

GEORGE WILLIAM YEATS AND PAULINE VERA YEATS (PLAIN- TIFFS)	}	APPELLANTS;
AND		
CENTRAL MORTGAGE AND HOUS- ING CORPORATION (DEFENDANT)	}	RESPONDENT.

1950
 *May 5
 *June 23

ON APPEAL FROM THE SUPREME COURT OF ALBERTA,
 APPELLATE DIVISION

Crown—Central Mortgage and Housing Corporation—Contract made in the name of the Corporation—Whether Corporation subject to Supreme Court of Alberta—Central Mortgage and Housing Corporation Act, S. of C. 1945, c. 15, s. 5.

Held: The Central Mortgage and Housing Corporation, having entered in the name of the Corporation into a contract under section 5(2) of the *Central Mortgage and Housing Act*, is subject to the jurisdiction of the Supreme Court of Alberta in respect of any obligations arising out of that contract.

APPEAL from the judgment of the Supreme Court of Alberta, Appellate Division, (1), affirming, Ford J.A. dissenting, the decision of Macdonald J. holding that the Central Mortgage and Housing Corporation, being a servant and agent of the Crown, could not be sued in the Supreme Court of Alberta.

Neil V. German for the appellants.

D. W. Mundell, K.C. for the respondent.

The judgment of the Court was delivered by

KERWIN J.: The Appellate Division of the Supreme Court of Alberta (1) affirmed an order of H. J. Macdonald, J., striking out the name of Central Mortgage and Housing Corporation as a party defendant in this action on the ground that, for all purposes, it was a servant and agent of the Crown, and that the plaintiffs could not maintain the suit against it in the Supreme Court of Alberta. The action is based on contract and was brought by Mr. and Mrs. Yeats against the Corporation, the Manufacturers

*PRESENT: Rinfret C.J. and Kerwin, Rand, Kellock, Estey, Cartwright and Fauteux JJ.

(1) [1949] 2 W.W.R. 1110.

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Life Insurance Company, and Bow River Construction Company, Limited. It claims relief for breach of certain contracts for the construction of a house by the construction company and the loaning of a part of the cost thereof by the other defendants. The application to strike out the Corporation as a party defendant was made on the advice of its legal advisers and effect was given to their argument in the Courts below. When these judgments came to the attention of the Attorney General of Canada, he took a different view of the matter and no objection was raised to an application to the Appellate Division for leave to appeal to this Court, which leave was granted.

It is agreed that the Corporation entered into the contracts sued upon, on behalf of His Majesty within subsection 2 of section 5 of the *Central Mortgage and Housing Corporation Act*, being chapter 15 of the Dominion Statutes of 1945, the said Corporation being described in the contracts as representing His Majesty the King in the right of Canada. It is also agreed that the Corporation in the manner aforesaid acquired or incurred a right or obligation in its own name under subsection 4 of section 5. This *Act* established the Corporation, consisting of the Minister of Finance and those persons who from time to time comprise the Board of Directors. Provision is made for the appointment of such a Board and an Executive Committee thereof, for advances by the Minister to the Corporation, and for loans under various Housing Acts therein specified. Section 5 reads:—

5. (1) Except as provided in section fourteen of this *Act*, the Corporation is for all purposes an agent of His Majesty in right of Canada and its powers under this *Act* may be exercised by it only as an agent of His Majesty.

(2) The Corporation may, on behalf of His Majesty, enter into contracts in the name of His Majesty or in the name of the Corporation.

(3) Property acquired by the Corporation is the property of His Majesty and title thereto may be vested in the name of His Majesty or in the name of the Corporation.

(4) Where the Corporation has acquired or incurred a right or obligation in the name of the Corporation, it may sue or be sued in respect thereof in the name of the Corporation.

Section 14, referred to, empowers the Corporation on its own behalf to “employ such officers and employees for such purposes and on such terms and conditions as may

be determined by the Executive Committee and such officers and employees are not officers or servants of His Majesty.”

Although at one time it was also agreed that the issue to be determined is whether or not there can be liability on the Corporation in an action in the Supreme Court of Alberta in respect of any alleged obligation incurred under section 5, subsection 4, the appeal was argued on the basis that the only matter to be determined is whether the Corporation is subject to the jurisdiction of the Supreme Court of Alberta. That point should be decided in the affirmative. While by subsection 1 of section 5 of the *Act* the Corporation is for all purposes an agent of His Majesty and its powers under the *Act* may be exercised by it only as an agent of His Majesty, subsection 2 provides that the Corporation may on behalf of His Majesty enter into contracts in the name of His Majesty or in the name of the Corporation. It being agreed that the contracts in question were entered into in the name of the Corporation, therefore, by virtue of subsection 4, it may sue or be sued in respect of any right or obligation so acquired or incurred. A number of cases are referred to in the reasons for judgment in the Courts below but only those now to be mentioned need be considered.

While there are differences between the contracts here sued upon and the agreement in question in *International Railway Co. v. Niagara Parks Commission* (1), the reasoning of the Judicial Committee in that case applies as the appellants have sued only the Corporation. See also *Rattenbury v. Land Settlement Board* (2).

The latest pronouncement is the judgment of the House of Lords in *Tyne Improvement Commissioners v. Arment Anversois S/A (The Brabo)* (3). The point there determined was that leave to serve notice of a concurrent writ out of the jurisdiction could not be granted as the action had not been “properly brought” against the Minister of Supply within the meaning of R.S.C. Order 11, r. 1(g). However, in the course of so concluding, their Lordships stated that it was plain under the relevant statu-

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(1) [1941] 2 A.E.R. 456.

(3) [1949] A.C. 326.

(2) [1929] S.C.R. 52.

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tory enactments that the Minister could be sued in the ordinary Courts without the necessity of a petition of right but that did not debar him from the protection which the Crown itself would have had in the particular case.

We have not before us a case like *City of Halifax v. Halifax Harbour Commissioners* (1), because there the judgment was based upon the conclusion that the occupancy of the harbour property by the Halifax Harbour Commissioners was of such a character as to constitute that occupation an occupation "for the Crown" and, therefore, the Commissioners were not taxable in respect thereof. When such a question does arise, it will be necessary to consider the provisions of subsection 2 of section 30 of the *Act*:—

(2) Where title to real or immovable property becomes vested in the name of the Corporation or of His Majesty, whether alone or jointly with any other person, in consequence of foreclosure or other proceedings taken in respect of a mortgage assigned to the Corporation or to which His Majesty is a party under the Housing Acts, the Corporation may pay to a municipal or other taxing authority an amount equivalent to the taxes which might be levied in respect of the said property or of the interest of the Corporation or of His Majesty therein by the said authority if the said property or interest were not so vested, and may enter into such agreements as may be necessary to give effect to the provisions of this subsection.

The *Exchequer Court Act*, R.S.C. 1927, chapter 34, was referred to in the reasons for judgment of H. J. Macdonald, J., but the only suggested applicable sections are 18 and 19. Section 18 does not apply as this case is not the "subject of a suit or action against the Crown" and the meaning of these words in the early part of the section is not enlarged by the concluding phrase "or in which the claim arises out of a contract entered into by or on behalf of the Crown." Section 19, so far as it might have any relevancy, makes provision in respect of "claims against the Crown." Here, the appellants desire to have decided their claims against the Corporation (not the Crown) at the same time as their claims against the other defendants. The provisions of the *Central Mortgage and Housing Corporation Act* are apt to authorize the Corporation being sued in the Provincial Court and the judgments below should, therefore, be set aside and the motion to strike out the Corporation as a party defendant and dismiss the

(1) [1935] S.C.R. 215.

action as against it, should be dismissed. The appellants are entitled to their costs throughout against the Corporation.

Appeal allowed with costs.

Solicitors for the appellants: *German, Mackay and McLaws.*

Solicitors for the respondent: *Macleod, Riley, McDermid and Dixon.*

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