Supreme Court of British Columbia
First Western Capital Ltd. v. Hancock
Date: 1984-06-12

F. G. Potts, for plaintiff.

A. K. Fraser, for defendant.

W. D. Pike, for garnishee.

(Vancouver No. H821210)

[1] 12th June 1984. WALLACE J.:— The plaintiff, an unsatisfied judgment creditor of the defendant doctor, applies, pursuant to s. 21 of the Court Order Enforcement Act, R.S.B.C. 1979, c. 75, for an order to determine whether moneys payable by the B.C. Medical Services Commission ("commission") to the defendant doctor may be the subject of a garnishing order.

FACTS

[2] The defendant Ronald John Hancock is a doctor practising medicine in Vancouver. In the spring of 1981 Dr. Hancock invested in a real estate project along with another doctor and an architect. They borrowed money to finance the project from the plaintiff, First Western Capital Ltd., which took a mortgage on the property.

[3] The project ended in financial disaster. On 17th June 1982 the plaintiff recovered personal judgment against the defendant and the other investors in the amount of $640,069.61. Over $200,000 of this judgment remains unpaid.

[4] In its effort to collect the balance of the judgment debt, the plaintiff issued a garnishing order against the defendant on 17th February 1984. The order named the commission as garnishee and sought to attach, and have paid into court for the benefit of the plaintiff, moneys payable to Dr. Hancock by the commission under the B.C. Medical Services Plan ("the plan"). The order was served on the commission but the commission took the position that payments to doctors under the plan were not garnishable and refused to comply with the order. The plaintiff brought this application for an order to determine whether payments to doctors under the plan are garnishable.

[5] Section 4 of the Court Order Enforcement Act provides for the garnishment of debts, obligations and liabilities owed by third parties to the judgment debtor. Section 7 of the Act defines debts, obligations and liabilities. It reads in part:

> 7…. the expression "debts, obligations and liabilities" in section 4 … does not comprise an obligation or liability not arising out of trust or contract, unless judgment

> has been recovered on it against the garnishee, but… the expression in the section … shall be construed to include all claims … of the … judgment debtor … against the garnishee arising out of trusts or contract where the claims and demands could be made available under equitable execution.

[6] In essence, s. 7 provides that, to be garnishable, a debt, obligation or liability must arise out of trust or contract.

[7] The obligation of the commission to pay Dr. Hancock for services he renders to insured persons arises under the Medical Service Act, R.S.B.C. 1979, c. 255, and the Medical Service Plan Act, 1981, 1981 (B.C.), c. 18, and the regulations passed pursuant thereto [B.C. Reg. 144/68].

[8] The commission is created by s. 2 [am. 1983, c. 10, s. 2] of the Medical Service Act.

[9] Section 1 defines the "plan" to mean the medical service plan of the province as established under that Act.

[10] Section 7 provides in part:

> 7.(1) Subject to the prior approval of the Lieutenant Governor in Council and in accordance with the plan, the commission may …
>
> (*f*) directly operate and administer, and have any power or authority necessary to directly operate and administer, a voluntary medical services plan established under section 9;
>
> and where prescribed by the Act or the plan, the exercise of these powers is a duty of the commission.

[11] Section 9 [am. 1980, c. 36, s. 24; 1983, c. 10, s. 21] provides in part:

> 9.(1) The Lieutenant Governor in Council may by regulation establish a voluntary medical services plan for the Province, and may make regulations …
>
> (*f*) providing for assessment and approval of all individual accounts for insured services and the amounts to be paid for them, on a basis that
>
> (i) provides reasonable compensation for insured services provided by the plan; and
>
> (ii) does not impede, directly or indirectly, by charges to insured persons or otherwise, reasonable access to insured services by insured persons.

[12] The Medical Service Plan Act, 1981 provides for the administration of the plan established under the Medical Service Act.

[13] Section 7(2)(*b*) authorizes the Lieutenant Governor in Council to make regulations defining the rights and liabilities of medical practitioners with respect to their participation in the plan (s. 7(b)).

[14] Section 2(1) also provides that insured services shall continue to be provided under the plan in accordance with the agreement dated 1st April 1974 between the B.C. Medical Services Commission and the British Columbia Medical Association as amended and subsisting on 15th March 1981.

[15] The regulations empower the commission to: (1) be responsible to the minister in respect of the administration and operation of the plan (s. 3.01); (2) assess and approve all individual accounts for insured services under the plan; and (3) determine the amount to be paid therefor in accordance with the tariff of fees approved by the commission (s. 3.12).

[16] The regulations further provide that: (1) the plan shall provide, for any resident who pays the premiums fixed by the commission, payment of all insured services (s. 4.02); (2) a practitioner who renders an insured service to an insured person shall submit his claim for the service to the commission (s. 5.01); (3) payment under the plan for insured services on behalf of an insured person shall be made directly to the practitioner who renders the service. Payment may be made pursuant to an assignment if approved by the commission (s. 5.02).

SUBMISSIONS

Commission's argument

[17] Counsel for the commission submits that moneys payable to doctors under the B.C. Medical Services Plan are not debts arising out of trust or contract. Rather, he submits that the obligation of the commission to pay these moneys arises from statute. Thus the moneys do not come within the terms of s. 7 of the Court Order Enforcement Act and are not garnishable.

First Western's argument

[18] Counsel for the applicant submits that Dr. Hancock's claim for fees for providing insured services to insured persons under the plan constitutes a "debt" of the commission which arises out of a contract between the commission and the B.C. Medical Association on behalf of each member of the medical profession participating in the plan. Alternatively, counsel asserts that the "debt" of the commission to Dr. Hancock arises from an express trust or, in the further alternative, from a constructive trust.

OPINION

[19] In *Royal Bank of Can. v. Panwest Mgmt. Ltd.,* [1984] B.C.W.L.D. 703, B.C.S.C, Vancouver No. C823650, 22nd September 1983 (not yet reported), Trainor J. considered the effect of an assignment by a practitioner to a bank which, despite the restrictive terms of s. 5.02, he held to be effective. In that case it appears the commission voluntarily paid the fees due the doctor into court pursuant to a garnishee order served upon it and did not dispute its obligation to do so.

[20] Counsel for the applicant submits that Trainor J. must have considered the funds due to the doctor by the commission to be a "debt" capable of being assigned and accordingly the sum due to Dr. Hancock should also be regarded as a debt.

[21] I will assume, for the purpose of the applicant's submission only, that Dr. Hancock's claim for fees for insured services rendered to his patients constitutes a "debt" and now turn to the fundamental issue — does such "debt" arise out of a contract or trust?

[22] In my opinion it does not. The legislation and the regulations which I have previously reviewed clearly create the medical services plan which, in turn, provides for: the amount to be paid to doctors for the insured services they perform; the manner in which doctors' claims are to be submitted; and the approval and payment thereof by the commission. The agreement of 1st April 1974 between the commission and the B.C. Medical Association is merely a mechanism by which a mutally acceptable tariff of fees is established. It does not purport to create legal relations between the commission and individual doctors or to otherwise effect the implementation of the medical services plan or the rights or privileges of those practitioners participating in it. Accordingly I must conclude the "debt" for fees does not arise from contract.

[23] I am also of the opinion that the "debt" for fees does not arise from an express or constructive trust. The premium payable by subscribers for the plan is fixed by the commission and the gross amount paid by insured persons is remitted to the commission. The commission is required by the regulations (s. 8.06):

> … to pay out of the funds so remitted the expenditures necessary for the operation and function of the Plan … and the amounts as determined by the commission in payment of insured services, and in the event of any deficiency in the funds to meet the expenditures necessary the Commission shall make application to the Minister … for moneys to be paid out of the Consolidated Revenue Fund.

The commission's obligation is to apply the premiums received to meet the administrative expenses of the plan as well as payment of insured services. It is contemplated there may be insufficient premiums to meet these expenditures, in which case the minister may

authorize that further moneys be provided from the Consolidated Revenue Fund. Accordingly there has never existed a specific fund held by the commission for the express or implied benefit of the applicant against which Dr. Hancock might claim. Clearly, none of the usual prerequisites of a trust fund exist in the instant case.

[24] Furthermore, it is apparent from the scheme of the legislation, as well as the regulations requiring that payment under the plan "shall be made directly to the practitioner who renders the service" and providing that an assignment of the fees "has no force or effect for the purposes of the Plan unless the Commission approves the terms and conditions of the assignment" (s. 5.02), that the legislature considered that premiums collected from insured persons should not be treated as are other debts, obligations and liabilities arising from the usual commercial relationship. It may well be that if a doctor's claim for fees were attachable, as are other commercial debts due the practitioner, it would create a situation detrimental to the implementation of, and the rendering of, medical services under the medical services plan, and that for this reason the legislature provided specific direction as the method of payment for medical services and restricted the right to assign the same. However that may be, it is apparent that the right to claim compensation for the insured services rendered by the practitioner and the obligation to pay the same arises solely from the provision of the relevant statutes dealing with the subject and not from either a contract or a trust.

[25] The application is dismissed with costs.

Application dismissed.