

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Maintenance Enforcement) v. Circuits Your Home & Car Entertainment Center Ltd.*, 2008 NSFC 5

Date: (20080213)

Docket: SD-Y-051481

Registry: Yarmouth

Between:

Director of Maintenance Enforcement

Applicant

v.

Circuits Your Home & Car Entertainment Center Limited
and
Stanley LeBlanc

Respondents

Judge: The Honourable Judge John D. Comeau,
Chief Judge of the Family Court for the
Province of Nova Scotia

Heard: October 3, 2007, and November 28, 2007 in Yarmouth, Nova
Scotia

Written Decision: February 13, 2008

Counsel: Megan E. Farquhar Esq, for the Applicant
The Respondent - unrepresented and not present

By the Court:

APPLICATION:

[1] The Director of Maintenance Enforcement is the Applicant for relief pursuant to Section 24 of the **Maintenance Enforcement Act** more specifically.

“... such other relief as the Honourable Court considers appropriate pursuant to Section 24(2) of the **Maintenance Enforcement Act**, including an order for contempt against the Respondent company and against Stanley LeBlanc, Respondent in his personal capacity, in particular, for the Respondents failure to comply with the garnishment issued by the Director of Maintenance Enforcement.”

ISSUE:

- [2] 1. Third party responsibility under a garnishment for child support - Authority of the Director of Maintenance Enforcement to issue and enforce a garnishment.
2. Contempt of Court - jurisdiction and procedure.

FACTS:

[3] On October 3, 2007 no one appeared on behalf of the Respondents. They had been served personally on September 4, 2007. Service was made on the official agent of the limited company and on the Respondent, Stanley LeBlanc, in his personal capacity.

[4] Failure to appear on October 3, 2007 resulted in judgement against the Respondents, jointly and severally in the amount of \$3,579.32 representing monies the Respondents were required to pay pursuant the garnishment issued by the Applicant to the Respondent Company on November 1, 2005. Costs in the amount

of \$650 were also awarded to the Applicant, included in the total referred to.

[5] The matter was adjourned to November 28, 2007 with respect to the issue of contempt against the Respondent Company and Stanley LeBlanc, in his personal capacity pursuant to Section 24(2) of the **Maintenance Enforcement Act**. No payment has been paid by either Respondent nor did the Respondents or anyone representing them appear in Court on November 28, 2007.

[6] Following the hearing, based on affidavit evidence, the Court adjourned this matter to February 28, 2008 so that a written decision could be filed dealing with the issues referred to above.

[7] The Court has made the following findings with respect to the Respondents more particularly in the order of October 3, 2007, that the Respondent Company was an income source for the payor BMA within the meaning of the **Maintenance Enforcement Act** as a result of information received from the company. The original order against the payor BMA was made on December 23, 1998 by the Family Court and confirmed in a corollary relief judgement issued by the Supreme Court on the 15th day of May, 2001. Documentary evidence of income received

from the Respondent Company by the payor consists of payroll deductions and regular salary statements along with copies of the cheques issued to the payor and signed by Stanley LeBlanc on behalf of the company.

[8] In an affidavit dated February 27, 2007, Karen Dagenais, Enforcement Officer for the Director of Maintenance Enforcement obtained the following information from the Registry of Joint Stock Companies:

“The information contained on the Registry of Joint Stock Companies database indicates that the Respondent Company was, as of the date of the Notice of Garnishment, and has continued to be, up to the date of this my Affidavit, an active Nova Scotia Limited Company, with registered office at 134 Haley Road, Yarmouth, Nova Scotia, B5A 4A5. The information contained on the Registry of Joint Stock Companies database also indicates that Stanley LeBlanc was, as of November 1, 2005, and has continued to be up to the date of this my Affidavit, the Director, President, and Recognized Agent of the Respondent Company, with a civic address and mailing address of 134 Haley Road, Yarmouth, Nova Scotia, B5A 4A5.”

THE LAW:

The Director's Authority:

Garnishment

19(1) Notwithstanding any enactment, an obligation to pay money under a maintenance order may be enforced by a garnishment issued by the Director requiring that one or more income sources of the payor deduct the amount as specified in the garnishment from any monies payable to the payor at the time the order is served on the income source or thereafter due, or accruing due.

(2) A garnishment binds every income source served by the Director with the order, whether or not the income source is named in the order.

(3) The Director may include in the amount required to be deducted and paid to the Director pursuant to subsection (1) any amount in arrears under a maintenance order, any costs of the Director and any fees of the Director prescribed pursuant to this Act.

(4) The Director may serve a garnishment by ordinary mail addressed to each income source from whom payment is sought.

(5) The Director shall send a copy of the garnishment to the payor by ordinary mail at the last address of the payor as shown on the records of the Director.

(6) Failure to comply with subsection (4) and (5) does not render the garnishment ineffective.

Further provisions respecting garnishment

20 (1) Upon service on an income source, a garnishment binds all money then due and from time to time accruing due from the income source to the payor, in the amount specified in subsection (2).

(2) On service of a garnishment, the garnishee shall

(a) hold the money then due and from time to time accruing due to the payor in the amount equal to

(i) the amount specified in the garnishment with respect to money accruing due during the thirty days immediately preceding the date of service, and

(ii) the amount specified in the garnishment, as each payment becomes due under the maintenance order; and

(b) provide the Director with such information as may be required in order to determine if the garnishee is making bona fide efforts to comply with the order.

(3) The garnishee shall forthwith pay to the Director, in accordance with the garnishment, the amount held pursuant to subsection (2).

(4) Where the amount of money paid pursuant to subsection (3) is insufficient to cover the amount then required to fulfil the amount specified in the garnishment, an amount equal to the difference between the amount that should have been paid and the amount that was actually paid is, for the purpose of this Section, to be added to and is considered to be part of the next payment due under the maintenance order.

(5) Where a maintenance order that is the subject of garnishment is varied after service of the garnishment, and the Director has been served by the court with the variation order.

(a) a notice of variation in the form prescribed by the Director shall be served on the garnishee by the Director; and

(b) the garnishee shall, on service pursuant to clause (a), hold money due to the payor and pay to the Director in accordance with the notice of variation and in accordance with subsection (3).

Payment discharges garnishee

21 Payment made by the garnishee, pursuant to a garnishment, is a valid discharge to the garnishee against the payor to the amount paid or levied, notwithstanding that the judgment or order in respect of which the payment was made is later reversed.

Payments to Director

22 Until the income source begins deduction maintenance payments or where payments by an income source are interrupted or terminated, the payor shall pay the amounts owing under the maintenance order to the Director.

Notice to Director

23 Where an individual, corporation or entity served with a garnishment is not an income source of the payor, the individual, corporation or entity shall give written notice to the Director within ten days following receipt of the order.

FAILURE TO COMPLY WITH GARNISHMENT:

Applications respecting income source

24(1) The Director, the payor or the income source, individual, corporation or entity may bring an application to court to determine whether

(a) the income source has failed to comply with the order;

(b) the individual, corporation or other entity is an income source;

(c) money owed under the maintenance order has been paid.

(2) In an application pursuant to subsection (1), the court shall determine the issue and make such order as it considers appropriate in the circumstances, including an order for contempt.

Failure of corporate income source to comply

24A Where the court determines under Section 24 that a corporation that is an income source has failed to comply with a garnishment order, the court may order that the directors of the corporation are jointly and severally liable for payment of the money that the corporation failed to hold and pay to the Director.

EVIDENCE:

Admissible in evidence

48(1) A statement of arrears signed by the Director is admissible in evidence, in the absence of evidence to the contrary, as proof of the arrears without prior notice to the other party.

(2) A statement signed by the Director that a maintenance order is filed in the office of the Director is admissible in evidence as conclusive proof of the facts contained in the statement.

(3) A document signed by the Director with respect to the enforcement of a maintenance order is admissible in evidence without proof of the signature or official character of the Director.

(4) Where the signature of the Director is required for the purpose of this Act, the signature may be written, engraved, lithographed or reproduced by another

mode of reproducing words in visible form.

(5) In any proceeding pursuant to this Act, a computer printout

(a) showing, as of the date of the printout, the state of the account, as between the parties to the proceeding, in respect of the payments required to be made by one party to the other pursuant to an order; and

(b) certified by the Director as being a true copy of the record in respect of the state of that account as of

Proof of default

54 In an action brought on default of an obligation under a maintenance order, proof of the default or arrears may be made either by oral or affidavit evidence or by other evidence that the judge may allow.

Proof of service not required

55 Where a proceeding is brought to enforce a maintenance order, it is not necessary to prove the payor was served with the maintenance order provided a copy of such maintenance order has been sent by regular mail, addressed to the payor, at the payors last known address.

Offence and penalty

57 An individual, corporation or entity that fails to comply with a provision of this Act or that fails to comply with an order or direction of the Director or a court is guilty of an offence and liable on summary conviction to a fine or not more than two thousand dollars or to imprisonment for not more than six months, or to both fine and imprisonment.

Offence by corporation

57A Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable on summary conviction to the punishment for the offence, whether or not the corporation has been prosecuted. 2004, c. 40, s. 13.

Offences prosecuted in Family Court

58 All offences prescribed in the Act shall be prosecuted in the Family Court.

Court is defined in Section 2 (a)

“means the Family Court, unless otherwise stated or required by law.”

CONCLUSION/DECISION:

[9] The Director of Maintenance Enforcement has the authority to issue garnishment to an income source of the payor. There was sufficient proof to find the Respondents as an income source for the payor.

[10] Further the directors of the corporation are jointly and severally liable for the payment of the money the corporation failed to hold and pay to the Director.

CONTEMPT JURISDICTION:

[11] The Respondents company has failed to comply with an order of this Court (the Family Court of Nova Scotia) dated October 3, 2007 in that there has been failure to pay the sum of \$3,579.32 which includes costs of \$650 representing

monies due from the Respondents as a payor source.

[12] Such action can be classified as contempt out of the court's presence (also referred to as contempt not in the face of the Court). At common law the Supreme Court as a Court created by the Canadian Constitution (S. 96) has the power to punish outside of its presence. Courts created by statute (**Family Court Act**) do not have common law jurisdiction to deal with contempt not in their presence, however, "unambiguous statutory language can override the common law and confer ex-facie contempt powers." on a statutory court (see *Chrysler Canada v. CCT* below).

[13] In *Chrysler Canada Ltd. v. Canada (Competition Tribunal)* [1992] 2 S.C.R. 394, 92 D.C.R. (4th) 209 the Supreme Court of Canada was dealing with an appeal from the Federal Court of Appeal, which reversed a decision of the Competition Tribunal citing *Chrysler Canada* to answer why it should not be found in contempt of an order to resume supplying automotive parts to one, Richard Brunet. The Respondent, Chrysler Canada had objected to the Tribunal's jurisdiction for contempt not in its presence.

[14] The Federal Court of Appeal found that statutory Tribunals do not have the power to punish for contempt committed out of their presence (contempt ex-facie curiae) unless a statute confers such power on them.

[15] The Family Court was established by statute (**The Family Court Act**) and its jurisdiction is conferred by statute. Consequently it does not have the power to cite for contempt not in its presence.

[16] Section 24(2) of the **Maintenance Enforcement Act** gives the Family Court jurisdiction to cite for contempt not in its presence. The granting of this jurisdiction does not deprive the Supreme Court from exercising its common law jurisdiction for contempt.

[17] It is ordered that a notice will issue to the Corporate Respondent and Stanley LeBlanc to attend before the Family Court on a date set by the Family Court Officer to show cause why the Court should not make an order for contempt.

[18] The notice shall be form 55.03A under the Nova Scotia Civil Procedure rules and shall be prepared by counsel for the Applicant. This document shall be issued

by the Family Court Officer and given to the Sheriff for service on the Respondents.

[19] Upon service, the Sheriff shall advise the Respondents that if they or their agents fail to appear in Court on the date and time set out in the notice the Court will require the Respondent, Stanley LeBlanc, be taken into custody by the Sheriff and brought before the Court as soon as practical.

John D. Comeau Chief Judge of the
Family Court of Nova