

July 12, 2022

Dear Members:

I would like to take a moment to update and provide you with some final comments in relation to the Parsons/Benoit (Plaintiffs) application for certification as a class action against Local 740 and the Board of Trustees. On April 15th, 2021, the Plaintiffs filed a Notice of Discontinuance with the Supreme Court of Newfoundland and Labrador releasing the Board of Trustees from the action leaving Local 740 as the only Defendant. A hearing was held in St. John's on February 3rd, 2022, before the Honorable Justice Donald H. Burrage at the Supreme Court of Newfoundland and Labrador. To provide context, I will outline the claims put forward by the Plaintiffs against Local 740.

The Amended Statement of Claim put forward by the Plaintiffs asserts four separate causes of actions: unjust enrichment; breach of fiduciary duty; breach of trust; and negligent misrepresentation. They were each dealt with separately by Justice Burrage as noted in his comments below:

Unjust Enrichment

All member contributions are deducted by the employer at source and remitted by the employer directly to the Pension Plan Trust Fund and Welfare Plan Trust Fund, as required by the PBA and Income Tax Act (Canada). The contributions do not flow through the Union and the Union has no control over how the contributions are administered. Rather, pursuant to the PBA, full power and control over the contributions rests with the Trustees of the plan's trust funds. It is therefore plain and obvious that the Union has no ability to return the member contributions. The Union has not been "enriched" by the members' contributions and, as such, does not hold these contributions for the benefit of members, as a constructive trustee, or otherwise. Such a claim can only be made to the Trustees of the plans. The Trustees and Union are separate legal entities, such that the Union does not have legal authority over the Pension Plan Trust Fund or Welfare Plan Trust Fund.

With respect, this claim has no reasonable prospect of success.

Breach of Fiduciary Duty

Rule 14.11 of the Rules of the Supreme Court, 1986, S.N.L. 1986, c. 42, Sch. D requires that in a claim for breach of trust the plaintiff provide particulars of the breach. It reads:

14.11. (1) Subject to rule 14.11(2), every pleading shall contain the necessary particulars of any claim, defense or other matter pleaded, including

(a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies; and

(b) *where a party pleading alleges any condition of the mind of any person, including any disorder or disability of mind or any malice, or fraudulent intention, or other condition of mind except knowledge, particulars of the facts on which the party relies.*

(2) *Where it is necessary to give particulars of debt, expenses, or damages, and those particulars exceed three pages, they may be set out in a separate document referred to in the pleading and the pleading shall state whether the document has already been served and, if so, when or whether it is to be served with the pleading.*

The Plaintiffs have provided no such particulars.

Breach of Trust

“At the outset, I observe that in both claims the Plaintiffs have deleted the reference to "Trustee", commensurate with their discontinuance against the Trustees, and have substituted "Trustee" with "Union", as if the two were interchangeable. They are not.”

*The signature characteristic of a trust is the fiduciary relationship which exists between the trustee and beneficiary, whereby the trustee is to hold the trust property solely for the beneficiary's engagement (see *Valard Construction Ltd. v. Bird Construction Co.*, 2018 SCC 8.) Similarly, the *Trustee Act*, R.S.N.L. 1990, c. T-10, provides that a Trustee is chargeable only for the money and securities actually received by him or her. The trust property in this proceeding is the contributions to the Pension Plan Trust Fund and the Welfare Plan Trust Fund.*

As already discussed, these contributions were never received or held by the Union.

Negligent Misrepresentation

The original Statement of Claim pleading negligent misrepresentation was issued some seven and one-half years ago, on 8 October 2014. There has been ample time for the Plaintiffs to provide particulars of the negligent misrepresentation between then and now. At this late stage, I declined to grant this request.

Furthermore, insofar as the pension contributions are deducted by the employer and remitted directly to the plan, as required by legislation, it is hard to fathom how members could be said to rely on the Union for an alternate arrangement. The deductions are part of the wage package negotiated between the Union and employer and voted on by the members and embodied in the governing Collective Agreement.

Disposition:

On 15 April 2021 the Plaintiffs discontinued the proceeding against all of the Trustees, leaving the Union as the only Defendant. The Union and pension and welfare plans, as administered by the Trustees, are separate and distinct legal entities. All contributions to the plans are paid by employers directly to the Trustees, and not to the Union. Power or control over these contributions is exercised not by the Union, but exclusively by the

Trustees in accordance with the Trust agreements and federal and provincial legislation and regulations. Moreover, in negotiating with employers for the compensation package for its members the Union was not acting as a fiduciary and was not in a position of trust.

For these reasons the class action has no reasonable prospect of success and the within application must be dismissed.

Summary

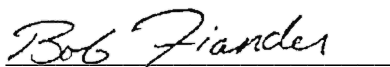
The Plaintiffs' application for certification of the within matter as a class action was dismissed. The Amended Statement of Claim failed to disclose a cause of action.

It should also be noted that the Board of Trustees followed the legislative requirements with regard to pension contributions received by the pension trust fund on behalf of working retired members that were continuing to receive their monthly pension benefit. Section 8503(3)(b) of the Income Tax Regulations (Canada) prohibited a retired member from simultaneously accumulating pensionable service credits while receiving pension income. In June 2021, the federal government amended the Income Tax Regulations (Canada) to prohibit the pension trust fund from receiving pension contributions on behalf of working retired members that are simultaneously receiving their monthly pension benefit and for those who are working that are over the age of 71. **This amendment will apply to collective agreements that are ratified on or after June 2021 (it does not apply to agreements ratified before June 2021).** The Union Executive and the Board of Trustees are reviewing this matter with the Canada Revenue Agency, our legal advisors, income tax specialists, and our consultants and we will advise you of the outcome once it has been determined.

In closing, in alignment with Justice Burrage's findings, the Trustees of Local 740's trust funds hold themselves accountable in accordance with industry best practices, legal advice, and are making decisions that are in line with provincial and federal legislation. They are bound by common law standards of fiduciary conduct. The Pension and Health and Welfare trusts are funded through contributions received in accordance with the ratified collective agreements and the Trustees must act with a standard of care and thought for the future in the administration of these funds. Any decisions relating to the trusts are based on fact and not self-interest and/or blind opinion. Local 740's trusts will always be handled responsibly while continuing to build and enhance on the strong policies and procedures around them. Members can take great comfort that your Board of Trustees, administrative staff, and third-party advisers are working as a unified team on your behalf to ensure that your funds are, and remain, secure for the betterment of all eligible members, both retired and active.

"Maintain professionalism and professionalism will find its way back to you"

Respectfully,



Bob Fiander
Business Manager
Chairman, Board of Trustees
UA Local 740