

Federal Court



Cour fédérale

Date: 20190321

Docket: T-1866-16

Citation: 2019 FC 352

Toronto, Ontario, March 21, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

DARRIN GRAY

and

619947 NB INC.

Respondents

ORDER AND REASONS

[1] By Order (the “Order”) dated May 29, 2018, Mr. Darrin Gray (the “Respondent”) was found to be in contempt of the Order of the Court dated December 15, 2016 (the “Compliance Order”). That Order was sought by the Minister of National Revenue (the “Applicant”) pursuant to the provisions of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the “Act”). The Compliance Order required the Respondent to provide specified documents. He failed to do so.

[2] The Order and Reasons were served upon the Respondent, according to the affidavit of service dated July 14, 2018 and sworn to by Mr. Guy Badcock, process server.

[3] The Order dated May 29, 2018 provided the sentencing hearing would take place at the Federal Court in St. John's on September 27, 2018.

[4] At the commencement of the hearing, the Court usher called out the name of the Respondent in the precincts of the Court located at 354 Water Street, St. John's, NL. There was no response; the Respondent did not respond and did not appear at the hearing

[5] The Respondent was given the opportunity to respond to the allegations of contempt. He chose neither to attend the show-cause hearing nor to avail of the opportunity to cross-examine the witnesses called on behalf of the Minister. He was not obliged to testify himself and no adverse findings are drawn from his choice not to do so.

[6] The Minister seeks a fine in the amount of \$3,000.00, together with costs in the amount of \$5,399.08, as set out in a draft Bill of Costs that was presented at the hearing. The Respondent did not request solicitor and client costs. The costs address taxable services and legal fees in the amount of \$2,240.00 and disbursements in the amount of \$3,159.08. The taxable services include the amount of \$420.00 for assessment of costs. This amount will be removed since the issue of costs will be addressed now.

[7] The principles of sentencing in respect of a finding of contempt were reviewed by the Court in *Canada (Minister of National Revenue) v. Marshall* (2006), 294 F.T.R. 297. The Court said the following at paragraph 16:

To summarize, the factors relevant to determining a sentence in contempt proceedings are:

- i. The primary purpose of imposing sanctions is to ensure compliance with orders of the court. Specific and general deterrence are important to ensure continued public confidence in the administration of justice;
- ii. Proportionality of sentencing requires striking a balance between enforcing the law and what the Court has called “temperance of justice”;
- iii. Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court; and
- iv. Mitigating factors might include good faith attempts to comply (even after the breach), apologize or accept responsibility, or whether the breach is a first offence.

[8] In my opinion, the primary sentencing principle to be kept in mind is that of deterrence. Inherent in that principle is respect for the processes of the Court, including its Orders.

[9] The Respondent chose not to participate in the sentencing hearing, after due service upon him of the Order of May 29, 2018 and with notice of the date of the sentencing hearing.

[10] Disobedience of a Court Order is a serious matter. In *Marshall, supra*, the Court noted that “specific deterrence” was required to “ensure that the respondent does not again breach the orders of this Court”.

[11] The same applies in the present case.

[12] There is no evidence of prior non-compliance by the Respondent with any Order of the Court or indeed, with any prior request by the Minister.

[13] There is no evidence that the Respondent has been previously found to be in contempt of a Court Order.

[14] In the circumstances, then, I am satisfied that a fine should be imposed upon the Respondent, as a sanction for his disobedience of the Order of the Court made on December 15, 2016.

[15] As noted above, the Minister seeks a fine in the amount of \$3,000.00. That amount seems appropriate and a fine in the amount of \$3,000.00 is imposed upon the Respondent.

[16] Pursuant to the *Federal Courts Rules*, SOR/98-106 (the “Rules”), Rule 400(1), costs lie in the full discretion of the Court.

[17] The Minister seeks recovery of costs in the amount of \$2,240.00, including the amount of \$420.00 for assessment of costs. The amount for taxable services will be reduced by this amount since the costs will be assessed by the Court, subject to the comments below.

[18] The disbursements, in the amount of \$3,159.08, include witness fees in respect of Kelly MacKinnon, Guy Badcock and Mike Carroll. The disbursements also include a charge for Stephen Kennedy's Bailiff Service in the amount of \$1,092.50.

[19] No supporting documents were provided to support the witness fees, including travel, for Ms. MacKinnon nor for the services of Stephen Kennedy Bailiff Service.

[20] Recovery of the travel expenses of Ms. MacKinnon for her attendance on November 16, 2017 is appropriate, but not for her attendance on August 16, 2017.

[21] The matter did not proceed on August 16, 2017 due to a defect in service upon the Respondent. Expenses incurred by the Minister for any travel of Ms. MacKinnon in August 2017 should not be assessed against the Respondent.

[22] Costs will be allowed for the travel expenses of Ms. MacKinnon upon production of supporting documentation.

[23] The fees claimed in respect of Stephen Kennedy Bailiff Service will be allowed upon production of the invoice or invoices in support.

[24] Disbursements will be allowed now in the amount of \$564.46 and a further Order will issue in respect of travel expenses of Ms. MacKinnon and Stephen Kennedy Bailiff Services.

[25] An amended Order will issue in respect of costs once the supporting documents are provided.

[26] Costs for the taxable services are allowed in the amount of \$1,820.00 together with disbursements in the amount of \$564.46. The travel costs of Ms. MacKinnon and the service fees of Stephen Kennedy's Bailiff Service, totalling \$2,594.62, will be assessed upon production of the supporting invoices and a further Order will issue in that regard.

[27] The amounts claimed in respect of the services of Mr. Guy Badcock and Mr. Mike Carroll are reasonable, and will be allowed.

[28] The Respondent has failed to comply with the terms of the Compliance Order. Notwithstanding the finding of contempt made in the Order of May 29, 2018, the terms of the Compliance Order remain in effect.

[29] Failure by the Respondent to comply with the Compliance Order within thirty days of service of this Order upon him will result in further consequences, including imprisonment for a period of 30 days, such imprisonment to run consecutive to any other term of imprisonment imposed by this Order.

ORDER

THIS COURT ORDERS that

1. The Respondent, Darrin Gray, having been found to be in contempt of the Order dated December 15, 2016, shall pay a fine of \$3,000.00 within 30 days from the date of service of this Order, and shall also pay the Applicant's legal costs in the amount of \$1,820.00 within 30 days of the date of service of this Order, failing which he will be subject to 30 days imprisonment.
2. Disbursements will be allowed now in the amount of \$564.46 and a further Order will issue in respect of the travel expenses of Ms. MacKinnon and fees of Stephen Kennedy Bailiff Services.
3. The Respondent shall provide the information and documents to be provided by him pursuant to the Compliance Order within 30 days from the date of service of this Order, failing which the Respondent shall be imprisoned for 30 days, such terms to run consecutive to any other term of imprisonment imposed by this Order.
4. The Respondent shall not be imprisoned for the failure to pay the fine or the costs as ordered in paragraphs 1 and 2 above if, within 30 days from the date of service of this Order, the Respondent arranges with the Minister for an oral examination under oath and provides evidence satisfactory to the Court that he is not presently able to pay the

- fine or the legal costs and disbursements, or that he needs an extended time period in which to pay.
5. The Respondent shall not be imprisoned for the failure to produce the information and documents as ordered in paragraph 3 above if, within 30 days from the date of service of the Order, the Respondent arranges with the Minister under oath and provides evidence satisfactory to the Court that he is not able to produce the information and documents and that his inability to do so does not stem from his own intentional actions, recklessness, or negligence.
 6. If the Minister informs the Court by affidavit that payment of either the fine or the legal costs and disbursements as ordered in paragraphs 1 and 2 above has not been made within 30 days from the date of service of this Order and that the Respondent has not arranged with the Minister for an oral examination under oath with respect to his ability to pay the fine or the legal costs and disbursements, and the Respondent has not satisfied the Court in accordance with paragraph 4 above, the Minister may apply to the court to issue a warrant for the imprisonment of the Respondent for 30 days.
 7. If the Minister informs the Court by affidavit that the Respondent has not provided the information and documents as ordered in paragraph 3 above within 30 days from the date of service of this Order and that the Respondent has not arranged with the Minister for an oral examination under oath with respect to his ability to produce the

information and documents, and the Respondent has not satisfied the Court in accordance with paragraph 5 above, then the Minister may apply to the court to issue a warrant for the imprisonment of the Respondent for 30 days.

8. This Order may be served upon the Respondent by personal service pursuant to Rule 128 of the *Federal Courts Rules*, SOR/98-106.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1866-16

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE V DARRIN GRAY AND 619947 NB INC.

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND

DATE OF HEARING: SEPTEMBER 27, 2018

JUDGMENT AND REASONS: HENEGHAN J.

DATED: MARCH 21, 2019

APPEARANCES:

Maeve Baird

FOR THE APPLICANT

SOLICITORS OF RECORD:

Attorney General of Canada
St. John's, Newfoundland and
Labrador

FOR THE APPLICANT