

CASTLEMAHON

1984-6784¹⁹⁷p.

THE HIGH COURT

IN THE MATTER OF THE COMPANIES ACTS 1963-1983

IN THE MATTER OF:

CASTLEMAHON POULTRY PRODUCTS LIMITED

JUDGMENT OF Mr. Justice Costello delivered on the 6th day of May
1986

The liquidator of Castlemahon Poultry Products Ltd., found that there were sums for wages and holiday pay due on the date of his appointment to former employees of the company. He has paid these as they were given a preferential status by virtue of s. 285 of the Companies Act, 1963. In doing so he deducted the relevant "employees contribution" of the "employment contribution payable under the provisions of the Social Welfare (Consolidation) Act, 1981. He has accepted that these sums too are a preferential debt and he has paid them to the Collector General. But he has not paid over the "employers contribution" of the "employment contribution". He admits it is a debt due under the Social Welfare (Consolidation) Act, 1981 but denies that it enjoys any preference, in the liquidation. This, not surprisingly, does not satisfy the Collector General and the issue for determination on this motion is whether these sums constituted a preferential debt under the provisions of section 285, subsection (2) (e) of the 1963 Act.

That subsection provides that in the case of a compulsory liquidation (which this is) a preferential claim arises in respect of-

"all amounts due in respect of contributions payable during the 12 months next before the relevant date" (that is, the date of the liquidators appointment) by the company as an employer of any person under the provisions of the Social Welfare Acts, 1952 to 1961...."

I have underlined the words "contributions payable during the 12 months next before the relevant date" because the issue for determination is whether the employers contributions which were not paid before the liquidator's appointment can properly be regarded as "payable" in the period referred to in the subsection. If they can, then they are preferred, if not, the sums due in respect of them are unpreferred and unsecured.

To resolve this issue I must first consider the relevant

sections of the Social Welfare (Consolidation) Act, 1981 and the relevant Regulations under which the claim by the Collector General arises. One of the sources of money for payment of the benefits provided for in the 1981 Act are what are termed "employment contributions" which are defined in section 9 (1) as contributions comprising

- (a) a contribution by the "employed contributor" and
- (b) a contribution by the employer.

Section 10 deals with the payment of this "employment contribution". By virtue of subsection (2):-

"Where in any contribution year a payment is made to or for the benefit of an employed contributor in respect of reckonable earnings of the employed contributor there shall be payable an employment contribution comprising....."

a contribution by the employed contributor at a specified rate and a contribution by his employer at a specified rate.

One feature of this subsection calls for special note in the context of the present motion. A liability to pay the "employment contribution" only arises when a payment is made to an employed contributor in respect of reckonable earnings. The liquidator places particular emphasis on this, pointing out (perfectly correctly) that no legal liability to pay the "employment contributions" which are in contention in this case arose prior to his appointment because the "reckonable earnings" to which they relate, although due, had not been paid.

The employer is declared by subsection (3) of section 9 to be liable in the first instance to pay both parts of the employment contribution, and by Regulations made under an earlier statute (The Social Welfare (Collection of Employment Contributions by the Collector General) Regulations, 1979, S.I. No. 77 of 1979) the employer is required on making any payment of reckonable earnings to an employed contributor to deduct from the earnings the amount of

the employment contribution due by the employed contributor (Article 6 (1)). The same Regulations provide that employment contributions are to be remitted by an employer to the Collector General. The result is that an employer is required (a) to deduct from any sum paid in respect of reckonable earnings the appropriate amount of the employees contribution to the "employment contribution" and then (b) to pay this sum together with the appropriate amount of the employers contribution (thereby making up the "employment contribution") to the Collector General. When should he do this?

Mr. Quinn on behalf of the Collector General suggests that the employment contribution must be paid within nine days after the payment of the reckonable earnings referring in support of this proposition to Article 20 (2) of S.I. No. 77 of 1979. But this Article refers specifically to the time limits for the purposes of prosecutions under the 1952 Act and is not of general application. Furthermore, there is clearly a typographical or drafting error in the sub-article as it refers to the wrong subsection of section 52 of the 1952 Act, and is unintelligible unless the Court was prepared to construe it as referring to a different subsection.

There is therefore, no time specified by Regulation for the payment of the employment contribution and so by virtue of s.10 of the 1981 Act it falls to be paid immediately on payment of reckonable earnings.

Since his appointment the liquidator has paid the company's employees what they were due in respect of earning and holiday pay in the four month period prior to his appointment and in so doing deducted the appropriate amount of the employees contribution payable under the 1981 Act. He has remitted these sums to the Collector General not because he believes that they obtain a preference under s. 285 of the 1963 Act but because, he says, they obtain a preferenc

under s. 120 (2) of the 1981 Act, a section which provides (a) that sums deducted by a company from its employees remuneration in respect of employers contribution and which are not paid to the Collector General are not to form part of the assets of the company in a winding-up: and (b) that a sum equal to the amount deducted is to be paid to the Social Insurance Fund in priority to the debts specified in s.285 of the 1963 Act. This section, it seems to me, may well refer exclusively to a situation in which deductions were made prior to liquidation and not paid over, and not to deductions made by a liquidator but I need not decide the point because I think that the entire of the employment contribution is given a preferential status by the subsection of s.285 which I have already quoted.

The liquidator's case can be stated very briefly. He says that by virtue of section 10 of the 1981 Act no liability to pay employment contributions arises until reckonable earnings are paid. As reckonable earnings due to the company's employees were only paid since the liquidation, liability to pay employers contribution only arose after that date. So, the contributions which are now claimed by the Collector General were not "payable" in the twelve month period prior to the liquidator's appointment and so they do not get the benefit of s. 285 (2) (e). The effect of this submission is that if the company had paid its employees all their reckonable earnings prior to the date of the liquidator's appointment after deducting the employees contribution payable under the Act of 1981, but had failed to pay the employment contribution to the Collector General, then preference under the section would arise because the contribution was "payable", reckonable earnings having been paid. But if the company fails to pay reckonable earnings which are due to its employees and the liquidator does

so the employment contribution cannot be regarded as having been "payable" within the meaning of the subsection because no legal liability to pay it existed in respect of reckonable earnings which had been left unpaid in the period prior to his appointment.

But this submission, it seems to me, is based on too restrictive a construction of the word "payable" in the subsection, treating it as a synonym for "legally due". In ordinary speech, however, it has a wider meaning for, as pointed out in the Shorter Oxford Dictionary it may not only mean "due" or "falling due", but it may also mean "something to be paid". In this latter sense it is frequently used. A beneficiary under a will may properly describe a legacy to him under a will as "payable" after a life interest has determined but before the executor is legally liable to pay it because, for example, all the deceased debts had not yet been paid. A landowner may properly say that compensation is "payable" to him by a local authority after a compulsory acquisition order has been confirmed but before the amount has been determined. A vendor may properly regard the price of goods as "payable" when after a dispute he and his purchaser have agreed that the price payable will be fixed at a later date by an agreed arbitrator. In each case the word is used to indicate that a set of circumstances has arisen or an event has happened by virtue of which a sum of money is required to be paid at some future date.

I can see no reason why the reference is s. 285 (2) (e) to contributions being "payable" should not be similarly construed. Indeed not to do so would lead to the anomalous situation to which I have referred, namely, that the preferential status of the debt due to the State depended on whether the company had or had not paid the wages to which the arrears of contributions related - a situation which I think the legislature could not have intended.

Construing the section in this way it seems to me that it can be properly claimed that the employment contributions which the company failed to pay in the twelve months prior to the liquidator's appointment were "payable" by the company. During this period there were wages (and holiday pay) to which employees were entitled by virtue of their contracts (and/or by statute) and which the company was required to pay. In addition on the dates on which wages (and holiday pay) should have been paid, the company was required (by statute) to pay the "employment contribution" to the Collector General. Events had occurred therefore by virtue of which employment contributions became "payable" during the relevant period, even though legal liability to pay them did not arise until after the liquidator's appointment.

I propose then, to answer the questions posed in the Motion by directing that the claim by the Collector General to arrears of "employers contribution" referred to is to be treated as a preferential debt by virtue of s. 285 (2) (e) of the Companies Act, 1963.

affirmed
JC
24-6-86