

SUPREME COURT OF YUKON

Citation: *Liedtke-Thompson v Gignac*
2016 YKSC 8

Date: 20160129
S.C. No. 11-A0009
Registry: Whitehorse

Between:

TINA LIEDTKE-THOMPSON

Applicant

And

PAUL GIGNAC

Respondent

Before Mr. Justice R.S. Veale

Appearances:

Tina Liedtke-Thompson
Paul Gignac

Appearing on her own behalf
Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] The issue in this case is the extent to which a long-term disability payment received in lieu of wages is garnishable under the *Garnishee Act*, R.S.Y. 2002, c. 100. The Respondent, Mr. Gignac, is garnishing Ms. Liedtke-Thompson pursuant to a judgment against Ms. Liedtke-Thompson in a suit for assault and battery. The damages decision in that matter is cited to *Liedtke-Thompson v. Gignac*, 2015 YKSC 5.

FACTS

[2] Ms. Liedtke-Thompson is employed by the Government of Yukon and is covered by a Group Insurance Policy from Sun Life Assurance Company of Canada ("Sun Life"),

which provides long term disability benefits for employees. Ms. Liedtke-Thompson is currently on long term disability. She has a basic salary of \$5,056.33. Her monthly disability benefit is 70% of her monthly salary, i.e. \$3,540. A cost of living adjustment effective January 1, 2015, brought her monthly benefit to \$3,622.12.

[3] On June 12, 2015, a Writ of Continuing Garnishment was filed with the Supreme Court against Sun Life in the amount of \$68,256.40, and beginning on August 7, 2015, Sun Life began paying 100% of Ms. Liedtke-Thompson's Long Term Disability Claim payments into court, at a rate of \$3622.12 per month.

[4] On September 4, 2015, Ms. Liedtke-Thompson filed an Application seeking return of the funds paid into court.

[5] It is not disputed that Ms. Liedtke-Thompson's long-term disability is paid in lieu of income from her employment. Section 22 of the *Garnishee Act*, R.S.Y. c. 100, says that 70% of wages payable by an employer are not attachable under a writ of garnishment. If Ms. Liedtke-Thompson's disability payments are considered wages, only \$1,086.64 of her monthly payment would be garnishable and the balance of \$2,535.48 would continue to be paid to Ms. Liedtke-Thompson by Sun Life. Ms. Liedtke-Thompson initially contended that she should receive 100% of her payment since her long term disability is 70% of her salary (wages), but I do not accept that submission.

ANALYSIS

[6] While some provincial garnishment statutes explicitly include disability payments in lieu of wages in the definition of a wage, the Yukon *Garnishee Act* does not. The Yukon act defines "wages" as follows:

“wages” means wages, salary, commissions, fees, and any money payable by an employer to a debtor in respect of work done or services performed in the course of the employment of the debtor; "salaire"

[7] The wage exemption is set out in s. 22(1) as follows:

22(1) Except as otherwise provided in this Act, 70 per cent of the wages payable from time to time by an employer to a debtor is not attachable under a writ of garnishment, but in no case shall the monthly amount that is exempt from attachment under this subsection be less than,

- (a) in the case of a debtor supporting at least one dependant, \$1000 and, if they support at least four dependants, an additional \$150 for the fourth dependant and for each additional dependant after the fourth dependant; and
- (b) in the case of a debtor who supports no dependants, \$600.

[8] The balance of s. 22 provides for reducing or increasing the debtor’s exemption in certain circumstances not applicable here.

[9] I also note that the court has a broad discretion to achieve a result that is “just in all the circumstances”. Section 54 states as follows:

54(1) Subject only to subsection 12(2), the court has discretion to order that, to achieve a result that is just in all the circumstances,

- (a) a writ of garnishment be varied;
- (b) a writ of garnishment be set aside; or
- (c) terms and conditions be imposed with respect to a writ of garnishment.

(2) The generality of subsection (1) is not limited by any other provision of this Act that authorizes the court to order that a writ of garnishment be varied or set aside.

[10] Ms. Liedtke-Thompson's disability payments do not fit squarely within the Yukon definition of wages, however courts have commented on the wage-like nature of disability insurance. Although observed in the context of family law property division, the Ontario Court of Appeal noted in *Lowe v. Lowe* (2006), 78 O.R.(3d) 760 that "a disability pension is simply the flip side of employment or self-employment income" and "of the same nature as the income that the person would earn" (per Aitken J. in *Hamilton v. Hamilton* (2005), 18 R.F.L. (6th) 115 (S.C.)).

[11] There is one precedent case in which a court interpreted "wages" to include disability payments, despite a definition that did not explicitly include such payments. In *Central Trust Company v. Merrithew* (1984), 58 N.B.R. (2d) 206, Barry J. considered the situation where the disability payments of a former brokerage employee were sought to be garnished. There was no definition of wages in the New Brunswick legislation. However, s. 31 provided that "[w]ages due to the judgment debtor for his personal labour and services on a hiring are exempt from garnishment."

[12] At para. 6, Barry J. wrote:

The effect of that argument is that if Mr. Merrithew was not disabled and continued to earn his wages from his employer, his income would not be subject to garnishee. But because he is disabled and unable to work, the income he receives under a disability insurance policy becomes the subject of a garnishee. I cannot accept that interpretation even though literally it might be read that way. I take the purpose of the legislature in enacting the Garnishee Act, s. 31, was to stop creditors from garnisheeing the wages and what Mr. Merrithew is receiving is certainly in lieu of wages, if not wages themselves. If the wages are exempt, the income he receives when he is unable to work and earn wages in the technical sense should also be exempt, and while the statute doesn't provide for the exemption of disability payments it seems to me that I would be defeating the purpose of the

legislature to say that disability payments may be subject to garnishee.

[13] Although the definition of “wages” in the Yukon *Garnishee Act* is not exhaustive, in order to include disability insurance in the definition, I would have to read s. 22 as saying that a disability insurance payment is “money payable by an employer ... in respect of work done or services performed in the course of employment”. In my view, this would stretch the definition beyond a plausible understanding of the wording.

[14] Having said that, it is also my view that allowing full garnishment of Ms. Liedtke-Thompson’s disability insurance would not be just in all the circumstances. It is money paid in lieu of wages, and, on the evidence before me, Ms. Liedtke-Thompson’s sole source of income. Fairness dictates that the payments be treated as if they were wages, and I exercise my discretion under s. 54 of the *Act* to vary the writ of garnishment to reflect that 70% of Ms. Liedtke-Thompson’s monthly payment from Sun Life is not attachable.

[15] I have read the cases provided by Mr. Gignac (*Bank of Montreal v. Freedman* (1984), 58 B.C.L.R. 289 (S.C.); *Crosson v. Crosson*, [1985] B.C.J. No 1580 (S.C.); *Toronto Dominion Bank v. Berezowsky* (1987), 36 D.L.R. (4th) 235 (A.B.Q.B.)). To the extent that they consider the attachment of writs to payments made to designated beneficiaries of a debtor’s insurance policy, they are distinguishable.

CONCLUSION

[16] The Clerk of the Supreme Court of Yukon shall pay out all payments to Ms. Liedtke-Thompson from Sun Life Assurance Company of Canada garnished by Mr.

Gignac in the amount of 30% payable to Mr. Gignac and 70% payable to Ms. Liedtke-Thompson.

[17] There will be no costs payable by either party.

VEALE J.