

Date: 20080409

Docket: T-1594-06

Citation: 2008 FC 460

Ottawa, Ontario, the 9th day of April 2008

PRESENT: The Honourable Mr. Justice Martineau

IN THE MATTER OF the *Income Tax Act*

**AND IN THE MATTER OF assessments by the Minister
of National Revenue under the *Income Tax Act***

AGAINST:

**MARIO LAQUERRE
FIDUCIE MARIO LAQUERRE
FIDUCIE ML
9075-3153 QUÉBEC INC.
9015-7769 QUÉBEC INC.
9067-6388 QUÉBEC INC.
1392, 4^e avenue
Québec (Québec) G1J 3B6**

**9029-0065 QUÉBEC INC.
825, chemin Hibou
Stoneham (Québec) G0A 4P0**

-AND-

**9011-1345 QUÉBEC INC.
1392, 4^e avenue
Québec (Québec) G1J 3B6**

Respondents

**Third party
(for the purposes of
the motion for a
charging order
absolute)**

Docket: T-699-07

IN THE MATTER OF the *Income Tax Act*
AND IN THE MATTER OF assessments by the Minister
of National Revenue under the *Income Tax Act*

AGAINST:

MARIO LAQUERRE
FIDUCIE MARIO LAQUERRE
FIDUCIE ML
FIDUCIE MJ
9122-9831 QUÉBEC INC.
9067-6388 QUÉBEC INC.
1392, 4^e avenue
Québec (Québec) G1J 3B6

Respondents

-AND-

9011-1345 QUÉBEC INC.
1392, 4^e avenue
Québec (Québec) G1J 3B6

Third party
(for the purposes of
the motion for a
charging order
absolute)

REASONS FOR ORDER AND ORDER

[1] The applicant, Her Majesty the Queen in Right of Canada (the judgment creditor) is seeking to obtain pursuant to rule 459 of the *Federal Courts Rules*, SOR/98-106, as amended (the Rules), a charging order absolute against six immovables already subject to an interim charging order

following the *ex parte* issuance by the Court of a varied interim charging order on October 11, 2007 (the impugned order).

[2] Five of the immovables belong to the company 9067-6388 Québec Inc. (9067), one of the respondents, and the sixth belongs to the company 9011-1345 Québec Inc. (9011), which is added as a third party for the purposes of the motion for a charging order absolute brought by the judgment creditor.

[3] The interim order that the applicant is seeking to have maintained follows the registration, on various dates, of certificates issued under section 223 of the *Income Tax Act*, S.C.R. 1985 (5th Supp.), c-1 (the Act). In this case, the Minister of National Revenue (the Minister), acting through an authorized agent from the Canada Revenue Agency (the Agency), has already been authorized by two jeopardy collection orders issued *ex parte* by the Court on September 6, 2006 (docket T-1594-06), and April 25, 2007 (docket T-699-07), respectively, to take forthwith any or all of the collection measures described in paragraphs (a) to (g) of subsection 225.1(1) of the Act, to collect and/or secure the payment of the reassessments made by the Minister on August 31, 2006, and April 25, 2007. It must be remembered that the registration of a certificate of the Minister is equivalent to a judgment of this Court. In fact, certification is specifically listed as a collection measure at paragraph 225.1(1)(b) of the Act. This means that the judgment creditor may immediately register an interim charge against any immovable belonging to the judgment debtor mentioned in the certificate in question.

[4] The first issue in this case is whether the judgment creditor's motion for a charging order absolute is premature where the Tax Court of Canada has not yet ruled on the appeals from the reassessments.

[5] Rule 459(1) reads, "At a show cause hearing referred to in paragraph 458(1)(b), the Court shall make the interim charge absolute, in Form 459, or discharge it." In this case, then, the Court has two options: to make the charge absolute or to discharge it. I note that rules 458 and 459 do not require a judgment creditor to seize the immovable immediately (although he could); the goal is rather to charge it with the equivalent of a judicial hypothec to ensure the protection of his rights: *R. v. Mullin*, [1985] 2 C.T.C. 128. More specifically, the purpose and effect of these rules is the creation of a charge on the debtor's immovable pursuant to a judgment, affecting the said immovable when that judgment is enforced: *Re Beaudry*, [1979] 2 FC 138. Given that we are simply dealing with a judgment execution measure and that under rule 462, the Court may, on a motion by the judgment debtor or any other person having a right in the property charged with an interim or absolute charge, discharge or vary the charging order on such terms as it considers just with respect to costs, I do not find it premature to issue a charging order absolute in this case.

[6] In issuing the interim order on October 11, 2007, the Court found, in light of the evidence submitted by the applicant, that *prima facie* and subject to evidence to the contrary, it was appropriate to lift the corporate veil and consider the patrimony of the third party as belonging to the following judgment debtors: Mario Laquerre (Laquerre), 9122-9831 Québec Inc. (9122), 9075-3153 Québec Inc. (9075), 9015-7769 Québec Inc. (9015) and 9029-0065 Québec Inc. (9029). Given that as of September 28, 2007, Laquerre, 9122, 9075, 9015 and 9029 owed the Agency various amounts

then totalling \$1,813,868.02 and that these amounts were owing and unpaid, the Court found it appropriate to order an interim charge until it could be determined whether a charging order absolute was required, and this only for the purpose of enabling the applicant to take measures to collect the tax debts of those judgment debtors.

[7] The judgment debtors, who are respondents in dockets T-1594-06 and/or T-699-07, sought by way of two separate motions to have the two above-mentioned jeopardy collection orders set aside. The respondents and the third party oppose this motion by the judicial creditor on the basis that the conditions for lifting the corporate veil are not met in this case. In concurrent decisions, this Court is dismissing the respondents' two motions to set aside the jeopardy collection orders (2008 FC 458; 2008 FC 459). Secondly, for the reasons that follow, I am allowing this motion for a charging order absolute against the immovables in question.

[8] Laquerre is a resident of Quebec City. He has been involved in real estate investment for several years, acquiring (in his own name and through the trusts and numbered companies he controls) foreclosures and other distress properties. In this regard, he has constituted several numbered companies and trusts:

- a) The Fiducie Mario Laquerre (Fiducie Laquerre) is an *inter vivos* trust constituted on August 21, 1996, in Quebec City. Laquerre is a trustee (along with his mother Monique Carignan) of Fiducie Laquerre. Laquerre (along with his sons Hugo and Michel-Olivier Laquerre) is a beneficiary of Fiducie Laquerre. The Fiducie owns various immovables.

- b) ML is an *inter vivos* trust constituted on August 21, 1996, in Quebec City. Laquerre is a trustee (along with his mother Monique Carignan) of ML. Laquerre (along with his sons Hugo and Michel-Olivier Laquerre) is a beneficiary of ML. ML also owns various immovables.
- c) MJ is an *inter vivos* trust constituted on July 11, 2000, in Quebec City. Laquerre is a trustee (along with his mother Monique Carignan) of MJ. Laquerre (along with his daughter Mélissa Tremblay Laquerre and with Josée Tremblay) is a beneficiary of MJ. The assets belonging to MJ are primarily investments.
- d) 9075 was constituted on March 15, 1999, and its head office is located at 1392, 4^e avenue, Québec (Québec). 9075 manages funeral complexes that belonged to ML. Laquerre is the sole administrator and ML the sole shareholder of company 9075.
- e) 9015 was constituted on February 7, 1995, and its head office is located at 1187, 1^{ère} avenue, Québec (Québec). The immovable assets held by 9015 were the Hôtel Faubourg Stoneham located at 825 Hibou Road, Stoneham, Quebec. 9015 sold that hotel to 9075, described above. Laquerre is the sole administrator and ML the sole shareholder of 9015.
- f) 9067 was constituted on August 26, 1998, and its head office is located at 1392, 4^e avenue, Québec (Québec). The immovable assets held by 9067 include various immovables and commercial properties. 9067 signed two purchase agreements in June and September 2006. Laquerre is the sole administrator and shareholder of 9067.

- g) 9029 was constituted on December 11, 1995, and its head office is located at 1392, 4^e avenue, Québec (Québec). The immovable assets held by 9029 are a former paint factory and the land on which it sits.
- h) 9122 was constituted on November 12, 2002, and its head office is located at 1392, 4^e avenue, Québec (Québec). The immovable asset managed by 9122 is an immovable belonging to ML. Laquerre is the sole administrator and ML the sole shareholder of 9122.

[9] On October 3, 2007, the applicant filed an *ex parte* motion seeking to have the corporate veil lifted and seeking an interim charging order against the immovables at issue pursuant to rule 458 of the Rules. According to the applicant's written submissions, the judgment debtors' only assets of value that the Agency has yet to seize or charge with a hypothec belong to 9067 and 9011. The equity in these assets is estimated at \$315,000.00 and \$320,000.00 respectively. The applicant alleges that lifting the corporate veil is justified because [TRANSLATION] "several [of Laquerre's] non-arm's length companies were established so that he and some of his companies could evade taxes". In fact, the investigation and audit conducted by the Agency reveal that Laquerre and his *alter ego* companies knowingly set up their distinct legal personalities to escape their tax liabilities and avoid paying the amounts owing to the Minister under the Act. This is against public order and constitutes fraud within the meaning of article 317 of the *Civil Code of Québec*, S.Q. 1991, c. 64 (C.C.Q.).

[10] The respondents claim that imposing a charge (whether interim or absolute) unduly prevents them from carrying on their legitimate business activities of buying and selling immovable property

and will force them into bankruptcy. They also claim that none of the payments referred to in Mr. Ferland's two affidavits (one sworn October 1, 2007, and the other November 20, 2007) were made for the purpose of mingling the assets of the various entities. In this case, the respondents committed no fraudulent acts. Moreover, the non-payment of tax debts does not constitute a contravention of a rule of public order: the judgments debtors are entitled not to pay the tax debts in question before the validity of the impugned notices of assessment has been confirmed by final judgment on the appeals brought before the Tax Court of Canada. The lifting of the corporate veil can only be permitted in limited circumstances. There is nothing to indicate that Laquerre's *alter ego* companies are being used to dissemble fraud.

[11] A corporation may be considered the *alter ego* of another corporation when there is such a close relationship between them that what apparently concerns one actually pertains to the activities of the other: *Buanderie centrale de Montréal Inc. v. Montreal (City)*, [1994] 3 S.C.R. 29 at para. 34 (*Buanderie centrale*). A large number of factors can be identified to determine the existence of such a relationship, but according to the Supreme Court of Canada, the one that is most explicit and most likely to cover all aspects of the concept is control: *Buanderie centrale, supra*.

[12] According to article 317 C.C.Q., “[i]n no case may a legal person set up juridical personality against a person in good faith if it is set up to dissemble fraud, abuse of right or contravention of a rule of public order.” This legislative text prohibits one from setting up the separate legal personality of a corporation to dissemble fraud, abuse of right or contravention of a rule of public order: *Québec (Commission des droits de la personne et des droits de la jeunesse) c. Coutu*, [1998] A.Q. no 2779 (QL) (C.A.Q.). This decision clearly applies to this case.

[13] As a general rule, I am of the opinion that the non-payment of tax debts may constitute contravention of a rule of public order. Authors Paul and Maurice Martel wrote the following in *La Compagnie au Québec*, Montréal, Wilson et Lafleur, Martel Ltée., 2005, at page I-64 :

[TRANSLATION]

The expression “contravention of a rule of public order” refers in particular, according to the Minister of Justice, to [TRANSLATION] “contraventions of environmental, public security, communications and public utilities regulations”. They are contraventions to legal rules that are imperative in nature and that cannot be derogated from by contract, such as those set out in legislation regarding the organization of the state, as well as administrative and fiscal laws and laws regarding the organization of professional bodies, criminal legislation, labour legislation and the charters of rights and freedoms. This codifies another series of the above-mentioned exceptions established in case law, namely, the use of companies as screens to dissemble a contravention of a rule of public order.

[Emphasis added]

[14] Moreover, in *Quebec (Deputy Minister of Revenue) v. Couverture C.G.L. Inc. and Les Entreprises Yvon Latouche Inc.* (Unpublished decision, rendered February 15, 1995 – Docket No. GST-100-94), the Federal Court applied the principle set out in article 317 C.C.Q. in the context of an applicant (Les Entreprises Yvon Latouche) objecting to a seizure made by the Deputy Minister of Revenue of Quebec against the defendant (Couverture C.G.L. Inc.). It is clear from Mr. Justice Denault’s decision that the applicant had engineered a whole series of transactions to avoid paying the amounts it owed to the Minister of Revenue:

In the case at bar, after hearing the testimony of Yvon Latouche and his wife Ginette Giroux, I have no hesitation in concluding that Yvon Latouche is the alter ego of Les Entreprises Yvon Latouche Inc., as he admitted in his testimony, but most importantly he is the prime mover in Couverture C.G.L. Inc. The incorporation of various companies by Yvon Latouche, sometimes in his own name and

sometimes in that of his wife, taking care never to transfer the assets of the company he was discarding to the name of the company he was preparing to do business with, was manifestly done in order to deceive creditors, avoid the payment of debts and, as here, avoid having to reimburse money which he had collected as a trustee but had neglected to reimburse. Clearly, the Court cannot be a tool or accomplice in such machinations.

[15] The judge then concludes as follows:

In the case at bar the Court considers that the applicant cannot set up the legal personality of an artificial person other than the defendant as a means of objecting to the seizure and sale of the property seized. In the circumstances at bar the applicant's opposition constitutes an abuse of right and an attempt by the prime mover in the defendant as well as by the applicant to avoid its obligations. Its opposition therefore cannot be allowed.

[16] In this case, there is no doubt as to the non-payment by Laquerre and his companies and trusts of their tax debts. Despite the collection measures taken following the issuance of the two jeopardy collection orders on September 28, 2007, the full tax debt owed by Laquerre, 9122, 9075, 9015, 9029, ML, Fiducie Laquerre and MJ amounted to \$2,809,313.22 (paragraph 23 of Mr. Ferland's affidavit sworn November 20, 2007, filed in response to the respondents' motion to strike). I note that the total debt owed to the judgment creditor by the respondents covered by the seven certificates registered under section 223 of the Act amounts to \$1,720,588.80 (see Exhibit 19.1 to Mr. Ferland's affidavit sworn October 1, 2007).

[17] Furthermore, according to the evidence in the docket, I have no doubt that Laquerre attempted to camouflage his actions through his many companies, which constituted a planned business structure. According to the affidavit of Annie Valois, sworn August 31, 2006, Laquerre and the non-arm's length companies or the trusts of which he was one of the beneficiaries were

employing a number of tax evasion schemes. On February 27, 2004, Ms. Valois met with Laquerre and his chartered accountant, Laurier Edmond. The latter stated that Laquerre [TRANSLATION] “really doesn’t like paying income tax”. Ms. Valois also described four schemes in her affidavit dated August 31, 2006. One of them is explained as follows under the heading [TRANSLATION]

“B. THE SCHEME OF ADVANCING FUNDS TO A COMPANY ABOUT TO BE DISSOLVED”:

15. During my audit, I discovered that Laquerre had also developed a scheme for diverting proceeds from the sale of immovables to one of his trusts or companies without any tax implications;
16. Through one of his trusts or non-arm’s length companies, Laquerre would charge the immovables belonging to his trusts or companies with several hypothecs, indicating in the hypothecary instruments that these were amounts granted through cash advances;
17. However, the cash advances were in fact much lower than the amounts of the registered hypothecs;
18. This means that when the company or trust sold the immovable to a third party, the notary—often selected by the buyer—had to ensure that all the debts associated with the immovable were paid before making any payments to the vendor;
19. The notary would therefore discharge the hypothecs in the name of the entities belonging to Laquerre without having to verify whether the amounts had actually been advanced;
20. At that point, the notary would write a cheque to the holder of the hypothec to obtain an acquittance for the debt. Usually, the redemption of the hypothec generates a credit balance with regard to the advances. Normally, in such a transaction, no benefit is calculated because the entity receiving the money records an account payable to the entity to which the advances are owed.
21. In fact, however, his entities would wind up their companies, cease operations, make no credit entry offset, stop filing

income tax returns and be struck off by the Inspector General of Financial Institutions, so that the advance owed by the company or trust that had sold the immovable was never reimbursed;

22. I consider the resulting benefits undeclared income amounting to approximately \$1,888,952.67 for the various entities concerned, as can be seen in Reference 2 of Appendix 2 of the audit report filed as Exhibit “65” in support of my affidavit;

[18] The respondents argue that they are entitled not to pay any tax debts before their validity under the circumstances has been confirmed by the Tax Court of Canada. Unfortunately, they do not cite any relevant authorities or cases in support of this proposition. I am also of the opinion that the non-payment of the tax debts would constitute a contravention of a rule of public order in this case. It may also bear repeating that according to rule 462, the respondents may ask the Court (by way of a motion) to discharge or vary the charging order absolute if the Tax Court of Canada allows their appeal and refuses to confirm the validity of the reassessments issued by the Minister on August 31, 2006, and April 25, 2007.

[19] Finally, I note that Laquerre’s personal property is mingled with that of his non arm’s-length companies. I agree with the following statements of Mr. Justice Barbe in *Échafaudages Fast Montréal Inc. c. Alfredo Masciotra*, [2001] AZ-01036292.7:

[TRANSLATION]

The personal use of company property does not benefit the company; it constitutes a dishonest act. Article 317 C.C.Q. allows us to disregard the legal person when juridical personality is set up to dissemble fraud. The involvement of the shareholder as sole administrator and president of the company in the company’s actions is a key criterion for lifting the corporate veil. Using the company’s money to cover personal tanning expenses and failing to inform the

applicant of the company's precarious financial situation constitute abuse within the meaning of article 317 C.C.Q.

[Emphasis added]

[20] On the facts in the docket, I find that Laquerre is making personal use of property belonging to his companies and trusts. According to Mr. Ferland's affidavit sworn October 1, 2007, the personal property used by Laquerre (such as his vehicles and his residence) is in the name of his companies and trusts. Moreover, 9122 issued cheques in 2006 to pay off Laquerre's personal credit cards. I note that in 2005, company 9067 issued cheques to entities controlled by the judgment debtor in amounts totalling \$195,643.19. There are several other examples in the docket showing that Laquerre has mingled his personal affairs with those of his companies and trusts: see Mr. Ferland's affidavit sworn October 1, 2007, at paras.113 to 135.

[21] This mingling constitutes an act that entitles us to lift the corporate veil. According to the Court of Québec (Civil Division) in *Buccaneer Industries Ltd. c. Bresee*, [2003] J.Q. no 369 (QL), by mingling a company's account with his personal account, an individual places himself in an uncomfortable situation of conflict, allowing the corporate veil to be lifted:

[TRANSLATION]

The burden of proof is therefore reversed, and he must demonstrate that he has never benefited from the company's income. This mingling of the Bresee family's affairs with those of the company constitutes an act enabling us to lift the corporate veil. It is a blameworthy act.

[22] In conclusion, the respondents' arguments in favour of the dismissal of the judgment creditor's motion to have the corporate veil lifted are not persuasive. Given the convincing evidence

presented by the applicant in dockets T-1574-06 and T-699-07, I find that it is in the interests of justice that the judgment debtors be considered one and the same person with a single patrimony for the purposes of all of the measures to collect the judgment debtors' tax debts.

[23] In light of the preceding, the judgment creditor is also justified in seeking a charging order absolute for the immovables at issue. Given this outcome, the judgment creditor is entitled to costs against the judgment debtors.

ORDER

THIS COURT ORDERS that

1. The motion for a charging order absolute is granted with costs.

2. An absolute charge is made pursuant to rule 459 of the *Federal Courts Rules* against the immovables described in schedules 1 to 6 attached.

“Luc Martineau”

Judge

Certified true translation

Francie Gow, BCL, LLB

Schedule 1

Lot number THREE MILLION SEVEN HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED THREE (3 772 403), Quebec cadastre, land registration division of Quebec City.

With the building erected thereupon, bearing civic number 1095, chemin de la Canardière, Québec, province of Quebec, G1J 2C2, circumstances and dependencies.

Schedule 2

A building commonly known and designated as part of lot number FOUR HUNDRED FIFTY-SIX (456 ptie), official cadastre for the parish of St-Jean-Deschaillons; land registration division of Lotbinière, of irregular shape, bounded on the northwest by rue Principale shown on original and measuring along that boundary thirteen metres and eighty-eight hundredths (13.88m), on the northeast by another part of lot 456 and measuring along that boundary thirty-seven metres and eighty-three hundredths (37.83m), on the southeast by another part of lot 456 and measuring along that boundary twenty-one metres and forty-nine hundredths (21.49m), on the southwest by another part of lot 456 (rue Thibodeau) and measuring along that boundary thirty-four metres and fourteen hundredths (34.14m), and on the west by another part of lot 456 (intersection of rue Thibodeau and rue Principale) and measuring along that boundary eleven metres and forty-eight hundredths (11.48m) along the arc of a circle with a radius of six metres and ten hundredths (6.10m) containing an area of eight hundred forty square metres and seven tenths (840.7m²) the south corner of this immovable being located twenty-seven metres and forty-three hundredths (27.43m) from the west corner of lot 456-1 measured along the northeast boundary of the right-of-way of rue Thibodeau.

With the building erected thereupon, bearing civic number 1000, rue Principale, Parisville, province of Quebec, G0X 1X0, circumstances and dependencies.

Schedule 3

A commercial building comprised of three (3) units bearing civic numbers 101, 102 and 201 of an immovable held in co-ownership located at 385 and 387, rue St-Paul Ouest, Montréal, province of Quebec, H2Y 2A7, circumstances and dependencies.

The exclusive part designated as lot number ONE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-FIVE (1 179 885) Quebec cadastre, land registration division of Montréal.

The exclusive part designated as lot number ONE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-FOUR (1 179 884), Quebec cadastre, land registration division of Montréal.

The exclusive part designated as lot number ONE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-SIX (1 179 886), Quebec cadastre, land registration division of Montréal.

Schedule 4

- a) Lot number THREE MILLION FIVE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED SEVEN (3 531 107), Quebec cadastre, land registration division of Chambly.
- b) Lot number ONE MILLION EIGHT HUNDRED NINETY-SIX THOUSAND NINE HUNDRED FIFTY-SEVEN (1 896 957), Quebec cadastre, land registration division of Chambly.

With the building erected thereupon, bearing civic number 3350, boulevard Sir Wilfrid-Laurier, Saint-Hubert, province of Quebec, J3Y 6T1, circumstances and dependencies.

Schedule 5

Lot THREE MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND NINE HUNDRED TWENTY (3 527 920), Quebec cadastre, land registration division of Chambly.

With circumstances and dependencies.

Schedule 6

A building commonly known and designated as lot number TWO MILLION EIGHT HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED SIXTY-SIX (2 898 466), Quebec cadastre, land registration division of Dorchester.

With the building erected thereupon, bearing civic number 1089, Route Kennedy, Scott, province of Quebec, G0S 3G0, circumstances and dependencies.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1594-06

STYLE OF CAUSE: **IN THE MATTER OF the *Income Tax Act***
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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 20, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** The Honourable Mr. Justice Martineau

DATED: April 9, 2008

APPEARANCES:

Jacques Trudeau FOR THE APPLICANT

Martin Lamoureux FOR THE RESPONDENT

SOLICITORS OF RECORD:

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