Federal Court of Appeal | Cour d'appel fédérale

Date: 20210616

Dockets: A-49-20
A-52-20
A-53-20
A-54-20

Citation: 2021 FCA 121

CORAM: **NEAR J.A.**
WOODS J.A.
MACTAVISH J.A.

Docket: A-49-20

BETWEEN:

JAMES MOODIE (also known as Jim Moodie) and DENETTY MOODIE (also known as Denny Moodie)

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-52-20

AND BETWEEN:

GARNET ALEXANDER HARMAN

Appellant

and

HER MAJESY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-53-20

AND BETWEEN:

ROSS WILLIAM MCKINNA

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-54-20

AND BETWEEN:

ROLAND HEDLEY KLESSE

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Heard by online video conference hosted by the Registry on May 17, 2021.

Judgment delivered at Ottawa, Ontario, on June 16, 2021.

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: WOODS J.A.
MACTAVISH J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20210616

Dockets: A-49-20
A-52-20
A-53-20
A-54-20

Citation: 2021 FCA 121

CORAM: **NEAR J.A.**
WOODS J.A.
MACTAVISH J.A.

Docket:A-49-20

BETWEEN:

JAMES MOODIE (also known as Jim Moodie) and DENETTY MOODIE (also known as Denny Moodie)

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-52-20

AND BETWEEN:

GARNET ALEXANDER HARMAN

Appellant

and

HER MAJESY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-53-20

AND BETWEEN:

ROSS WILLIAM MCKINNA

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-54-20

AND BETWEEN:

ROLAND HEDLEY KLESSE

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

REASONS FOR JUDGMENT

NEAR J.A.

[1] These appeals consist of four cases heard jointly, all appealing from related summary judgments of the Federal Court, Pentney J.: *Canada v. Moodie*, 2020 FC 46 [*Moodie*]; *Canada v. Harman*, 2020 FC 47; *Canada v. McKinna*, 2020 FC 48; *Canada v. Klesse*, 2020 FC 45. In each decision, the Federal Court awarded Canada, plaintiff in all four actions and respondent in these appeals, recovery of payments made through the Advance Payments Program under the

Agricultural Marketing Programs Act, S.C. 1997, c. 20 as it read on 28 February 2008 [*AMPA*], by Canada on behalf of the different defendants in the actions, now appellants.

[2] The appellants were represented by the same counsel and relied on the same arguments on appeal. While the specific amounts and relevant dates vary in each case, counsel for the appellants indicated that there are no material factual differences between the cases requiring specific analysis. As such, one set of reasons will be issued and placed in the file for each appeal.

[3] I note as well that counsel for the appellants advised that Ross William McKinna, appellant in file A-53-20, died prior to these appeals being heard. At no point did counsel for the respondent suggest that Mr. McKinna is not a proper party to the appeal.

[4] By way of background, the Advanced Payments Program allows agricultural producers to obtain advanced payments from agricultural administrator organizations like the Canadian Wheat Board, for example. To benefit from the program, the producer must enter into a repayment agreement outlining, among other things, when and how repayment of any advance payments is to be made.

[5] Section 23 of the *AMPA* effectively makes the Minister of Agriculture and Agri-Food (the Minister) a guarantor of the producer. If the producer defaults on its repayment obligations, the creditor administrator organization may request payment from the Minister. Provided certain conditions are met, the Minister is obligated by statute to pay any outstanding sums on behalf of

the defaulting producer. The program facilitates access to credit for agricultural producers by transferring a substantial portion of the lending risk to the Minister.

[6] The Minister is nevertheless entitled to be made whole in the event of the producer's default. Subsections 23(2) and 23(4) of the *AMPA* provide the following:

Subrogation	**Subrogation**
(2) The Minister is, to the extent of any payment under subsection (1), subrogated to the administrator's rights against the producer in default and against persons who are personally liable under paragraphs 10(1)(c) and (d).	**(2)** Le ministre est subrogé dans les droits de l'agent d'exécution contre le producteur défaillant et les personnes qui se sont engagées personnellement au titre des alinéas 10(1)c) et d), à concurrence du paiement qu'il fait au titre du paragraphe (1).
…	[…]
Limitation period	**Prescription**
(4) No action or proceedings may be initiated by the Minister to recover any amounts, interest and costs that are owing more than six years <u>after the day on which the Minister is subrogated</u> to the administrator's rights.	**(4)** Toute poursuite visant le recouvrement par le ministre d'une créance relative au montant non remboursé de l'avance, aux intérêts ou aux frais se prescrit par six ans <u>à compter de la date à laquelle il est subrogé</u> dans les droits de l'agent d'exécution.
[emphasis added]	[nos soulignements]

[7] The appeals turn on the proper interpretation of these subsections, and in particular, the underlined portion.

[8] As mentioned, the specific dates and amounts vary between each case, but the chronology of events in each followed a similar pattern. In each case, a producer obtained an advanced payment by entering into a repayment agreement with an administrator. The producer eventually defaulted on repayment, and the administrator requested and obtained payment from the Minister. The Minister commenced an action for recovery more than six years from the date upon which the producer first defaulted on repayment, but less than six years from the date upon which the Minister made payment to the administrator in place of the producer.

[9] The appellants argue that this means the Minister is, in each case, statute-barred from pursuing recovery because she did not commence the actions within the limitation period prescribed in subsection 23(4) of the *AMPA*. The appellants advance the novel argument that the six-year period referred to in subsection 23(4) begins on the date upon which the producer defaults on its repayment obligations. As I understood the appellants' position, they contend that this is the date upon which the Minister becomes subrogated to the administrator's right of recovery. They argue that by allowing the actions, the Federal Court judge erred in law.

[10] There are several reasons why the appellants' interpretation of subsection 23(4) must be rejected. Firstly, it is contrary to the plain and ordinary meaning of the statute. The concept of subrogation is not contentious and the date upon which it occurs is generally accepted to be the date upon which the guarantor or surety pays the debt to the creditor, and in so doing acquires the creditor's rights in respect of the debt. *Black's Law Dictionary* defines subrogation as "[t]he substitution of one party for another whose debt the party *pays*, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor": Bryan A. Garner, ed.,

Black's Law Dictionary, 11th ed. (Thomson Reuters, 2019) [*emphasis added*]. The subrogated party must actually *pay* the debt to obtain the creditor's rights through subrogation.

[11] The language of subsection 23(2) also makes clear that the Minister is only subrogated "to the extent of any payment under subsection (1)"; that is, payment to the administrator. It follows that when no payment under subsection (1) occurs, no subrogation occurs, and the six-year period prescribed in subsection 23(4) does not begin to run.

[12] Indeed, a second reason why the appellants' interpretation must be rejected is that it implies that the Minister, if she becomes subrogated to the administrator at the moment of the producer's default, could start an action to recover the debt from the producer before the administrator requests payment by the Minister and before the Minister pays any funds. This would presumably mean either that the administrator is precluded from seeking to recover the debt itself, as its creditor's rights assign to the Minister the moment of the producer's default; or that the producer would be liable upon default to both the administrator and the Minister at the same time. This interpretation is, frankly, without merit, and the appellants made no cogent argument as to why this strained interpretation must be preferred over the more obvious and logical one, namely, that subrogation occurs when the Minister pays the administrator in place of the producer.

[13] This accords with the conclusion of the Federal Court judge, who pointed out that the *AMPA* sets out specific pre-conditions that are to be met before the Minister must pay the administrator in place of the producer: *Moodie* at para. 27. The Federal Court judge therefore

concluded that the Minister does not become subrogated at the moment of the producer's default: *Moodie* at paras. 27–28.

[14] In my view, the Minister's obligation to pay the administrator in place of the producer does not arise at the moment of the producer's default, and indeed may not arise at all if the administrator does not follow the statutorily mandated steps. It is thus difficult to see how the Minister could become subrogated to the administrator at the moment of the producer's default, before the Minister has paid in place of the producer, and before it is even clear that she will have to.

[15] Therefore, in my view, the Minister's claims were not statute-barred, as the limitation periods did not begin to run at the moment of the appellants' defaults.

[16] While the appellants' main line of argument was that subsection 23(2) must be interpreted to mean the limitation period commences on the date of default, they also advanced arguments that allowing the actions for recovery was essentially unfair.

[17] The appellants pointed to the equitable doctrine of subrogation, which holds that the subrogated party cannot be put in a better position than the original creditor. According to the appellants, allowing the action to proceed more than six years after the date of default is unfair to the appellants as it puts the Minister in a better position than the administrator was in, given that the administrator was subject to provincial limitation periods.

[18] The appellants also argue that the repayment agreements needed to clearly spell out the fact that the applicable limitation period was not that specified by provincial legislation. They argue that it is unfair to allow Canada to rely on legislative provisions prescribing a different limitation period of which the appellants were unaware at the time they entered into the repayment agreements.

[19] Chief among the several problems with these arguments is the fact that they each fail to provide a clear reason why, as a matter of law, a valid and applicable legislative provision must simply be ignored on grounds of unfairness. The appellants have failed to articulate any direct and cogent attack on the validity of the legislation itself. Thus, the appellants' arguments that it would be unfair to allow the Minister to recover the sums within the period prescribed by subsection 23(4), do not provide any basis to overturn the decisions of the Federal Court.

[20] As such, I would dismiss the appeals, with costs for each appeal set at $1,000 all inclusive.

"D.G. Near"

J.A.

"I agree.
Judith Woods J.A."

"I agree.
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-49-20, A-52-20, A-53-20 AND A-54-20
DOCKET:	A-49-20
STYLE OF CAUSE:	JAMES MOODIE ET AL v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND DOCKET:	A-52-20
STYLE OF CAUSE:	GARNET ALEXANDER HARMAN v. HER MAJESY THE QUEEN IN RIGHT OF CANADA
AND DOCKET:	A-53-20
STYLE OF CAUSE:	ROSS WILLIAM MCKINNA v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND DOCKET:	A-54-20
STYLE OF CAUSE:	ROLAND HEDLEY KLESSE v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING:	VIA ONLINE VIDEO CONFERENCE
DATE OF HEARING:	MAY 17, 2021
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	WOODS J.A. MACTAVISH J.A.
DATED:	JUNE 16, 2021

APPEARANCES:

Tarissa L. Peterson	FOR THE APPELLANTS
Don Klaassen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Linka Howe Peterson Law Offices Regina, Saskatchewan	FOR THE APPELLANTS
Deputy Attorney General of Canada Saskatoon, Saskatchewan	FOR THE RESPONDENT