CANADA / JUDGMENT

Greenwood v. British Columbia

2001 BCSC 786

COURT	DECIDED
Supreme Court of British Columbia	30 May 2001

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2001 BCSC 786 Docket:
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Registry: Victoria
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:	JACK GREENWOOD PLAINTIFF
AND:	HER MAJESTY THE QUEEN IN RIGHT OF CANADA DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE MELVIN

Appearing in Person: J. Greenwood

Counsel for the Defendant: D. S. Mulroney

Date and Place of Hearing/Trial: May 28, 2001

Victoria, BC

[1] The final version of the statement of claim was filed by consent on May 28, 2001. The defendant now applies pursuant to R. 18(6) for judgment alleging that there is no merit in the whole of the plaintiff's claim.

[2] The plaintiff's claim is that the defendant wrongfully withheld his entitlements to Canada Pension and Old Age Pension to satisfy the plaintiff's indebtedness to the defendant. The defendant submits that the defendant is entitled to set-off against the plaintiff's pension payments the prior tax indebtedness of the plaintiff to the defendant.

[3] The plaintiff relies on ss. 65(1) and (1.1) of the Canada Pension Plan legislation and ss. 36(1) and (1.1) of the Old Age Security Act, which are identical:

(1) A benefit shall not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, attach, anticipate or give as security a benefit is void.

(1.1) A benefit is exempt from seizure and execution, either at law or in equity.

[4] The issue to be addressed is whether at law a set-off claim by the defendant is caught by the language of the statutes in question.

[5] The nature of set-off in the context of Canada Pension Plan benefits was considered in Mintzer v. Canada (C.A.), [1995] F.C.J. No. 1726 where the court adopted language from Sigurdson v. The Queen (1982), 132 D.L.R. (3d) 131 (B.C.C.A.):

The law relating to true set-off is well settled. A true set-off of indebtedness can take place only between two debtors who are at the same time one another's creditors. A set-off is merely the remission or cancellation pro tanto of reciprocal debts by applying one's credit receivable from another against one's debt owed to that other. A set-off is a cross-claim for money's worth respecting mutual or reciprocal debts due and owing from and to the same parties in the same right.

[6] The court in Mintzer (supra) then concluded that set-off is a different legal concept from "seizure" or "execution". In addition, I note that "assignment" (the transfer of property or cause of action) has not occurred, nor has attachment in its usual form of execution under legal process. Consequently, I am satisfied that the defendant has not breached the provisions of the Canada Pension Plan or the Old Age Security Act in withholding the pension payments that the plaintiff would otherwise be entitled to, setting those amounts off against monies owing by the plaintiff to the defendant.

[7] As to the constitutional issue raised by the plaintiff in his statement of claim, the plaintiff has not discharged the burden of demonstrating on a balance of probabilities that the actions of the defendant in claiming set-off violate the 1960 Bill of Rights, ss. 7, 8, 12, 15 of the Charter of Rights and Freedoms, or the Magna Carta. The defendant has exercised the same right that a private citizen could where a mutual debtor/creditor relationship exists. The statutory provisions of the Canada Pension Plan and Old Age Security Act under consideration are designed to protect recipients from actions of third parties who may seek to attach pension benefits. They are not designed to restrict the payor (defendant) from claiming set-off against monies owing by the pension claimant.

[8] Consequently, the plaintiff's action is without merit pursuant to R. 18(6) and is dismissed. The defendant will recover its costs on Scale 3.

"F.A. Melvin, J."

The Honourable Mr. Justice F.A. Melvin

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