

**Date: 20071203**

**Docket: T-687-05**

**Citation: 2007 FC 1269**

**BETWEEN:**

**THE MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**KEVIN WILLIAM MIDDLETON**

**Respondent**

**REASONS FOR ORDER**

**HENEGHAN, J.**

[1] By Order dated April 7, 2006, in *Canada (Minister of National Revenue – M.N.R.) v. Middleton*, 2006 FC 455, Mr. Kevin William Middleton (the "Respondent") was found in contempt of an Order of this Court, issued by Mr. Justice Kelen, dated May 9, 2005. The terms of the Order issued on April 7, 2006, provide as follows:

1. The Respondent is found to be in contempt of the Order dated May 9, 2005, pursuant to Rule 466(1)(b) of the *Federal Courts Rules*, SOR/98-106;
2. A fine of \$2,000.00 is imposed upon the Respondent, payable within thirty (30) days of service upon him of this Order;

3. The Respondent is to pay costs in the amount of \$1,000.00 within thirty (30) days of service upon him of this Order;
4. If the Respondent fails to pay the fine of \$2,000.00 and costs of \$1,000.00 within thirty (30) days of being served with this Order, the Court imposes a sentence of fifteen (15) days imprisonment for default of payment of the fine and a sentence of fifteen (15) days imprisonment for default of payment of the costs, such sentences to run consecutively.

[2] By an *ex parte* notice of motion filed by the Minister of National Revenue (the “Applicant”) on November 30, 2007, the Applicant seeks an Order for the issuance of a Warrant of Committal against the Respondent, and that he be arrested and serve the default time set by this Court in the Order of April 7, 2006. A penalty hearing was held at Calgary, Alberta and Vancouver, British Columbia, by teleconference on Thursday, October 4, 2007. Three witnesses were called by the Applicant, as follows:

- i) Mr. William Traptow;
- ii) Mr. Michael Munro;
- iii) Ms. Tove Mills

[3] Mr. Traptow is a process server, working in the City of Victoria, British Columbia. Mr. Traptow testified that, after identifying Mr. Middleton, he personally served him with a copy of the Reasons for Order and Order that were issued in this action on April 7, 2006. A copy of the Reasons for Order and Order was marked as Exhibit 1, Tab 2 of the Book of Exhibits. Service was effected on April 21, 2006.

[4] Mr. Munro is a Collections Officer with the Canada Revenue Agency in the Vancouver Island tax service office. He testified that he served a package of documents upon Mr. Middleton at his home address, on August 28.

[5] Ms. Mills is the Collections Officer who assumed management of the Canada Revenue Agency file in relation to Mr. Middleton, in July 2007. She testified that she had prepared the package of materials that was served by Mr. Munro upon Mr. Middleton. That package included several documents, of which the following are the most relevant:

- i) a copy of the Reasons for Order and Order dated April 7, 2006 (Exhibit 1);
- ii) a copy of the Applicant's Motion Record in relation to the *ex parte* motion for the issuance of a warrant for the arrest of the Respondent (Exhibit 6); and
- iii) a copy of a letter dated August 2, 2007, advising Mr. Middleton about the hearing scheduled for October 4, 2007.

[6] Ms. Mills testified that, according to her review of the files maintained by her office, Mr. Middleton had not satisfied the requirements of the Compliance Order of May 9, 2005, nor had he satisfied the terms of the Order of April 7, 2006, that is, he had failed to produce the information requested and he had failed to pay the fine and costs imposed by the Order of April 7, 2006.

[7] Ms. Mills testified that the only response from the Respondent, in respect of the Order of May 9, 2006, was the delivery of a "user agreement and copyright infringement." This document was entered as Exhibit 4. Ms. Mills testified that this document was not responsive to the Order of May 9, 2005.

[8] The Applicant is seeking the issuance of a Warrant of Committal for contempt because the Respondent has failed to pay the fine of \$2,000.00 and costs in the amount of \$1,000.00, pursuant to the Order issued by this Court on April 7, 2006.

[9] Having regard to the evidence of Mr. Munro and Ms. Mills, I am satisfied that the Respondent was given notice of the Applicant's *ex parte* motion to seek a Warrant of Committal. The Respondent was served with the motion record and related documents. The Respondent did not appear.

[10] Having regard to the evidence of Mr. Traptow, I am satisfied that Mr. Middleton was personally served with the Order of April 7, 2006. Finally, having regard to the evidence of Ms. Mills, I am satisfied that the Respondent has failed to pay the fine in the amount of \$2000.00 and costs in the amount of \$1,000.00.

[11] Accordingly, I am satisfied that the Applicant has shown that an Order should be granted pursuant to Rule 471 of the *Federal Courts Rules*, SOR/98-106, for the issuance of a Warrant of Committal. It is emphasized that this Warrant of Committal is being issued because the Respondent

defaulted in satisfying the terms of the Order of April 7, 2006, by which a monetary penalty was imposed, together with an order for the payment of costs. The Order of April 7, 2006, provided that in default of payment of the fine and payment of the costs, a term of imprisonment would be imposed.

[12] The Applicant seeks costs in relation to the present matter. I assess costs in the amount of \$1,000.00.

"E. Heneghan"

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Judge

Vancouver, British Columbia  
December 3, 2007

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-687-05

**STYLE OF CAUSE:** The Minister of National Revenue v. and Kevin William Middleton

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** October 4, 2007

**REASONS FOR ORDER AND ORDER:** HENEGHAN J.

**DATED:** December 3, 2007

**APPEARANCES:**

Ms. Amanda Lord

FOR THE APPLICANT

No appearance

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE APPLICANT

n/a

FOR THE RESPONDENT