

Date: 20070813

Docket: T-2194-06

Citation: 2007 FC 834

Ottawa, Ontario, August 13, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

757746 ALBERTA LTD. and PAUL MOREL

Respondents

REASONS FOR ORDER AND ORDER

[1] In these reasons I explain why I have found the Respondents to be in contempt of the Court's Order of January 18, 2007.

1. Applicable Legal Principles

[2] Rule 466(b) of the *Federal Courts Rules*, SOR/98-106 (Rules) states that a person is guilty of contempt of court when they disobey an order of the Court.

[3] In considering whether a person is in contempt, the Court must apply the following principles:

1. The burden of proving contempt falls upon the party alleging such contempt, and that the person alleged to be in contempt (contemnor) need not present any evidence to the Court.
2. The constituent elements of contempt must be proven beyond a reasonable doubt.
3. The disobedience of an order of the Court must be established by demonstrating the existence of the Court order, knowledge of the order by the alleged contemnor, and knowledge of disobedience of the order.
4. The evidence to establish contempt shall be provided orally, unless instructed otherwise by the Court.
5. To establish liability for disobeying an injunctive order it is sufficient to show that the contemnor has knowledge of the order, as proof of intent is not a required element for the finding of contempt. See; Rules 469 and 470, and *Tele-Direct (Publications) Inc. v. Canadian Business Online Inc.* (1998), 151 F.T.R. 271.

[4] The underlying rationale justifying the Court's contempt power is to ensure the orderly administration justice and respect for judicial process. The disobedience of a Court order constitutes an attack on its authority and dignity. Consequently, compliance with Court orders is imperative if the rule of law is to be maintained.

2. Findings of Fact

[5] Oral evidence in support of the allegation of contempt of court was adduced by William John Stevens; a process server and Jana Engelhardtova, an auditor. Each witness testified in a straight-forward manner with no inconsistencies or inherent implausibilities in their evidence. Each answered questions put to them by counsel and by the Court directly and without hesitation. I find each witness to be credible and accept their evidence.

[6] Additionally, copies of the Court's Orders of January 18, 2007 and April 4, 2007, along with proof of their service to the Respondents were tendered and received as exhibits.

[7] The Respondents did not attend in Court, nor did they otherwise respond to the application to find them to be in contempt of court.

[8] On the basis of the above described evidence, I am satisfied beyond a reasonable doubt of the following facts:

1. On November 4, 2005, Ms. Engelhardtova met with Mr. Morel and requested books and records for the corporation as she was conducting a GST audit ordered by Canada Revenue Agency. The requested documents were not provided by the Respondents.
2. On March 12, 2006, Ms. Engelhardtova accompanied by her team leader visited Mr. Morel and requested the aforementioned documentation. No documentation was provided by the Respondents during this visit.

3. On June 13, 2006, the Respondents were personally served with a Requirement to Provide Information and Documents (the Requirement) issued pursuant to paragraphs 289(1)(a) and (b) of the *Excise Tax Act*, R.S.C. 1985, c. E-15, and paragraphs 231.2(1)(a) and (b) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The Respondents were required to answer in respect to the period from August 1, 2002 to January 31, 2004, and requested six (6) different categories of documents pertaining to all transactions that occurred during the audit period. The requirement specified that the information and documents were to be provided within 30 days from the date of receipt of the notice.
4. On October 11, 2006, Mr. Morel faxed Ms. Engelhardtova a printout of the corporation's bank statements but omitted to provide the Applicant documents from the other five categories listed in the Requirement.
5. On December 28, 2006, the Respondents were personally served with a copy of the Applicant's record filed in this proceeding by the Minister of National Revenue (the Minister) in which he sought an order requiring the Respondents to comply with the Requirement.
6. On January 11, 2007, the Respondents did not appear for the hearing requesting an order of compliance with the Requirement.
7. On January 18, 2007, the Court granted the Minister's application and ordered that the Respondents comply with the Requirement within 30 days after being served with the order.
8. On January 26, 2007, the Respondents were personally served with the Court's order of January 18, 2007.

9. The Respondents failed to comply with January 18, 2007 Order. To date, neither the required documents nor information has been provided by the Respondents.
10. On April 4, 2007, an order was made requiring the Respondents to appear before the Court on June 7, 2007, and be prepared to answer the allegation of contempt of the January 18, 2007 Court Order made against them.
11. On April 12, 2007, the Respondents were personally served with the April 4, 2007 Court Order.
12. On June 7, 2007, the Respondents did not comply with the April 4, 2007 Court Order and failed to appear and answer the allegation of contempt made against them.

[9] These facts, establish without doubt, the existence of the Court's Order of January 18, 2007, the Respondents' knowledge of that Order, and their disobedience of that Order.

3. Disposition

[10] The Respondents are guilty of contempt of court because they have disobeyed the Court's Order of January 18, 2007.

[11] The Applicant seeks an order requiring the Respondents to attend Court on the next available date to speak to sentence, and costs on a solicitor-client basis.

[12] Rule 472 deals with the penalty which may be ordered on a finding of contempt. The Rule provides that:

472. Where a person is found to be in contempt, a judge may order that

- (a) the person be imprisoned for a period of less than five years or until the person complies with the order;
- (b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;
- (c) the person pay a fine;
- (d) the person do or refrain from doing any act;
- (e) in respect of a person referred to in rule 429, the person's property be sequestered; and
- (f) the person pay costs.

472. Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner;

- a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
- b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
- c) qu'elle paie une amende;
- d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
- e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
- f) qu'elle soit condamnée aux dépens.

[13] In *Winnicki v. Canada (Human Rights Commission)*, 2007 FCA 52, the Federal Court of Appeal held that an individual found in contempt of court should be provided an opportunity to make submissions as to what would be an appropriate sentence. To that end, I will provide the Respondents the opportunity to make submissions on sentence and order that: (1) the Respondents make written submissions and appear at a sentencing hearing; (2) a copy of the within Order and Reasons for Order be personally served on the Respondents; and (3) the Applicant file further written submissions on sentencing.

[14] I will dispose of the issue of costs after the sentencing hearing.

ORDER

THIS COURT ORDERS that:

1. The Respondents are guilty of contempt of court because they have disobeyed the Court's Order of January 18, 2007.
2. The Respondents shall serve and file written submissions on sentencing on or before August 31, 2007.
3. The Respondents will attend the sentencing hearing at 9:30 a.m. on September, 21, 2007 at the Federal Court, 3rd Floor, 8th Avenue S.W., Calgary, Alberta, and will be heard as to the appropriate sentence.
4. The Applicant will serve and file further written submissions, on or before September 7, 2007, wherein the following factors are to be addressed:
 - (1) Any non-compliance or past violations by the Respondents of provisions of the *Income Tax Act*, and/or the *Excise Tax Act* if any;
 - (2) Any further information about the Respondents which may assist the Court on sentencing.

5. The Applicant shall serve the Respondents' personally with a true copy of the within Order and Reasons for Order no later than August 21, 2007 and file proof of service with the registry of the Court.

6. The issue of costs shall be dealt with after the sentencing hearing.

“Edmond P. Blanchard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2194-06

STYLE OF CAUSE: Minister of National Revenue v. 757746 Alberta Ltd.
and Paul Morel

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: June 7, 2007

REASONS FOR ORDER: BLANCHARD J.

DATED: August 13, 2007

APPEARANCES:

Ms. Chang Du

FOR THE APPLICANT

No one appearing for the
Respondents

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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FOR THE APPLICANT

No one appearing for the
Respondents

FOR THE RESPONDENTS