

Date: 20081001

Docket: T-1122-06

Reference: 2008 FC 1075

[ENGLISH TRANSLATION]

In the matter of the *Income Tax Act*,

- and -

In the matter of an assessment or assessments raised by the Minister of National Revenue under one or more of the following acts: the *Income Tax Act*, the *Canada Pension Plan*, the *Employment Insurance Act*,

BETWEEN:

**DANIEL HAZAN
6521 Merton Road
Côte Saint-Luc
Province of Quebec
H4V 1C4**

REASONS FOR THE ORDER

Pinard J.

[1] This is an application by Daniel Hazan under subsection 225.2(8) of the *Income Tax Act*, (R.S.C., 1985, c. 1 (5th Supp.)) (the Act), to review the order made by my colleague, Michel Shore J., on July 11, 2006.

[2] Daniel Hazan (“the applicant”) is a businessman from Côte-St-Luc in the province of Quebec. Following an audit by the Canada Revenue Agency (“the Agency”), the applicant’s income for both 2001 and 2002 was adjusted in the following manner:

- For 2001, the applicant had reported a total income of \$9,672; the audit determined a revised taxable income of \$375,295.

- For 2002, the applicant had reported an income of \$9,759; the audit determined a revised taxable income of \$208,899.

[3] Subsequently, the applicant objected to the notices of assessment dated January 31, 2005, for the additional income thus attributed to the 2001 and 2002 taxation years. In August 2006, the Agency sent the applicant a notice of confirmation for the assessments in question.

[4] On February 4, 2005, von Finckenstein J. determined that, according to the sworn statement of François Bacave, a collections officer at an Agency tax services office, there were reasonable grounds to believe that granting Mr. Hazan a delay to pay the required amount would jeopardize its collection. He thus authorized any of the actions set forth in paragraphs (a) to (g) of subsection 225.1(1) of the Act to be taken forthwith in order to guarantee the payment of \$233,668.81, the assessment for 2001 and 2002. This order by von Finckenstein J. was not challenged.

[5] In January 2006, the Agency proceeded with an income audit for the 2003 taxation year. On May 17, 2006, a notice of assessment for \$111,507.61 was raised against the applicant, who objected to it through a notice of objection dated August 4, 2006.

[6] On July 11, 2006, Shore J. made the order that is the subject of this review request, an order authorizing the Agency to take forthwith any of the actions set forth in paragraphs (a) to (g) of subsection 225.1(1) of the Act, or one or several of them, in order to receive and/or guarantee the payment by Daniel Hazan of the amount of \$111,507.61, plus interest, claimed by the Agency for 2003. Based on the sworn statements of Messrs. François Bacave and Pierre Léger, the Court found that there were reasonable grounds to believe that granting Mr. Hazan a delay to pay said sum would jeopardize the collection of all or part of it. The authorization was provided by the Court *ex parte*, in compliance with subsection 225.2(2) of the Act.

* * * * *

[7] The following provisions of the Act are relevant:

152. (8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

152. (8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

225.2 (1) In this section, "judge" means a judge or a local judge of a superior court of a province or a judge of the Federal Court.

225.2 (1) Au présent article, « juge » s'entend d'un juge ou d'un juge local d'une cour supérieure d'une province ou d'un juge de la Cour fédérale.

(2) Notwithstanding section 225.1, where, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the

(2) Malgré l'article 225.1, sur requête *ex parte* du ministre, le juge saisi autorise le ministre à prendre immédiatement des mesures visées aux alinéas 225.1(1)a) à g) à l'égard du montant d'une cotisation établie relativement à un contribuable, aux conditions qu'il estime

collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) with respect to the amount.

raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à ce contribuable d'un délai pour payer le montant compromettrait le recouvrement de tout ou partie de ce montant.

[...]

[...]

(8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

(8) Dans le cas où le juge saisi accorde l'autorisation visée au présent article à l'égard d'un contribuable, celui-ci peut, après avis de six jours francs au sous-procureur général du Canada, demander à un juge de la cour de réviser l'autorisation.

[...]

[...]

(11) On an application under subsection 225.2(8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make such other order as the judge considers appropriate.

(11) Dans le cas d'une requête visée au paragraphe (8), le juge statue sur la question de façon sommaire et peut confirmer, annuler ou modifier l'autorisation et rendre toute autre ordonnance qu'il juge indiquée.

* * * * *

[8] In his written submissions, the applicant thus summarizes his arguments:

[TRANSLATION]

The evidence submitted in support of the application for authorizing immediate enforcement is not convincing and does not establish beyond all suspicion that the defendant tried to reduce his property to the credit of the applicant.

The defendant indeed sold some of those properties and obtained various loans, but it was not difficult to retrace those funds or to collect them. Mr. Daniel Hazan never tried to hide those transactions. The defendant has not acted in any way that would suggest the use of

schemes for the purpose of reducing his assets from the applicant's credit.

[9] Lastly, he claims: [TRANSLATION] "We submit that the application for authorizing immediate enforcement was excessive, abusive and based on unfavourable prejudices".

[10] At the hearing before me, counsel for the applicant essentially reiterated the same arguments, but corrected his aim regarding the burden of proof imposed by subsection 225.2(2) of the Act on the Minister.

[11] I cannot concur with the applicant's claims, which suggest that the Minister did not show that there are reasonable grounds to believe that granting a delay to pay the claimed amount would jeopardize the collection of all or any of that amount.

[12] In *The Minister of National Revenue and 514659 B.C. Ltd.*, 2003 FCT 148, my colleague, François Lemieux J., supported by a decision by the Federal Court of Appeal, specifies the burden imposed on the Minister by subsection 225.2(2) of the Act as follows:

[6] I interpret the words "reasonable grounds to believe" to mean a standard of proof that "while falling short of a balance of probabilities, nevertheless connotes a bona fide belief in a serious possibility based on credible evidence" (see para. 24 in *The Minister of Citizenship and Immigration v. Qu*, [2002] 3 F.C. 3 (C.A.)).

[13] In my view, the evidence presented by the taxpayer applicant does not raise any reasonable doubt as to the sufficiency of evidence that was initially submitted by the minister in support of his *ex parte* application (see *The Queen v. Satellite Earth Station Technology Inc.*, [1989]

2 T.C.C. 291, (1989), 30 F.T.R. 94). In addition, all of the notices of assessment issued against the applicant then had to be deemed valid and binding (subsection 152(8) of the Act).

[14] Therefore, it is fundamentally in light of that evidence, which clearly comes from paragraphs 2 to 54 of the sworn statement by Collections Officer François Bacave, dated February 1, 2005, paragraphs 2 to 15 of the sworn statement by Collections Officer Pierre Léger, dated June 29, 2006, and the documentary evidence to which those statements refer, that I must find that the applicant failed to satisfy me that the Minister did not shift his burden under subsection 225.2(2) of the Act.

[15] In any case, the applicant himself did not submit any relevant or sufficient evidence to satisfy me that the minister may not be satisfied that there are reasonable grounds to believe, *i.e.* that the minister may have a “bona fide belief in a serious possibility based on credible evidence”, that granting the applicant a delay to pay the amount in question would jeopardize the collection of all or any of that amount. In my view, the evidence submitted by the minister showing the history of interactions between the Agency and the applicant since 1990 are largely sufficient to support the criteria of section 225.2 of the Act. The applicant did not present any credible explanation for his clearly unorthodox tax practices. In addition, there is no basis for his reproach of the minister for having reused the sworn statement of Mr. Bacave for obtaining the order in 2005 and in 2006. The reasons taken from the statement are also relevant for both applications. I note that the facts raised in the most recent sworn statement from Mr. Bacave (dated August 15, 2008) reveal behaviour since July 2006 from Mr. Hazan that matches what was previously described. As for the allegation by Mr. Léger, on the topic of the \$50,000 loan made by the applicant for his sister Yvonne, the

applicant presents an alternative explanation, but I am not satisfied that it makes what was provided by Mr. Léger not credible.

[16] It is true that in his original sworn statement, Collections Officer Bacave indicated that, given the applicant's past actions, it is "possible" for the applicant to once again put a lien on his residence for the purpose of reducing or eliminating the equity. However, it was up to the judge who hears the application under subsection 225.2(2) of the Act to determine, in light of all of the evidence submitted to him, the seriousness of that possibility, which he did by stating, in his order:

[TRANSLATION]

There are reasonable grounds to believe that granting Mr. Daniel Hazan a delay to pay said amount would jeopardize any or all of its collection.

[17] Under the circumstances, it does not appear appropriate to intervene and the review request must be dismissed. There is no awarding of costs in the minister's favour, since the minister did not request it.

"Yvon Pinard"

Judge

Ottawa, Ontario
October 1, 2008

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1122-06

STYLE OF CAUSE: In the matter of the *Income Tax Act* and DANIEL HAZAN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 17, 2008

REASONS FOR ORDER: Pinard J.

DATED: October 1, 2008

APPEARANCES:

Henri Simon FOR THE APPLICANT

Julie Mousseau FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Montréal, Quebec

John H. Sims, QC FOR THE RESPONDENT
Deputy Attorney General of Canada

Date: 20081001

Docket: T-1122-06

[ENGLISH TRANSLATION]

Ottawa, Ontario, this 1st day of October 2008

PRESENT: The Honourable Mr. Justice Yvon Pinard

In the matter of the *Income Tax Act*,

- and -

In the matter of an assessment or assessments raised by the Minister of National Revenue under one or more of the following acts: the *Income Tax Act*, the *Canada Pension Plan*, the *Employment Insurance Act*,

AGAINST:

DANIEL HAZAN
6521 Merton Road
Côte Saint-Luc
Province of Quebec
H4V 1C4

ORDER

The review request is dismissed, without costs.

“Yvon Pinard”

Judge