Federal Court  Cour fédérale

Date: 20220921

Docket: T-2235-16

Citation: 2022 FC 1313

Ottawa, Ontario, September 21, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ALBERT JAMES ODDI

Plaintiff

and

CANADA REVENUE AGENCY

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff, Mr. Albert James Oddi (Mr. "Oddi"), is self-represented in these proceedings. The Plaintiff commenced an action against the Canada Revenue Agency (the "CRA") seeking damages for alleged negligence, fraud, and a violation of his rights under section 7 of the *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982, being Schedule B to the Canada Act* 1982 (UK), c 11 (the "*Charter*"). The Plaintiff is seeking over

$10 million dollars in damages against the CRA for the sale of his farm property (the "Property") under a power of sale proceeding by a third-party mortgagee and for the loss of certain other property located on the Property. The CRA now seeks a motion for summary judgment pursuant to Rules 213 to 215 of the *Federal Courts Rules*, SOR/98-106 (the "*Rules*").

[2] In support of its motion, the Defendant submits that the CRA is not responsible for Mr. Oddi's loss. Any loss suffered is a consequence of the criminal enterprise Mr. Oddi was involved in, his failure to keep his mortgage in good standing, and his failure to provide information to the CRA that could have mitigated any of the losses he suffered. The Defendant maintains that Mr. Oddi makes two discrete complaints, which are both doomed to fail. First, Mr. Oddi complains about "inaccuracies" in CRA's accounting, which he describes as fraud. The Defendant argues that this amounts to no more than a dispute over the assessing position of the CRA and is a matter to be addressed within the complete code provided for within taxing statutes. Indeed, Mr. Oddi's Statement of Claim indicates that these amounts are currently under appeal in separate litigation.

[3] Second, Mr. Oddi complains that the Property was sold for less than the fair market value. However, the Property was sold under power of sale by his mortgage lender because Mr. Oddi defaulted on his mortgage. The sale of the Property was not carried out by the CRA, nor did Mr. Oddi accept the CRA's offer to provide him with a comfort letter for prospective lenders in any refinancing efforts.

[4] For the reasons that follow, I do not find that there is a genuine issue for trial in this matter. I therefore grant the Defendant's motion for summary judgment.

II. **Preliminary Issue**

[5] On the morning of the hearing, on June 15, 2022, the Court received a letter from Mr. Dale Barrett ("Barrett") dated June 14, 2022, requesting an adjournment of the motion for summary judgement returnable on June 15, 2022. The letter indicates that Mr. Barrett was recently retained by Mr. Oddi and has not had sufficient time to review the matter and corresponding materials and thus would be unable to adequately respond to the motion for summary judgment. The letter further states that Mr. Barrett's office sent the Defendant's counsel a letter on June 13, 2022 requesting an informal adjournment on consent, yet received no response.

[6] At the start of the hearing, counsel for the Defendant indicated that she had advised Mr. Barrett that the Defendant does not consent to an adjournment and she was prepared to proceed with the hearing of the motion for summary judgment. She also stated that Mr. Barrett sent her his Notice of Appointment as Mr. Oddi's solicitor at 4:34pm on June 14, 2022, yet it was not filed with the Court.

[7] When this Court asked Mr. Oddi why the hearing for the motion for summary judgment should be adjourned, Mr. Oddi responded that he had hired Mr. Barrett two weeks prior to represent him in this matter, but that Mr. Barrett had not yet had the chance to review the file. Mr. Oddi insisted that, out of fairness, he be given his "day in Court".

[8] The Court took a 10-minute recess to consider the parties' submissions as well as the lengthy history of this case.

[9] When the hearing resumed, the Court denied Mr. Oddi's request for an adjournment, advising the parties that the matter at issue must proceed without further delay.

[10] The Court acknowledges that being self-represented poses its challenges, yet Mr. Oddi had ample opportunity to find a lawyer to represent him for the hearing of this motion for summary judgment. The Court has also been patient, accommodating and generous with its time and resources. In an order following a case management conference on February 2, 2022, Prothonotary Tabib gave Mr. Oddi one week to inform the Court of his lawyer's availabilities between June 6 and June 30, 2022. Mr. Oddi responded by advising the Court that he would need an additional seven weeks to obtain dates from a lawyer. This request was found to be unreasonable and the Court proceeded to fix a hearing date on February 18, 2022.

[11] From February 18, 2022 until the date of this hearing, June 15, 2022, Mr. Oddi had nearly four months to find a lawyer that would be available to represent him on the motion for summary judgment. This is plenty of time. The oral direction from Prothonotary Tabib issued on June 3, 2022 also made it clear that Mr. Barrett would not be considered a solicitor of record until he had filed a Notice of appointment as Mr. Oddi's solicitor. While counsel for the Defendant indicated that had she received Mr. Barrett's Notice of Appointment as Mr. Oddi's solicitor on June 14, 2022, and Mr. Oddi stated that he hired Mr. Barrett as his lawyer two weeks prior to this hearing, as of the date and time of this hearing, no Notice of Appointment of a

solicitor for Mr. Oddi had been filed with the Court. Additionally, on June 13, 2022, the Court Registry left two messages at Mr. Barrett's office indicating that no Notice of Appointment had been filed, and received no response. Consequently, Mr. Oddi was self-represented at the hearing of this motion.

[12] The Court explained to Mr. Oddi that June 15, 2022 is the date that was set for the hearing and for Mr. Oddi's "day in Court". For the reasons above, the Court was not prepared to grant Mr. Oddi more time and the requested adjournment. The Court proceeded to hear the parties' submissions on the motion for summary judgment.

III. **Facts**

A. *Relevant Background*

(1) **Mr. Oddi's Property and marijuana growing operation**

[13] On December 4, 2001, Mr. Oddi and his spouse purchased the Property, located at 7838 Twenty Road in Smithville, Ontario, for $235,000.

[14] From 2002 to 2005, Mr. Oddi operated an illegal marijuana growing operation at the Property (the "First Illegal Marijuana Growing Operation"). In 2005, Mr. Oddi was charged with operating an illegal marijuana growing operation and was convicted in 2007. In August 2012, Mr. Oddi was again criminally charged with operating an illegal marijuana growing operation at the Property (the "Second Illegal Marijuana Growing Operation").

[15] On September 11, 2012, Mr. Oddi and his spouse refinanced the Property for $500,000.00 with Paul Michael Siskind ("Siskind"), a third-party private lender (the "Mortgage Agreement"). Mr. Oddi failed to make the required monthly payments in accordance with the Mortgage Agreement.

[16] Despite having operated the Second Illegal Marijuana Growing Operation on the Property in 2012, Mr. Oddi reported a nil income for the 2012 taxation year and did not provide his spouse's income on his income tax return.

[17] On April 15, 2013, Mr. Siskind commenced power of sale proceedings in respect of the Property. At the time, Mr. Oddi owed $526,884.94 on the mortgage. Mr. Siskind sold the Property on December 22, 2014 for $600,000. The Property had been appraised at a value of $595,000.00. Mr. Oddi subsequently commenced an action in the Ontario Superior Court against Mr. Siskind.

(2) **The CRA audit and reassessment of personal income tax**

[18] On his personal income tax returns for the taxation years from 2002 to 2007, Mr. Oddi reported either nil income or $1 income, and reported no business income for the First Illegal Marijuana Growing Operation. By letter dated June 30 2008, a CRA auditor (the "Auditor") wrote to Mr. Oddi to inform him that the CRA had commenced an audit of his personal income tax returns for the 2003 to 2007 taxation years. The Auditor requested that Mr. Oddi contact her within seven days of the date of the letter to arrange an appointment, and asked that he provide certain information and records related to his personal and business activities.

[19] On November 14, 2008, the Auditor sent a proposal letter to Mr. Oddi (the “November 2008 Proposal Letter”), which stated that Mr. Oddi's personal income tax returns for the 2004 to 2007 taxation years would be readjusted to include a total of $605,815.00 of unreported income and $41,106.00 in Goods and Services Tax ("GST") on the unreported income. The Defendant states that Mr. Oddi did not have a GST account associated with the First Illegal Marijuana Growing Operation. In order to issue the assessments for the GST, the Auditor created a GST account and listed the St. Catharines Tax Services Office as Mr. Oddi’s address for administrative purposes.

[20] On January 6, 2009, the Auditor sent a final audit letter, which included reassessments of Mr. Oddi's personal income tax returns for the 2002 and 2003 taxation years, including unreported income of $56,000 for 2002 and $71,000 for 2003.

[21] On January 23, 2009, CRA issued Notices of Assessment of the GST for the 2002 to 2007 years in the amount of $69,082.66 (the "GST Assessments"). The Auditor did not change the address on Mr. Oddi's GST account before issuing the GST Assessments and Mr. Oddi did not receive them.

[22] On January 30, 2009, CRA issued Notices of Reassessment for the 2002 to 2007 taxation years resulting in a tax debt of $512,966.39, including interest and penalties (the "2009 T1 Reassessments"). The 2009 T1 Reassessments were sent to the Property.

[23] On March 14, 2009, Mr. Oddi filed Notices of Objection to the 2009 T1 Reassessments. He retained an accountant, Larry Joslin (“Joslin”), who communicated with the CRA and assisted Mr. Oddi with the objections process. On November 1, 2010, the CRA allowed Mr. Oddi's objection in part and issued Notices of Reassessment resulting in a reduction of Mr. Oddi's personal income tax debt to $58,470.23 for the 2002 to 2006 taxation years (the “2010 T1 Reassessments"). Mr. Oddi did not object to the 2010 Tl Reassessments.

(3) **Collection of personal income tax and GST debts**

[24] CRA Collections assumed responsibility for the collection of Mr. Oddi's personal income tax and GST debts after they were assessed. To track the steps taken in the collections, CRA Collections uses a database called the Automated Collections and Source Deductions Enforcement Systems Diary ("ACSES Diary"), which is maintained for each taxpayer account. The ACSES Diary is used to create "diary notes" of collection steps taken, to create and send letters, to raise certain assessments and to generate correspondence documents. In Mr. Oddi's case, CRA Collections maintained one ACSES Diary for his personal income tax debt and another ACSES Diary for his GST debt. The ACSES Diary indicates that CRA Collections reviewed Mr. Oddi’s accounts and contacted him on several occasions about paying his personal income tax and GST debts but did not take any collection action until 2012.

[25] On January 26, 2012, a CRA Collections officer sent standard legal warning letters to Mr. Oddi, advising him of the amounts owed for personal income taxes and GST and requesting that Mr. Oddi contact CRA Collections within 14 days. Mr. Oddi did not contact the CRA Collections officer as requested. The legal warning letter regarding Mr. Oddi’s GST debt was

sent to the wrong address, as were the Notices of Assessment for GST. However, the legal warning letter regarding Mr. Oddi's personal income tax debt was sent to the Property.

[26] Mr. Oddi did not make any voluntary payments toward either outstanding debt. In September 2012, this Court certified Mr. Oddi's personal income tax and GST debts. The CRA obtained two certificates from this Court: 1) a certificate, dated September 6, 2012, in the amount of $65,088.90 in respect of Mr. Oddi's personal income tax debt, which consisted of personal income tax, interest and penalties (Court File No. ITA-8482-12), and 2) a certificate, dated September 7, 2012, in the amount of $82,771.19 in respect of Mr. Oddi's GST debt, which consisted of GST and interest applicable from August 23, 2012 to the day of payment (Court File No. ETA-6512-12).

[27] On October 9, 2012, CRA Collections registered two liens on the title of the Property: a lien in the amount of $65,088.90 in respect of Mr. Oddi's personal income tax debt (the "Personal Income Tax Lien"), and a lien in the amount of $82,771.19 in respect of Mr. Oddi's GST debt (the "GST Lien"). By letter dated October 26, 2012, CRA Collections advised Mr. Oddi that the Personal Income Tax Lien and the GST Lien had been registered on the title of the Property.

[28] On November 2, 2012, Mr. Oddi contacted the CRA about the liens. The ACSES Diary entry from November 2, 2012 states that Mr. Oddi and his friend, Adam Stelmaszynski ("Stelmaszynski"), both spoke with a CRA Collections officer. The ACSES Diary entry notes:

> […] Adam asked numerous questions about Mr. Oddi's NOA's. [The Collections Officer] confirmed with him the issuance dates of the NOA's in question. Adam asked about the GST debt and if

> they could appeal the debt. [The Collections Officer] advised the appeal period for this [account] has expired and I did not believe he had any additional recourse, but I would look into the matter and advise.[…] Adam asked if the Agency would be willing to wait until Mr. Oddi was able to have a look through some things and possibly offer a resolution. [The Collections Officer] advised as long as the [account] continues to move forward in a positive manner and a resolution proposed I would be willing to work with him. Adam advised that he would call back in 2 weeks.

(4) **Reassessment of GST**

[29] The Defendant states that it appears that neither the CRA nor Mr. Oddi were aware that Mr. Oddi did not receive the GST Assessments. Mr. Oddi retained three individuals to represent him in his communications with the CRA: Mr. Stelmaszynski, Mr. Joslin, and John Loukidelis ("Loukidelis"), a lawyer with Simpson Wigle LLP.

[30] On March 15, 2013, Mr. Stelmaszynski wrote to CRA Collections, claiming that Mr. Oddi had not received the November 2008 Proposal Letter, any original 'Notice of Assessment' upon which notices of re-assessment may be re-formulated on January 30, 2009, or an explanation regarding the calculation of the amounts noted in the Notices of Reassessment. The letter also states that if the CRA did not lift the liens on the title of Mr. Oddi's property, Mr. Oddi would commence legal proceedings against the CRA.

[31] By letter dated April 12, 2013, Mr. Joslin wrote to CRA Appeals to request an extension of time to file a Notice of Objection in respect of the Notices of Assessment for GST. On April 16, 2013, Mr. Loukidelis contacted CRA Collections to request information regarding the Audit.

A CRA Collections officer provided him with the Auditor's name and contact information. The Auditor agreed to discuss the matter with Mr. Loukidelis.

[32] On April 23, 2013, Ms. Dakers, a team leader in the Audit Division of the CRA wrote to Mr. Loukidelis to confirm their telephone conversation of the previous day, in which they reached an agreement that the GST Assessments would be reassessed to reflect the 2010 T1 Reassessments. The letter states:

> I am sending this letter to confirm the details of our telephone conversation of April 22, 2013, and to provide you with the details regarding our proposed reassessments.
>
> Analysis:
>
> On January 23, 2009, CRA issued reassessments on Mr. Oddi's GST account, however, the Notice of Assessment was incorrectly addressed and has never been received by your client. On January 30, 2009, CRA also issued reassessments of Mr. Oddi's Tl account. The GST and Tl adjustments were both based upon unreported income calculated using a net worth analysis. Your client filed a Notice of Objection disputing the Tl reassessments and was successful in having the Tl reassessment reduced. No corresponding GST adjustment was made.
>
> We acknowledge that our error resulted in the GST Notice of Assessment not being delivered to your client. We have discussed with you the options for dealing with this matter and you have indicated that your client is agreeable to having his GST account reassessed at this time to reflect the correct mailing address and to reduce the assessments based upon the decision made by the Appeals Division.

[33] By letter dated May 14, 2013, CRA Appeals responded to advise that Mr. Oddi's application to appeal the GST Assessments could not be granted because it was not made within

one year after the expiration of the time permitted to file an objection. The letter was sent to Mr. Joslin, and a copy was mailed to the Property.

[34] On May 17, 2013, the CRA issued Notices of Reassessment of GST, whereby Mr. Oddi's GST debt was reduced to $17,744.97 as of that date (the "GST Reassessments"). The GST Reassessments were sent to the Property. Interest relief was later processed to further reduce Mr. Oddi's GST debt. The August 13, 2013 ACSES Diary entry indicates that the debt was $14,493.64 on this date.

(5) **Request to remove the liens**

[35] Between January 2013 and July 2014, Mr. Oddi and his representatives, Mr. Loukidelis and Mr. Stelmaszynski, contacted CRA Collections regarding the liens. The ACSES Diary entries from this period indicate that Mr. Loukidelis and Mr. Stelmaszynski advised CRA Collections several times that Mr. Oddi would pay his outstanding personal income tax and GST debts. On other occasions, Mr. Oddi and Mr. Stelmaszynski requested that the CRA remove the liens.

[36] The ACSES Diary entry from April 2, 2013 indicates that a CRA Collections officer refused to remove the liens until the payments were received on the accounts. However, the Collections officer offered to provide the proposed lenders with comfort letters, which would confirm the amounts outstanding on the liens, the required payments, and that the liens would be discharged once the amounts owing were paid in full.

[37] On July 31, 2014, the CRA Collections officer provided Mr. Oddi with the current personal income tax and GST balances and stated that he would send a current Statement of Account of Mr. Oddi's personal income tax account to show to any potential lenders.

[38] Mr. Oddi did not provide CRA Collections with the contact information of any proposed lenders or lawyers dealing with the sale of the property, nor any correspondence regarding financing. The CRA Collections officer also did not receive any correspondence or documentation to support Mr. Oddi's claim that he could not secure financing because of the CRA's liens.

[39] Mr. Oddi claims that he had secured refinancing in 2014. This claim is based on two letters sent from Capital Direct Lending Corp. to Centum Fundsource Financial, both dated August 29, 2014 ("August 2014 Letters"). The first letter states that Capital Direct Lending Corp. had secured a first mortgage on the Property in the amount of $600,000, which was subject to a monthly payment of $5,453.00. The lender's fees and other expenses associated with the first proposed mortgage were approximately $38,420.00, resulting in proposed net proceeds of $561,580.00. The second letter states that Capital Direct Lending Corp. had secured a second mortgage on the Property in the amount of $100,000, which was subject to a monthly payment of $1,438.00. The lender's fees and other expenses associated with the second proposed mortgage were approximately $10,250.00 resulting in proposed net proceeds of $89,750.00. Both letters indicate that Mr. Oddi and his spouse had not provided all the documentation required for approval of the proposed amounts.

[40] Mr. Oddi further relies on a letter, dated December 19, 2019, from the Principal Broker at Hotline Mortgages Inc. who had previously been in contact with Mr. Oddi when they were a mortgage agent with Centum Fundsource Financial ("December 2019 Letter"). The December 2019 Letter states that when the financing was initially considered, Mr. Oddi advised that the amount owing on the mortgage to Mr. Siskind was approximately $560,000 (as of December 2013) and the amount owing on the Personal Income Tax Lien and the GST Lien was approximately $85,500 (as of February 2014). The final paragraph of the December 2019 Letter states:

> After lender, broker and legal fees, the new first and second mortgage resulted in $651,330.00 in available funds. However, by August 2014, when I provided you with the mortgage offer, the first mortgage had grown to approx. 592,000 (likely higher) plus the registered liens of 147,859.00 resulting in a shortfall of 88,582.00 before client legal fees requiring Independent Legal Advice. Mr. Oddi did not have funds to cover the shortfall and the refinance could not proceed. As our lender could not receive clear title because CRA Liens could not be paid out in full, nor were they willing to postpone to second position, the refinance ended there.

[41] According to the December 2019 Letter, Mr. Oddi did not provide the up-to-date information to the proposed lender, nor did he seek the assistance of a lawyer with the refinancing. As noted by the Defendant, even if Mr. Oddi had provided the up-to-date amounts owing on the CRA liens, based on the December 2019 Letter, after subtracting the amount owed on the mortgage to Mr. Siskind ($592,000.00) from the $651,330.00 in available funds from the proposed refinancing, there would be $59,330.00 remaining. This amount would have been insufficient to pay the amount owing on the Personal Income Tax Lien.

[42] The ACSES Diary entry from January 5, 2015 notes that Mr. Stelmaszynski advised the CRA that the Property was "sold recently for less than fair market value and that Mr. Oddi was going to contest the sale." The ACSES Diary entry also states that this was the first time the CRA Collections officer had heard of the sale of the Property.

(6) **The CRA's attempt to collect debts by statutory set-off**

[43] On February 18, 2014, the CRA issued a statutory set-off to Service Canada Income Security Programs with respect to Mr. Oddi's Old Age Security Pension and allocated the payments received against Mr. Oddi's outstanding GST debts. Mr. Oddi requested that the statutory set-off be cancelled. The ACSES Diary notes indicate that a CRA Collections officer requested information from Mr. Oddi regarding his financial circumstances on a number of occasions. Mr. Oddi provided the required information on January 14, 2016. On January 18, 2016, after reviewing the information provided by Mr. Oddi, the CRA cancelled the statutory set-off.

(7) **Appeal to the Tax Court of Canada**

[44] In July 2014, Mr. Oddi requested an adjustment of his personal income tax returns for the 2002 to 2006 taxation years. On April 15, 2015, Mr. Oddi filed an appeal to the Tax Court of Canada, in which he sought to appeal reassessments for certain taxation years.

[45] On April 20, 2016, the Tax Court of Canada dismissed the CRA's motion to strike the Notice of Appeal on the basis that it was out of time (see: *Oddi v The Queen*, 2016 TCC 102).

[46] In 2019, the tax appeals were settled by the parties resulting in the issuance of Notices of Reassessment, dated December 16, 2019, which vacated Mr. Oddi's personal income tax debts for the 2002 to 2006 taxation years.

IV. **Issue and Standard of Review**

[47] The issue in this case is whether Mr. Oddi's action should be dismissed on summary judgment, and in particular:

A. *Whether the assessments and reassessments of Mr. Oddi's personal income tax and GST were valid and binding;*

B. *Whether the CRA's collection of Mr. Oddi's debts was proper and valid;*

C. *Whether the cause of action in negligence should be dismissed;*

D. *Whether the cause of action in fraud should be dismissed; and*

E. *Whether the damages claim prefaced on an alleged section 7 Charter breach should be dismissed.*

[48] Pursuant to Rules 213 to 215 of the *Rules*, a summary judgment is intended to allow the Court to summarily dispense with cases that should not proceed to trial because there is no genuine issue to be tried. If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, then summary judgment shall be granted accordingly (Rule 215(1) of the *Rules*). At paragraph 49 of *Hryniak v Mauldin,* 2014

SCC 7 ("*Hryniak*"), the Supreme Court described the circumstances in which such a determination can be made:

> [49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[49] The case of *Hryniak* involved the interpretation of Rule 20 from the Ontario *Rules of Civil Procedure,* RRO 1990, Reg 194, which deals with motions for summary judgment. While the *Rules* relating to summary judgment are worded differently, the principles set out by the Supreme Court in *Hryniak* are of general application and serve as a reminder that the principal goals of a summary judgement are to conserve judicial resources and improve access to justice, while safeguarding the proper disposition of an action (*Hryniak* at para 35).

[50] The test for summary judgment was recently articulated by this Court in *Lauzon v Canada (Revenue Agency),* 2021 FC 431 at paragraph 21:

> The test on a motion for summary judgment is not whether a party cannot possibly succeed at trial; rather, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial (*Milano Pizza* at para 33; *Kaska Dena Council v Canada*, 2018 FC 218 at paras 21, 23 (*Kaska*)). The onus is on the party seeking summary judgment to establish the absence of a genuine issue for trial and that onus carries with it an evidentiary burden (*Collins v Canada*, 2015 FCA 281 at para 71). However, Rule 214 of the Rules requires the responding party to set out specific facts in their response to the motion and to adduce evidence showing that there is a genuine issue for trial (*Canmar*

> *Foods Ltd. v TA Foods Ltd.*, 2021 FCA 7 at para 27). In other words, both parties must put their best evidentiary foot forward and the Court is entitled to assume that no new evidence would be presented at trial (*Samson First Nation v Canada*, 2015 FC 836 at para 94; aff'd 2016 FCA 223 at paras 21, 24; *Kaska* at para 23).

V. **Analysis**

[51] The Defendant submits that this case meets the test for summary judgment: the case is so doubtful that it does not deserve consideration by a trier of fact at a future trial. The Defendant maintains that the facts in this case are not complex, and the Court has a complete factual record relating to the matters in issue. The record before this Court in this matter is comprehensive: the parties have exchanged affidavits, conducted cross-examinations on affidavits and provided answers to undertakings. Additionally, by order dated March 3, 2022, Prothonotary Tabib found that the Defendant has properly responded to the Plaintiff's follow-up questions to the Defendant's responses to further questions on their affidavit.

A. *Whether the assessments and reassessments of Mr. Oddi's personal income tax and GST were valid and binding*

[52] First, the Defendant submits that the assessments and reassessments of Mr. Oddi's personal income tax and GST were valid and binding. Both the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.) (the "*ITA*") and the *Excise Tax Act*, R.S.C., 1985, c. E-15 (the "*ETA*") provide a complete and complex structure for dealing with a multitude of tax-related claims (*Canada v Addison & Leyen Ltd.*, 2007 SCC 33 at para 11). The Defendant maintains that the 2009 T1 Reassessments were valid and binding under the *ITA* until CRA Appeals varied them by issuing

the 2010 T1 Reassessments. Mr. Oddi did not object to the 2010 T1 Reassessments and the personal income tax debt was properly collectable on or about February 1, 2011. The GST Assessments were also valid and binding under section 299 of the *ETA*. Taxpayers who do not receive Notices of Assessment or Reassessment may apply for an extension of time to object to the CRA or to appeal to the Tax Court for an extension of time to appeal those assessments (*ETA*, sections 299, 303-304). In Mr. Oddi's case, the CRA agreed to reassess the GST Assessments within eight days after Mr. Loukidelis contacted the CRA Collections officer on April 16, 2013.

[53] As noted by the Defendant, the *ITA* and *ETA* provide the structure for tax-related claims and assessments. Subsection 152(8) of the *ITA* stipulates:

Assessment deemed valid and binding	**Présomption de validité de la cotisation**
152 (8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.	152 (8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

[54] This same language appears at subsection 299(4) of the *ETA*. Additionally, subsection 299(5) of the *ETA* provides:

Irregularities	**Irrégularités**
(5) An appeal from an assessment shall not be allowed by reasons only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Part.	(5) L'appel d'une cotisation ne peut être accueilli pour cause seulement d'irrégularité, de vice de forme, d'omission ou d'erreur de la part d'une personne dans le respect d'une disposition directrice de la présente partie.

[55] Pursuant to section 165 of the *ITA* and section 301 of the *ETA*, a taxpayer may object to an assessment or reassessment by filing a Notice of Objection within 90 days after the Notice of Assessment is sent. The Minister of National Revenue then considers this application and decides whether to grant or refuse it.

[56] Under section 169 of the *ITA* and section 302 of the *ETA*, a taxpayer who has served a Notice of Objection to an assessment may appeal to the Tax Court of Canada to have the assessment vacated or varied after either: a) the Minister has confirmed the assessment or reassessed, or b) 90 days have elapsed after service of the Notice of Objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed. However, no appeal to the Tax Court of Canada may be instituted after the expiration of 90 days from the day notice is sent to the taxpayer that the Minister has confirmed the assessment or reassessed.

[57] Pursuant to subsection 12(1) of the *Tax Court of Canada Act*, RSC 1985 c. T-2, the Tax Court of Canada has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *ITA* and the *ETA*. Pursuant to section 171 of the *ITA*, the Tax Court may dispose of an appeal by a) dismissing it, or b) allowing it and either vacating,

varying or referring the assessment back to the Minister for reconsideration and reassessment. The corresponding provision at subsection 309(1) of the *ETA* states that the Tax Court may dispose of an appeal from an assessment by a) dismissing it, or b) allowing it and either vacating or referring the assessment back to the Minister for reconsideration and reassessment.

[58] I agree with the Defendant's arguments that the assessments and reassessments of Mr. Oddi's personal income tax and GST were valid and binding in accordance with the *ITA* and *ETA*. It is clear from the record that the 2010 T1 Reassessments were valid and binding. While Mr. Oddi had a statutory right to object to the 2010 T1 Reassessments, he chose not to do so.

[59] With regard to the GST Assessments, pursuant to sections 303 to 305 of the *ETA*, taxpayers may make an application to the Minister for an extension of time to file a notice of objection (*ETA*, section 303), apply to the Tax Court to have the application granted (*ETA*, section 304), or apply to the Tax Court for an extension of time to appeal the assessments (*ETA*, section 305).

[60] On April 12, 2013, Mr. Joslin wrote to CRA Appeals on behalf of Mr. Oddi to request an extension of time to file a Notice of Objection of the Notices of Assessment for GST. In a letter dated April 23, 2013, Ms. Dakers, a team leader in the Audit Division of the CRA, wrote to Mr. Oddi's legal counsel, Mr. Loukidelis, acknowledging that the CRA's error resulted in the GST Notice of Assessment not being delivered to Mr. Oddi. Ms. Dakers' letter confirmed the conversation she had with Mr. Loukidelis on April 22, 2013, in which they agreed that the GST Assessments would be reassessed to reflect the 2010 T1 Reassessments. On May 14, 2013, CRA

Appeals advised Mr. Oddi that his application to appeal the GST Assessments could not be granted because it was made beyond the deadline to file an objection. However, on May 17, 2013, following the letter from Ms. Dakers on April 23, 2013, the CRA issued the GST Reassessments in keeping with the 2010 T1 Reassessments.

[61] According to the record, the GST Reassessments were issued on May 17, 2013, reducing Mr. Oddi's GST debt. The GST debt was also further reduced in August 2013 after interest relief was processed. When it became aware of its error, the CRA acted promptly to rectify the error and reassessed the GST Assessments to ensure that they were consistent with the 2010 T1 Reassessments. I therefore find that the GST Reassessments are also valid and binding.

B. *Whether the CRA's collection of Mr. Oddi's debts was proper and valid*

[62] The Defendant submits that the collection of Mr. Oddi's debts was proper and valid. Under the *ITA* and *ETA,* the CRA has the authority and discretion to take collection measures, including registering liens and statutory set-offs – both of which were exercised in this case (*ITA*, sections 220-224; *ETA*, section 313-325). The Defendant argues that the Personal Income Tax Lien was validly registered on the title of the Property well after the collection restrictions expired.

[63] The Defendant further notes that while there are no collection restrictions under the *ETA* for GST debts, the CRA did register the GST Lien before Mr. Oddi received the GST Assessments and refused Mr. Oddi and his representatives' requests to lift the liens on the Property. Under subsection 315(1) of the *ETA,* the Minister may not take collection action in

respect of any amount payable or remittable by a person that may be assessed, other than interest, unless the amount has been assessed. Any amount assessed and unpaid after an assessment is sent to a person is payable forthwith by the person to the Receiver General. The Defendant maintains that the CRA's decision not to remove the liens on the Property was a discretionary decision. Pursuant to sections 18 and 18.1 of the *Federal Courts Act* (R.S.C., 1985, c. F-7), taxpayers may seek judicial review of administrative discretionary decisions.

[64] The Federal Court has considered applications for judicial review of decisions made by CRA Collections refusing to lift liens. For instance, in *893134 Ontario Inc. (Mega Distributors) v Canada (National Revenue),* 2008 FC 715, this Court considered the Minister of National Revenue's refusal to lift a lien registered on the tax debtor's real property pending the determination of a disputed GST/HST assessment. The Court held that the Minister had no obligation "[…] to go beyond the statutory scheme and consider lifting or postponing the lien in order to assist the Applicant […]" (at para 20). The Court also notes at paragraph 41:

> Tax enforcement measures often appear unfair and draconian… But the governing legislation suggests that Parliament intended the Minister to have the powers and the security that has been taken in this case, even when the taxpayer objects to the conduct of CRA and its officials.

[65] The Defendant submits that Mr. Oddi was entitled to bring an application for judicial review of the CRA's decision not to lift the liens, yet he chose not to do so. Mr. Oddi was also represented by legal counsel, Mr. Loukidelis, at the time of the refinancing efforts when it was open to him to apply for judicial review of the CRA's decision.

[66] I find that the CRA's collection of Mr. Oddi's debts was proper and valid. I agree with the Defendant that the Personal Income Tax Lien was validly registered on the title of the Property after the collection restrictions expired. Pursuant to section 222(4) of the *ITA*, the limitation period for the collection of a taxpayers' tax debt begins 90 days after the notice of assessment is sent or served. The 2010 T1 Reassessments were issued on November 1, 2010. The Personal Income Tax Lien was registered on October 9, 2012, well after the 90-day limitation period.

[67] With respect to the GST Lien, the Defendant has conceded that that the GST Assessments were issued on January 23, 2009, yet sent to the wrong address. However, this Court certified the GST debt on September 7, 2012 (section 316(1) of the *ETA*), and the CRA did not register the GST Lien until October 9, 2012. The GST Lien was thus not issued before the certification of the GST debt. As stipulated in subsection 316(4) of the *ETA*:

Charge on property	**Charge sur un bien**
(4) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (2), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing	(4) Un document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur en application du paragraphe (2), un bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (ce document ou bref ou cette notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge un bien du débiteur situé dans une province, ou un droit sur un tel bien, de la même manière que peut l'être, au titre ou en

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or	a) soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;
(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province	b) soit d'un montant payable ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.
may be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest	application de la loi provinciale, un document faisant preuve :

[68] The ACSES Diary entry from November 2, 2012 also indicates that during their communications with a CRA Collections officer, Mr. Oddi and his representative, Mr. Stelmaszynski, were aware of the GST debt as they inquired whether it could be appealed.

[69] Furthermore, as noted by the Defendant, Mr. Oddi did not submit an application for judicial review of the CRA's decision to refuse to remove the liens, despite being represented by Mr. Loukidelis at the relevant time. In fact, the evidence submitted by the Defendant indicates that both Mr. Loukidelis and Mr. Stelmaszynski advised CRA Collections that Mr. Oddi would be paying the personal income tax and GST debts. I therefore find that the CRA exercised its discretion to collect Mr. Oddi's debts in a way that was proper and valid.

C. *Whether the cause of action in negligence should be dismissed*

[70] A successful claim in negligence requires a plaintiff to prove the following elements, known as the "*Anns/Cooper*" framework: i) a duty of care owed by the defendant to the plaintiff;

ii) a breach of the duty of care through conduct falling below the standard of care; iii) damages suffered by the plaintiff; and iv) causation (*Cooper v Hobart*, 2001 SCC 79 ("*Cooper*"); *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 ("*Hill*") at paras 20, 90, 93-94).

[71] In determining the first element – whether a duty of care is owed to a plaintiff – the Court begins by assessing whether a *prima facie* duty of care in the particular circumstances has already been established by the courts, or if it is analogous to findings made in previous cases. If so, there is no need to engage in the full *Anns/Cooper* analysis. The Supreme Court of Canada recently articulated the *Anns/Cooper* duty of care framework in *Nelson (City) v Marchi*, 2021 SCC 41 ("*Nelson*") from paragraphs 16 to 19:

> [16] In Canada, the *Anns/Cooper* test provides a unifying framework to determine when a duty of care arises under the wide rubric of negligence law, including for allegations of negligence against government officials. But as *Cooper* and subsequent cases make clear, the framework applies differently depending on whether the plaintiff's claim falls within or is analogous to an established duty of care or whether the claim is novel because proximity has not been recognized before.
>
> [17] In novel duty of care cases, the full two-stage *Anns/Cooper* framework applies. Under the first stage, the court asks whether a *prima facie* duty of care exists between the parties. The question at this stage is whether the harm was a reasonably foreseeable consequence of the defendant's conduct, and whether there is "a relationship of proximity in which the failure to take reasonable care might foreseeably cause loss or harm to the plaintiff" (*Rankin's Garage*, at para. 18). Proximity arises in those relationships where the parties are in such a "close and direct" relationship that it would be "just and fair having regard to that relationship to impose a duty of care in law upon the defendant" (*Cooper*, at paras. 32 and 34).

> [18] If there is sufficient proximity to ground a *prima facie* duty of care, it is necessary to proceed to the second stage of the *Anns/Cooper* test, which asks whether there are residual policy concerns outside the parties' relationship that should negate the *prima facie* duty of care (*Cooper*, at para. 30). As stated in *Cooper*, at para. 37, the residual policy stage of the *Anns/Cooper* test raises questions relating to "the effect of recognizing a duty of care on other legal obligations, the legal system and society more generally", such as:
>
> > Does the law already provide a remedy? Would recognition of the duty of care create the spectre of unlimited liability to an unlimited class? Are there other reasons of broad policy that suggest that the duty of care should not be recognized?
>
> [19] When the duty of care at issue is *not* novel, there is generally no need to proceed through the full two-stage *Anns/Cooper* framework. Over the years, courts in Canada have developed a body of negligence law recognizing categories of cases in which a duty of care has previously been established (*Cooper*, at para. 41; *Childs v. Desormeaux*, 2006 SCC 18, [2006] 1 S.C.R. 643, at para. 15; *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 5). In such cases, "the requisite close and direct relationship is shown" and the first stage of the *Anns/Cooper* framework will be complete, as long as the risk of injury was reasonably foreseeable (*Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, [2017] 2 S.C.R. 855, at para. 26). The second stage of the *Anns/Cooper* test will rarely be necessary because residual policy concerns will have already been taken into account when the duty was first established (*Cooper*, at paras. 36 and 39; *Livent*, at paras. 26 and 28; see also *Edwards v. Law Society of Upper Canada*, 2001 SCC 80, [2001] 3 S.C.R. 562, at paras. 9-10).

[72] The Defendant submits that CRA officers do not owe a duty of care to taxpayers and it is therefore not necessary to apply the *Anns/Cooper* test. The Defendant notes that Canadian courts have consistently refused to recognize that CRA officers conducting tax administration functions including audits, assessments, or collections owe a private law duty of care to taxpayers. For instance in *Canus v Canada Customs*, 2005 NSSC 283, the Supreme Court of Nova Scotia found that there were no authorities to establish that an employee of the CRA was found to owe a duty

of care, nor was this analogous to any existing categories (at paras 61, 63-64). The Defendant cites several other cases to support this position.

[73] The jurisprudence relied on by the Defendant demonstrates that the CRA does not owe a duty of care towards taxpayers, nor is there an analogous case to establish such a duty (see the discussion in *Softcom Solutions Inc. v Canada (Attorney General),* 2020 ONSC 3290 ("*Softcom*") at para 191, and *Grenon v Canada Revenue Agency,* 2017 ABCA 96 ("*Grenon*") at paras 8-15). The jurisprudence establishes that there is insufficient proximity because of the "inherently adverse relationship" between CRA officers who are exercising a statutory function and taxpayers (*Grenon* at para 25; see also: *Humby v Canada*, 2013 FC 1136 at paras 118-123 ("*Humby*"), aff'd: *Humby v Canada,* 2015 FCA 266; *Leighton v Canada (Attorney General),* 2012 BCSC 961 ("*Leighton*") at paras 48, 54, 57; *Canada v Scheuer*, 2016 FCA 7 at paras 30-31).

[74] Furthermore, the overriding duty of a CRA officer to its employer (the government, and by extension the Canadian public) and not to the taxpayer is incompatible with the creation of a duty of care (see discussion in *783783 Alberta Ltd. v Canada (Attorney General),* 2010 ABCA 226 at paras 45-47 ("*783783 Alberta*"); *Foote v Canada (Attorney General),* 2011 BCSC 1062 at paras 40-43; *Deluca v Canada*, 2016 ONSC 3865 at paras 42-44 ("*Deluca*"); *Piett v Global Learning Group Inc*., 2021 SKQB 232 at paras 113-120; *Signal Hill Manufacturing Inc v Canada Revenue Agency*, 2021 ABQB 460 at paras 65-75). Much of the case law outlines how the CRA and taxpayer occupy opposing positions; the nature of their relationship – that of debtor-creditor – is inherently adverse. As noted by this Court in *Humby* at paragraph 122, "The

relationship between the debtor and the Minister is governed, in these circumstances, by statute. Absent a breach of the powers in the statute, the Minister has no duty towards a debtor other than to act in accordance with the statute for purposes of the statute." As discussed above, the Tax Court also provides Mr. Oddi with the proper forum for redress.

[75] There is one case, *Leroux v Canada Revenue Agency*, 2014 BCSC 720 ("*Leroux*"), in which the Supreme Court of British Columbia found that a *prima facie* duty of care exists on behalf of CRA auditors towards the plaintiff (at para 305). This finding was based on the "huge penalties" at stake. *Leroux* is regarded as unique and recognized as the "outlier case" (*Jayco, Inc.v Her Majesty the Queen in Right of Canada*, 2021 ONSC 2120 ("*Jayco (ONSC)*") at para 29). While *Leroux* was mentioned favourably by the Ontario Court of Appeal in *McCreight v Canada (Attorney General)*, 2013 ONCA 483 ("*McCreight*"), *McCreight* finds that a claim in negligence is available when the CRA conducts an investigation into criminal offences. This is not the case in the matter at hand.

[76] Furthermore, in *Grenon,* the Alberta Court of Appeal noted that the chamber judge was correct to distinguish *Leroux*: "In our view, creating a duty based on the size of a monetary penalty provides insufficient footing – and bad policy – upon which to ground a private law duty of care." I find *Grenon* to be persuasive, particularly given the ample jurisprudence finding that there does not exist a duty of care from the CRA towards taxpayers. The views expressed in *Grenon* were also most recently affirmed in *Jayco Inc. v Canada (Revenue Agency),* 2022 ONCA 277 ("*Jayco (ONCA)*"), in which the Ontario Court of Appeal affirmed the Ontario

Superior Court's decision in *Jayco (ONSC)* to dismiss Jayco's duty of care claim (at para 19; see also paras 25-35). At paragraph 30 of *Jayco (ONCA)*, the Ontario Court of Appeal states:

> This court's approval of *Leroux v. Canada Revenue Agency*, 2012 BCCA 63, 347 D.L.R. (4th) 122 as a basis to allow the action to proceed where criminal charges have been laid does not amount to affirmation that a duty of care also exists when the CRA undertakes administrative assessments and audits.

[77] Having found that the jurisprudence supports the finding that the CRA does not owe a duty of care to taxpayers, the Court is not required to go through the *Anns/Cooper* test. However, for the sake of clarity, I will apply the framework to the matter at issue to demonstrate that the application of the *Anns/Cooper* test does not establish a duty of care in this case.

(1) **Stage 1 of the *Anns/Cooper* test**

[78] The first stage of the *Anns/Cooper* test is a proximity analysis that involves examining the relationship at issue (*Cooper* at paras 30, 32). When it comes to government actors, proximity may arise by virtue of the statutory scheme, or by virtue of interactions between the plaintiff and the defendant, unless negated by the statutory scheme (*R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 43).

[79] As noted by the Defendant, the statutory framework in the *ITA* and *ETA* do not impose a duty of care. Furthermore, Canadian courts have repeatedly held that there is insufficient proximity to ground a duty of care between CRA officers performing their administrative functions and taxpayers (*Leighton* at para 57, *Humby* at paras 119-122; *783783 Alberta* at paras

44-45; *Deluca* at paras 50-58; *Softcom* at para 191). As this Court emphasized in *Humby*, the relationship between the CRA and a taxpayer in the context of collecting a tax debt that is due and owing is oppositional, and "except in very limited circumstances, there is no duty of care imposed on the Minister when the Minister is attempting to collect a debt" (at para 121).

[80] The Defendant further notes, and I agree, that a duty of care also does not arise from "specific interactions" in this case. Proximity requires a "close and direct" or "special" relationship (*Humby* at para 42; *Cooper* at para 32). The evidentiary record of communications between the CRA and Mr. Oddi clearly demonstrates that the CRA officers who communicated with Mr. Oddi and his representatives were not engaged in "close, direct or special relationships" with them, but rather acted in accordance with their duty to administer and enforce the *ITA* and *ETA* (*ETA*, subsection 275(1)). There were no unique promises or representations made outside of the ordinary work of the CRA. While the CRA officers were willing to provide comfort letters to Mr. Oddi to assist him in securing refinancing from prospective lenders, their job was to collect Mr. Oddi's debts, including using liens and statutory set-offs to do so.

[81] As the Defendant's counsel explained during the hearing, while CRA officers did have several interactions with Mr. Oddi and his representatives, it was part of the CRA's practice to provide letters of comfort. The offer to provide comfort letters is something the CRA would do for anybody in Mr. Oddi's situation and was not unique to Mr. Oddi's case. For instance, the ACSES Diary entry from September 23, 2013 states the following:

> […] call back from [Mr. Stelmaszynski], he advises that [Mr. Oddi] has been trying to obtain financing for the farm, but he is having a hard time […] therefore he would like to know if the

> [CRA] will take partial payment and then defer on the remainder until Mr. Oddi can get back up and running. […][The Collections officer] advised that was unfortunate, but the [CRA] is not a lender and since there is more than sufficient equity our expectations would be that we will receive [payment in full before] lifting our liens […]

[82] I am satisfied that there was no "special" relationship between the CRA Officers and Mr. Oddi or his representatives. As noted by the Defendant's counsel, all of the interactions between the CRA officers and Mr. Oddi or his representatives were professional and can be characterized as the CRA officers fulfilling their mandate to collect the debts from Mr. Oddi, and trying to find a way to assist him in doing so.

(2) **Stage 2 of the *Anns/Cooper* test**

[83] Under the second stage of the *Anns/Cooper* test, it must be determined whether there are policy considerations outside the relationship of the parties that would negate a *prima facie* duty of care. Relevant policy considerations include whether the law already provides a remedy, and whether the recognition of a duty of care creates "the spectre of unlimited liability to an unlimited class" (*Cooper* at para 37).

[84] I agree with the Defendant's position that even if there were a *prima facie* duty of care, stage two residual policy reasons would negate it. First, recognizing a duty of care in the context of the administration of the *ITA* and *ETA* would impede the CRA from fulfilling its duty under those statutes, which is to raise revenue for the government. As noted by the Defendant, auditors cannot be reluctant to take untested positions and CRA Collections officers cannot be afraid of

enforcing compliance with the *ITA* and *ETA*. As explained by the Supreme Court in *R. v McKinlay Transport Ltd*., 1990 CanLII 137 (SCC), [1990] 1 S.C.R. 627, Canada's self-reporting and self-assessing tax system "depends upon the honesty and integrity of taxpayers for its success" (at pp. 636-637). The CRA has broad duties to ensure that all taxes are lawfully owing and correctly assessed and collected (*Leighton* at para 58). Imposing a private law duty of care of the CRA towards taxpayers risks leading to a chilling effect on the CRA's auditors and collections officers. As rightly pointed out by counsel for the Defendant during the hearing, the ACSES Diary entries reveal a number of occasions when Mr. Oddi threatened to take legal action against CRA officers.

[85] Furthermore, in cases of pure economic losses, the Supreme Court cautioned that care must be taken to find that a duty is recognized only where the class of plaintiffs, the time and the amount are determinate (*Design Services Ltd. v Canada*, 2008 SCC 22 (CanLII) at para 62). Imposing a duty of care on the CRA opens the door to a claim in negligence by any taxpayer. As pointed out by the Defendant, this imposes more costs on the Canadian government and gives taxpayers more procedural tools to defer tax.

[86] Finally, it ought to be stressed that other remedies are available to taxpayers: both the *ITA* and *ETA* provide a complete code for challenging incorrect assessments by way of objections and appeals to the Tax Court of Canada, and for seeking extension of time to object to or appeal assessments. Ministerial discretionary decisions, such as imposing a statutory set off or refusing to lift a lien, are also subject to judicial review. If a CRA official behaves in a manner that is

truly egregious and intended to harm a taxpayer, a taxpayer may also be left with the remedy of an intentional tort, such as misfeasance in public office (*Jayco (ONCA)* at para 36).

(3) **Standard of Care**

[87] The Defendant submits that if this Court finds sufficient legal proximity, this claim fails because CRA officers acted promptly and reasonably in correcting errors when they were discovered and in removing the statutory set-off once they had all the required information. The Defendant argues that the CRA's conduct did not fall below the reasonable standard of care. I agree.

[88] Reasonableness applies when assessing the standard of care: a person must exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances (*Nelson* at para 91, citing *Ryan v Victoria (City)*, 1999 CanLII 706 (SCC) at para. 28). The reasonableness standard applies regardless of whether the defendant is a government or a private actor. When assessing the standard of care, the court must consider the conduct within the scope of the relevant time (*Hill* at paras 77-78). I agree with the Defendant's submissions that neither the Auditor's error regarding the mailing address, nor CRA Collections' refusal to remove the liens in the circumstances here fall outside the scope of a reasonable standard of care. When the Auditor's error in sending the GST Assessments to the wrong address was discovered, it was corrected promptly by reassessing the GST Assessments, with the approval of Mr. Loukidelis, Mr. Oddi's authorized representative. Interest relief was also later provided. As the Defendant notes, the CRA's refusal to remove the liens upon Mr. Oddi's

request was a discretionary decision that could have been the subject of judicial review, which Mr. Oddi chose not to pursue.

(4) **Damages and Causation**

[89] The fact that the Property was sold under power of sale proceedings by the third party mortgagee is not in dispute. Mr. Siskind commenced the power of sale proceedings approximately seven months after the mortgage was registered on the title of the Property, after Mr. Oddi failed to make payments in accordance with the Mortgage Agreement. On cross-examination, Mr. Oddi admitted that he did not make all of the required mortgage payments because he was incarcerated at the time.

[90] According to the record, the Mortgage Agreement was registered on September 11, 2012; the power of sale proceedings were commenced by Mr. Siskind on April 15, 2013; and Mr. Siskind sold the Property on December 22, 2014 for $600,000. Following the sale of the Property, Mr. Oddi commenced an action against Mr. Siskind in the Ontario Superior Court. I agree with the Defendant's position that Mr. Oddi's failure to make all of the required mortgage payments was not because of any action by the CRA, or the outstanding tax debts. Simply put, the loss of the Property is a result of Mr. Oddi's poor management of funds and his failure to pay his mortgage payments. I therefore do not find that Mr. Oddi has proven that damages resulted from the CRA's action.

[91] Furthermore, I do not find that Mr. Oddi's allegations that the loss of the Property and certain personal property was due to his inability to obtain refinancing meet the test for causation

against the CRA. When determining causation, the primary test is the "but for" test in negligence actions. The "but for" test requires a plaintiff to demonstrate that the injury would not have occurred but for the negligence of the defendant (*Resurfice Corp. v Hanke*, 2007 SCC 7 at paras 21-22, citing: *Athey v Leonati*, 1996 CanLII 183 (SCC) at para 14).

[92] I agree with the Defendant's argument that there is no factual or causal connection between the CRA's actions and Mr. Oddi's loss of the Property. I do not find that the CRA is responsible for the alleged improvident sale of the Property, nor is it responsible for the alleged loss of other personal property referred to by Mr. Oddi in his Statement of Claim. Mr. Oddi entered into the Mortgage Agreement shortly after being criminally charged with operating the Second Illegal Marijuana Growing Operation in 2012, a year in which he declared a nil income on his income tax return and failed to make the required monthly mortgage payments. Mr. Siskind sold the Property under power of sale proceedings because of Mr. Oddi's failure to pay the mortgage. This was a private arrangement between Mr. Siskind and Mr. Oddi.

[93] As rightly noted by the Defendant, due to Mr. Oddi's criminal enterprises, his financial decisions, his failure to declare his business income from the marijuana growing operations on his income tax returns, and his failure to pursue legal recourse at appropriate times and in the appropriate manner, Mr. Oddi is the author of his own misfortune.

D. *Whether the cause of action in fraud should be dismissed.*

[94] The Supreme Court in *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8 at paragraph 21 outlines the four elements of the tort of civil fraud:

> From this jurisprudential history, I summarize the following four elements of the tort of civil fraud: (1) a false representation made by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness); (3) the false representation caused the plaintiff to act; and (4) the plaintiff's actions resulted in a loss.

[95] The Defendant notes that a higher standard of particulars is required when alleging fraud (Rule 181(1)(a), the *Rules*), yet Mr. Oddi has not demonstrated any particulars, nor has he submitted evidence of falsity or intent that would support his allegations of fraud against the CRA. On the first element of the test, no false representations have been identified. The Defendant states that if Mr. Oddi is alleging that the false representations relate to an error in the 2009 T1 Reassessments and/or the GST Assessments; this is a complaint relating to the CRA's assessment and is addressed by the code provided for in the *ITA* and *ETA*, which fall under the exclusive jurisdiction of the Tax Court. It cannot be characterized as a complaint of fraud.

[96] I agree with the Defendant that a claim about an incorrect assessment is not a legitimate basis to assert a claim of fraud. Pursuant to subsection 152(8) of the *ITA*, subject to being varied or vacated on an objection or appeal, and subject to reassessment, an assessment is deemed valid and binding notwithstanding any error, defect or omission in the assessment. Similar language is used in subsection 299(4) of the *ETA*. As has been discussed, Mr. Oddi objected to the 2009 T1 Reassessments. On November 1, 2010, the CRA allowed Mr. Oddi's objection in part and varied the 2009 T1 Reassessments by issuing the 2010 T1 Reassessments, to which Mr. Oddi did not object.

[97] With regard to the GST Assessments, due to an error on the part of the CRA, Mr. Oddi failed to receive the original GST Notice of Assessment by mail. However, the April 23, 2013 letter from Ms. Dakers acknowledges the CRA's error and indicates that Mr. Loukidelis agreed on Mr. Oddi's behalf to have the GST account reassessed "to reflect the correct mailing address and to reduce the assessments based upon the decision made by the Appeals Division [in the 2010 T1 Reassessments]". The GST Reassessments reduced Mr. Oddi's GST debt, and interest relief was later processed to further reduce the GST debt. I therefore find that the CRA's error was corrected when the CRA issued the GST Reassessments to reflect the 2010 T1 Reassessments and the elements of the test for fraud have not been made out.

E. *Whether the damages claim prefaced on an alleged section 7 Charter breach should be dismissed.*

[98] Finally, I agree with the Defendant's position that Mr. Oddi has not demonstrated a violation of section 7 of the *Charter,* nor has a damages claim flowing from such a violation been made out. Section 7 of the *Charter* states:

Life, liberty and security of person	**Vie, liberté et sécurité**
7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[99] As the Defendant notes, the restriction on a person's right to security of the person is only made out if the alleged state action has had a serious and profound effect on a person's physical

or psychological integrity (*Gosselin v Quebec (Attorney General)*, 2002 SCC 84, citing *R. v Morgentaler*, 1988 CanLII 90 (SCC) and *New Brunswick (Minister of Health and Community Services) v G. (J.)*, 1999 CanLII 653 (SCC)). In my view, there is insufficient evidence to demonstrate that the CRA's actions rise to the level of depriving Mr. Oddi of his *Charter* right to security of the person.

VI. **Costs**

[100] The Defendant requests costs in this matter. As was rightly noted by the Defendant's counsel during the hearing, this case has taken up years of the Court's time and resources. Mr. Oddi filed his original Statement of Claim on December 22, 2016 and since February 1, 2018, this case has continued as a specially managed proceeding, including numerous case management conferences with Prothonotary Aylen (as she then was), Prothonotary Furlanetto (as she then was), and Prothonotary Tabib, as well as a failed mediation conducted by Prothonotary Aylen (as she then was). The Defendant's lawyers have also spent copious amounts of time and resources defending this action that is without merit.

[101] Considering the extensive history of this case and the demands it placed on the Court's resources, an award of costs in favour of the Defendant is appropriate in this case. In accordance with the factors set out in Rule 400(3) of the *Rules*, costs are fixed in the amount of $10,000 to be paid by Mr. Oddi to the Defendant.

VII. **Conclusion**

[102] I note that Mr. Oddi represented himself in this motion for summary judgment. I recognize that his submissions may not offer the type of legal analysis normally provided by counsel, and I have done my best to accommodate him in this regard. I also thank the Defendant's counsel for their exercise of patience, respect, and professionalism during oral arguments.

[103] In conclusion, I am satisfied that the Court was presented with sufficient documentation relating to the matters at issue in this case. The parties had ample opportunity to file their materials, they exchanged affidavits and had the chance to conduct cross-examinations on each other's affidavits. As discussed above, I find that the CRA's assessments and reassessments of Mr. Oddi's personal income tax and GST were valid and binding, and that the CRA's collection of Mr. Oddi's debts was proper and valid. I also do not find that a duty of care has been established in this case to support the cause of action in negligence, nor has Mr. Oddi demonstrated that the CRA's actions led to fraud or a breach of his section 7 of the *Charter*. Overall, I find that this case meets the test for summary judgement. I therefore grant the Defendant's motion for summary judgment and order that this action be dismissed with costs.

JUDGMENT in T-2235-16

THIS COURT'S JUDGMENT is that:

1. The motion for summary judgement is granted.

2. The Plaintiff's action is dismissed in its entirety.

3. Costs are awarded in the amount of $10,000 inclusive of tax and disbursements, payable to the Defendant by the Plaintiff.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2235-16
STYLE OF CAUSE:	ALBERT JAMES ODDI v CANADA REVENUE AGENCY
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 15, 2022
JUDGMENT AND REASONS:	AHMED J.
DATED:	SEPTEMBER 21, 2022

APPEARANCES:

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Maria Vujnovic Sarah Mackenzie	FOR THE DEFENDANT

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