Federal Court Cour fédérale

Date: 20150410

Docket: T-1594-06

Citation: 2015 FC 440

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 10, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

IN THE MATTER OF THE *INCOME TAX ACT*

AND IN THE MATTER OF ASSESSMENTS BY THE MINISTER OF NATIONAL REVENUE UNDER THE *INCOME TAX ACT*

BETWEEN:

MARIO LAQUERRE
FIDUCIE MARIO LAQUERRE
FIDUCIE ML
9075-3153 QUÉBEC INC.
9015-7769 QUÉBEC INC.
9067-6388 QUÉBEC INC.
9029-0065 QUÉBEC INC.

Judgment debtors

AND

9011-1345 QUÉBEC INC. AND GAÉTAN LAQUERRE

Opponents

ORDER AND REASONS

[1] In 2007, following an *ex parte* motion by Her Majesty (execution creditor), Justice Gauthier, then of this Court, issued an interim charging order against five immovables in the Quebec City area registered in the names of the respondents. She also issued an interim charging order in the name of 9011-1345 Québec Inc., which, itself, did not owe and does not owe anything to Her Majesty.

[2] The following year, Justice Martineau issued a charging order absolute against those immovables. He was satisfied that all of the companies could be considered the alter ego of Mario Laquerre, who used the property of those trust companies for personal purposes. He stated the following in paragraph 21 of his detailed reasons published in 2008 FC 460: "This mingling constitutes an act that entitles us to lift the corporate veil".

[3] The company 9011-1345 Québec Inc. (9011), a third party, filed written submissions and appeared before Justice Martineau in opposition to the motion. Today, almost seven years later, 9011 and Gaétan Laquerre, owner of the majority of 9011's shares and brother to respondent Mario Laquerre, are requesting, under Rule 462 of the *Federal Courts Rules*, the discharge of Justice Martineau's order. Rule 462 stipulates the following:

The Court may, on the motion of a judgment debtor or any other person with an interest in property subject to an interim or absolute charge under rule 458 or 459, at any time, discharge or vary the charging order on such terms as to costs as it considers just.	La Cour peut, sur requête du débiteur judiciaire ou de toute autre personne ayant un droit sur les biens grevés par une charge provisoire ou définitive, annuler ou modifier l'ordonnance constituant la charge, aux conditions qu'elle estime équitables quant aux

dépens.

[4] The motion is based on three principal grounds:

a. Justice Martineau apparently misread the material before him, so Rule 462 allows me to review his order. If I deem the decision erroneous, I should discharge or vary it.

b. Justice Martineau would have come to a different conclusion if 9011 and Gaétan Laquerre had submitted evidence (which they did not do). As the principal shareholder of 9011, Gaétan Laquerre should have been served personally, but he was not. Now that that evidence is before me, I should discharge Justice Martineau's order.

c. Circumstances have changed since Justice Martineau's order: some of 9011's property was damaged by fire; the judicial hypothec created a problem for insurance and refinancing; Mario Laquerre declared bankruptcy; Gaétan Laquerre, who paid the Caisse Desjardins de Gentilly-Lévrard in full, presently has a hypothec on the immovable and is subrogated to hypothecary rights. The said hypothec was registered prior to the Crown's judicial hypothec.

[5] The Crown vehemently objects to those three principal grounds for the motion. It makes a clear distinction between 9011 and Gaétan Laquerre.

[6] The company 9011 is a person with an interest in the immovable with the ability to bring a motion under Rule 462. Apart from Justice Martineau's decision, there are only two decisions

that address the scope of this rule, and they are of little assistance to us because they come from common law provinces and concern interest and property in those provinces. Regardless of the meaning of the rule, it does not validate the assumption that a decision may be reviewed absent new circumstances.

[7] Regarding the first ground, if 9011 was dissatisfied with the decision, it should have appealed the matter, as set out in section 27 of the *Federal Courts Act*. Alternatively, if it believed that an issue requiring a decision had been forgotten or wrongly omitted, 9011 could have filed a motion to reconsider under Rule 397 of the *Federal Courts Rules*. The deadlines to do so passed long ago.

[8] Regarding the second ground, the opposition before Justice Martineau was based on an affidavit by Mario Laquerre. Gaétan Laquerre could have filed an affidavit at the time and subjected himself to cross-examination to claim, like he is doing now, that he was not acting as a nominee for his brother but was taking an active part in the company. It is far too late to raise those issues.

[9] Even if I agreed to consider those two issues, which I should not do, the Crown submits that Justice Martineau did not err. The evidence before him was voluminous and packed with information amply justifying his decision.

[10] Regarding Gaétan Laquerre, as a shareholder, he has an interest in 9011 but not in the properties that that company owns, therefore not in the immovable subject to the Crown's judicial hypothec. Thus, he has no standing under Rule 462.

[11] To conclude, even for the period after 2008, the Crown submits that Mario Laquerre's bankruptcy and the fire are irrelevant.

[12] It is admitted that Gaétan Laquerre, as the hypothecary creditor, now has interest in the immovable in question but that interest is not greater than that of the Caisse populaire. There is no basis for a motion on the part of a hypothecary creditor to discharge or vary the order issued by Justice Martineau.

I. Decision

[13] I find that this motion must be dismissed, with costs. The following reasons consider the perspectives of Gaétan Laquerre and 9011.

II. Analysis

A. *Gaétan Laquerre*

[14] It has been well established that a company, as a legal person, has a very different legal personality than its shareholders (*Salomon v Salomon & Co, Ltd*, [1897] AC 22, [1895-99] All ER Rep 33 (HL)). In *Kosmopoulos v Constitution Insurance Co of Canada,* [1987] 1 SCR 2, the Supreme Court refused to acknowledge a sole shareholder's interest in his company's property. Furthermore, as explained by the Quebec Court of Appeal in *Greenberg c Gruber*, [2004] JQ nº 6567, REJB 2004-64851 (QC CA), a shareholder has an interest in the company, but not in the company's property. Thus, as a shareholder, Gaétan Laquerre has no standing.

[15] However, he has standing as a hypothecary creditor; but there is absolutely no basis on which a hypothecary creditor can argue that a judicial hypothec registered subsequent to his hypothec should be discharged.

B. *9011-1345 Québec Inc.*

[16] Aside from Justice Martineau's decision, the only other decisions published with respect to Rule 462 are the following: *Canada v Malachowski*, 2011 FC 413 and *Re Income Tax Act*, 2010 FC 340. Those decisions, based on that of Justice Martineau, do not establish the scope of Rule 462 of the *Federal Courts Rules*.

[17] Without being exhaustive, Rule 462 could have applied if the respondents had successfully challenged their tax valuations, or even if they had paid the amount owing. In such a case, there would likely be a motion on consent to have the judicial hypothec discharged. Rule 462 could also have applied if Her Majesty held more securities than were required. According to a procedure similar to common law's "marshalling", it might have been appropriate to discharge the charge on the properties of 9011, which, itself, is not the judgment debtor. See also article 2754 of the *Civil Code of Québec*, RLRQ c C-1991. The evidence shows that the Crown did not have excess securities. Nonetheless, I agree that despite any remedies available to 9011, I cannot set aside Justice Martineau's decision, even if I disagree with it. The company should have appealed the matter or perhaps filed a motion to reconsider under Rule 397 of the *Federal Courts Rules*.

[18] The company 9011 is now seeking to reopen the debate on the motion before me. However, Justice Martineau's decision is *res judicata*. Nothing prevented Gaétan Laquerre, as president and principal shareholder, to submit an affidavit. As he explained in paragraph 47 of his most recent affidavit, he deemed it unnecessary to do so:

> [TRANSLATION]
>
> Wrongly, clearly, I always believed that the proceedings would not impact me or 9011-1345 Québec inc., because 9011-1345 Québec inc. was only a third party.

[19] As a third party, 9011 was personally served the motion in order for the interim charging order to be absolute. In his capacity as principal shareholder and president, Gaétan Laquerre was supposed to know what was happening. Obviously, there was no obligation to serve him as a shareholder.

[20] Justice Hugessen explained the following on behalf of the Court of Appeal in *Rostamian v Canada (Minister of Employment and Immigration)*, 129 NR 394, [1991] FCJ No 525 (QL), at paragraph 5:

> There is an important public interest to be served in the finality of judgments. a court should not lightly set aside a decision on the ground of new matter subsequently discovered. Litigants have a responsibility to present their case as fully as possible in the first instance; if they seek to reverse or vary a decision they must act with all reasonable diligence and must demonstrate that they have done so. The present application fails to do this and will accordingly be dismissed.

ORDER

FOR REASONS GIVEN;

THE COURT ORDERS that the motion is dismissed with costs.

"Sean Harrington"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1594-06
STYLE OF CAUSE:	IN THE MATTER OF THE *INCOME TAX ACT* AND IN THE MATTER OF ASSESSMENTS BY THE MINISTER OF NATIONAL REVENUE UNDER THE *INCOME TAX ACT* AGAINST MARIO LAQUERRE; FIDUCIE MARIO LAQUERRE; FIDUCIE ML; 9075-3153 QUÉBEC INC.; 9015-7769 QUÉBEC INC.; 9067-6388 QUÉBEC INC., 1392, 4e AVENUE, QUÉBEC, (QUÉBEC) G1J 3B6 AND 9029-0065 QUÉBEC INC. 825, CHEMIN HIBOU, STONEHAM, (QUÉBEC) G0A 4P0
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	MARCH 26, 2015
ORDER AND REASONS:	HARRINGTON J.
DATED:	APRIL 10, 2015

APPEARANCES:

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