

Federal Court of Appeal



Cour d'appel fédérale

Date: 19991130

Docket: A-638-97

CORAM: STONE, J.A.
ISAAC, J.A.
SEXTON, J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

-and-

THE MARITIME LIFE ASSURANCE COMPANY

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Halifax, Nova Scotia
on Tuesday, November 30, 1999)

STONE, J.A.

[1] The issue in this appeal is whether the Tax Court Judge¹ erred in deciding that the "cash value" of two Registered Retirement Savings Plan administered by the respondent were not amenable to seizure by the Minister of National Revenue pursuant to a "requirement" issued under subsection 224(1) of the *Income Tax Act*.

¹ The Judgment is reported as *The Maritime Life Assurance Company v. Her Majesty the Queen*, 97 DTC 1321; [1997] 3 C.T.C. 2561

[2] The Registered Retirement Savings Plans included insurance policies to each of which were attached an endorsement to the effect that the right to surrender the "registered contract" for its "cash value may not be exercised". The policies themselves each contained a clause permitting the debtor taxpayer to be paid the "cash value" upon either a written or simple request sent to the respondent.

[3] We are of the view that the Tax Court Judge did not err in deciding as he did. At the time the subsection 224(1) requirements were served on the respondent, the two plans were fully in existence and no request had been received by the respondent to pay to the two taxpayers the cash value of their respective policies. If, apart from the prohibition against payment out of the "cash value" contained in the endorsements attached to the policies, such request had been made of the respondent or the respondent had been otherwise instructed by the debtor taxpayers to pay out the cash value, then the respondent would have become "liable to make a payment" to each of the taxpayers. This, it seems to us, is the clear effect of this Court's decision in the leading case of *lvational Trust Co. v. Canada* ².

[4] In that case the monies that were the subject of the subsection 224(1) requirement were on deposit in the financial institution after a GIC in a self-administered Registered Retirement Savings Plan had matured and the debtor taxpayer had requested that the plan be collapsed and the monies paid over to him directly. In these circumstances, the Court

² [1998] F.C.J. No. 968 (Q.L.)

determined that the financial institution was a person "liable to make a payment". As Isaac, C.J. put it in paragraphs 56 and 57 of the reported decision:

56. The tax debtor's instructions were clear. After the GIC had matured, he wished to have the net proceeds of the RRSP for his own use and enjoyment. With deference to the Tax Court Judge, I am unable to discern any ambiguity or contradiction in those instructions.

57. The tax debtor had a contractual right, enforceable in law, to have the net proceeds paid to him. The respondent had a corresponding contractual obligation to make the payment requested. In my respectful view, this legal obligation was sufficient to bring the respondent within the scope of the phrase "a person liable to make a payment" to the tax debtor within the meaning of subsection 224(1).

[5] We are unable to agree that the present case is governed by the decision of the Court of Appeal for Alberta in *Hutterian Brethren Church of Smoky Lake et al. v. Provincial Treasurer of Alberta et al.*,³ in which it was decided that the subsection 224(1) requirement, in and of itself, effected a "request" such as rendered the financial institution "liable to make a payment" to the debtor taxpayer of the monies held by it under certificates of deposit. In that case the terms of the deposit agreements were such that the depositor was entitled to withdraw the monies "at any time" subject to a short period of delay in payment in the case of terms exceeding one year. That case, unlike the present one, was not concerned with a prohibition such as that contained in the endorsements attached to the policies, viz:

³ 80 DTC 6228 (Alta. C.A.)

At the request of the Owner and in order that this contract may be registered as a Retirement Savings Plan under the Income Tax Act the contract is hereby modified in the following respects:

1. The right to surrender the registered contract for its cash value may not be exercised.

[6] For the foregoing reasons the appeal will be dismissed with costs.

"A.J. Stone"

J.A.

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-638-97

STYLE OF CAUSE: Her Majesty the Queen v.
The Maritime Life Assurance Company

PLACE OF HEARING: Halifax, N.S.

DATE OF HEARING: November 30, 1999

REASONS FOR JUDGMENT OF THE COURT BY: Stone, J.A.

DATED: November 30, 1999

APPEARANCES:

Bruce Russell for the Appellant

E. Harris for the Respondent

SOLICITORS OF RECORD:

Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, ON for the Appellant

Daley, Black & Moreira
Halifax, NS for the Respondent