

# Judgment

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## NORTH HOLLAND COURT

Civil law Court seat

Location Haarlem

Case number: C/15/351564 / HA ZA 24-211

### Judgment of December 11, 2024

in the case of

**LINH SON TEMPLE FOUNDATION**,  
established in Heerhugowaard,  
plaintiff,  
hereinafter referred to as: the Foundation,  
lawyer: mr. P.F. Keuchenius

against

- KIM NGAN NAILS GP (general partnership), also trading as AMERICAN NAIL**,  
established in Amsterdam, hereinafter referred to as: American Nail
- KIM NGAN HUYNH**,  
residing in Purmerend,  
defendants,  
hereinafter together referred to as: the GP et al.,  
lawyer: mr. E. Doornbos.

## 1. The procedure

- 1.1 The course of the proceedings is evidenced by:
- the interlocutory decree of June 17, 2024, providing for oral proceedings
  - the oral proceedings of October 30, 2024, notes of which were taken by the Registrar.

1.1 Finally, judgment was rendered.

## 2. The facts

- 2.1 The purpose of the Foundation is to spread and teach Mahayana Buddhism. The Foundation owns real estate at Oudendijk, furnished as a temple.
- 2.2 Kim Ngan Huynh, together with Hien Ngoc Lam (hereafter Lam), is a partner of American Nail.

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2.3 Lam is part of the faith community that meets in the Foundations temple. Lam served in the board in the capacity of treasurer from its inception on March 27, 2015, until Aug. 23, 2022.

2.4 By judgment of this court dated October 25, 2023, Lam was ordered to pay € 40,445.03 to the Foundation and to surrender certain property of the Foundation. On November 14, 2023, this judgment was notified to Lam. Lam did not comply with the judgment.

2.5 On January 10, 2024, the Foundation garnished American Nail and shortly thereafter the Foundation garnished Huynh.

2.6 On February 11, 2024, the Foundation received an out-of-court declaration (hereinafter referred to as the third-party declaration) from the GP et al. This states that the GP et al. currently owes something to Lam. In the statement it is entered that Lam receives a gross salary per month of €1,316.11 with a periodic deduction of € 155.51. Under the bank seizure section two bank account numbers are entered with the balance, under rent attachment a rental price of €1,000 is listed and under other it is stated that the GP et al. owes money to the debtor, namely €100. Finally, under the question of previous garnishment is listed a fine to CJIB<sup>1</sup> and a capital loan corona with the monthly repayment.

2.7 On March 22, 2024, additional documents were requested on behalf of the Foundation to substantiate the third-party statement. These have not been received.

### 3. The dispute

- 3.1 The Foundation claims - in summary - to condemn the GP et al. jointly and severally:
- I. to make a judicial statement and supplement the statement made provided with the documents from which sufficient insight can be gained into the obligations of the GP et al. in connection with the facts alleged in the body of the summons.
  - II. After these declarations have been made by the GP et al. and the court has determined what has become effective under the garnishment, to the extent that they do not exceed the total amount that the Foundation can claim from Lam, to be increased by the statutory interest from the day of payment if there are payments in spite of the garnishment
  - III. to pay the costs of the proceedings.

3.2. In summary, the Foundation bases its claim on the plausibility that the third-party statement made is false because it is not supported by relevant documents. The Foundation argues that Lam works for American Nail seven days a week but receives less pay than the minimum wage. Also, the GP et al. did not provide any documents showing the stated income, such as annual reports or other verifying records.

3.3. The GP et al. conclude by dismissing the Foundation's claims, ordering the Foundation to pay the costs of these proceedings. The GP et al. defend that the statement made is correct. Lam is a joint partner. He therefore receives a

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<sup>1</sup> Central Judicial Collection Agency

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profit share and that cannot be compared to the minimum wage. Also, the documents submitted with the declaration are adequate, the GP et al. said.

3.4. The parties' contentions are discussed in more detail below, to the extent necessary.

#### **4. The assessment**

4.1 The Foundation explained at the hearing that the claim under II. should be read as meaning that the Foundation claims to order the GP et al. to pay the entire amount for which the attachment has been levied, if the third-party statement made has not been substantiated and the court is therefore unable to determine the amount for which the garnishment has been effective. The court finds that the claim leaves room for this reading.

4.2 The crux of the dispute is whether the GP et al., as third-party garnishees, made a proper declaration within the meaning of Article 476a of the Code of Civil Procedure (Rv). The court considers that the declaration of the GP et al. does not meet the requirements of the law regarding its content and explains this below.

4.3 The burden of proof of the existence and extent of any claim the GP et al. may have against Lam rests on the Foundation. On the other hand, as third-party garnishee, the GP et al. is obliged to substantiate its statement as much as possible with data and documents (Section 476b, Subsection 2 Rv) and an aggravated obligation to state reasons rests on them, now that the statement is disputed by the Foundation.

4.4 The Court finds that the GP et al. intended to state that the GP et al. owes a monthly amount of €1,316.11 gross per month as profit distribution to Lam. Indeed, it was explained at the hearing on behalf of the GP et al. that the other amounts entered in the third-party statement (as mentioned under 2.6) were erroneously included therein. The court further finds that the GP et al. persisted in their third-party statement.

4.5 The Foundation has substantiated that the statement is incorrect. The defence of the GP et al. is briefly limited to saying that the statement is correct and adequately substantiated. However, the court noted that the statement was not substantiated with relevant documents. The documents submitted with the third-party declaration of February 11, 2024, do not relate to the gross profit distribution and therefore do not provide substantiation for Lam's alleged claim against the GP et al. Also, no (annual) documents were submitted at the written request of the Foundation's attorney dated March 22, 2024. During these proceedings, the GP et al. also failed to substantiate its statement with documents. For example, no annual documents of American Nail have been submitted or bank statements showing previous profit distributions of €1,316.11. Thus, no insight has been provided into the extent to which the garnishment has been effective. The GP et al. have not indicated that they do not have the documents but have stated that in view of the disturbed relationship between the Foundation and Lam and the GP et al. they will not voluntarily submit documents to the Foundation.

4.6 In doing so, the GP et al. did not refute, or at least inadequately refuted, the Foundation's reasoned assertions that the statement is false. The Foundation brought forward that Lam works seven days a week for American Nail and

receives an amount lower than the minimum wage. The attorney for the GP et al. confirmed at the hearing - in the context of an appeal to the garnishment-free foot - that what Lam receives from American Nail is his only income. Nor has the Foundation's contention been disputed by the GP et al. that Lam completed and signed the third-party statement himself. The Foundation further argues that Lam drives a leased Audi E-tron Sportback car with a list value of €96,000, which has also not been refuted. It would have been in the path of the GP et al. situated to dispute these contentions with reasons and substantiation. This they have failed to do.

4.7 Since the GP et al. failed (repeatedly) to substantiate the third-party statement with documents in violation of the - aggravated - duty to state reasons, it failed in its obligation to substantiate and substantiate its statement as referred to in article 476a paragraph 2 and article 476b paragraph 2 Rv. This situation should be equated in its consequences to the case that no statement was made at all. A factor here is that the attitude of the GP et al. shows that, because of the disturbed mutual relationships, they knowingly refuse to comply with their legal obligation to make a proper statement. The Court therefore sees no reason to allow the GP et al. - as requested by wood attorney at the hearing in case the court concludes that the statement is unsubstantiated - by interlocutory order to still submit documents. For the GP et al., the consequence of the preliminary judgment is that - as claimed under II. - is ordered to pay the amount for which the attachment has been made, viz. €47.464,10.

4.8 The GP et al. have persisted in their extrajudicial third-party declaration, by which they have essentially already made a judicial declaration. That the Foundation still has an interest in having the claim under I. granted has not become apparent, also in view of the foregoing. This claim will therefore be dismissed.

4.9 The GP et al. were ruled against and must therefore pay the litigation costs (including follow-up costs). The Foundation's legal costs are estimated at:

- costs of the summons	€	135.97
- court fee	€	688.00
- salary lawyer	€	1,228.00 (2 points x €614.00)
- follow-up costs	€	178.00 (plus the increase as mentioned in the decision)
Total	€	<u>2,229.79</u>

## 5. The decision

The court

5.1 orders the GP et al. jointly and severally to pay to the Foundation, at least to the bailiff in charge of the execution, against proper proof of discharge €47,464.10,

5.2 order the GP et al. to pay the legal costs of € 2.229,97, to be paid within fourteen days after notice to that effect, to be increased by € 92.00 plus the costs of service

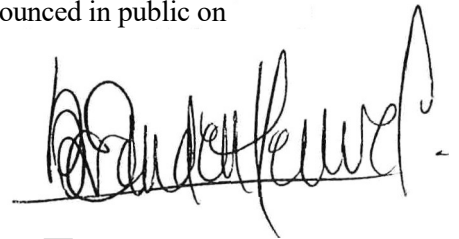
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if the GP et al. fails to timely comply with the judgments and the judgment is subsequently served,

- 5.3. Declares this judgment provisionally enforceable to this extent,
- 5.4. Dismisses the more or otherwise claimed.

Dit vonnis was rendered by Mr. E.B. van den Heuvel and pronounced in public on December 11, 2024.

S. Stolkwijk



ISSUED FOR GROSSE  
the registrar



Translated by