

Federal Court



Cour fédérale

Date: 20100908

Docket: T-2072-09

Citation: 2010 FC 881

Ottawa, Ontario, September 8, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

**IN THE MATTER of the *Canada Labour Code*,
R.S.C. 1985, c. 1-2 as amended, Part III (Labour Standards)**

BETWEEN:

RUSSELL REITER

Complainant

and

MASKWACIS HEALTH SERVICES

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion by Samson First Nation, Montana First Nation, Ermineskin First Nation and Louis Bull First Nation, operating as Maskwacis Health Services (MHS) for an order:

1. Setting aside the *ex-parte* garnishee order granted by a prothonotary issued January 22, 2010, attaching all present and future debts owing by Peace Hills Trust Company (Peace Hills) to MHS to satisfy a judgment recovered by Russell Reiter against MHS in the proceedings;

2. Declaring all present and future debts owing by Peace Hills Trust to MHS exempt from garnishment;

3. Directing any and all monies paid into Court pursuant to the garnishee order including accrued interest be returned to the judgment debtor, MHS; and

4. For costs to Samson First Nation, Montana First Nation, Ermineskin First Nation and Louis Bull First Nation operating as MHS.

[2] Ms. Molgat attended the motion via teleconference.

[3] MHS provides health services for the four bands mentioned in paragraph 1. The four Bands make up the Hobbema and Pigeon Lake Reserves.

[4] The evidence shows that MHS is not an incorporated entity or society. Based on a four Band council resolution made in 1982, the four Bands resolved to make health services available to their members jointly through MHS.

[5] The health funding for the four Bands comes from Her Majesty the Queen in Right of Canada (Health Canada) pursuant to a health funding contribution agreement executed by the four Bands and Health Canada. The terms of the funding agreement provide for the funds to be paid directly to MHS which uses the funds to provide health programs and services to the members of the four Bands.

[6] MHS maintains a number of accounts with Peace Hills and all of these accounts are located at the Peace Hills Hobbema branch which is located on a reserve. All of the funds paid into these accounts pursuant to the funding agreement, are allocated for the provision of health programs and services to the members of the four Bands.

[7] There is no dispute that the funds in question were located on a reserve.

Issue

[8] Are the funds paid monthly by Health Canada into MHS' accounts with Peace Hills funds which are exempt from seizure, for being situated on a reserve under section 89 of the *Indian Act*, R.S., c. I-6, (the Act) or being deemed to be situated on a reserve under paragraph 90(1)(b) of the Act?

Analysis and Decision

[9] Section 89 of the Act provides:

89.(1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

89.(1) Sous réserve des autres dispositions de la présente loi, les biens d'un Indien ou d'une bande situés sur une réserve ne peuvent pas faire l'objet d'un privilège, d'un nantissement, d'une hypothèque, d'une opposition, d'une réquisition, d'une saisie ou d'une exécution en faveur ou à la demande

d'une personne autre qu'un Indien ou une bande.

(1.1) Notwithstanding subsection (1), a leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.

(1.1) Par dérogation au paragraphe (1), les droits découlant d'un bail sur une terre désignée peuvent faire l'objet d'un privilège, d'un nantissement, d'une hypothèque, d'une opposition, d'une réquisition, d'une saisie ou d'une exécution.

(2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

(2) Une personne, qui vend à une bande ou à un membre d'une bande un bien meuble en vertu d'une entente selon laquelle le droit de propriété ou le droit de possession demeure acquis en tout ou en partie au vendeur, peut exercer ses droits aux termes de l'entente, même si le bien meuble est situé sur une réserve.

[10] The respondent (applicant) submits that the accounts are not subject to garnishment because of section 89 and paragraph 90(1)(b) of the Act, since MHS is not a separate legal entity from the four Bands it represents.

[11] The complainant (respondent), Russell Reiter, submitted that his employer was in fact MHS which is controlled by a board of directors and not any of the four Bands. He also submitted that neither MHS nor its board of directors was a band or an Indian within the meaning of the Act. As a

result, the money on deposit for MHS is not exempt from garnishment by operation of sections 89 or 90 of the Act.

[12] The complainant (respondent) also argued that since the adjudicator found that Mr. Reiter was employed by MHS, that concludes the matter and the four Bands cannot claim that they were his employer nor that Peace Hills owed the funds in question to them. The complainant (respondent) also submitted that issue estoppel applies due to the finding of the adjudicator.

[13] The garnishment of the account is governed by Rule 449 of the *Federal Courts Rules*, SOR/2004-283, s. 2, which states:

<p>449.(1) Subject to rules 452 and 456, on the <i>ex parte</i> motion of a judgment creditor, the Court may order</p>	<p>449.(1) Sous réserve des règles 452 et 456, la Cour peut, sur requête ex parte du créancier judiciaire, ordonner :</p>
<p>(a) that</p>	<p>a) que toutes les créances suivantes du débiteur judiciaire dont un tiers lui est redevable soient saisies-arrêtées pour le paiement de la dette constatée par le jugement :</p>
<p>(i) a debt owing or accruing from a person in Canada to a judgment debtor, or</p>	<p>(i) les créances échues ou à échoir dont est redevable un tiers se trouvant au Canada,</p>
<p>(ii) a debt owing or accruing from a person outside Canada to a judgment debtor, where the debt is one for which the person might be sued in Canada by the judgment debtor,</p>	<p>(ii) les créances échues ou à échoir dont est redevable un tiers ne se trouvant pas au Canada et à l'égard desquelles le débiteur judiciaire pourrait tenter une poursuite au Canada;</p>

be attached to answer the judgment debt; and

(b) that the person attend, at a specified time and place, to show cause why the person should not pay to the judgment creditor the debt or any lesser amount sufficient to satisfy the judgment.

(2) An order to show cause made under subsection (1) shall be served, at least seven days before the time appointed for showing cause,

(a) on the garnishee personally; and

(b) unless the Court directs otherwise, on the judgment debtor.

(3) Subject to rule 452, an order under subsection (1) binds the debts attached as of the time of service of the order.

b) que le tiers se présente, aux date, heure et lieu précisés, pour faire valoir les raisons pour lesquelles il ne devrait pas payer au créancier judiciaire la dette dont il est redevable au débiteur judiciaire ou la partie de celle-ci requise pour l'exécution du jugement.

(2) L'ordonnance rendue en vertu du paragraphe (1) est signifiée, au moins sept jours avant la date fixée pour la comparution du tiers saisi :

a) au tiers saisi, par signification à personne;

b) au débiteur judiciaire, sauf directives contraires de la Cour.

(3) Sous réserve de la règle 452, l'ordonnance rendue en vertu du paragraphe (1) grève les créances saisies-arrêtées à compter du moment de sa signification.

[14] If the funds are determined to be funds owing to the Bands, thus being the personal property of the Bands, they are exempt from seizure as a result of the operation of subsection 89(1) of the Act. If the funds are found to be the property of MHS, then the garnishment order could stand.

[15] I have reviewed the evidence and considered the arguments presented to me and I have come to the conclusion that the funds in the account belong to the Bands and cannot be garnished.

[16] MHS has been put in place by the four Bands to administer the funds paid by Health Canada under the funding agreement to provide health services and programs to the four Bands. The four Bands signed the funding agreement and MHS is referred to as “First Nation” on the title page of the funding agreement.

[17] There is no evidence before me that MHS is a corporation or a partnership. From the evidence, it may be an unincorporated association.

[18] There is no evidence before me that anyone but the four Bands are entitled to use the funds for purposes other than the provision of health services to the members of the four Bands.

[19] The evidence supports the position that the funds were provided to the four Bands who utilized MHS to receive the funds and plan and deliver the health services on their behalf.

[20] The present case differs from *Choken v. Lake St. Martin Indian Band*, 2004 FCA 248 where funds were placed with a third party manager by the Department. As well in *Kostyshyn (Johnson) v. West Region Tribal Council Inc.*, [1994] 1 C.N.L.R. 94, the holder of the funds was found to be a corporation and not an Indian or a band within the meaning of the Act.

[21] Based on this evidence, I must conclude that the funds in the account at Peace Hills are ultimately the funds of the four Bands.

[22] Consequently, the funds are exempt from seizure as a result of the operation of subsection 89(1) of the Act. As they are the personal property of the four Bands, the garnishment order issued by the prothonotary must be set aside.

[23] Because of my finding, the respondent's (applicant's) motion must be allowed in part and the garnishment order is set aside with costs to the respondent (applicant) of this motion.

ORDER

[24] **IT IS ORDERED that:**

1. The *ex-parte* garnishee order granted by a prothonotary issued January 22, 2010, attaching to all present and future debts owing by Peace Hills Trust Company to MHS to satisfy a judgment recovered by Russell Reiter against MHS in the proceedings is set aside.
2. It is declared that all present and future debts owing by Peace Hills Trust Company to MHS are exempt from garnishment.
3. It is directed that any and all monies paid into Court pursuant to the garnishee order including accrued interest be returned to the judgment debtor, MHS.
4. Costs be awarded to Samson First Nation, Montana First Nation, Ermineskin First Nation and Louis Bull First Nation operating as MHS.

“John A. O’Keefe”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2072-09

STYLE OF CAUSE: RUSSELL REITER
- and -
MASKWACIS HEALTH SERVICES

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: March 8, 2010

**REASONS FOR ORDER
AND ORDER OF:** O'KEEFE J.

DATED: September 8, 2010

APPEARANCES:

J. A. Clifford Kemp	FOR THE COMPLAINANT (RESPONDENT)
Kelsey Becker Brookes	FOR THE RESPONDENT (APPLICANT)
Sylvie Molgat	VIA TELECONFERENCE FOR THE LOUIS BULL TRIBE

SOLICITORS OF RECORD:

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