

Federal Court



Cour fédérale

Date: 20120213

Docket: T-304-05

Citation: 2012 FC 185

Vancouver, British Columbia, February 13, 2012

PRESENT: Roger R. Lafrenière, Esquire
Prothonotary

IN THE MATTER OF the *Canada Labour Code*, R.S.C. 1985, c. L-2
as amended

AND IN THE MATTER OF an Adjudication Decision of
Eric G. Lister, Q.C., filed February 15, 2005

BETWEEN:

ALBERT SINCLAIR, SR.

**Complainant
(Judgment Creditor)**

and

SPLIT LAKE FIRST NATION

**Employer
(Judgment Debtor)**

REASONS FOR ORDER AND ORDER

[1] Mr. Albert Sinclair, Sr. (Complainant), has brought an *ex parte* motion for a garnishing order pursuant to Rule 449 of the *Federal Courts Rules* (FCR) that all debts owing or accruing due from a local branch of the Royal Bank of Canada in Thompson, Manitoba (Garnishee) to the Tataskweyak Cree Nation, formerly known as Split Lake First Nation (Employer), be attached to answer the judgment debt of \$10,435.20 due as at January 12, 2012, plus the sum of \$403.00 for

unpaid costs, for a total of \$10,838.20. The Complainant also seeks an order for costs against the Employer in the amount of \$300.00 or in such other amount as the Court deems just and appropriate in the circumstances.

[2] The issue on this motion is whether there is any “order for the payment of money” within the meaning of Rule 425 of *Federal Courts Rules* capable of being enforced by way of garnishment.

Background

[3] The Complainant is a band member of the Tataskweyak Cree Nation. In 1998, he was hired by the manager of the Split Lake Radio Station to fill the position of radio announcer and disc jockey. The Complainant’s employment was terminated on November 7, 2003 because he allegedly breached the First Nation’s “zero tolerance policy” with respect to alcohol consumption. The Complainant denied ever drinking on the reserve and filed a wrongful dismissal complaint against the Employer.

[4] Eric G. Lister, Q.C. was appointed as adjudicator to hear the complaint pursuant to the *Canada Labour Code*, RS, c. L-1. A hearing was held by the adjudicator on November 23, 2004; however, the Employer declined to attend.

[5] By decision dated November 26, 2004, the adjudicator concluded that the Complainant had been unjustly dismissed (Adjudication Decision). He ordered that the Complainant be reinstated to his position effective December 1, 2004. He also ordered that the Employer pay to the Complainant compensation for unpaid wages for the period from November 10, 2003 to November 30, 2004.

[6] On February 15, 2005, the Adjudication Decision was filed in the Registry of the Federal Court pursuant to subsection 251.15(1) of the *Canada Labour Code*. Upon being filed, the Adjudication Decision acquired the same status as a judgment and the same executory force as if it had been rendered by this Court: *National Bank of Canada v Granda*, [1984] 2 FC 249 (CA).

[7] Pursuant to a Garnishing Order dated January 17, 2006, the amount of \$16,637.98, equivalent to the wages owed to Complainant to November 30, 2004, plus \$300.00 for costs, was paid into court.

[8] The Employer subsequently made an unsuccessful application to set aside the judgment. By Order dated February 28, 2008, the amount of \$16,937.98, and accrued interest, was ordered paid out to the Complainant's solicitor. Costs of the garnishment proceedings, fixed in the amount of \$403.00, were awarded to the Complainant.

[9] In his affidavit in support of the present motion, the Complainant states that the costs award of \$403.00 has not been paid by the Employer. He also asserts that he was never rehired back by the Employer as ordered by the adjudicator.

[10] The Complainant indicates that he obtained other employment on June 10, 2005, leaving him without any wages for the period from December 1, 2004 to June 10, 2005. He claims that, as such, he is owed \$8,832.00 for wages from the Employer for the period of unemployment, as well as interest on the said amount in the amount of \$1,603.20 to January 12, 2012.

[11] The Complainant says that he believes that the Defendant Employer maintains a bank account with the Royal Bank of Canada, at a branch located at 23 Selkirk Avenue, Thompson, Manitoba. Accordingly, he seeks an order against the Garnishee attaching the sum of \$10,838.20, plus \$300.00 for the costs of this motion.

Analysis

[12] Pursuant to Rule 449(1) of the FCR, on the *ex parte* motion of a judgment creditor, the Court may order that a debt owing or accruing due from a person in Canada to a judgment debtor be attached to answer the judgment debt; and 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.

[13] A pre-condition to obtaining a garnishment order is the existence of a judgment debt, in other words, an unsatisfied “order for the payment of money”. In particular, there must be an order awarding monetary relief to one party from another party capable of being enforced.

[14] The Adjudication Decision does not provide monetary relief to the Complainant for any period beyond November 30, 2004. In fact, it is limited to a simple declaration that the Complainant be reinstated.

[15] The order of reinstatement may be enforced under Part 12 of the FCR. Alternatively, the Complainant could have returned before the adjudicator to obtain damages in lieu of reinstatement, as was done in *Pierre v Roseau River Tribal Council*, [1993] 3 FC 756. However, a motion for a garnishment order is clearly not the proper procedure to obtain default judgment against the Employer for non-compliance with the Adjudication Decision.

Conclusion

[16] The motion for garnishment of wages alleged to be owed to the Complainant as a result of the declaration of reinstatement is dismissed.

[17] The Complainant has established that the Employer has not paid costs awarded on February 28, 2008 in the amount of \$403.00. Based on Part XIV of the Manitoba *Court Of Queen's Bench Act*, the post-judgment interest on the costs award to date is roughly \$22.00.

[18] As for costs of this motion, the majority of the motion material submitted by the Complainant was related to his claim for unpaid wages. In the circumstances, I would reduce the award of costs to \$150.00.

[19] Accordingly, a garnishment order will issued to attach the judgment debt of \$425.00, plus \$150.00 for costs of this motion.

ORDER

THIS COURT ORDERS that:

1. The motion is granted in part, with costs of this motion hereby fixed in the amount of \$150.00, inclusive of disbursements and taxes, payable by the Employer, Tataskweyak Cree Nation.
2. All debts due or accruing due from the Garnishee, Royal Bank of Canada, 23 Selkirk Avenue, Thompson, Manitoba, to Tataskweyak Cree Nation, shall be attached to answer the unsatisfied Order of costs in the amount of \$425.00, plus costs of the garnishee proceedings of \$150.00.
3. Unless the amount of \$575.00 is paid into court, or an affidavit is filed by the Royal Bank of Canada confirming that there are no debts due or accruing due to Tataskweyak Cree Nation, or, alternatively, that all debts due or accruing due to Tataskweyak Cree Nation, up to \$575.00, have been paid into court, a representative of the Royal Bank of Canada shall attend before the Federal Court, 4th Floor, 363 Broadway, Winnipeg, Manitoba on Monday, March 12, 2012 at 9:30 a.m. to show cause why the Royal Bank of Canada should not pay to the Complainant the amount of \$575.00, or any lesser amount sufficient to satisfy the Order of costs dated February 28, 2008, together with the costs of the garnishee proceedings.

4. The Complainant shall serve a copy of this Order on the Royal Bank of Canada, 23 Selkirk Avenue, Thompson, Manitoba, in accordance with Rule 130 of the *Federal Courts Rules*, and file proof of service, no later than February 29, 2012.

“Roger R. Lafrenière”

Prothonotary

Federal Court



Cour fédérale

SOLICITORS OF RECORD

DOCKET: T-304-05

STYLE OF CAUSE: ALBERT SINCLAIR, SR. v
SPLIT LAKE FIRST NATION

***EX PARTE* MOTION IN WRITING CONSIDERED AT
VANCOUVER, BRITISH COLUMBIA, PURSUANT TO RULE 369**

**REASONS FOR ORDER
AND ORDER:** LAFRENIÈRE P.

DATED: FEBRUARY 13, 2012

REPRESENTATIONS BY:

LARRY B. NASBERG

FOR THE COMPLAINANT
(JUDGMENT CREDITOR)

N/A

FOR THE EMPLOYER
(JUDGMENT DEBTOR)

SOLICITORS OF RECORD:

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Winnipeg, Manitoba

FOR THE COMPLAINANT
(JUDGMENT CREDITOR)

N/A

FOR THE EMPLOYER
(JUDGMENT DEBTOR)

