

63/79

FAMILY COURT OF AUSTRALIA at MELBOURNE

PALEOPOULOS v PALEOPOULOS; ex parte BANK OF NEW SOUTH WALES SAVINGS BANK LIMITED

Smithers J

12 October 1979

(1980) 6 Fam LR 98 sub nom In the Matter of Paleopoulos [1980] FLR 75,294 (¶ 90-838)

FAMILY LAW – ENFORCEMENT OF MAINTENANCE ORDER – MONEY HELD IN HUSBAND'S BANK ACCOUNT – APPLICATION TO GARNISHEE AMOUNT OWING TO WIFE – MEANING OF "ON CALL OR ON NOTICE" – GARNISHMENT ORDER MADE BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: FAMILY LAW REGULATIONS, RR134(4)(a), (c), (18).

Regulation 134 of the *Family Law Regulations* provides (so far as relevant):

(4) The following moneys may be the subject of a garnishment order:

(a) a sum standing to the credit of the respondent in a bank, building society, credit union, investment fund or corporation, that is payable to the respondent on call or on notice;"

(c) any debt or other sum of money due or accruing to the respondent".

(18) An amount standing to the credit of a respondent in an account in a bank, building society, co-operative housing society or similar society, credit union or credit society, or investment fund or corporation, that is payable to the respondent on call or on notice shall, for the purposes of this regulation, be a debt due, owing or accruing to the respondent, notwithstanding that any condition relating to the account or a demand for payment under the account is unsatisfied.

HELD: Garnishment order of Magistrate confirmed.

1. The question for the Court was whether money held in the name of the respondent in his savings account with the bank at its Fitzroy branch could properly be the subject of a garnishment order under regulation 134 of the *Family Law Regulations*.

2. There was no doubt that the sum of money in this case was at the appropriate time standing to the credit of the judgment debtor in a bank. The question was whether this money was payable to him on call or on notice.

3. In the *Shorter Oxford Dictionary* "call" is defined, amongst other things, as "demand, requisition, claim" and "requirement of duty, a need, occasion, right". In *Banker and Customer in Australia* 1975 the authors Weaver and Craigie refer to the word "notice" in the context of a notification of a time after which a particular step can be taken or a particular situation will prevail.

4. It is thus clear that in one important sense the ordinary meaning of "call" involves the notion of immediacy, an entitlement which can be obtained straight away, or at any time at the option of the person entitled. Further in one important sense the ordinary meaning of "notice" involves the concept of the passage of time, the entitlement of a party to a warning that after a specified period of time he must meet his obligation, that a delay must occur before the person entitled can enforce his right.

5. When these words "call" and "notice" are used together in regulation 134 there are strong grounds for concluding that they are directed to each of these situations, that is to the situation where money is repayable without any delay caused by the requirement of a period of notice on the one hand and the situation where money is repayable only after a specified period of notice on the other hand.

6. What is involved is that provided the agreed method relating to the manner in which withdrawal is to be effected is complied with the money can be withdrawn immediately if it is on call but only after a delay if it is on loan on another basis such as for a fixed time. The mere fact that there are conditions as to the method to be adopted in achieving payment of the money does not stop it from being properly described as being on call.

7. Accordingly it appears that sub-regulation 134(4)(a) and (18) is worded consistently with an intention to encompass all money in one of the institutions described which is payable immediately or after a period stipulated in a notice, no matter what method of payment is required by the conditions of the contract between the institution and the customer. That is what the words "on call or on notice" mean and the moneys the subject of the garnishment order in this case must be regarded as moneys on call within the meaning of sub-regulations 134(4)(a) and (18).

Re ANZ Savings Bank Limited; Mellas v Evriniadis [1972] VicRp 79; (1972) VR 690, considered.

8. Accordingly the objection of the bank must be overruled and the garnishment order of the Magistrates' Court confirmed after amendment in order that the bank may be correctly described.

SMITHERS J: The respondent husband was in arrears in respect of an order made in the Magistrates' Court at Northcote on 21st September 1973 for maintenance of the applicant wife and two children of the marriage. Subsequently a garnishment order was made in the same court in respect of these arrears which amounted to the sum of \$1,710.

The question for the Court is whether money held in the name of the respondent in his savings account with the bank at its Fitzroy branch can properly be the subject of a garnishment order under regulation 134 of the *Family Law Regulations*.

It was revealed that the respondent held money in an ordinary savings bank account, that a passbook had been issued to him in the usual way and that there were the normal conditions attached to the account relating to the steps necessary before he was entitled to make a withdrawal from the account. One of these conditions was that the account had to be in funds. Of more significance are the conditions under which the bank is not obliged to release any funds to the respondent until he has produced the passbook relating to the account together with a form of withdrawal signed by him.

The account in this case is not one in which any period of notice is required before moneys can be withdrawn and in relation to the sum named in the order neither the passbook nor a withdrawal form signed by the respondent was presented to the bank. The bank maintain that the money standing to the credit of the respondent in his account is not money which can be the subject of a garnishment order pursuant to regulation 134 as the terms of the regulation, so it is argued, do not apply to money held in an ordinary savings account if the conditions relating to withdrawal by the customer have not been met.

Regulation 134 of the *Family Law Regulations* deals with the method of enforcement of orders by the process of garnishment and is the only provision in the legislation dealing with this type of enforcement. Sub-regulations 134(4)(a) and (c) and (18) are the provisions relevant to this case. They are in the following terms:

"(4) The following moneys may be the subject of a garnishment order:

(a) a sum standing to the credit of the respondent in a bank, building society, credit union, investment fund or corporation, that is payable to the respondent on call or on notice;"

"(c) any debt or other sum of money due or accruing to the respondent".

"(18) An amount standing to the credit of a respondent in an account in a bank, building society, co-operative housing society or similar society, credit union or credit society, or investment fund or corporation, that is payable to the respondent on call or on notice shall, for the purposes of this regulation, be a debt due, owing or accruing to the respondent, notwithstanding that any condition relating to the account or a demand for payment under the account is unsatisfied."

The question as to whether money in a bank savings account constitutes a debt due to the judgment debtor customer, in the event that he does not present the passbook and the signed withdrawal form to the bank, was not regarded as having been settled in Victoria until the decision of the Full Court of the Supreme Court in the case of *Re Australia and New Zealand Savings Bank Limited; Mellas v Evriniadis* [1972] VicRp 79; (1972) VR 690. In that case the earlier decision of a single judge of the Court in *Chubb v Emery* [1933] VicLawRp 19; (1933) VLR 125; 39 ALR 132 was overruled, and the Full Court held that the conditions in the contract between the bank and the customer requiring that the passbook together with a completed withdrawal form must be handed to the bank before a withdrawal could be made were conditions precedent to any

obligation on the part of the bank to repay monies deposited in the account. As these conditions had not been complied with at the date of the garnishee order nisi there was no debt owing or accruing from the bank to the judgment debtor.

Accordingly had the *Family Law Regulations* not contained provisions additional to sub-regulation 134(4)(c) the effect of Mr Abraham's (for wife) concession would have been that the garnishment order could not have been validly made in this case. Mr Abraham, however, relied on the terms of sub-regulation 134(4)(a) and on sub-regulation 134(4)(c) when read in conjunction with sub-regulation 134(18). He maintained that the moneys in the judgment debtor's account constituted a sum standing to his credit in a bank which was payable to the judgment debtor on call or on notice within the meaning of sub-regulation 134(4)(a). Further he said that the fact that conditions relating to the bank's obligation to make payment had not been met was of no account as by the specific terms of sub-regulation 134(18), if the money was on call or on notice, failure to comply with such requirements did not prevent it being the subject of a garnishment order.

There is no doubt that the sum of money in this case was at the appropriate time standing to the credit of the judgment debtor in a bank. The question is as to whether this money was payable to him on call or on notice.

Mr Charles for the garnishee submitted that in the context of sub-regulations (4)(a) and (18), on call simply meant on demand and nothing more. As, he argued, much more than a demand was necessary in this case, namely the compliance with the conditions for payment, the money was not on call. What was necessary it was put, had it been intended to make such money subject to garnishment in the circumstances, was a simple statement in the sub-regulation to the effect that the fact of any such condition should not prevent moneys being on call.

It was argued that had it been intended in the *Family Law Regulations* that moneys in savings accounts should be subject to garnishment, (which would involve a substantial change from the position in the past), then similar clear language would have been used in the *Family Law Regulations* as was employed in the United Kingdom and New South Wales. The fact that this has not been done is a further basis upon which, so it is submitted, the sub-regulation should not be interpreted as applying to the moneys the subject of the present application.

It may well be that the draftsman of the regulation was seeking a general expression to cover most types of money accounts, including accounts in savings banks, and that the broad expression "on call or on notice" was intended to cover a much wider range of accounts than was encompassed by the United Kingdom and New South Wales provisions. The use of broad terms, it might have been thought, would be some protection against inadvertently overlooking particular situations which might arise in the future. I believe that there is justification for regarding sub-regulation 134(4)(a) and (18) as an attempt in modern language to broaden the category of moneys subject to garnishment. There does not appear to be any reason as to why it should have been intended by the draftsman of the regulations that there should be any distinction in relation to garnishment of money in banks depending upon whether that money is in a current account or a savings account.

It is likely in my view that the regulation, was based upon the intention that it should have a broad operation so as to include savings accounts as well as many other types of account. It is necessary now to ascertain what assistance may be obtained from available authorities. In the *Shorter Oxford Dictionary* call is defined, amongst other things, as "demand, requisition, claim" and "requirement of duty, a need, occasion, right".

In *Banker and Customer in Australia* 1975 the authors Weaver and Craigie refer to the word "notice" in the context of a notification of a time after which a particular step can be taken or a particular situation will prevail. It is thus clear that in one important sense the ordinary meaning of "call" involves the notion of immediacy, an entitlement which can be obtained straight away, or at any time at the option of the person entitled. Further in one important sense the ordinary meaning of "notice" involves the concept of the passage of time, the entitlement of a party to a warning that after a specified period of time he must meet his obligation, that a delay must occur before the person entitled can enforce his right.

It appears to me that when these words call and notice are used together in regulation 134 there are strong grounds for concluding that they are directed to each of these situations, that is to the situation where money is repayable without any delay caused by the requirement of a period of notice on the one hand and the situation where money is repayable only after a specified period of notice on the other hand.

What is involved is that provided the agreed method relating to the manner in which withdrawal is to be effected is complied with the money can be withdrawn immediately if it is on call but only after a delay if it is on loan on another basis such as for a fixed time. The mere fact that there are conditions as to the method to be adopted in achieving payment of the money does not stop it from being properly described as being on call.

Accordingly it appears that sub-regulation 134(4)(a) and (18) is worded consistently with an intention to encompass all money in one of the institutions described which is payable immediately or after a period stipulated in a notice, no matter what method of payment is required by the conditions of the contract between the institution and the customer.

In my view that is what the words "on call or on notice" mean and the moneys the subject of the garnishment order in this case must be regarded as moneys on call within the meaning of sub-regulations 134(4)(a) and (18). Accordingly the objection of the bank must be overruled and the garnishment order of the Magistrates' Court confirmed after amendment in order that the bank may be correctly described
