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BROAD INTERPRETATION OF “WAGES” UNDER WEPPA

The decision of the British Columbia Superior Court in *Re Ted Leroy Trucking Ltd.* was a result of an application for directions with respect to what amounts are properly covered by the *Wage Earner Protection Program Act*, S.C. 2005, c. 47 (the “WEPPA”), and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”).

A receiver was appointed over Ted Leroy Trucking Ltd. (“TLT”) on March 27, 1992. On September 3, 2008, TLT was assigned into bankruptcy. Under the WEPPA, each individual employee can recover up to \$3000 for wages earned during the six months prior to bankruptcy or receivership. The issue in this application was how the term “wages” should be interpreted in the WEPPA and under s. 81.3 of the BIA.

The union which represented the employees of TLT (the “Union”) asserted that all liabilities arising from the collective agreement between the Union and TLT ought to be included in this calculation irrespective of whether the amount was payable directly to the employee, or to a third party such as the Union on the employee’s behalf.

The receiver rejected the Union’s argument, stating that it interpreted the provisions of the WEPPA and the BIA to provide priority protection solely to employee’s wages that are directly payable to an employee. The receiver did not believe that the definition of “wages” in the WEPPA and the BIA encompassed benefit payments to third parties on behalf of employees.

Section 2(1) of the WEPPA provides:

2 (1) In this Act, “wages” includes salaries, commissions, compensation for services rendered, vacation pay and any other amounts prescribed by regulation but does not include severance or termination pay.

The WEPPA Regulations, S.O.R./2008 – 222 further define wages as follows:

2 (2) The following amounts are prescribed for the purpose of subsection 2(1) of the Act:

- (a) gratuities accounted for by the employer
- (b) disbursements of a travelling salesperson properly incurred in and about the business of a bankrupt or the business of a person subject to receivership; and
- (c) production bonuses and shift premiums.

The Court also noted that the term “compensation” had previously been interpreted in the context of a bankruptcy

Based on the foregoing, the Court in this case found that “[i]n the absence of authority by way of a specific statutory definition or otherwise...the word ‘compensation’...include[s] any return given by an employer to, or for the benefit of, an employee for services by the employee as such”.

In the case at hand, the Court was of the view that the definition of “wages” was rather broad, and includes holiday and overtime pay and all employee benefits and entitlements, with the exception of severance and termination pay. The Court agreed with the Union’s position and concluded that the term “wages” in the WEPPA includes not only amounts due to be paid directly to the employee but also other amounts that were earned by the employee which were directed to be paid to a third party by the employee directly or pursuant to a contract such as a collective agreement. Regardless of whether these third party payments may be considered “wages” in the ordinary sense of the word, they are clearly “returns given by an employer to or for the benefit of the employee for services given by the employee” and are therefore included in the WEPPA scheme.

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