

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

C.H. NO. 77299

**I N T H E C O U N T Y C O U R T
O F D I S T R I C T N U M B E R O N E**

BETWEEN:

VINCE AND TINA DI BENEDETTO

- Applicants

- and -

LLOYD AND NANCY SLAUNWHITE

- Respondents

Vince & Tina Di Benedetto, Applicants, acting on their own behalf;
D.A. Rollie Thompson, Esq., Counsel for the Respondents;
David G. Giovanetti, Esq., Counsel for the Sheriff for the County
of Halifax;

1993, January 12th, Palmeto, C.J.C.C.:

This is an application for:

(1) an Order that the net wages of the Respondent, Lloyd Slaunwhite, are not sufficient to allow any amount to be paid from such wages to the Sheriff under the Execution Order issued in this proceeding, pursuant to **Civil Procedure Rule 53.05(a)**; and

(2) an Order to direct the Sheriff for the County of Halifax to return to the Respondents any monies obtained under the Execution Order and now being held by the Sheriff.

Civil Procedure Rule 53.05(a) reads as follows:

"53.05. Unless the court otherwise orders, the following provisions shall apply to the payment of wages, from time to time, to a sheriff under an execution order,

(a) an employer shall only be required to pay to the sheriff fifteen per cent of the gross wages of an employee, provided that when the payment would reduce the net amount of wages payable to the employee, after deduction of all amounts required by law to be deducted from such wages, to the amount of three hundred and fifteen dollars per week payable to an employee supporting a family, ... then only the difference by which the payment of the fifteen per cent exceeds these respective amounts shall be paid to the sheriff;"

Lloyd and Nancy Slaunwhite, the Respondents in this proceeding and the applicants on this Interlocutory Application, are the former tenants of Vince and Tina Di Benedetto, the Applicants in this proceeding. Pursuant to an application filed by the landlords, the Residential Tenancies Board recommended on March 20, 1992, that the tenants be ordered to pay \$1,413.88. On April 10, 1992, an execution order was served upon Dalhousie University, the employer of Lloyd Slaunwhite, for the purpose of garnishing wages.

The issue before this Court is the interpretation of "all amounts required by law to be deducted from such wages" in Civil Procedure Rule 53.05(a).

It has been the Sheriff's practice to deduct only those amounts that are expressly required by legislation. The Sheriff therefore deducted only income tax, CPP and UIC from Mr.

Slaunwhite's salary in calculating the Execution Order. These amounts totalled \$186.31 per biweekly pay period. This was subtracted from Mr. Slaunwhite's gross wage of \$836.80. Applying **Civil Procedure Rule 53.05(a)**, there was \$20.49 left for the Execution Order.

The Respondent contends that "required by law" in **Civil Procedure Rule 53.05(a)** should be given a broader interpretation than "required by legislation", as the Sheriff suggests. There are legal arrangements binding on the employee and employer which are not directly required by legislation. These would include the various mandatory deductions made from an employee's pay cheques. Two examples of such mandatory deductions in Mr. Slaunwhite's case are union dues to CUPE (\$13.60 every 2 weeks) and Staff Pension Plan contributions (\$31.84 every 2 weeks). If these two deductions are considered, Mr. Slaunwhite is left with less than the minimum stipulated by **Civil Procedure Rule 53.05(a)**. No amount of wages would therefor be payable to the Sheriff under the Execution Order.

This issue has not been decided before in this province. It seems to me that "required by law" means more than required by legislation. The former phrase includes deductions made pursuant to other types of legal arrangements, such as certain types of compulsory pay cheque deductions. The purpose of **Civil Procedure Rule 53.05(a)** is to ensure that poor families who owe debts are left with some kind of subsistence level of income. Courts should

endeavour to give effect to this purpose, especially when the minimum amount reserved is fixed and not subject to changes for inflation. The limitation on this Rule is that an employee should not be able to manipulate deductions to reduce or eliminate the effect of an Execution Order.

It may be difficult to know when a deduction is sufficiently compulsory to be included and such a determination will depend on the facts of a given case. Factors to consider in making that determination are the degree of control the employee has over deductions and the nature of the arrangement which requires the deductions.

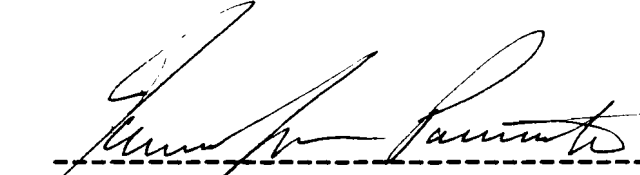
In this case, Mr. Slaunwhite has no control over his pension and union dues deductions. The contributions to the staff pension plan is a condition of his employment. This is a contractual arrangement which is as legally binding as a statutory provision. It should be noted that not all pension plans have mandatory contributions and will therefore not necessarily be deductions "required by law".

The union dues can be seen as being indirectly required by legislation. Mr. Slaunwhite is required to be a member of CUPE by the collective agreement in force in his bargaining unit. Article

6.1 of the collective agreement also required the employer to

deduct union dues from the employee's pay. Section 41 of the **Trade Union Act**, R.S.N.S. 1989, c.475, makes the collective agreement binding on the parties.

In conclusion, I am of the opinion that Mr. Slaunwhite's pension contributions and union dues are deductions "required by law" under **Civil Procedure Rule 53.05(a)**. As a result, Mr. Slaunwhite's wages are insufficient to allow any amount to be paid to the Sheriff pursuant to the Execution Order issued in this proceeding. The Sheriff will also return any monies already obtained under the Execution Order.



A Judge of the County Court of
District Number One