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CASE UPDATE 4/2026

Recovering Outstanding LAD: Can Homebuyers Garnish a Housing Development Account?

Guidance from Intan Permata Properties Sdn Bhd v AEJB Engineering (M) Sdn Bhd & Anor [2023] 1 LNS 60

Obtaining judgment for liquidated ascertained damages ("LAD") against a housing developer is often only half the battle. Where a developer fails or refuses to satisfy the judgment, homebuyers are left with a practical question: how can the judgment be enforced?

One enforcement option is garnishee proceedings, which allow a judgment creditor to recover monies owed to the judgment debtor by a third party. But can this mechanism be used against a housing developer's Housing Development Account? The issue is far from straightforward.

The Legal Framework Governing Garnishee Proceedings

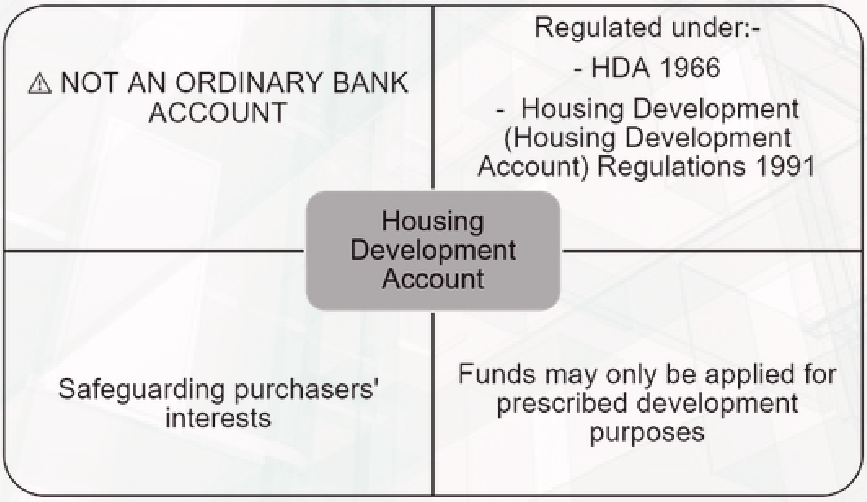
Order 49 rule 1 of the Rules of Court 2012 entitles a judgment creditor to enforce a monetary judgment through garnishee proceedings. In essence, garnishee proceedings enable the Court to order a third party (the garnishee) who owes money to the judgment debtor to pay that money directly to the judgment creditor.

For a garnishee order to be made, the following requirements must be satisfied:

1. There must be a judgment or order for the payment of money;
2. The judgment or order must not require payment into Court; and
3. There must be a debt due or accruing due from the garnishee to the judgment debtor.

Once these requirements are met, the Court may order the garnishee to pay the debt, or so much of it as is necessary to satisfy the judgment debt, directly to the judgment creditor.

Can a Housing Development Account Be Garnished?



The key issue is whether monies standing to the credit of a Housing Development Account maintained under the Housing Development (Control and Licensing) Act 1966 ("HDA 1966") may be attached through garnishee proceedings.

Section 7A(7) of the HDA 1966 is central to this issue. It provides:

> *"(7)Notwithstanding any other written law to the contrary, all moneys in the Housing Development Account and moneys held by the stakeholder shall* ***not be garnished until all liabilities and obligations of the licensed housing developer under the sale and purchase agreements in respect of the housing development have been fully discharged and fulfilled.****"*

On a plain reading, section 7A(7) of the HDA 1966 does not create an absolute bar against garnishment. Rather, it postpones garnishment until the developer has fully discharged its liabilities and obligations under the relevant sale and purchase agreements.

The scope of section 7A(7) was considered by the High Court in **Intan Permata Properties Sdn Bhd v AEJB Engineering (M) Sdn Bhd & Anor**[1], where the Court held that section 7A(7) of the HDA 1966 does not create an absolute bar against garnishment. Instead, the statutory protection ceases to apply once the developer's obligations under the sale and purchase agreements have been fully performed. In considering when those obligations may be regarded as fully discharged and performed, the High Court observed that relevant factors include, among others, the issuance of the Certificate of Completion and Compliance ("CCC") and the expiry of the defect liability period.

The High Court's decision was subsequently appealed by the developer. Although the Court of Appeal[2] allowed the appeal, the appellate court did not reject the High Court's interpretation of section 7A(7) of the HDA 1966 as imposing only a temporary prohibition on garnishment. Rather, the appeal turned on the facts of the particular case. The strata titles had not yet been issued and, accordingly, the Court found that the developer had not fully discharged its obligations. As a result, the statutory protection under section 7A(7) of the HDA 1966 remained in force.

Recent High Court Decision Affirms Garnishment of a Housing Development Account

Although the principles governing section 7A(7) of the HDA 1966 have been considered by the Courts, there remains relatively limited judicial guidance on the circumstances in which a Housing Development Account may in fact be garnished.

1 [2023] 1 LNS 60
2 Civil Appeal No. W-04(IM)(NCVC)-520-11/2022

In a recent unreported High Court decision *(Xtreme Meridian Sdn Bhd v Siti Nurbaiyah Binti Kamal Effendi)*[3], we acted for a homebuyer who had successfully obtained judgment against a housing developer for LAD but was unable to recover the judgment sum. To enforce the monetary judgment, we commenced garnishee proceedings against the developer's Housing Development Account.

The developer applied to set aside the garnishee order, contending that the Housing Development Account was protected from garnishment under section 7A of the HDA 1966. The Sessions Court dismissed the developer's application, and the developer appealed to the High Court.

On 22 January 2025, the High Court dismissed the appeal and affirmed the Sessions Court's decision. In doing so, the High Court accepted our submission that section 7A(7) of the HDA 1966 does not create an absolute bar against the garnishment of a Housing Development Account.

On the facts, the High Court found that the developer had completed all of its contractual obligations. In particular, the CCC had been issued, vacant possession of the parcel and the common property had been delivered, the defect liability period had expired, and the separate strata title had been issued. The facts of this case are particularly significant as they went beyond the stage considered by the Court of Appeal in Intan Permata. In this case, the developer had not only obtained the CCC and completed the defect liability period, but the strata title had also been issued.

Accordingly, the Court held that all liabilities and obligations of the developer under the sale and purchase agreement had been fully discharged.

In the circumstances, the High Court therefore upheld the garnishee order, enabling the homebuyer to recover the outstanding judgment sum from the Housing Development Account.

While each case will turn on its own facts, the decision demonstrates that, where a developer has fully discharged its obligations under the sale and purchase agreement, garnishee proceedings may offer homebuyers an effective avenue for enforcing judgments for outstanding LAD.

[3] Civil Appeal No. WA-12ANCvC-187-10/2024 and Civil Appeal No. WA-12ANCvC-189-10/2024

Key Takeaways

- Section 7A(7) of the HDA 1966 does not impose an absolute bar on garnishing a Housing Development Account.
- Whether a Housing Development Account may be garnished depends on the facts of each case.

Is the Housing Development Account likely to be garnishable?

Question	Yes	No
Has the CCC been issued?	√	
Has vacant possession been delivered?	√	
Has the defect liability period expired?	√	
Has the strata title been issued?	√	
Have all obligations under the SPA been fulfilled?	√	

- Garnishee proceedings may provide an effective enforcement mechanism for homebuyers seeking to recover outstanding LAD.

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