Dockets: ITA-13319-02

ITA-13320-02

[ENGLISH TRANSLATION]

Citation: 2005 FC 1657

Ottawa, Ontario, December 5, 2005

Present: THE HONORABLE MADAM JUSTICE GAUTHIER

In the matter of the *Income Tax Act*,

In the matter of an assessment or assessments

by the Minister of National Revenue under one or more

of the following statutes: the *Income Tax Act*, the *Canada*

Pension Plan and the *Employment Insurance Act*,

AGAINST:

ROGER BLOUIN

Judgment Debtor

AND:

ANNE-MARIE BLOUIN

ROSE-HÉLÈNE BLOUIN

MADELEINE BLOUIN

Garnishees and

Opposing Parties

AND:

NATIONAL BANK OF CANADA

Garnishee

REASONS FOR ORDER AND ORDER

[1] Her Majesty the Queen (the seizing creditor) requests that the Court issue a final order confirming the garnishment provisionally directed by order of Justice Michel Beaudry on March 4, 2003, in respect of the following three National Bank of Canada investment certificates:

i) certificate number 555134565403 in the amount of $77,253.24 issued in the name of Madeleine Tardif-Blouin;

ii) certificate number 555134561475 in the amount of $106,460.22 issued in the name of Rose-Hélène Blouin;

iii) certificate number 555134561327 in the amount of $94,125.00 issued in the name of Anne-Marie Blouin.

[2] Further to declaring that they do not owe any amount whatsoever to Roger Blouin, the judgment debtor, Madeleine Tardif-Blouin, Rose-Hélène Blouin, and her sister, Anne-Marie Blouin filed objections to the garnishment under section 597 of the *Code of Civil Procedure*, CQLR c. C-25. Responding to these objections, the seizing creditor requests that the Court declare void all money transfers made by Roger Blouin to the opposing parties, said transfers being made in fraud of his rights. (sections 1631 *et seq.* of the *Civil Code of Québec*, L.Q., 1991, c. 64 (C.C.Q.)). These provisions are presented in Schedule 1.

[3] Finally, with leave of the Court, Anne-Marie Blouin and Madeleine Tardif-Blouin made additional applications for the Court to avoid all transactions through which Roger Blouin claimed to have obtained loans from them and following such annulment, declare repayments of the amounts into the opposing parties' bank accounts as not constituting an onerous contract, a gratuitous contract or payments made pursuant to such contract under sections 1631 *et seq.* of the C.C.Q.

BACKGROUND

[4] Madeleine Tardif-Blouin is the mother of the debtor, Roger Blouin. On May 15, 2000, the Superior Court of Quebec homologated a protection mandate she had given in anticipation of incapacity pursuant to sections 2165 and 2166 of the C.C.Q. After Jacques-François Blouin, the debtor's brother, declined the responsibility, Roger Blouin was confirmed as guardian and curator to Madeleine Tardif-Blouin and her estate until he himself abdicated the responsibility in June 2005 when Jacques-François Blouin took over.

[5] Anne-Marie Blouin is the aunt of the debtor, Roger Blouin On November 23, 1998, she was involved in a serious accident which left her completely incapacitated. Since March 1999, she been staying at the Manoir Le Château. On April 18, 2001, she signed a general mandate entrusting the administration of her estate to Roger Blouin. In his affidavit, Jacques-François Blouin explains that he did not think it wise to file for the homologation of an incapacity mandate at that time.

[6] However, on July 30, 2002, a physician officially concluded that Madame Blouin was suffering from confusion and was no longer able to take care of herself and her business. On November 12, 2002, the Superior Court of the district of Québec City homologated the mandate she had given in anticipation of her incapacity, naming Jacques-François Blouin as mandatary to her property and person.

[7] It appears that Roger Blouin subsequently continued to act as a de facto representative of his aunt, Anne-Marie, with the consent of Jacques-François Blouin, since the former was already charged with the management of the estates of his other aunt, Rose-Hélène, and that of his mother, Madeleine. Jacques-François Blouin has, since June 22, 2005, has been exercising his mandate by a notarial deed.

[8] For her part, Roger Blouin's second aunt, Rose-Hélène Blouin, who is also the third opposing party, is over 80 years old, and has never been declared incapacitated. Roger Blouin administers her estate pursuant to a notarized general mandate dated December 3, 1999, which remains in force.

[9] In his affidavit of March 19, 2003, Roger Blouin indicates that he borrowed the following amounts from his mother and aunts:

i) Madeleine Tardif-Blouin	March 3, 2000	$35,000	
	June 9, 2000	$15,000	
	December 27, 2000	$19,000	
	Total		**$69,000**
ii) Rose-Hélène Blouin	June 9, 2000	$42,000	
	June 14, 2000	$28,000	
	December 27, 2000	$25,000	
	Total		**$95,000**
iii) Anne-Marie Blouin	January 21, 2001	$90,000	
	Total		**$90,000**

[10] The cheques that Roger Blouin made payable to himself for said amounts were entered into evidence, as was a letter of June 9, 2000, signed in the presence of his wife, Francine Blouin, and Jacques-François Blouin, as witnesses. In said letter, Roger Blouin acknowledges a debt of $42,000 owed to Rose-Hélène Blouin and specifies that this amount was deposited in Roger Blouin's name to account number 511432 at the General Trust of Canada.

[11] In another document dated August 5, 2000, Roger Blouin, in the presence of Francine Blouin and Jacques-François Blouin as witnesses, recognizes a debt of $50,000 owed to Madeleine Tardif or her successors ($35,000 on May 3, 2000, and $15,000 on June 9, 2000).

[12] The opposing parties also submitted several documents and affidavits in a bid to establish the source of the amounts, which they claimed had been sitting in their accounts well before 1997.

[13] Roger Blouin attests that he borrowed those amounts to allow them to be consolidated with his personal assets and to have them managed privately by General Trust of Canada, where a minimum investment of $500,000[1] is required in order to obtain the highest returns for the entire investment portfolio. He states that he had to pay the opposing parties 5% in interest on the capital amount, and that he intended to keep any additional profits accruing. According to him, a 5% interest was higher than what the three opposing parties had received on their investments to that point.

[14] In January 2001, the Canada Customs and Revenue Agency launched an investigation into the accounts of Roger Blouin and of the two companies in which he holds shares, i.e. Les Placements Roger Blouin Inc. and 2735-5577 Québec Inc. Roger Blouin was informed of this on January 24, 2001.

[15] After receiving several assessment notices covering the reporting period ending November 30, 1997, and particularly that of October 21, 2002, Mr. Blouin admits in the affidavits filed in the opposing parties' applications, that he had requested that to protect the capital of Anne-Marie Blouin, Rose-Hélène Blouin and Madeleine Tardif-Blouin, General Trust of Canada should liquidate his long-term investments.

[16] However, after General Trust of Canada had disposed of the investments, a deposit totalling $404,281.83 was made in the name of Roger Blouin to an account that had recently been opened at the Sainte-Anne-de-Beaupré branch of the National Bank of Canada, ostensibly to facilitate funds transfers to the three opposing parties, who had long had accounts at the same National Bank of Canada branch.

[17] Of that amount, a total of $277,838.,35 was transferred on December 3, 2002, and according to Roger Blouin, that represented the borrowed capital plus interest of 5%:

Madeleine Tardif-Blouin: $77,253,25

Rose-Hélène Blouin: $106,460,22

Anne-Marie Blouin: $94,125

[18] The $126,443.58 balance in Roger Blouin's personal account at the National Bank was seized by the seizing creditor and applied to the payment of certificates registered by the latter.

[19] In fact, on December 19, 2002, the seizing creditor submitted to the Court, in docket ITA-13320-02, a certificate issued under the *Income Tax Act*, R.S.C. (1985), c. 1 (5th Suppl.) (the Act) against Roger Blouin for the sum of $402,021.26, as well as another certificate in docket ITA-13319-02 for the sum of $529,189.68.

[20] The provisional garnishment order by Beaudry J. was issued in the framework of the execution of these certificates.

[21] Be it also noted that Tremblay-Lamer J. on December 19, 2002, issued an authorization to proceed forthwith under section 225.2(2) of the Act and that on February 18, 2003, Pinard J. dismissed the application by the judgment debtor, Roger Blouin, for a review of said authorization (section 225.2(8) of the Act).

[22] In seeking to obtain this authorization to proceed forthwith from Tremblay-Lamer J., the seizing creditor submitted, *inter alia*, a summary of a September 20, 2002, meeting prepared by Martin Desgagnés, account manager at General Trust. During that meeting, the judgment debtor presumably mentioned his tax-related problems to Mr. Desgagnés, and that he preferred not to have anything in his name in order to protect his assets in the event of a bankruptcy. He is said to have proposed certain scenarios, including bankruptcy, transforming his RRSP into an unseizable RRSP, creating a trust with no named beneficiary and returning the funds to his aunts' names [TRANSLATION] "arguing they were loans". Mr. Desgagnés also indicates that the amounts were obtained from investments held in the names of Mr. Blouin's aunts. Based on that document, the seizing creditor argued that the amounts in the opposing parties' accounts have in fact always belonged to the borrower.

[23] Both Roger Blouin and Mr. Desgagnés have since been cross-examined.

ISSUES

[24] The Court must decide the following issues:

1) did the money seized belong to the judgment debtor, Roger Blouin?

2) is repayment or transfer of the amount of $277,838.35 enforceable against the seizing creditor?

[25] For the reasons I will provide hereinafter, the Court does not have jurisdiction to rule on the validity of the transactions referenced by the additional applications by Madeleine and Anne-Marie Blouin. Therefore, this matter will not be considered.

ANALYSIS

Jurisdiction

[26] As indicated by the Federal Court of Appeal in *Canada (M.N.R.) v. Gadbois*, [2002] F.C.J. No. 836 (F.C.A.) (QL), there is no doubt that the Court has the power to execute its rulings

and that it may be called upon in an incidental manner to rule on provincial law matters arising from such execution. Duly registered Minister's Certificates are deemed to constitute rulings by the Court (subsection 223(3) of the Act). I am thus satisfied that the Court has the jurisdiction to declare the transfers or repayments of December 3, 2002, unenforceable against the seizing creditor, where the latter is able to establish that the criteria stipulated in sections 1631 *et seq.* of the C.C.Q. have been met.

[27] On the other hand, the Court is not satisfied that it has jurisdiction to avoid these acts which, according to Madeleine Blouin and Anne-Marie Blouin, were carried out while they were incapacitated and while Roger Blouin knew of their incapacity (see *Gadbois*, above, at paragraphs 19, 21 and 22). This extends beyond what is required to ensure that these certificates are duly executed.

Did the money seized belong to the judgment debtor?

[28] During the hearing, the parties focused their arguments on the application by the seizing creditor to have the transfer or repayment of the money "borrowed" by Roger Blouin declared unenforceable because it was in fraud of his rights. However, the seizing creditor did not formally waive the first argument he raised, which is that the money withdrawn from the accounts effectively belonged to Roger Blouin.

[29] After careful analysis of the evidence on the record, the Court is satisfied that even considering the seizing creditor's responses on the matter, the opposing parties established by preponderance of evidence that the money that was transferred from their accounts through cheques made out to Roger Blouin (See paragraph 10, above), was rightfully theirs.

[30] The Court must therefore consider the question of unenforceability while assuming that the money transfers to Roger Blouin made between March 3, 2000 and January 21, 2001 (see paragraph 9 above), were indeed borrowed as alleged. The only other alternative would be to consider that Roger Blouin took possession of these funds illegally, as alleged by the opposing parties in their additional application. As indicated, the Court does not have jurisdiction to make that determination. In any case, this alternative would not unburden the seizing creditor.

Unenforceability of the repayments or transfers

[31] Section 1631 of the C.C.Q. provides as follows:

A creditor who suffers injury through a juridical act made by his debtor in fraud of his rights, in particular an act by which the debtor renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor, may obtain a declaration that the act may not be set up against him.

[32] Action by the seizing creditor is not required in order for him to benefit from this remedy. The procedural vehicle used is inconsequential and as herein, can render opposition to the seizure unenforceable (*National Bank of Canada v. Bitar*, [2000] J.Q. No. 471 (C.A.)[2], at paragraph 37).

[33] However, just like the former Paulian appeal, an unenforceability appeal is subject to strict conditions. It is not worthwhile discussing what has not been debated before me.

[34] The opposing parties dispute that the creditor owes a liquid and exigible debt (section 1632 of the C.C.Q.) and that Roger Blouin's insolvency has been established. They equally argue that it has not been shown by preponderance of evidence that they had a fraudulent intention or were active participants in this fraud. They hold that the Court cannot therefore declare transfers they received to be unenforceable against the seizing creditor.

[35] The seizing creditor submits that it is section 1631 of the C.C.Q. that stipulates the conditions for the exercise of this remedy. He believes that once it has been established that the transfer was made in fraud of his rights, the burden of proof of good faith falls on the opposing parties.

[36] The Court is satisfied that the seizing creditor owes a due and payable debt because duly registered Minister's certificates are deemed to constitute rulings by the Court (subsection 223(3) of the Act). Filing a notice of appeal of a notice of assessment does not change this situation.

[37] On the matter of Roger Blouin's insolvency, as indicated by the Quebec Court of Appeal through its adoption of the position of authors Jean-Louis Baudouin and Pierre-Gabriel Jobin at paragraph 40 of its ruling in *Bitar*, above:

[TRANSLATION]

The existence of insolvency is a question of fact left to the sole discretion of the courts. The latter have always refrained from limiting themselves to a very rigorous definition and to adopt the technical definitions provided in the *Bankruptcy and Insolvency Act* or in the *Winding-Up and Restructuring Act*. To some authorities, insolvency is simply the state of a person's liabilities exceeding his assets. Generally speaking, jurisprudence adopts a broad view and recognizes anyone who has stopped honouring his commitments as they become due or who is unable to meet his responsibilities or pay his debts as insolvent. Being an "accounting fact", insolvency must be proven by all means of evidence, even by direct testimony.

[38] The Court is satisfied that the seizing creditor has established that the sum of Roger Blouin's assets was insufficient to enable him to pay his debts, including his 1997 tax debt, on that date.

[39] The opposing parties submitted no evidence to contest the assessment of Roger Blouin's assets contained at paragraph 24 of André Tremblay's affidavit of August 29, 2003.

[40] Furthermore, as indicated by the authors cited above in *Les Obligations*, 5th Edition, Les Éditions Yvon Blais inc., 1998, at paragraph 711, insolvency is no longer the sole measurement of prejudice required under section 1631 of the C.C.Q.

[41] There is no doubt that the seizing creditor essentially incurred damages as a result of the transfers of December 3, 2002.

[42] With regard to the matter of the opposing parties' intention to defraud, the Quebec Court of Appeal in *Bitar*, above, clearly decided that the presumption in section 1632 of the C.C.Q. was a rebuttable presumption, and that unenforceability could not be entertained against third parties where they have proven good faith, even where they had knowledge of the debtor's insolvency. Such a position necessarily means that to successfully claim unenforceability, the creditor must prove that the third party was preferred to him intended to act fraudulently.

[43] The Court of Appeal of Quebec further reconfirmed this position in *St-Cyr (Re)*, [2002] Q.J. No. 3569, at paragraphs 21 to 24.

[44] To facilitate proof that the debtor and third party had fraudulent intentions, legislation includes a number of presumptions.

[45] In the situation under consideration, that is, one involving the performance of an onerous contract, the intention of the opposing parties is deemed fraudulent if they knew of the insolvency of the debtor or of the fact that the latter was rendering or seeking to render himself insolvent by repaying them.

[46] The debtor, on the other hand, will be deemed to have fraudulent intentions if it is demonstrated that he rendered himself or sought to render himself insolvent by moving these monies or preferred the opposing parties, despite full knowledge of his insolvency.

[47] The Court is satisfied that the seizing creditor has established that the debtor intended fraud. The evidence (for example, the liquidation of investments at General Trust at a loss before their due date, discussions with Mr. Desgagnés, family relations, Roger Blouin's affidavits and cross-examination) appears to indicate that Roger Blouin considered himself insolvent and sought to prefer his mother and aunts. As I have already emphasized, Roger Blouin also admitted as much in his affidavits of March 19, 2003 (see paragraph 23 of the opposing party Anne-Marie Blouin's record, paragraph 29 of the opposing party Rose-Hélène Blouin's recod and paragraph 25 of Madeleine Tardif-Blouin's record).

[48] What remains now is to determine if the seizing creditor has established an intention to defraud by the opposing parties.

[49] The seizing creditor argues that he benefits from the presumptions in section 1632 of the C.C.Q. because Roger Blouin's knowledge of his own insolvency must apply to the opposing parties over whom he has an incapacity mandate.

[50] In fact, in his additional written claims, the seizing creditor indicates that the payments of December 3 were legal actions in which Roger Blouin wore two hats: firstly, as a debtor and secondly, as the creditors' representative.

[51] He emphasizes that this situation is exceptional as it is a breach of mandate rules. In fact, under normal circumstances, a representative cannot be party to an act concluded in the name of his mandator and should therefore not wear two hats. However, he adds that Roger Blouin is responsible for finding himself in this unfortunate situation and should not benefit from it.

[52] The seizing creditor submits that the Court should follow the ruling by the Supreme Court of Canada in *Wilks v. Matthews* (1913), 49 S.C.R. 91, where the Court deemed that the preferred third party knew about the insolvency of the person he had authorized to receive payments on his behalf, in this case his wife.

[53] The seizing creditor further argues that the general mandate issued by Rose-Hélène Blouin to Roger Blouin expressly states at paragraph 7 a) that the latter is authorized to receive payments on her behalf.

[54] In the case of Madeleine Tardif-Blouin and Anne-Marie Blouin, the seizing creditor argues that both were incapacitated on December 3, 2002, and that since payment is a legal act, Roger Blouin must be deemed to have represented them.

[55] As is apparent from Pierre Painchaud's affidavits submitted by the seizing creditor, the transactions they are seeking to have the Court declare unenforceable are transfers made by Roger Blouin from his private account into the private bank accounts of each opposing party and not payments he received on their behalf into his own account.

[56] Under the circumstances, it is clear that Rose-Hélène Blouin had the full capacity to receive the transfer or repayment from Roger Blouin. This action has nothing to do with the general mandate that authorizes Roger Blouin to represent her before third parties. The authorization paragraph 7 a) of the mandate enables third parties to make payments to Roger Blouin as an authorized representative under subsection 1557(1) of the C.C.Q.; nevertheless, it does not remove Rose-Hélène Blouin's capacity to receive such payments directly. And as I stated, the transfer was indeed made to her directly on December 3, 2002.

[57] In the present context, the Court cannot presume that Rose-Hélène Blouin knew of her nephew's insolvency merely because they are blood relations. There is no other evidence to buttress this conclusion.

[58] Since the seizing creditor has not proved that Rose-Hélène Blouin was in the know, he cannot benefit from the presumption under section 1632 of the C.C.Q. and has therefore not met the burden to prove fraudulent intention on the part of the creditor who was preferred to him. The seizure of certificate number 555134561475 must be avoided.

[59] Let us now move on to the acts involving the other two opposing parties. None of the decisions cited by the seizing creditor, including *Wilks*, above, concerns a situation involving incapacity. The seizing creditor also admits that there is no precedent in which knowledge of the personal circumstances of the authorized representative was assimilated to the person issuing the mandate based on information the latter obtained within the framework of the mandate.

[60] These distinctions are important, and the Court is not convinced that the principles of *Wilks*, above, are applicable to this case.

[61] Whatever the case, the parties agree that even if the opposing parties are legally incapacitated, they still retain the ability to receive payments, if this action can be considered as a juridical fact. However, they do not agree on the nature of the payment.

[62] As indicated by Pierre-Gabriel Jobin and Nathalie Vézina in *Les obligations*, 6th Edition, 2005, at paragraph 673, the nature of payments gave rise to a controversy in doctrine and jurisprudence.[3] Some consider it as a mere juridical fact, which can be proven by any means, while others consider it to be a juridical act, for which evidence is subject to the rules stipulated under sections 2860 *et seq.* of the C.C.Q. The parties agree however, that the doctrinal debate has never been examined from its present perspective.

[63] Payment is a mode of execution common to all obligations. According to Maurice Tancelin in *Des obligations : actes et responsabilités*, 6rd Edition, 1997, at page 586:

[TRANSLATION]

Execution, just like its opposite, non-execution, is a juridical fact meaning it is a concrete action to which the law attributes certain consequences.

Payments can be broken down into two distinct components: the concrete component, which enables its consideration as a juridical fact and the intentional component, which also makes it a juridical act.

[64] The evidence before me only establishes the concrete payment component, that is, the physical transfer of funds directly into the opposing parties' accounts on December 3, 2002. There is no indication that in this case, the opposing parties had to waive the benefit of a term or other conditions. None of the parties has stipulated that Roger Blouin had released himself by abandoning such conditions on behalf of the opposing parties. This notwithstanding, the seizing creditor argues that the Court should find that the opposing parties could not validly receive payments without the intervention of their representative.

[65] However, irrespective of the juridical status of the payment, section 1558 of the C.C.Q. establishes a special rule in favour of the creditors of an incapacitated person since it confirms the validity of any payment made directly to such person provided he benefits from the payment.

[66] It is therefore possible that we are facing a situation involving an execution with legally recognized consequences, even where the representative of the opposing parties does not intervene.

[67] The seizing creditor did not provide any evidence to justify the conclusion that section 1558 of the C.C.Q. cannot apply in this situation. If the seizure were set aside, then

everything would indicate that the opposing parties benefited from the payment. They clearly did not deplete that money.

[68] The Court cannot take it for granted that Roger Blouin had to intervene. There is thus no evidence that the two opposing parties had personal direct or inferred knowledge of the debtor's insolvency. The presumption in section 1632 of the C.C.Q. is thus inapplicable.

[69] Although Roger Blouin's behaviour is clearly reprehensible, it does not rise to the level of causing the transfers to be unenforceable against the seizing creditor. Participation by Madeleine Tardif-Blouin and Anne-Marie Blouin has not been shown.

[70] I therefore find that the Court cannot declare the transfers made to Madeleine Tardif-Blouin and Anne-Marie Blouin to be unenforceable against the seizing creditor.

[71] The seizures against certificates number 555134565403 and 555134561327 must also be avoided.

[72] The opposing parties applied for costs. The Court notes that the issues raised in this case were new and that for various reasons, the parties had to collaborate closely for adjudication of the applications. After consideration of all relevant factors, the Court finds that each party must bear their respective costs in this case.

ORDER

THE COURT ORDERS as follows:

1. The three objections are allowed;

2. The seizure of certificates of deposit bearing numbers 555134565403, 555134561475 and 555134561327, following a requirement on December 20, 2002, and amended on February 7, 2003, is avoided;

3. Each party will bear their own costs.

"Johanne Gauthier"

Judge

APPENDIX 1

Civil code of Quebec, S.Q., 1991, c. 64 :	*Code civil du Québec*, L.Q., 1991, ch. 64 :
1558. Payment made to a creditor	**1558.** Le paiement fait à un créancier

without capacity to receive it is valid only to the extent of the benefit he derives from it.

qui est incapable de le recevoir ne vaut que dans la mesure où il en a profité.

1631. A creditor who suffers prejudice through a juridical act made by his debtor in fraud of his rights, in particular an act by which he renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor may obtain a declaration that the act may not be set up against him.

1631. Le créancier, s'il en subit un préjudice, peut faire déclarer inopposable à son égard l'acte juridique que fait son débiteur en fraude de ses droits, notamment l'acte par lequel il se rend ou cherche à se rendre insolvable ou accorde, alors qu'il est insolvable, une préférence à un autre créancier.

1632. An onerous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent if the contracting party or the creditor knew the debtor to be insolvent or knew that the debtor, by the juridical act, was rendering himself or was seeking to render himself insolvent.

1632. Un contrat à titre onéreux ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder si le cocontractant ou le créancier connaissait l'insolvabilité du débiteur ou le fait que celui-ci, par cet acte, se rendait ou cherchait à se rendre insolvable.

1633. A gratuitous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent, even if the contracting party or the creditor was unaware of the facts, where the debtor is or becomes insolvent at the time the contract is formed or the payment is made.

1633. Un contrat à titre gratuit ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder, même si le cocontractant ou le créancier ignorait ces faits, dès lors que le débiteur est insolvable ou le devient au moment où le contrat est conclu ou le paiement effectué.

1634. The creditor may bring a claim only if it is certain at the time the action is instituted, and if it is liquid and exigible at the time the judgment is rendered.

1634. La créance doit être certaine au moment où l'action est intentée; elle doit aussi être liquide et exigible au moment du jugement sur l'action.

He may bring the claim only if it existed prior to the juridical act which is attacked, unless that act was made for the purpose of defrauding a later ranking creditor.

La créance doit être antérieure à l'acte juridique attaqué, sauf si cet acte avait pour but de frauder un créancier postérieur.

1635. L'action doit, à peine de déchéance, être intentée avant l'expiration d'un délai d'un an à compter du jour où le créancier a eu connaissance du préjudice résultant de l'acte attaqué ou, si l'action est intentée

1635. The action is forfeited unless it is brought within one year from the day on which the creditor learned of the injury resulting from the act which is attacked, or, where the action is brought by a trustee in bankruptcy on behalf of all the creditors, from the date of appointment of the trustee.

par un syndic de faillite pour le compte des créanciers collectivement, à compter du jour de la nomination du syndic.

Income Tax Act, R.S.Q. 1985, c.1 (5th Supp.) :

Loi de l'impôt sur le revenu, L.R.C. (1985), ch. 1 (5^{e} suppl.) :

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.

222.(2) A tax debt is a debt due to Her Majesty and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

222.(2) La dette fiscale est une créance de Sa Majesté et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente loi.

(3) The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

(3) Une action en recouvrement d'une dette fiscale ne peut être entreprise par le ministre après l'expiration du délai de prescription pour le recouvrement de la dette.

223. (2) An amount payable by a person (in this section referred to as a "debtor") that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.

223. (2) Le ministre peut, par certificat, attester qu'un montant ou une partie de montant payable par une personne -- appelée "débiteur" au présent article -- mais qui est impayé est un montant payable par elle.

(3) On production to the Federal Court, a certificate made under subsection 223(2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment

(3) Sur production à la Cour fédérale, un certificat fait en application du paragraphe (2) à l'égard d'un débiteur

obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection 223(1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit les lois visées au paragraphe (1) en application desquelles le montant est payable, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Dans le cadre de ces procédures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit ces lois.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	ITA-13319-02
	ITA-13320-02
STYLE OF CAUSE:	TAXATION
	against
	ROGER BLOUIN
	-and-
	ANNE-MARIE BLOUIN
	ROSE-HÉLÈNE BLOUIN
	MADELEINE BLOUIN
	-and-

NATIONAL BANK OF CANADA

PLACE OF HEARING: Québec City, Quebec

REASONS FOR ORDER: The Honourable Johanne Gauthier

AND ORDER

DATED: December 5, 2005

APPEARANCES:

Sophie Matte	FOR THE SEIZING CREDITOR
Hugues LaRue	FOR THE JUDGMENT DEBTOR AND GARNISHEES

SOLICITORS OF RECORD:

John H. Sims, Q.C. The Deputy Attorney General of Canada	FOR THE SEIZING-CREDITOR
Pothier Delisle	FOR THE JUDGMENT DEBTOR AND GARNISHEES

Sainte-Foy, Quebec

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[1] In his affidavit, Guy de Rico, an employee of the National Bank of Canada's Sainte-Anne-de-Beaupré branch, where the assets of the three opposing parties were located, confirmed that he was the one who had suggested that Roger Blouin meet an employee of the Trust to help him better understand private management products, considering the amount of money he was managing. He confirms that these services are offered to clients with assets of over $500,000.

[2] Also referred to as *National Bank v. Soracchi*.

[3] N. Catala, La nature juridique du paiement, Paris, L.G.D.J., 1961.