

Date: 20070614

Docket: T-1847-05

Citation: 2007 FC 636

Montréal, Quebec, the 14th day of June 2007

PRESENT: THE HONOURABLE MADAM JUSTICE JOHANNE GAUTHIER

In the matter of the *Income Tax Act*,

and

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*, the *Employment Insurance Act*,

AGAINST:

RÉGIS DELAUNIÈRE

and

9039-0402 QUÉBEC INC.

Judgment Debtors

REASONS FOR ORDER AND ORDER

[1] The debtors, Régis Delaunière and 9039-0402 Québec Inc., are applying for a review and a setting aside of the jeopardy collection order issued by Mr. Justice Simon Noël on October 21, 2005 (subsections 225.2(2) and (3) of the *Income Tax Act*).

[2] The relevant principles for such an application (including those concerning the burden of proof) are not the subject of argument before the Court since the parties agree that these are settled law and are summarized in the following decisions: *Canada (Minister of National Revenue) v. Services M.L. Marengère Inc.*, [2000] 1 C.T.C. 229, [1999] F.C.J. No. 1840 (QL) and *Canada v. Satellite Earth Station Technology Inc.*, [1989] 2 C.T.C. 291, [1989] F.C.J. No. 912 (QL).

[3] The Court must decide whether or not the totality of evidence before it (the original evidence submitted to Noël J. and additional evidence submitted by the two parties for the present application) establishes that there are reasonable grounds to believe that the collection of the amounts assessed in respect of the debtors would be jeopardized by a delay in the collection of those amounts.

[4] The Minister of National Revenue presented the following four arguments to Noël J.:

- (i) The unorthodox behaviour of the debtors, which led to the audit and the issuing of reassessments (admission from 9039-0402 Québec Inc.'s bookkeeper to the effect that the president, Mr. Delaunière, had asked her to keep double accounts for Resto-Bar La Broue, with the first, [TRANSLATION] "Food Sales", being used for the entries in the sales journal, the general ledger, and income tax returns, and the second, [TRANSLATION] "Banana Sales", listing additional sales not reported by 9039-0402 Québec Inc.);

- (ii) The sale of Mr. Delaunière's residence shortly after the draft assessment was received (June 23, 2005);
- (iii) The intended sale of 9039-0402 Québec Inc.'s sole asset, the Resto-Bar La Broue;
- (iv) The behaviour of Mr. Delaunière during the audit and, in the context of an appeal of a previous assessment, the Tax Court of Canada's findings regarding this taxpayer's credibility.

[5] The Court is satisfied that the debtors have established that they demonstrated an intention to sell the residence and the Resto-Bar before the start of the audit in September 2004. The debtors also established that, on the facts, the Resto-Bar had been sold on June 30, 2005, before the application heard by Noël J. had been filed. However, they have not submitted any evidence that would make possible a finding that the Minister knew or should have known these facts.

[6] The debtors argued that they did not have and still do not have an intent to dissipate their assets. With regard to this, the Court echoes Mr. Justice François Lemieux's statements in *Marengère, supra*, at paragraphs 67 and 72 (subparagraph 4):

[67] This case does not turn on intent or on tax planning; it calls to be determined looking at the matter objectively and realistically on the ground so to speak. In other words, it is the effect or result of the taxpayer's action in dealing with its assets that is important and relevant in the assessment of the appropriateness of a collection jeopardy order. Tax liability is not an issue in such proceedings.

[72] (4) ... the Minister does not have to prove fraud or deceit or bad motive.

[7] In coming to a decision on this application, the Court cannot take into account the many facts (conversations with the investigator, etc.) that counsel for the debtors tried to introduce, since these are not in evidence before the Court.¹

[8] The debtors agree that the merit of the assessments is not a relevant issue in itself (see for instance *Marengère, supra*); however, the Court notes that it can take into account debtors' unorthodox behaviour in conducting their affairs (*Mann v. Canada (Minister of National Revenue)* 2006 FC 1358, [2006] F.C.J. No. 1697 (QL), para. 50, *Canada v. Paryniuk* 2003 FC 1505, [2003] F.C.J. No. 1924 (QL), para. 13; *Canada v. Laframboise* [1986] 2 C.T.C. 274, [1986] 3 F.C. 521, para. 19). In this case, the debtors have not in any way explained the accounting document [TRANSLATION] "Banana Sales". They have not dealt with this allegation at all. They have also not explained why the selling price of the Resto-Bar (\$50,000) was handed over by 9039-0402 Québec Inc. to Mr. Delaunière that same day, or why he rushed to cash the cheque from 9039-0402 Québec Inc. This money was not in the safety deposit boxes opened after the order of October 21, 2005 was issued. The Court does not know what happened to it.

¹ Among other things, counsel for the debtors raised the issue that the garnishment of the balance of the selling price in the hands of the notary could be invalidated given the failure to discharge on the part of the purchaser. The parties were invited to discuss this issue after the hearing since the facts were not in evidence and this issue was not before the Court today.

[9] In the circumstances, is it reasonable to believe that without the order requested by the Minister, there would also be a risk that the balance of the selling price of the residence (\$60,000) would disappear or be dissipated or used to pay off other debts?

[10] Having considered all the evidence, the Court is satisfied that the Minister has met the test outlined in the *Income Tax Act*.

[11] In addition, the debtors have not convinced the Court that the Minister did not meet his obligation of reasonable disclosure.

[12] Consequently, the debtors' application is dismissed with costs and the jeopardy collection order is upheld.

ORDER

The application is dismissed with costs.

The jeopardy collection order of October 21, 2005 is upheld.

“Johanne Gauthier”

Judge

Certified true translation
Gwendolyn May, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1847-05

STYLE OF CAUSE: INCOME TAX ACT v. RÉGIS DELAUNIÈRE ET AL.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 14, 2007

REASONS FOR ORDER BY: The Honourable Madam Justice Gauthier

DATED: June 14, 2007

APPEARANCES:

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