.

### **D. Imposing an Unlawful Attachment Constitutes Damaging Publication**

Defamation means “a publication which might degrade and defile a person, attribute to him certain characteristics, harm a person in his employment”<sup>3</sup>. The definition of defamation in the Prohibition of Defamation Law is a broad definition of damage to the good reputation of a person. It teaches us that any deed by any person whatsoever, subject to the principles of civil wrong requiring publication for the awareness of another person besides the injured party, the results of which will cause a negative change of our mind in the way we will look at a person, will constitute an act of defamation.

Therefore, by publishing that somebody fails to comply with judicial decisions, his good reputation is damaged, since such a person is portrayed in a more negative light and it is easily understood that this will cause damage to him in economical aspect. Thus, for example, in the event that such person wishes to do business transactions, but is known to be a person, who fails to comply with judicial decisions, it will be difficult for him to do the business transactions, or at least lead to conditions which will account for the risk calculated by the other party of the ability of such a person to fulfill his obligations, thus causing such person to sign a business contract at less favorable conditions than would have been required of a person known to be someone who fulfills his obligations.

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<sup>1</sup> Clause 7 (a) of the **Prohibition of Defamation Law** provides compensations without proof of damage; see also the paper: Compensations in the Laws of Defamation: **Reputation and Oil**, Yuval Carniel, Amiram Bareket, in: Alei Mishpat Journal, 5762

<sup>2</sup> Application for leave of Appeal 4740/00 **Limor Amar vs. Orna Josef et al.** Judgment NH 523, 510 (5)

<sup>3</sup> Clause 1 of the **Prohibition of Defamation Law**, 5725-1965

This situation is even more difficult in the United States, where a person is measured by his “Credit Index”, and if it is claimed that he fails to meet payments when due, this will impair his credit index records and he will find it difficult to obtain credit from the formal banking system. In recent years, during the financial crisis in the United States, which began in 2008, many people found themselves unable to pay the mortgages they took for buying an apartment. Many mortgage holders sold the mortgaged apartments. There was a case, in which the mortgage holder tried to sell the apartment mortgaged to him in the State of California. He published the apartment for sale in a foreclosure proceeding. The mortgage lender, i.e. the injured claimant, claimed, among others, that the mortgage holder’s unlawful request to sell the property, constitutes an act of defamation. The case was brought before the Supreme Court of the State of California, who compared the interpretation of defamation to a situation where a person, without any justification to do so, tries to realize the mortgage and determined that in this case his declaration for realizing the property should be considered to be a publication of defamation<sup>4</sup>. It shall be noted that, contrary to the State of Israel, in the State of California an arrangement of compensation without proof of damage caused by someone damaged by defamation, is not provided by law. In its above-mentioned decision, the Court repeated the examinations for the existence of an unjust act of defamation, set forth in the old rulings of the United States, viz.: unjustified false publication and direct financial loss.<sup>5</sup>

On the other hand, in a case where a debt does exist, which was not settled, the creditor has the right to send a notification of attachment against debtors, and creditor will have the right to defend himself as provided in Clause 13 of the Law.<sup>6</sup>

Consequently, imposing an unlawful attachment constitutes “publication” in the meaning of the Prohibition of Defamation Law, and it is also about “defamation” in the meaning of the Prohibition of Defamation Law.

In this connection, what was said in Civil Appeal 740/86, **Tomarkin v. Haetzni, Judgment** 334 (2) MG, 337-338, applies: **“On the one hand, the practice is that the question what had been the intention of the publishing party, is of no importance.**

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<sup>4</sup> **Sumner Hill Homeowners’ Association v. Rio Mesa Holdings, LLC**, 2012)

<sup>5</sup> Citing **Truck Ins. Exchange v. Bennett**, 53 Cal.Ap.Dath 75.84 (1997); **Howard v. Schanie**, 113 Cal.Ap.D.3d 256, 263-264 (1980)

<sup>6</sup> In Civil File (Tel-Aviv) 17615-03-10 **Esther Gidnian v. Municipality of Tel Aviv**, the Municipality imposed an attachment for property tax debts, following a request filed with the Municipality for exempting the property from payment of property tax. In her claim, Respondent claimed being entitled to the defense according to Clause 13 (9) of the Law. The Court rejected the claim ruling “where a debt exists, the Local Authority must or is entitled to send an attachment notification against debtors, however, there is no obligation, nor permission to send notifications of attachment against persons not owing anything.”

**On the other hand, the question how matters were actually understood by those reading these words, is of no importance. The determining test is, what, in the opinion of the presiding judge, is the meaning a reasonable reader would have attached to those words...”.**

See also judgments in the Civil Appeal 723/74 Haaretz Publishing House Ltd. v. Electric Company, Judgment 31 281 (2), 293.

By imposing an attachment, a person is shown as someone not paying his debts and the creditor having no choice but to impose an attachment on the debtor's property. This constitutes publication of defamation against the debtor, because the attachment might damage his good reputation and degrade him, making him the object of ridicule and contempt.

In this matter, see 60625/06 A, **Zohar Amram et al. v. Magen David Adom et al.** [Israeli Red Cross]. It concerns a situation where a person received notification to the Bank managing his account, that an attachment order was imposed on his account. The Court ruled that the lawyer, who imposed the attachment, would compensate the respective person, notwithstanding the fact that the lawyer acted on behalf of her client. Furthermore, it was pointed out in the judgment that the notification to the Bank concerning the attachment places the debtor:

**“in a situation where he becomes someone classified as problematic, though not in a formal manner, and at least, a client owing money to certain factors, due to which those factors are forced to turn to the Execution Office for collecting the debt.”**

In some other case, where the State of Israel unlawfully attached the money of a person, it was determined that **“the notification portrayed the Defendant as someone who failed to pay some debt to the State in such a manner which left no choice but to impose an attachment on his property.”**<sup>7</sup>

Similar explanations were given, when the Bituah Haleumi [Israel Social Security Authority] imposed attachments on someone not having any debts.<sup>8</sup>

The mere fact of sending attachment orders regarding a certain person portrays him as someone not paying his debts and this constitutes publication of defamation, since those attachment orders might damage the good reputation of the person, making him the object of ridicule and contempt.

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<sup>7</sup> **Achiman Shmuel v. Center for the Collection of Fines** 25746/07 A (Tel Aviv Magistrate's Court)

<sup>8</sup> **Ronit Harpaz-Sief v. Bituach Leumi, Ramat Gan Branch**, 22407-08 A

In cases in which the issue of defamation arises, it should be examined as to whether the attachment initiator bears compensation liability for an unlawful attachment. Such cases might be numerous and diverse. Thus, for example, in a case where a debtor received a parking ticket for parking against payment of a fee, while the debtor failed to pay the fee. However, there was no signpost indicating that parking was against payment of a fee. Is it appropriate to damage the good reputation of this innocent citizen, who did not receive the warning letters due to an error in identifying his address, without allowing him the right to be heard?

This issue is relevant also in situations where a person tries to carry into effect a judgment given against a debtor, while the debtor filed an appeal, although it was determined that filing an appeal in itself would not prevent the prevailing party from carrying the judgment into effect or to act in accordance therewith<sup>9</sup> and following the appeal, the judgment would be cancelled and determined that the debtor has no debts. However, the execution of enforcement orders given by a lower court might be considered, *prima facie*, as publication constituting defamation, since the principles of publication and damage to the good reputation of a person exist, but the law explains that there are permissible publications, such as a publication made by a judge or some other person possessing judicial or quasi judicial competence.<sup>10</sup> Consequently, an attachment action for carrying into effect a judgment given, even if such will be cancelled later on following an appeal, shall be considered as an action not constituting defamation.

#### **E. Concluding Remarks:**

Imposing an attachment on the funds of a person, when this person does not owe these funds, constitutes publication prohibited by the Prohibition of Defamation Law. Delivering attachment orders to third parties will not only damage the good reputation of such a person, but even cause damage by classifying this person in the records as debtor, who failed to pay a debt, having future impact whenever this person applies for a credit or when defining his financial solidity.

It should be remembered that in addition to the damage of a person's good reputation, the attachment action would harm the proprietary right of the debtor, thus increasing the damage caused to a person, on whom an unlawful attachment is imposed. Imposing an attachment in the framework of execution proceedings might have the same implication as caused by an interim order and imposes liability on the person initiating

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<sup>9</sup> Uri Goren – **Issues in Civil Procedure**: Ed. 10, page 672, and in Civil Hearing 2966/96 **Attia v. Municipality of Tel-Aviv-Yafo**, (Published on the Nevo Law Repository)

<sup>10</sup> **Prohibition of Defamation Law**, 5725-1965, Clause 13 (5)

the legal proceedings against another person.<sup>11</sup> On the other hand, not every attachment constitutes defamation; an attachment imposed by law, though causing damage to a person, is protected by the defenses determined by law, as is the rational considered by the legislator in protecting a publication being of public importance, the meaning of which being that someone fails to pay his debts as determined by law.

Beneficiaries would be well advised to be very careful to initiate procedures, either by themselves or by their representatives, only against a person not paying his debt and be careful not to make any mistake.

Saving resources and manpower as well as lack of quality and supervision requirements in law offices might be considered as a central factor for the occurrence of errors in collection proceedings.

The Courts should be aware of the fact that errors occur due to the attempt to save and streamline work procedures, and it should be appropriate that the Courts will adjudge adequate compensations, so that “a sinner will not benefit” and to raise the standard of debt collection.

Therefore, the obvious trend is to increase the amount of compensation and to enable the injured party to utilize to the fullest his right to statutory compensations, as laid down by law.

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<sup>11</sup> Lawyer Daniel Abraham v. Akram Meshulam et al., 7753/00 A