Federal Court of Appeal | Cour d'appel fédérale

Date: 20140429

Docket: A-84-13

Citation: 2014 FCA 106

CORAM: **BLAIS C.J.**
GAUTHIER J.A.
MAINVILLE J.A.

BETWEEN:

LONDON LIFE INSURANCE COMPANY

Appellant

And

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

And

PROJEXIA CONSEIL INC.

Third Party

Heard at Montréal, Quebec, on March 19, 2014.

Judgment delivered at Ottawa, Ontario, on April 29, 2014.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: BLAIS C.J.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] London Life Insurance Company (London Life or the appellant) is appealing from a decision of Justice Beaudry of the Federal Court (the judge) dismissing its appeal from two orders dated August 15 and 24, 2012, respectively, made by Prothonotary Morneau (the prothonotary) in respect of a garnishment by the respondent of the surrender value of 11 life insurance policies of which the company Projexia Conseils Inc. (Projexia) is the owner and sole beneficiary. Projexia owes the respondent a tax debt of $1,255,298.28 plus interest.

[2] London Life submits that the judge erred in ruling that, as garnishee, it did not have the required standing to challenge the respondent's motion and to appeal against the prothonotary's orders. It also argues that neither the judge nor the prothonotary could order it to pay the surrender value of the insurance policies absent a written request from Projexia, and certainly not in the context of a garnishment.

[3] For the reasons that follow, the appeal should be dismissed even though, in my view, London Life has the required standing to raise the absence of indebtedness and the absence of a debtor-creditor relationship between it and the respondent or the judgment debtor.

I. BACKGROUND

[4] Projexia was incorporated on September 25, 2002. Sylvie Bologna is the company's sole director and shareholder.

[5] Projexia is the owner and beneficiary of 11 insurance polices underwritten by London Life on the life of Ms. Bologna. The death benefits payable under these policies total over $1.5 million, and the annual premiums are approximately $50,000. The surrender value at the time of the garnishment was approximately $83,172 (Appellant's Memorandum at paragraph 11).

[6] These life insurance contracts stipulate that upon written request, London Life shall pay the surrender value of the contract, less any debts. Indeed, Projexia had already received advances from London Life at the time the respondent instituted proceedings, these loans being available upon written request once the accumulated values of the life insurance policies have reached a certain amount.

[7] On October 13, 2011, a certificate was issued under section 223 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA), confirming that Projexia owes a tax debt of $1,255,298.28 plus interest. According to subsection 223(3) of the ITA, this certificate has the same effect as and is deemed to be an enforceable judgment of the Federal Court.

[8] The respondent alleges that Projexia has no assets apart from the 11 insurance policies. As Projexia did not participate in the proceedings before the Federal Court, this allegation was not challenged.

[9] On December 1, 2011, the prothonotary made an interim order of garnishment in respect of any amount owing or that will become owing by London Life to Projexia under the life

insurance policies with surrender value, up to the sum of $1,255,298.28 plus interest noted above.

[10] On August 15, 2012, having heard the representations of London Life and the respondent regarding the validity of the negative declaration by the garnishee and the appropriateness of making a final order of garnishment, the prothonotary concluded that a final order of garnishment should be made. In his opinion, the Supreme Court of Canada in *Perron-Malenfant v. Malenfant (Trustee of)*, [1999] 3 S.C.R. 375 (*Malenfant*), laid down the general principle that the policies and the rights to surrender under [TRANSLATION] "these policies that otherwise are not covered by the comprehensive and exhaustive set of rules governing seizability under articles 2252 and 2254 of the *Civil Code of Lower Canada* (C.C.L.C.)—now articles 2457 and 2458 of the *Civil Code of Québec*—are seizable, and that a right to surrender is not a personal right that would bar such a garnishment" (see the reasons of the prothonotary bearing the neutral citation 2012 FC 996 at paragraph 14).

[11] The prothonotary also rejected London Life's argument that garnishment is the wrong procedural vehicle for obtaining the surrender value of the life insurance policies. In the prothonotary's opinion, the garnishment procedure under Rule 449 of the *Federal Courts Rules*, SOR/98-106 (the Rules), is an oblique remedy that allows the respondent to exercise the rights of its debtor, in this case, Projexia (*Canada (Minister of National Revenue) v. Steckmar Corp.*, 2004 FC 581) (*Steckmar*). He also concluded that it was irrelevant whether the policyholder, Projexia, made a written request for surrender, as the garnishment process is equivalent to a

written request to obtain the surrender value. He concluded that the process proposed by London Life would create a two-step process that is in no way supported or laid down by *Malenfant*.

[12] On August 24, 2012, the prothonotary made a final order of garnishment in respect of the surrender value of the policies (A.B., Vol. 3, page 599). Among other things, this order compelled the garnishee to immediately pay the judgment creditor the total amount of the surrender values of the 11 life insurance policies described in the order, up to a total of $1,255,298.28 plus interest as noted above.

[13] On appeal before the judge, London Life asked that the orders dated August 15 and 24, 2012, be quashed.

[14] In his reasons bearing the neutral citation 2013 FC 93, the judge began by addressing London Life's standing to defend the interests of Projexia and Ms. Bologna in the case. Citing *Crown Life Insurance Co. v. Perras*, [1953] B.R. 659 (*Crown Life*), a decision of the Court of Queen's Bench (now the Quebec Court of Appeal), he noted that Projexia did not object to the garnishment and did not argue that the respondent could not request payment of the surrender value in its place. In his view, London Life, having suffered no harm, therefore could not raise these arguments on behalf of the policyholder, since in any event it had to pay the surrender value upon Projexia's request.

[15] The judge also concluded that London Life did not have the legal standing to raise the personal right doctrine on behalf of Projexia. He came to the same conclusion regarding the

arguments raised in the place and stead of the insured to the effect that the insured may no longer be insurable in the future. However, this last conclusion is not relevant to the appeal before this Court, so I will not discuss it.

[16] That being said, the judge nevertheless discussed the arguments on the merits. Applying the standard propounded in *Canada v. Aqua-Gem Investments*, [1993] 2 F.C. 425 (and restated in *Merck & Co. v. Apotex Inc.*, 2003 FCA 488), the judge held, first of all, that these questions should be decided *de novo* because the impugned orders are determinative of the final issue of the dispute between the parties.

[17] He then went on to address London Life's argument to the effect that the respondent was required to seize the life insurance policies before exercising the surrender rights associated with them.

[18] The parties agreed that the rights under the life insurance contracts, including the right to surrender, are in this case seizable. What remained controversial was how to proceed to obtain the surrender value. The judge agreed with the prothonotary that in *Malenfant* the Supreme Court did not have to rule on the type of enforcement procedure applicable to all cases where a surrender value is garnished. In his view, paragraph 57 of *Malenfant*, on which London Life based its argument, cannot be read as propounding a rule in this regard.

[19] Second, the judge considered whether subparagraph 449(1)(*a*)(i) of the Rules applies in this case, since London Life stated that there was no debt owing or accruing under the life

insurance contracts. After describing in detail the arguments and the authorities presented by the parties, the judge concluded that the conditions set out in subparagraph 449(1)(*a*)(i) had been met, for the following reasons:

(i) Article 569 of Quebec's *Code of Civil Procedure*, R.S.Q. c. C-25 (C.C.P.), provides that a creditor may in "all cases" seize by garnishment in the hands of a third party the sums and effects due or belonging to the debtor;

(ii) Under article 1627 C.C.Q., the respondent was entitled to exercise the rights that Projexia failed to exercise;

(iii) Garnishment prevents Projexia from sheltering the surrender value of its life insurance policies from its creditors;

(iv) Garnishment is a form of oblique action, given that the judgment creditor is directly exercising a right of the judgment debtor (*Steckmar*);

(v) A party cannot, through clauses in a contract, protect its property from seizure by its creditors except under a special enactment;

(vi) The principle laid down in *Canada v. Bidner*, [1984] F.C.J. No. 1114 (*Bidner*), to the effect that a garnishment is equivalent to a demand by a judgment debtor in enforcing a call loan applies here as well, since the surrender values are payable upon written request by Projexia.

[20] The third issue discussed by the judge at paragraphs 80 *et seq.* of his reasons is not relevant to the appeal before us since it regards the practical and financial consequences for the insured (and, presumably, for any insured) where a policy is cancelled by a withdrawal of the surrender value. My comments on London Life's standing to challenge the garnishment do not apply to this last argument, as we do not have to decide it.

II. **ISSUES**

(1) Does London Life have standing to raise the arguments presented before us?

(2) Did the judge err in concluding that the Court could order London Life to pay the surrender value of the policies to the respondent?

III. **ANALYSIS**

[21] The standard applicable to the decision of the Federal Court in this case is trite law, as the Supreme Court itself set it out in *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, [2003] 1 S.C.R. 450, at paragraph 18. This Court cannot intervene unless the judge "had no grounds to interfere with the prothonotary's decision or, in the event such grounds existed, if the decision of the motions judge was arrived at on a wrong basis or was plainly wrong". Moreover, as stated by my colleague Justice Stratas in *Apotex Inc. v. Bristol-Myers Squibb Co.*, 2011 FCA 34, if we had to set aside the decision of the judge, we would have to render the decision that should have been rendered, since we would have to review the prothonotary's decision *de novo*.

(a) *Standing of London Life*

[22] London Life submits that its right to challenge the garnishment, as garnishee, is well established in Quebec law and that section 453 of the Rules guarantees its right to challenge the obligation to pay the surrender value to Projexia. I agree.

[23] Indeed, with respect, I cannot accept the judge's opinion, since in the present case, there is no reason to apply the principle on which the Court relied in *Crown Life*, above: first, because the factual background to this case was completely different; and, second, because the reasons of the majority of the Court were not based on a lack of standing, but on *res judicata* and consent to judgment on the part of the holder of the right to surrender.

[24] Indeed, in *Crown Life*, the bankrupt, who was the life insurance policyholder and therefore held the right to surrender, objected to the trustee's motion to force Crown Life to pay the surrender value of the policies. Crown Life appeared as an impleaded party (*mis-en-cause*), but only to rely on the decision of the Court. It was the policyholder who had pleaded that exercising the right to surrender was a personal right that could not be exercised by the trustee in his place. The Superior Court rejected his objection and ordered Crown Life to pay the surrender value to the trustee. The policyholder did not appeal from that decision, and Crown Life, as mis en cause, tried on appeal to raise the arguments that had been presented by the policyholder at trial.

[25] Regarding the basis for that decision, as I stated, two of the three judges concluded that *res judicata* applied as between the bankrupt and the trustee and that, in addition, the policyholder had implicitly acquiesced to the Superior Court judgment and therefore to the surrender by not appealing.

[26] Here, the dispute has always been between the garnishee (London Life) and the judgment creditor (the respondent). Such is the case in most garnishment challenges (see, for example, *Canada (Minister of National Revenue) v. Millette*, 2002 FCT 433 at paragraph 6, and *Canada v. Mauro*, [1984] F.C.J. No. 141 at pages 3-4).

(b) *Validity of the prothonotary's final orders*

[27] I will commence by discussing the nature of the asset which the respondent intends to garnish.

[28] The rights under the life insurance contracts held by Projexia in this case, particularly the right to surrender, are incorporeal movables that are part of the judgment debtor's patrimony. It is common ground that the Supreme Court of Canada held in *Malenfant* that they are seizable. Moreover, these rights may be hypothecated and are therefore transferable. The transfer of these rights may also be effected by transferring the life insurance contracts, subject to the restrictions provided for under article 2475 C.C.Q. Projexia thus acquired all the rights under three of the life insurance contracts under which Ms. Bologna was the original policyholder before 2002.

[29] Article 2644 C.C.Q. states the principle that the property of a debtor is charged with the performance of his obligations and is the common pledge of his creditors.

[30] Despite all this, London Life argues that only Projexia may exercise the right to surrender under the life insurance policies because this right is, in London Life's view, a personal right that cannot be, for example, exercised by a creditor in the context of an oblique action. However, London Life was forced to admit that this so-called "personal" right is nevertheless transferred to the trustee, who has the right to exercise it for the benefit of the mass of creditors in bankruptcy, since *Malenfant* must have some application.

[31] This opinion is supported by the doctrine cited by London Life: Pierre-Gabriel Jobin and Nathalie Vézina, *Les obligations* (7th ed. 2013) at page 1094, paragraph 887; Vincent Karim, *Les obligations*, Vol. 2 (2nd ed. 2002) at page 573.

[32] It should be noted, however, that those works merely state what the Quebec case law had held before *Malenfant*. Indeed, it is that case law that Justice Gonthier refers to in *Malenfant* when he discusses the state of the law prior to the comprehensive codification of insurance law by the Quebec legislature. This jurisprudential solution (conceptualization as a personal right and its impact on exigibility) made it impossible to seize the right to surrender under insurance policies where the beneficiary is anyone but the wife or child of the insured, wives and children being protected by a special statute (see *Malenfant* at paragraphs 35-36 and 39).

[33] *Norwood on Life Insurance Law* (3rd ed. 2002), a treatise of which London Life cited a number of excerpts dealing with the situation in the common law provinces (see Joint Book of Authorities, Vol. 2, Tab 40), analyzes the right to seize and to obtain the surrender value in Quebec in a separate section from those cited by London Life (page 356). These last comments are therefore more relevant and in my view confirm my understanding of *Malenfant*.

[34] According to the doctrine, it is clear that the personal rights referred to in article 1627 C.C.Q. (formerly, 1031 C.C.L.C.) are not defined by law. This concept was developed to protect certain extra-patrimonial rights, such as divorce proceedings, and certain patrimonial rights, such as support payments and the revocation of gifts on account of ingratitude. Works of doctrine agree that these rights involve [TRANSLATION] "a moral interest" of the debtor. Pierre-Gabriel Jobin and Nathalie Vézina (in the doctrine cited at paragraph 31 above) state that the exclusion of extra-patrimonial rights is intended to prevent creditors from controlling the life of the family and the personal status of its members against the wishes of the debtor. They group support and other rights exempt from seizure, as well as compensatory allowances, under the category of personal patrimonial rights (since creditors have no right in the pledge in respect of those rights).

[35] It is interesting to note that the rights declared to be personal rights by the classical case law are no longer unanimously considered as such. For example, the partition of the family patrimony has evolved over the years, and the contemporary jurisprudence now holds that it can be subjected to an oblique action (see also the comments of Pierre-Gabriel Jobin and Nathalie Vézina in their work *Les obligations*, cited above at pages 1093-1095, with regard to compensatory allowances).

[36] In my opinion, the changes regarding the seizability and transferability of certain rights such as the right to surrender should also have an impact on whether or not this right is a personal one.

[37] Having made a few general comments, I will now discuss the scope of *Malenfant*. In his analysis beginning at paragraph 25, Justice Gonthier first examines the major legislative reform in insurance to determine the intention of the Quebec legislature. He writes the following at paragraph 25:

> To the extent that the legislature did so intend, arts. 2552 and 2554 displace and supersede, for the purposes of this appeal, the jurisprudence regarding the exigibility of the surrender value of life insurance contracts under art. 1031. Because I conclude that the legislature did so intend, this Court need not decide in this case whether the right to surrender a life insurance policy is a "personal right". Articles 2552 and 2554 of the *Civil Code* make irrelevant in the life insurance context any other basis for exemption which may have existed, and which might still exist for other purposes, [page 392] under the general law of Quebec . . . [emphasis added].

[38] According to the learned judge, if the legislature can enact an exhaustive set of rules governing seizability in a particular field, it is these rules and only these rules that a court should apply, "to the exclusion of other considerations not because it has confused seizability as provided by those rules with the inherent nature of the rights at issue, but because the legislature's express and exhaustive rules supersede considerations that would cut across and undo the legislated division" [emphasis added] (*Malenfant* at paragraph 26).

[39] Justice Gonthier notes that the legislature must have had "all elements of the life insurance contract in mind, including the right to surrender the contract for its cash surrender

value", since for a creditor, "the most valuable right in his debtor's in-force life insurance policy is the right to surrender the policy for its cash surrender value" (*Malenfant*, at paragraph 39).

[40] Indeed, Justice Gonthier continues, it is the "only right in an in-force life insurance policy that has the potential to create an immediate realization of value for the seizing creditor". He adds the following, again at paragraph 39, which to my mind is essential to this debate, given that in London Life's view, the Court should confine itself to declaring the garnishment binding:

> In other words, if the exemption of "rights" in arts. 2552 and 2554 was not meant to protect the right to surrender the policy, the only remaining purpose of the articles would be to protect the debtor against a creditor who attaches the policy, and waits until the insured volunteers to surrender it or until some other payment eventually comes due. In my view, this would be an unreasonably restrictive reading of the provisions. [emphasis added]

[41] In his view, the legislature's decision to express itself in such detailed language "indicates an intention not to have the rules contained [in arts. 2552 and 2554 C.C.L.C.] undermined by the application of more general provisions [art. 1031 C.C.L.C.]" (*Malenfant* at paragraph 42).

[42] He goes on to write the following at paragraph 52:

> The legislature, in carrying out its reform, would most certainly have wanted to address the very feature of the pre-existing law that hindered its policy, namely the tendency of the law to protect the cash surrender value from creditors.

[43] All these comments have, as I see it, a general scope, since it was only after concluding this analysis that the Supreme Court of Canada went on to apply these principles to the matter before it, that is, a bankruptcy (paragraphs 54 *et seq.*). This Court is required to apply them. The

judge thus properly upheld the conclusion of the prothonotary that these comments in *Malenfant* totally discount London Life's submission to the effect that the right to surrender in the present case is a personal right that can be exercised only by the holder, Projexia.

[44] That being said, the issue before us is even easier to decide since the surrender rights are held by Projexia, a legal person. I do not see how it could be argued here that these rights are personal rights because they are intimately linked to this corporation or because of their moral character for the corporation, which is the sole beneficiary. I therefore have no hesitation in concluding that the rights which the respondent intends to enforce are not personal rights.

(c) *The procedure*

[45] This brings me to the second part of London Life's argument to the effect that the judge erred in stating that garnishment is indeed an appropriate process for obtaining payment of the surrender value that is not yet part of the judgment debtor's patrimony, since this is an option that London Life has not yet actually exercised. Like the judge, I cannot agree with London Life's argument that *Malenfant* also addresses this issue.

[46] Before reviewing the general principles, it is important to point out that London Life reminds us that under section 56 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, specifically subsections 3 and 4, enforcement against movable or immovable property in a province should, as nearly as possible, be executed in the same manner as similar processes that are issued out of the superior courts of the provinces and according to the procedure applicable to like claims in provincial courts, unless otherwise provided by the Rules.

[47] On this point, London Life stated at the hearing that if the Federal Court used garnishment, this would be contrary to the practice followed by Quebec courts. In London Life's view, the usual procedure is to issue a writ of seizure to seize the original life insurance policy in the judgment debtor's possession so that an order may then be obtained under article 579 C.C.P. to demand the surrender value in the place and stead of the policyholder.

[48] After the hearing, in response to a request to provide an example of a [TRANSLATION] "typical" order, London Life filed the judgment in *Borden Ladner Gervais c. Lamarche*, 2002 CanLII 27580 (QC C.Q.), in which the property seized by writ of seizure was a certified cheque payable to the order of the judgment debtor. In its order, the Court of Québec allowed the bailiff, who also acted as guardian, to endorse this cheque on behalf of the judgment debtor and to present it to the bank for payment.

[49] The parties therefore did not cite any Quebec cases decided since *Malenfant* denying the right of a creditor to garnish the surrender value of a life insurance policy that is seizable under the C.C.Q.

[50] Indeed, not all the ordinary orders that may be issued under article 579 C.C.P. or to confirm a garnishment are reported. However, it is reasonable to assume that if such orders were in fact commonly made, as counsel for London Life pleaded, counsel would have had at least one example to offer.

[51] That being said, it was not difficult to identify an example where the Superior Court did indeed issue an order to pay the surrender value of a seizable life insurance policy to a creditor who had garnished it in the hands of the insurance company. In *Langlois c. Jean*, 2002 CanLII 35234 (QC C.S.), the creditor had made such a garnishment, and the Superior Court, after setting aside the change of beneficiary that had defrauded the creditor of his rights in this case, ordered that unless the policyholder made a written request for surrender within 30 days of the order, the garnishee would have to pay the creditor the surrender value provided under the contract.

[52] At the hearing, London Life did not question the proposition that if its reasoning is followed, the prudent judgment creditor should in any event (whatever the other necessary steps might be) first effect a garnishment that would be declared binding (article 639 C.C.Q.) until the right to surrender is exercised. This would be the only way to avoid allowing the judgment debtor to surreptitiously make a written request for the surrender value, thereby wasting the debtor's last asset. A consistent line of case law in Quebec (see for example *F.S. c. J.B.*, [1995] J.Q. No. 337 (*F.S.*); *Canada (Minister of National Revenue) v. Waldteufel*, 1995 F.C.J. No. 307*(Waldteufel)*; *Edward c. Reinblatt*, [1996] J.Q. No. 4416 (*Reinblatt*)) supports such an approach. London Life cites such cases to suggest that this is what this Court should confine itself to doing in the present case.

[53] Declaring a garnishment binding may be the appropriate solution where the rights under a life insurance contract are exempt from seizure (i.e. fall within the scope of articles 2457 and 2458 C.C.Q.) so long as they are not exercised (see the cases cited above). However, as I already stated at paragraph 40 above, limiting the execution measures available to the judgment creditor

in this case to just this one measure would give an unreasonable restrictive scope to the clear intention of the legislature to allow the immediate realization of surrender value provided in the contracts, which fall outside the ambit of articles 2457 and 2458 C.C.Q.

[54] Therefore, what is at stake here is whether the judgment creditor must do more and, if so, what exactly must be done to convert Projexia's surrender right, against which the judgment creditor wishes to execute, into cash.

[55] London Life suggests that the original policies, which are presumably still in Projexia's possession, must be seized. It is difficult to see how this step is necessary in this case, since physically handing over this document is not required as a condition or modality of the surrender. Moreover, London Life admitted before this Court that neither the policyholder nor the beneficiary needed to produce this document to exercise any of the rights under the life insurance contracts.

[56] Incorporeal rights should not be confused with physical media. For example, copyright in a work is not seized by seizing the book itself.

[57] In principle, the right to surrender, an incorporeal right, has no physical existence, unlike claims attested by a bearer instrument such as a bill of exchange, a share certificate, a coupon and certain negotiable bills.

[58] As Pierre-Claude Lafond writes in his *Précis de droit des biens*, (2nd ed. 2007) at page 35, paragraph 72, an incorporeal property is defined as an essentially immaterial right to which economic value is attached.

[59] In *Investissements Étrusques Inc. c. Frato Construction Inc.* [1988] R.D.J. 44, the Quebec Court of Appeal had to decide whether the judgment creditor could use a writ of seizure issued pursuant to article 569 C.C.P. to seize and sell an action instituted by its judgment debtor. Justice LeBel, writing on behalf of the Court, stated:

> [TRANSLATION]
> The procedure for seizure in execution of movables would not lend itself well to the seizure of similar property, particularly in the case of litigious rights. Litigious rights are clearly difficult to evaluate. Just how exactly the courts would go about seizing the property is problematic. On the contrary, in these cases, the garnishment procedure presents itself as a suitable instrument that allows the debtor's right to be exercised and enforced and to realize the right for the creditor's benefit.

[60] It is interesting to note that like the judge in the present case, Justice Lebel notes that garnishment is intended for situations where, legally, a property must be placed in the patrimony of the debtor in order for enforcement of the judgment to be effective. He points out that garnishment is a subrogated remedy (see 637 C.C.P.). As Charles Belleau notes in *Précis de procédure civile du Québec*, Vol. 2, (4th ed. 2003) at page 263, garnishment is a particular form of oblique action.

[61] London Life claims that seizing the original life insurance policies will then allow the judgment creditor to exercise the right to surrender (paragraph 121 of its memorandum) or to ask

the Court, under article 579 C.C.P., to be paid the surrender value on the basis that this measure would be more advantageous than a sale (paragraph 122 of the memorandum of London Life).

[62] In my opinion, the Court does not need a specific rule allowing it to give directions or to dispose of issues incidental to the enforcement of its judgments (*Canada (Minister of National Revenue) v. Gadbois*, 2002 FCA 228, particularly paragraphs 14-15). In our Rules, section 439, which deals with directions in the context of a seizure and sale, was recently added not to give the Court a new power, but to clarify who could request such directions.

[63] If the only goal of these two extra steps proposed by London Life is to obtain an order to pay taking the place of the written surrender request, I do not see why the Court could not make such an order in a garnishment, as the prothonotary did.

[64] The fact that London Life adds that other enforcement measures, such as appointing a receiver, could be appropriate puzzles me and leads me to believe that it is merely trying any means possible to avoid using garnishment for reasons that have nothing to do with the situation before us.

[65] In such circumstances, should I conclude that the judge's decision to uphold the prothonotary's order and to validate the garnishment was incorrect?

[66] There is no decision of this Court that obliged him to do otherwise. Indeed, the decision of this Court in *Maritime Life Insurance v. Canada* (1999), 258 N.R. 139, does not apply here. In

that case, the Court found that the garnishment of the surrender value of the life insurance contract was not valid solely on the basis that the life insurance contracts contained an amendment by which the policyholder waived his right to surrender.

[67] Although it is recognized that the seizing creditor cannot be in a better position than the debtor, and that the creditor must comply with the conditions of the contract, the nature and scope of these conditions are relevant. Here, the surrender value becomes due and payable upon written request alone. The reference in the policies to the waiver of the rights under the life insurance contracts is redundant, since surrender automatically and permanently cancels these life insurance contracts by mere operation of law.

[68] It is true that the circumstances in *Bidner* and *Bel-Fran Investments Ltd. v. Pantuity Holdings Ltd.*, (1975) 62 D.L.R. (3d) 140 (BC S.C.), for example, are different, first because they concern execution in a common law province and second because, according to London Life, its obligation to pay crystallizes and the surrender value becomes payable upon request. The fact remains that these two juridical facts are concomitant, and that the judge could draw inspiration from the practical solution adopted in those cases to resolve the problem created by the very nature of the right against which the legislature intended to allow the judgment creditor to enforce its judgment.

[69] In an imperfect world where, as in this case, the life insurance contract does not provide for the physical handing over of the life insurance policy for the purpose of effecting surrender, London Life has not persuaded me that the judge made an error allowing us to intervene. To

conclude otherwise would give the contract's written request requirement the same effect as declaring that Projexia's right to surrender is a personal right. This amounts to doing indirectly what we are not to do according to the *Malenfant* doctrine.

[70] Some will say that this expands the scope of garnishment. I disagree. It is hard to imagine that our decision would have a significant impact since there appears to be very few cases where enforcement concerns incorporeal property such as the property in this case.

[71] In conclusion, I note that the courts now have the duty to interpret their procedural rules and to apply them to find the most fair, expeditious and economical solutions possible for disputes. This includes the enforcement of their judgments. When the only condition required to exercise the right to surrender is a written request, it would be unreasonable to require three steps so that the judgment creditor can receive the surrender value in circumstances where the legislature clearly intended to make it available to the judgment creditor.

[72] I would therefore dismiss the appeal with costs.

"Johanne Gauthier"
J.A.

"I agree
Pierre Blais, C.J."

"I agree
Robert M. Mainville, J.A."

Certified true translation
François Brunet

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	BLAIS C.J. MAINVILLE J.A.
DATED:	APRIL 29, 2014

APPEARANCES:

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