

Federal Court



Cour fédérale

**Date: 20230725**

**Docket: T-2348-22**

**Citation: 2023 FC 1015**

**Ottawa, Ontario, July 25, 2023**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**ROD VERDIE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Rod Verdie, the Applicant, requests the Court's review of a decision of a Senior Program Advisor, Recourse Directorate, for the Minister of Public Safety and Emergency Preparedness (the Minister's Delegate). In their decision, the Minister's Delegate found that: (1) Mr. Verdie had contravened section 7.1 of the *Customs Act*, RSC 1985, c 1 (2nd Supp) (*Customs Act*) by deliberately providing a false value for a boat and trailer he was importing into Canada; and (2) the boat and trailer were lawfully seized pursuant to section 110 of the *Customs Act*. The

Minister's Delegate also concluded that the amount of \$5,779.87 paid by Mr. Verdie for the return of the seized items was reasonable and would be held as forfeit.

[2] For the reasons set out below, I conclude that the Court does not have jurisdiction to hear Mr. Verdie's application for judicial review and that, in any event, the decision under review is reasonable. Accordingly, I will dismiss this application.

I. Background

[3] On May 28, 2022, Mr. Verdie entered Canada through a port of entry at Aldergrove, British Columbia. He was travelling by car behind which he was towing a boat and trailer. When questioned by a Canada Border Services Agency (CBSA) officer, Mr. Verdie stated that he had received the boat and trailer as gifts from an individual in the United States and presented a bill of sale to the officer indicating that the items were a gift. Mr. Verdie declared that the boat and trailer had a combined value of \$2,000 US. The officer referred Mr. Verdie to a secondary inspection officer to verify the value of the two items.

[4] Mr. Verdie presented the same bill of sale to the second CBSA officer. The officer asked Mr. Verdie whether the vendor had listed the boat or trailer for sale online and Mr. Verdie replied, "No". However, using the boat's registration number, the officer located an online advertisement listing the boat for sale for \$11,250 US. The officer presented this information to Mr. Verdie who, as described by the officer, "became lost for words". The officer asked for proof of payment for the boat and, from his cell phone, Mr. Verdie provided bank records that included a bank transfer to the vendor in the amount of \$10,250 US.

[5] The second officer seized the boat and trailer pursuant to section 110 of the *Customs Act*. The terms of release were assessed at 55% of the undervalued amount because of the presentation of the false bill of sale. Mr. Verdie executed a new bill of sale indicating he had paid \$10,250 US for the two items and paid the required \$5,779.87 CA for the release of the boat and trailer.

[6] On May 29, 2022, Mr. Verdie appealed the second officer's enforcement action and requested a lower release amount. Mr. Verdie admitted that he paid the vendor \$10,250 US but presented the false bill of sale because the vendor told him it was the way to avoid paying taxes. Mr. Verdie stated that he felt guilty and would not provide misleading information again. He asked for sympathy and a reduction of the seizure penalty.

[7] In a subsequent email, Mr. Verdie stated that, when he crossed the border on May 28, 2022, he had only initiated the money transfer and that the vendor received payment on May 30, 2022. He reiterated his feelings of guilt and again asked for sympathy.

## II. Decision under review

[8] In their October 17, 2022 decision regarding Mr. Verdie's appeal, the Minister's Delegate determined:

- (1) under section 131 of the *Customs Act*, that Mr. Verdie contravened section 7.1 of the *Customs Act* by deliberately providing information that was not true, accurate and complete regarding the value of the boat and trailer and that the boat and trailer were lawfully seized under section 110 of the *Customs Act*; and

- (2) under section 133 of the *Customs Act*, that the amount of \$5,779.87 received from Mr. Verdie for the return of the seized boat and trailer would be held as forfeit.

[9] In terms of the structure of the decision, the Minister's Delegate set out the background facts relating to Mr. Verdie's entry to Canada on May 28, 2022, as described above, the positions of the two parties (the CBSA and Mr. Verdie) and the legal framework for the decision.

[10] The Minister's Delegate noted that it was Mr. Verdie's responsibility to make a full and truthful declaration regarding the value of the boat and trailer upon entry to Canada and to pay any applicable duties and taxes. A review of the evidence established that Mr. Verdie was provided an opportunity to make a declaration upon arrival to Canada and advised the first CBSA officer that the boat and trailer were valued at \$2,000. However, Mr. Verdie later admitted to the second CBSA officer that the actual amount he paid for the boat and trailer was \$10,250 US. The Minister's Delegate acknowledged Mr. Verdie's promise not to provide inaccurate information in the future but nevertheless concluded that Mr. Verdie had made a deliberate attempt to evade paying duties and taxes. Although the money transfer by Mr. Verdie may not have been completed until after the date of the enforcement action, the \$10,250 US was the agreed transactional value between Mr. Verdie and the vendor.

[11] Accordingly, the Minister's Delegate concluded that Mr. Verdie had contravened section 7.1 of the *Customs Act* and the boat and trailer were lawfully seized pursuant to section 110 of the same *Act*. The Minister's Delegate reviewed the terms offered to Mr. Verdie for the release of the seized items (55% of the undervalued amount of \$10,508.85 CA) and determined that the terms of release were reasonable.

[12] The Minister's Delegate then set out Mr. Verdie's avenues of appeal:

To appeal the decision made pursuant to section 131 (contravention of section 7.1 and seizure under 110), Mr. Verdie may file an action in the Federal Court, in accordance with section 135 of the *Customs Act*.

To appeal the decision made pursuant to section 133 (that the seizure/release amount was reasonable), Mr. Verdie may appeal this decision by way of an application for judicial review under section 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7 (*Federal Courts Act*).

[13] On November 3, 2022, Mr. Verdie filed this application for judicial review.

### III. Preliminary issue: Inadmissible evidence in Mr. Verdie's record

[14] The Respondent submits that Exhibits C and D to Mr. Verdie's affidavit are not admissible because they were not submitted to the Minister's Delegate. The two Exhibits are: a copy of Mr. Verdie's CIBC Bank Statement of Global Money Transfer on May 30, 2022 and a copy of his CIBC Global Money Transfer indicating the transfer of funds to the vendor was on its way on May 28, 2022.

[15] The general rule on judicial review is that the Court will not consider evidence that was not before the decision maker, subject to certain exceptions (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20). I agree with the Respondent that Exhibits C and D are not admissible and should not be considered in this application because they were not provided to the Minister's Delegate as part of the appeal record. For Mr. Verdie's benefit, as a self-represented litigant, I note that, in any event, the two documents if admissible would not change my assessment of his arguments.

#### IV. The Court's jurisdiction to hear this application

[16] I will first address the Respondent's submission that the Court does not have subject matter jurisdiction to hear Mr. Verdie's application for judicial review. The Respondent submits that the sole issue raised by Mr. Verdie in this application is the lawfulness of the finding by the Minister's Delegate that he contravened section 7.1 of the *Customs Act* by misrepresenting the value of the boat and trailer. This contravention finding was taken by the Minister under section 131(1) of the *Customs Act*. As set out by the Minister's Delegate in the decision under review, a contravention finding under section 131 must be challenged by way of an action in the Federal Court (section 135 of the *Customs Act*) and not, as Mr. Verdie has done here, an application for judicial review (subsection 18.1(1) of the *Federal Courts Act*).

[17] It is well-established that the contravention and penalty decisions of the Minister's Delegate are distinct and must be treated as separate decisions (*Chen v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at para 9). This distinction is made clear by the Minister's Delegate in describing the two methods of recourse open to Mr. Verdie should he wish to challenge either aspect of the October 17, 2022 decision.

[18] In order to determine whether in this application Mr. Verdie is contesting (1) the contravention decision (sections 7.1 and 131(1) of the *Customs Act*) or (2) the release terms imposed, that is the payment of \$5,779.87 CA to release the boat and trailer from seizure (section 133(1) of the *Customs Act*), I must assess the essential nature of the dispute raised by Mr. Verdie (*Celestin v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 223 at para 23).

[19] The starting point for this analysis is Mr. Verdie's Notice of Application. In the Notice, the grounds of the application are:

The amount of \$10,250.00 USD was not transfer[red] at the day of crossing the border on 28.05.22 and it's not related to the boat.

[20] Mr. Verdie requests that the full amount paid to release the seized items be returned to him.

[21] I am satisfied that Mr. Verdie is essentially challenging the section 7.1 contravention decision in this application: namely that he provided false information to the CBSA officers at the point of entry regarding the value of the boat and trailer he was importing into Canada. In both his Notice of Application and submissions to the Court, Mr. Verdie disputes the conclusion of the Minister's Delegate that the funds he paid to the vendor were in fact the purchase price for the boat and trailer. He states that the payment made was to settle an amount he had previously borrowed from the vendor (a submission that was not made to the Minister's Delegate). Mr. Verdie also states that, in any event, he had not actually paid any amount to the vendor when he crossed the border.

[22] In order to contest the Minister's Delegate's decision that he contravened section 7.1 of the *Customs Act*, Mr. Verdie was required to appeal the decision as a plaintiff by way of an action in this Court as required by subsection 135(1). He has not done so. Rather, Mr. Verdie has proceeded by way of an application for judicial review under section 133 of the *Customs Act*.

[23] I acknowledge that Mr. Verdie has requested a refund of the amount he paid for the release of the boat and trailer but he has done so as a remedy to his essential argument that no contravention of the *Customs Act* occurred. Mr. Verdie does not argue in this application that the amount assessed was unreasonable (which would properly form the basis of the application for judicial review). The focus of the application is the contravention itself.

[24] I conclude that the Court does not have jurisdiction to consider this application for judicial review and will dismiss the application.

V. Is the decision under review reasonable?

[25] In the alternative, I find that the decision of the Minister's Delegate is reasonable. The Minister's Delegate carefully and accurately reviewed the evidence in the record, Mr. Verdie's conduct and explanations at the border crossing on May 28, 2022, as well as his apologies for having provided false information, subsequent email to CBSA and appeal submissions. The Delegate also applied the relevant provisions of the *Customs Act* and the *Federal Courts Act* and provided detailed reasons that justify both their contravention/seizure and quantum of penalty decisions. Finally, the Minister's Delegate clearly explained to Mr. Verdie the two methods of recourse available to him.

[26] Mr. Verdie's late argument that the funds he paid to the vendor were unrelated to the boat and trailer and further insistence that he hadn't actually paid any funds to the vendor when he crossed into Canada are not persuasive. The arguments contradict his original statements to the CBSA officers and were not the appeal arguments before the Minister's Delegate. There is no



merit in the proposition that a postponement of payment, whether intentional or not, avoids the requirement to pay customs duties and taxes under the *Customs Act*. As stated by the Minister's Delegate, the \$10,250 US was the agreed transactional value between Mr. Verdie and the vendor.

[27] In addition, I find that the conclusion by the Minister's Delegate that the terms of release, the payment of \$5,779.87 CA, were reasonable does not warrant the Court's intervention. The imposition of release terms at Level 3 (at a rate of 55% of the undervalued amount of the boat and trailer) is consistent with the CBSA's Enforcement Manual and the facts of this case: that Mr. Verdie knowingly presented a bill of sale for the two items that contained a false undervaluation.

## VI. Conclusion

[28] Mr. Verdie's application for judicial review of the October 17, 2022 decision of the Minister's Delegate is dismissed. The Court does not have jurisdiction to hear the application because the substance of the application is a challenge to the contravention decision. Mr. Verdie was required to bring that challenge as an action under section 135 of the *Customs Act*. In the alternative and for completeness, I have also found that the decision is reasonable.

[29] Having considered the initial costs request and oral submissions of the Respondent at the hearing, and in the circumstances of this case, the Court fixes costs at \$500.00 payable by Mr. Verdie to the Respondent.

[30] The style of cause in this proceeding will be amended to name the Attorney General of Canada as the proper respondent in accordance with Rules 303(1)(a) and 303(2) of the *Federal Courts Rules*, SOR/98-106.

**JUDGMENT IN T-2348-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. Costs in the amount of \$500.00 are awarded to the Respondent.
3. The style of cause is amended to name the Attorney General of Canada as the Respondent.

"Elizabeth Walker"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2348-22

**STYLE OF CAUSE:** ROD VERDIE v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JULY 20, 2023

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** JULY 25, 2023

**APPEARANCES:**

Mr. Rod Verdie

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Mr. Il Hoon Ezra Park

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT