FTR Now

The Ontario Court of Appeal Confirms Pension Assignments must be “Clear and Unambiguous”

Date: July 31, 2013

In a marriage breakdown situation where family assets are being valued and/or divided, a member’s workplace pension entitlements are often the most significant asset. To settle the property issues, a member and his or her spouse may agree that the member will assign an interest in the member’s benefit to the spouse. Unfortunately, it is not uncommon for a plan administrator to receive a court order or separation agreement that is not worded clearly, making it difficult for the plan administrator to determine when and how much of a member’s benefits should be paid to a former spouse. This situation is made more complicated where the member has passed away and a pre-retirement death benefit is payable to the surviving spouse, but the former spouse claims that all or a portion of the benefit was assigned by the member to the former spouse.

This was the very situation addressed in Vladescu v. CTVglobemedia Inc. (“*Vladescu*“). In 2012, the Ontario Superior Court of Justice held that the assignment of a plan member’s pension entitlement to a former spouse in a separation agreement or court order required “clear and unambiguous” language in order to be effective. The former spouse appealed, and on June 27, 2013, the Ontario Court of Appeal (the “Court”) unanimously upheld the lower court’s decision.

Hicks Morley’s Frank Cesario successfully argued on behalf of CTV, the plan administrator, at both the motions court and appellate levels. This *FTR Now* reviews the Court’s decision and considers the implications that this decision will have for pension plan administrators.

FACTUAL BACKGROUND

As was previously discussed in our *FTR Now* “When is a Pension Assignment Not an Assignment“, the case considers a separation agreement between a plan member, Mr. Filotti, and his former spouse, Ms. Vladescu. The separation agreement contained specific provisions addressing Mr. Filotti’s pension benefit, which stated that Ms. Vladescu, who was Mr. Filotti’s spouse at the time under the plan, was entitled to “survivor benefits” and would continue to be entitled. Additionally, the separation agreement contemplated that in the event that Mr. Filotti subsequently married or co-habited with a common-law partner, he would make “all possible efforts” to have that subsequent spouse waive any rights or claims to his pension. A schedule to the separation agreement irrevocably authorized and directed CTV to pay all “survivor benefits” to Ms. Vladescu in the event of Mr. Filotti’s death.

Mr. Filotti had re-married by the time of his death, and the pre-retirement death benefit was claimed by Ms. Vladescu as well as by Mr. Filotti’s surviving spouse. The lower court was of the view that pension assignments required “clear and unambiguous” language, especially in cases where the assignment would supersede the statutory rights of another. Given the language of the separation agreement and the schedule, the separation agreement was found to be an irrevocable beneficiary designation in favour of Ms. Vladescu, rather than an “assignment.” Ms. Vladescu appealed this decision.

COURT OF APPEAL DECISION

The Court dismissed the appeal. Justice Gillese, writing on behalf of the Court, held that the relevant provisions of the *Pension Benefit Standards Act, 1985* (“PBSA”) created a presumptive entitlement to the pre-retirement death benefit in favour of Mr. Filotti’s spouse at the date of his death that could only be overridden by specific, clear and unambiguous language. The Court also noted that clear assignment language is needed to allow plan administrators to fulfill their duty to pay benefits to the correct recipients.

The Court found that the disputed provisions in the separation agreement did not constitute an assignment since there was no transfer of Mr. Filotti's pension rights or interests under the pension plan; the language merely described Mr. Filotti's pension benefit and acknowledged Ms. Vladescu's legal rights to those benefits at the time the separation agreement was executed. The disputed direction in the schedule simply directed and authorized a payment and did not reflect an intent to transfer rights.

The separation agreement did not use the term "assign" or state that Ms. Vladescu would continue to be entitled to the pre-retirement death benefit irrespective of the existence of a subsequent spouse. In fact, the Court noted that the separation agreement contained an express recognition that a subsequent spouse could have priority to the benefits, which was inconsistent with an intent to assign or transfer the member's rights. The Court also commented that the use of the term "survivor benefit" in the separation agreement lacked clarity since a "survivor benefit" could refer to either a monthly spousal payment following the plan member's death, or a lump-sum pre-retirement death benefit. In sum, these circumstances indicated to the Court the absence of a clear transfer of Mr. Filotti's pension interest to Ms. Vladescu.

As the Court found that the separation agreement did not contain an assignment, it declined to decide the issue of whether the PBSA permitted the assignment of pre-retirement death benefits.

GUIDANCE FOR PLAN ADMINISTRATORS

The Court's decision provides welcome guidance to plan administrators who are faced with confusing pension language in a court order or separation agreement, particularly where there are competing claims to the payment. *Vladescu* is the first clear judicial pronouncement on how pension assignment language must be drafted in order to be effective, and will provide assistance as plan administrators continue to examine separation agreements and court orders, particularly those that fall under the pre-Bill 133 regime in Ontario, the federal PBSA and the legislation of other provinces.

As at the date of writing, it is unknown whether leave to appeal the Court's decision will be sought from the Supreme Court of Canada.

If you have any questions about this case and its implications, please call any member of our Pension, Benefits and Executive Compensation Group.

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