

Date: 20080709

Docket: T-673-08

Citation: 2008 FC 853

Ottawa, Ontario, July 9, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

ADVANTAGE CREDIT UNION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Minister of National Revenue (the “Minister”) issued a Requirement For Information (the “Requirement”) obligating Advantage Credit Union to provide banking documents concerning a delinquent taxpayer, Marcel Simonot, as well as the banking documents of other related Credit Union account holders. Following strong objections by Mr. Simonot, the Credit Union refused to comply with the Requirement. The Minister now applies for a compliance order compelling observance of the Requirement.

Issue

[2] Is the Minister entitled to issue a Requirement that will require the Credit Union to disclose information concerning unnamed persons without first obtaining judicial authorization?

[3] I have decided that the compliance order should issue. My reasons follow.

Background

[4] The Minister is pursuing collection of unpaid taxes from Mr. Simonot whose outstanding tax indebtedness is over \$1.3 million.

[5] The related parties named in the Requirement are Albertine Simont, MAS Consulting Inc., Big Al Investments Ltd. and Bodmin Farms. They all have accounts or other business dealings with the Credit Union. Albertine Simonot is the spouse of Mr. Simonot. MAS Consulting Inc. is now named Marcel Simonot Consulting Inc. and Marcel Simonot is listed as sole director in the Saskatchewan corporate registry. Albertine Simonot is listed as sole director and shareholder of Big Al Investments Ltd. in the Registry. The registered office addresses of the two corporations are the same as Mr. Simonot's law office. Finally, Bodmin Farms held an account with the Credit Union and that the account name is also in the name of Albertine Simonot.

[6] The Minister served the Requirement on the Credit Union on March 29, 2007, then known as Northgate Credit Union. The Requirement, issued pursuant to s. 231.1(a) and (b) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1, as amended (the "*Act*"), required the Credit Union to provide

information and documents in respect of Marcel Simonot, Albertine Simont, MAS Consulting Inc., Big AI Investments Ltd. and Bodmin Farms as follows:

- (a) A statement setting out all entries in all accounts at your branch, that are known to be or to have been operated or controlled by, for, or on behalf of the persons named above or any of them and all joint accounts in the names of any of those persons and another or others and all entries that are known to be or to have been related to the affairs of those persons or any of them, in all other accounts at your branch including casual, manager's sundry and similar accounts.
- (b) A statement setting out particulars of all transactions, including loans and discounts and collateral thereto, safety deposit box rentals, safekeeping and security dealings at your branch with, to, for or on behalf of the persons named above or any of them either alone or with another or others, or any person or persons known to be or to have been acting on behalf of those persons or any of them; and
- (c) All documents, including authorizations, powers of attorney, mail and telegraphic transfers, accounts, vouchers, letters, contracts, letters of credit and statements that are known to be or to have been related to the entries or transactions set out in the statements required under (a) and (b) above.

[7] The Credit Union responded on May 17, 2007 advising that Mr. Simonot had objected to the Requirement and it invited the Minister to seek judicial authorization for the information sought. The basis for the Credit Union's refusal was that the disclosure of the information sought would also reveal information about unnamed persons. An exchange of correspondence followed between the Credit Union and the Minister. Ultimately, the Credit Union declined to comply with the Requirement.

[8] Lastly, the Minister provided, by way of affidavit evidence, that:

- 33. The Minister issued the Requirement for purposes related to the administration and enforcement of the *Income Tax Act*, in particular the collection of amounts payable under the *Income Tax Act* by Marcel Simonot.
- 34. The Applicant requires the information to determine whether Marcel Simonot made a transfer or transfers to any or all of Albertine Simonot,

MAS Consulting Inc., Big Al Investments Ltd. and Bodin Farms that may be the subject of collection action. Collection action may include assessments against any or all of Albertine Simonot, MAS Consulting Inc. (now known as Marcel Simonot Consulting Inc.), Big Al Investments Ltd., or Bodmin Farms pursuant to section 160 of the *Income Tax Act*.

35. The Requirement was not made to verify compliance by any unnamed person with any duty or obligation under the *Income Tax Act*. The information and documents sought in the Requirement are not required to verify compliance by any unnamed person with any duty or obligation under the *Income Tax Act*.

Is the Minister entitled to issue a Requirement that requires the Credit Union to disclose information concerning unnamed persons without first obtaining judicial authorization?

[9] The relevant provisions of the *Act* are:

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a comprehensive tax information exchange agreement between Canada and another country or jurisdiction that is in force and has effect or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

Unnamed persons

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3).

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord général d'échange de renseignements fiscaux entre le Canada et un autre pays ou territoire qui est en vigueur et s'applique ou d'un traité fiscal conclu avec un autre pays, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne, dans le délai raisonnable que précise l'avis :

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe

Judicial authorization

(3) On *ex parte* application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection 231.2(1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) where the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

(c) and (d) [Repealed, 1996, c. 21, s. 58(1)]

(1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Autorisation judiciaire

(3) Sur requête *ex parte* du ministre, un juge peut, aux conditions qu’il estime indiquées, autoriser le ministre à exiger d’un tiers la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une personne non désignée nommément ou plus d’une personne non désignée nommément — appelée « groupe » au présent article —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) cette personne ou ce groupe est identifiable;

b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

c) et d) [Abrogés, 1996, ch. 21, art. 58(1)]

[10] This issue turns on the interpretation of s. 231.2(2) of the *Act*. The Credit Union argues that the Minister must seek a judicial order before it can impose a Requirement that will release information on individuals who are unnamed in the Requirement. The Credit Union relies on the Federal Court of Appeal decision in *Canada (Minister of National Revenue) v. Toronto Dominion Bank*, 2004 FCA 359 (“*Toronto Dominion*”).

[11] The Credit Union agrees that section 231.2(1) of the *Act* empowers the Minister to issue a Requirement to provide documents or information for any purpose related to the administration or enforcement of the *Act*. However, the Credit Union argues that s. 231.2(2) constrains the Minister

from imposing on a third party, in this case the Credit Union, an obligation to provide information or documentation relating to one or more unnamed persons without the prior authorization of a judge.

[12] The necessity to seek judicial authorization to obtain information from a third party concerning unnamed persons was considered by the Federal Court of Appeal in *Toronto Dominion*, above. In that case, the Minister served a Requirement To Provide Information on the Toronto Dominion Bank requesting information with respect to a specific account into which it had reason to believe the named tax debtor had deposited a large cheque. The account belonged to an unnamed party. The Federal Court of Appeal decided the bank was justified in not providing the information. Justice Décaré described the purpose of section 231.2(2) as protecting the third party holding the information, in that case the Toronto Dominion Bank, as well as the unnamed party not under investigation, in that case the holder of the account in which the cheque was deposited. Justice Décaré stated at paragraph 7:

... The purpose of subsection 231.2(2) is to protect both the third party with the information and the person concerned. The third party naturally wants to be sure, before it gives information to the Minister (which moreover here is confidential under paragraph 244(d) of the *Bank Act*) that it has a legal duty to do so. The person concerned is entitled to have his or her privacy respected to the extent provided by law. It is specifically to achieve this twofold objective that Parliament has limited the Minister's power and required him to obtain prior judicial authorization, once the conditions mentioned in paragraphs 231.2(3)(a) and (b) are met.

[13] The Credit Union states it is governed by legislation, section 33 of the *Credit Union Act*, 1998, S.S. 1998, c. C-45.2, that protects the confidential information of customers from disclosure except as permitted by the *Credit Union Act*, any other applicable law or court order, or by customer

authorization. The Credit Union argues that the Federal Court of Appeal's reasoning in *Toronto Dominion* applies in this situation.

[14] The Minister contends that the Requirement is valid since the unnamed persons are not themselves the subject of an investigation. The Minister relies on the more recent Federal Court of Appeal decision in *Canada (Customs and Revenue Agency) v. Artistic Ideas Inc.*, 2005 FCA 68 ("*Artistic Ideas*").

[15] In *Artistic Ideas*, above, the Federal Court of Appeal again considered s. 231.2(2) of the *Act*. In this case an art dealer, Artistic Ideas, arranged for sale of art to individuals who donated the art to registered charities. Artistic Ideas in this case was the third party and its tax liability was being investigated. The Minister in *Artistic Ideas*, above, also wanted to reassess the donors. The donors received tax deduction receipts from the charities based on the appraised value of the art. The appraised values exceeded the amount paid by the donors and the tax deduction provided the donors with net financial benefits. The Minister required Artistic Ideas to provide the names of both the donors and the charities. Artistic Ideas refused and the matter proceeded to court. Writing for the Federal Court of Appeal, Justice Rothstein (now of the Supreme Court) took a different approach than in *Toronto Dominion*, above. In holding that the names of the charities must be revealed but not the names of the donors, Rothstein J.A. stated:

11. However, where unnamed persons are not themselves under investigation, subsections 231.2(2) and (3) do not apply. Presumably, in such cases the names of unnamed persons are necessary solely for the Minister's investigation of the third party. In such cases a third party served with a requirement to provide information and documents under subsection 231.2(1) must provide all the relevant information and documents including the names of unnamed persons. That is because subsection 231.2(2) only pertains to those unnamed persons in respect of whom the Minister may obtain an authorization of a judge under subsection 231.2(3).

[16] These two Federal Court of Appeal cases were recently considered by Deputy Judge Strayer in *Canada (National Revenue) v. Morton*, 2007 FC 503. He found *Artistic Ideas*, above, decided after *Toronto Dominion*, above, to more clearly indicate the intention of s. 231.2(2). He noted that *Artistic Ideas*, above, was quite clear in distinguishing between the charities that were not under investigation and the donors who were under investigation and therefore not required to be identified.

[17] I agree with Deputy Justice Strayer. Section 231.2(2) clearly relates “one or more unnamed persons” to the authorization required in subsection 231.2(3). Those “one or more unnamed persons” in subsection 231.2(2) are individuals in subsection 231.2(3) for whom “the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.” I conclude that the interpretation of s. 231.2(2) given by the Federal Court of Appeal in *Artistic Ideas*, above, governs this matter.

[18] The Minister has led evidence that the Requirement, and the information and documents sought, were not made to verify compliance by any unnamed person with any duty or obligation under the *Act*. As such, I find that s. 232.2(2) of the *Act* is not applicable and the Requirement in question is valid. Accordingly, I will grant the compliance order.

[19] The Credit Union sought the guidance of the court in this matter. It acknowledged that should the Requirement be valid, a compliance order should issue against it. The Minister acknowledges that the Credit Union was in a difficult position given the objections of Mr. Simonot.

In this regard, the Minister seeks a lesser amount of costs which I consider to be appropriate in these circumstances.

ORDER

THIS COURT ORDERS AND ADJUDGES that:

1. The Respondent shall comply with the Requirement for Information issued pursuant to subsection 231.2(1) of the *Income Tax Act* by the Minister of National Revenue to the Respondent on March 29, 2007 within thirty (30) days after being served with this Order;
2. Compliance shall be effected by providing the documents and information to Jim Wytosky, an officer with Canada Revenue Agency;
3. The Minister is authorized to effect service of this Order on the Respondent by personal service under Rule 128 of the *Federal Courts Rules*; and
4. Costs are awarded to the Minister in the amount of \$250.00.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-673-08

STYLE OF CAUSE: The Minister of National Revenue
v.
Advantage Credit Union

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: May 26, 2008

**REASONS FOR
ORDER & ORDER:** Mandamin, J.

DATED: July 9, 2008

APPEARANCES:

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