

Date: 20071210

Docket: ITA-4042-01

Citation: 2007 FC 1294

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 10, 2007

PRESENT: The Honourable Mr. Justice Martineau

IN THE MATTER OF the *Income Tax Act*

AND IN THE MATTER OF AN assessment or assessments by Minister of National Revenue under one or more of the following statutes: the *Income Tax Act*, the *Canada Pension Plan* and the *Employment Insurance Act*

AGAINST:

ALBERT VAILLANCOURT

Debtor / Respondent

AND

DENIS VAILLANCOURT

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion on behalf of the respondents seeking to reverse the temporary charging order issued by the Court on June 7, 2001 (the impugned order), as well as the striking out of the temporary charge entered by Her Majesty in right of Canada (the judgment creditor) on the property described in Appendix 1 (the property at issue), which is located at 38 Fillion St. in St-Joachim,

Quebec (the specific location). At the heart of this issue that is incidental to the collection proceedings initiated by the judgment creditor, this Court must examine the opposability of the latter as a deed of gift between the respondents involving the property at issue. The legislative and regulatory provisions mentioned below are reproduced in Appendix 2.

[2] The respondent, Albert Vaillancourt (the judgment debtor), died in 2006 at the age of 88. His estate, represented by his liquidator, Ghislain Vaillancourt (Ghislain), one of his sons, carried on the proceeding in January 2007 in this case. Denis Vaillancourt (the other respondent), another son, to whom the judgment debtor gifted the property at issue in September 29, 2000 (the gift at issue), is the co-respondent. A third son, René Vaillancourt (René) is not a party to these proceedings. While he owed \$284,852.37 to the tax authorities, René transferred a total of \$204,500 to the judgment debtor without consideration between May 1, 1996, and December 31, 1998. This transfer of property between persons not dealing at arm's length gave rise to the notice of assessment issued to the judgment debtor on November 22, 2000, under section 160 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1 (the ITA) (the assessment at issue).

[3] This case was initiated on April 18, 2001, after a certificate prepared on behalf of the judgment creditor was filed under section 223 of the ITA attesting that an amount of \$196,770 had not been paid by the judgment debtor by this date (the outstanding amount of the claim at issue).

[4] On June 4, 2001, the judgment creditor filed an *ex parte* application with the Court to obtain: (1) leave to continue the collection measures that began in April 2001, despite the appeal

filed in April 2001 by the judgment debtor against the assessment at issue on the basis that the collection of the Crown's claim would be wholly or partly jeopardized by granting a delay to the judgment debtor to pay the outstanding debt; and (2) establishing an interim charge on the property at issue on the basis that it is the only valuable asset in the judgment debtor's possession and that the gift at issue could not be set up against the judgment creditor. The application was granted in full on June 7, 2001. In particular, the Court issued an immediate performance under subsection 225.2(2) of the ITA as well as the impugned order under rule 458 of the *Federal Courts Rules*, SOR/98-106, as amended, known at the time as the *Federal Court Rules, 1998* (the Rules).

[5] On July 26, 2001, the respondents filed a motion to quash the two orders issued on June 7, 2001. Considering that the jurisdiction of the Court to declare that the gift at issue could not be set up against a judgment creditor was then challenged by the respondents and that a decision by the Federal Court of Appeal was pending in *Gadbois v. Transport H. Cordeau Inc. et al*, Court File No. ITA-1384-97, in which a similar issue was raised, on August 21, 2001, the Court ordered the suspension of the hearing of the respondents' motion to quash. On May 31, 2002, the Federal Court of Appeal made its decision in *Gadbois* and found that this Court has jurisdiction in a seizure by garnishment to decide the opposability to the judgment creditor of a third-party assignment of claim (*Canada (Minister of National Revenue) v. Gadbois*, [2002] F.C.J. No. 836, 2002 FCA 228). On the other hand, in 2005 the Tax Court of Canada (TCC) heard the judgment debtor's appeal. The latter was not challenging the assessment at issue per se but rather the merits of the notice of reassessment for 1995 issued against René, who, as aforesaid, is the transferor for the amount of \$204,500 to the

judgment debtor. On October 25, 2006, the TCC dismissed the judgment debtor's appeal (*Vaillancourt v. The Queen*, 2006 TCC 1395).

[6] Following the resumption of proceedings by the estate of the judgment debtor, a new notice of motion to quash was filed by the respondents on April 30, 2007. First, it appears that the respondents abandoned any claim that they may have previously had against the immediate enforcement order, and I agree with their current counsel that the issue of its lawfulness is moot. In fact, the TCC dismissed the judgment debtor's appeal, such that in any case the collection measures can now be continued under subsection 225.1(1) of the ITA by the Canada Customs and Revenue Agency (the Agency). It therefore remains to be decided in this case if the interim charge registered by the judgment creditor on the property at issue must be declared absolute, or whether it should be quashed by the Court under Rule 459. In this regard, the parties acknowledge that the Court has jurisdiction to decide incidentally the issue of the opposability of a juridical act that the judgment creditor considers to have been made in fraud of his rights, which appears to me to be a proposition correct in law (see *Canada (Minister of National Revenue) v. Gadbois, supra; Déziel (Re)*, [2006] F.C.J. No. 1859, 2006 FC 1481).

[7] In this case, it is provincial law that settles the issue. In this regard, the parties acknowledge that under sections 1631 to 1635 of the *Civil Code of Quebec*, S.Q. 1991, c. 64 (C.C.Q.), a certain number of conditions must be met for the Court to issue a declaration that the act may not be set up against the creditor: (1) it must be a juridical act; (2) the creditor must suffer prejudice; (3) the act must be done in fraud of the creditor's rights, which includes the act by which the debtor becomes

insolvent; (4) the claim must be certain, liquid and exigible at the time the Paulian action is instituted (or the objection is brought by the creditor in a judicial proceeding); (5) the claim must exist prior to the to the juridical act which is attacked; and (6) the declaration of inoperability must be sought within one year from the day on which the creditor learned of the injury. I note that these conditions arise from the content of the provisions of the C.C.Q. and that they are also repeated and addressed in detail by authors Baudouin and Jobin *Les Obligations*, 6th Edition, Cowansville, Quebec: Yvon Blais, 2005, at paragraphs 742 to 769.

[8] I also note that in the preamble of the impugned order, Dubé J. found that [TRANSLATION] “at least *prima facie* and in the absence of evidence to the contrary, the deed of gift concluded before a notary between respondents Albert Vaillancourt and Denis Vaillancourt on January 14, 2000, involving the property [at issue] should be found to be unenforceable against Her Majesty in right of Canada.” Since the service of the impugned order to the judgment debtor, additional evidence has been submitted by both parties. Specifically, both respondents filed their respective affidavits on July 5, 2001, as well as a second affidavit from the other respondent on April 2, 2007. In light of the allegations contained in these affidavits and the written submissions repeated at the hearing by their current counsel, the respondents submit that the impugned order is unfounded in fact and law given that the transfer of the property in question may entirely be set up against the judgment creditor.

[9] First, the respondents argue that the transfer of the property at issue on September 29, 2000, was in no way in fraud of the judgment creditor’s rights because it had been anticipated for a long

time that it would return to the other respondent. Given this age and state of health, the judgment debtor decided to transfer the property at issue rather than wait to bequeath it to the other respondent when he died. Furthermore, according to the respondents, section 1633 of the C.C.Q., which stipulates that presumption of fraud in the case of a gratuitous contract, where the debtor is or becomes insolvent by concluding the contract in question, does not apply to the gift at issue. Indeed, they argue that this is not a gratuitous contract because it is the other respondent who built the residence where the judgment debtor lived at the specific location of the property at issue. It was also the other respondent who paid for all of the materials and contractors and who cared for the judgment debtor on a daily basis after his mother died. In the respondents' opinion, the juridical act that the judgment creditor had declared unenforceable by the Court in June 2001 is not a true gift but instead a reimbursement of what the judgment debtor owed to the other respondent. Consequently, fraudulent intent may not be presumed in this case. Furthermore, the respondents submit that the judgment debtor did not prove that there was fraudulent intent since the judgment debtor was unaware that he owed money to the judgment creditor in September 2000. Although in July 2000 he was visited by Agency representatives, during which they issued him a requirement to pay, the judgment debtor did not understand the reason for their visit or the legal implications of the transfer of funds that he had received from René between 1996 and 1998.

[10] Second, the respondents submit that the claim at issue was not certain at the time when the judgment creditor asked the Court in June 2001 for the transfer of the property in question be declared unenforceable because the judgment debtor was then objecting to the assessment at issue. Although the usual 90-day period to object to the challenge at issue had expired, after the

administrative seizure of the funds in his bank account, the judgment debtor applied for an extension of time. The Agency allowed his application for an extension on April 11, 2000, acknowledging his standing right to challenge. In any event, today the respondents submit that the claim at issue does not precede the act which is attacked by the judgment creditor since the judgment debtor's tax debt arose on November 22, 2000 (i.e., when the assessment at issue was issued). Although it is true that liability under section 160 of the ITA may arise at the time of the transfer, the Crown claim against a third party arises only at the time the notice of assessment is issued on behalf of this third party.

[11] For the reasons that follow, I cannot accept the respondents' various arguments to have the impugned order quashed.

[12] First, it should be noted that under section 1806 of the C.C.Q., a gift is a contract by which a person, the donor, transfers ownership of the property by gratuitous donation to another person, the donee. Gifts may be either *inter vivos* or *mortis causa*. In this regard, section 1807 of the C.C.Q. states that a gift *inter vivos* is one whereby there is actual divesting of the donor, in the sense that the donor actually becomes the debtor of the donee. On the other hand, under section 1824 of the C.C.Q., the gift of movable or immovable property is made, on pain of absolute nullity, by notarial act *en minute*, and shall be published.

[13] In this case, all of the evidence before me satisfies me that the juridical act, executed before a notary on September 29, 2000, is a gratuitous contract. It is a gift *inter vivos*. This gift is made by

the judgment debtor to the other respondent for support, and the property in question will be exempt from seizure in the hands of the donee for a period of 20 years. It is intended that the other respondent will take possession of said property with occupancy starting on September 29, 2000. The act expressly states that the gift is [TRANSLATION] “made by the donor to the donee at no cost and without any other charges or conditions than those stipulated herein.” In this respect, the judgment debtor expressly reserves for himself the right of use ending at death allowing him to live at the house at the specific location, as well as its appurtenances, as long as he paid for the property taxes, heating costs, electricity, snow-removal costs and maintenance of the property at issue.

[14] I find that the gift at issue was made in fraud of the judgment creditor’s rights, while the judgment debtor made himself insolvent by making this gift. I accept the facts in André Tremblay’s (Tremblay) affidavit, an investigator with the Agency, which accompanied the *ex parte* application filed on June 4, 2001, as well as the facts set out in his supplementary affidavit dated January 16, 2002, which are not seriously challenged by the respondents. I also considered that fact that the judgment debtor was uneducated, although this in no way changes the fact that before he died, besides his property at issue he did not possess any other valuable assets that enabled him to pay his debt to the judgment creditor. Furthermore, according to the evidence in the record, the judgment debtor’s sole source of income was a pension exempt from seizure. Under sections 1631 to 1635 of the C.C.Q., the gift at issue clearly may not be set up against the judgment creditor, who can obtain a Paulian action simply by making a motion to the Court (see *Banque Nationale du Canada c. Bitar*, [2000] J.Q. no. 471).

[15] In his second affidavit, the other respondent is now attempting through testimony to contradict the content of an authentic act, in this case the notarized act setting out the gift of the property at issue. Indeed, under section 2819 of the C.C.Q., the notarial act then makes proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly related to the act, here the fact that it is a gratuitous gift *entre vivos* (sections 1806 and 1807 of the C.C.Q.). It should also be noted that under sections 2818 and 2821 of the C.C.Q., improbation is necessary only to contradict the recital in an authentic act of the facts which the public officer had the task of observing. On the other hand, as I noted above it is clear that by gifting the property in question to the other respondent, the judgment debtor became insolvent. In such a case, section 1633 of the C.C.Q. creates a presumption of fraud of the rights of a creditor. Under section 2847 of the C.C.Q., a presumption concerning deemed facts is absolute and irrefutable. As Baudouin and Jobin note at paragraph 763 of the aforementioned work, two explanations may serve to explain such a rigid rule. On one hand, in practice, an insolvent who makes a gratuitous transfer almost certainly has the intention of defrauding his creditors. On the other hand, irrespective of any true intent of fraud, the law applies to safeguard the interests of creditors who would suffer certain patrimonial loss, preferably to those of donees for whom the net, or free, benefit of a gain is withdrawn.

[16] I am also satisfied that as of June 4, 2001, the Crown's claim against the judgment debtor was certain despite the fact that a notice of objection had been filed against the assessment at issue. It should be noted that under subsection 152(8) of the ITA, 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. There is also no doubt that the Crown's claim is liquid and exigible, since the appeal filed by the judgment debtor against the assessment at issue has since been dismissed by the TCC. I also note that the judgment creditor asked the Court in June 2001 to issue a declaration that the transfer of the property in question may not be set up against it within one year from the day on which it learned of the injury resulting from the act which is attacked, i.e., in February 2001.

[17] There remains the respondents' argument based on the second paragraph of section 1634 of the C.C.Q., which states that the claim must exist prior to the juridical act which is attacked (unless that act was made for the purpose of defrauding a subsequent creditor). Baudouin and Jobin, at paragraph 748 of the aforementioned work (the footnotes have been omitted), note the following regarding the anteriority of the claim:

[TRANSLATION]

Creditors must, in principle, justify the anteriority of their claim regarding the act which is attacked (section 1634, paragraph 2). When creditors derive a right from the assignment of a claim or a subrogation, the relevant time is that of the existence of the right or the initial claim and not when the claim was issued or set up.

The basis of this rule of anteriority is clear. When the creditor agrees to engage with the debtor, the patrimony of the latter at the time of the conclusion of the act represents the debtor's pledge. The action set up against the creditor is essentially based on fraud and, as a general rule, one cannot imagine that following the act a creditor could avail themselves of the recourse, given that no fraud could be exercised against them. The creditor can therefore complain only of fraudulent acts subsequent to the establishment of its claim, since the prior acts, *ex hypothesi*, could not have caused the creditor prejudice. However, there is an

exception to this rule when the fraudulent act and the establishment of the claim are contemporaneous or even when the act which is attacked, although existing prior, was done by the debtor with a view to establish further claims and with the specific intent of defrauding even subsequent creditors (section 1634, subsection 2 *in fine*).

[18] The respondents argue that in this case a distinction must be made between the time the tax debtor's liability arose, i.e., the date of the transfer in question, and the date on which the Crown's claim arose, which depends on the date on which the notice of assessment was issued. Consequently, according to the respondents, the condition set out in the second paragraph of section 1634 of the C.C.Q. is not met because the assessment at issue was made on November 22, 2000, which was after the deed of gift on September 29, 2000. In my opinion, this argument is unfounded in fact and in law. Indeed, the claim at issue here arises from the provisions of the act and not from the issuance of a notice of assessment to the transferee, in this case the judgment debtor. The assessment made under subsection 160(1) of the ITA is not, strictly speaking, a tax assessment payable by the transferee on his own. Rather, it is as the assignee of a benefit from which arises the obligation to another taxpayer's taxes, in this case René, who owed \$284,852.37 to the tax authorities at the time that he made, without consideration, money transfers totalling \$204,500 to the judgment debtor. The collection remedy provided for under subsection 160(1) of the ITA therefore resembles the action set up against the debtor noted above (see *Gaston Yvan Drouin Inc. c. Canada*, [2000] A.C.I. no 872, [2001] 2 C.T.C. 2315 (CCI) at para 100 et seq.).

[19] Under subsection 160(1) of the ITA, taxpayers who have acquired property from a person with whom they are not dealing at arm's length and who owe taxes become jointly and severally liable for the transferor's taxes for an amount equal to the amount by which the fair market value of

the property exceeds the consideration, up to the amount of the transferor's tax debt. As noted by the Federal Court of Appeal in *Heavyside v. Canada*, [1996] F.C.J. No. 1608, once the conditions of subsection 160(1) of the ITA are met, the transferee becomes personally liable for the tax owing under this provision. This liability arises at the time of the transfer and is joint and several with the transferor's liability. The Minister may "at any time" thereafter assess the transferee (subsection 160(2) of the ITA) and the transferee's joint liability will only disappear with a payment made by her or by the transferor in accordance with subsection 160(3) of the ITA.

[20] That said, even if the Crown was a subsequent creditor of the judgment debtor, which is not the case here, the evidence in the record would allow me to find that the gift at issue was made with the intention of defrauding the judgment creditor. In addition to the gratuitous nature of the gift, which cannot be contradicted here, the facts clearly establish that it was with the amounts received from his son René, which resulted in the assessment at issue, that the judgment debtor built the residence in the specific location. I note that as far back as July 7, 2000, Tremblay went to the judgment debtor's residence with another investigator from the Agency, Maurice Hammond, to serve a requirement to pay in order to intercept any payment that he might make to his son René. During this meeting, Tremblay clearly explained to the judgment debtor that he was joint and severally liable for René's tax debt to the extent of \$204,500 even if he had not yet received the notice of assessment under section 160 of the ITA. I also note that even if the judgment debtor was poorly educated, he could still seek advice from his sons. Furthermore, based on the evidence in the record, he himself asked Ghyslain to handle the entire matter in March 2001 when all of the money in his bank account was administratively seized by the judgment creditor. An amount of \$7,730

appears to have then been imputed as a payment on the claim at issue. Furthermore, during the meeting on July 7, 2000, Tremblay had already encouraged the judgment debtor to seek advice from his other son, Réjean Vaillancourt, who at the time worked at the Agency, according to the evidence in the record.

[21] For the reasons given above, this motion to quash by the respondents should be dismissed. Accordingly, the deed of donation set up against the judgment creditor must be declared void and the interim charge registered on the property at issue declared definitive.

[22] In light of the outcome of the case, the judgment creditor will be entitled to full costs against the respondents.

ORDER

THE COURT DECLARES AND ORDERS that:

1. It is declared that the deed of gift involving the property at issue described in Appendix 1 is void against the judgment creditor;

2. It is ordered that the property at issue described in Appendix 1 be definitively encumbered with a charge for the payment to the judgment creditor of the outstanding amount of the claim at issue and the costs relating not only to the motion that gave rise to the orders issued on June 7, 2001, but also to this motion to quash by the respondents, which is dismissed with costs.

“Luc Martineau”

Judge

APPENDIX 1**DESIGNATION**

“A lot located on the territory of the municipality of Saint-Joachim, known and designated as the NEW Subdivision of original lot number ONE HUNDRED AND NINETY-EIGHT (lot 198-9) of the official cadastre for the parish of St. Joachim, registration division of Montmorency.

With the house erected thereupon, bearing the civic number 38 Fillion St., St. Joachim, province of Québec (G0A 3X0) circumstances and dependencies.”

APPENDIX 2

Legislative and regulatory provisions mentioned in the reasons for order:

Income Tax Act, R.S.C. 1985 (5th Supp.), c.1

<p>[...] 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. [...]</p>	<p>[...] 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 toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi. [...]</p>
<p>160. (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to</p>	<p>160. (1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes :</p>
<p>(a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,</p>	<p>a) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;</p>
<p>(b) a person who was under 18 years of age, or</p>	<p>b) une personne qui était âgée de moins de 18 ans;</p>
<p>(c) a person with whom the</p>	<p>c) une personne avec</p>

person was not dealing at arm's length,

laquelle elle avait un lien de dépendance,

the following rules apply:

les règles suivantes s'appliquent :

(d) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefore, and

d) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement d'une partie de l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la Loi de l'impôt sur le revenu, chapitre 148 des Statuts révisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y substitués ou à l'égard de tout gain tiré de la disposition de tels biens;

(e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

e) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants :

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

(ii) le total des montants dont chacun représente un montant que l'auteur du transfert doit payer en vertu de la présente loi au cours de l'année d'imposition dans laquelle les biens ont été transférés ou d'une année d'imposition antérieure ou pour une de ces années;

but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.
[...]

aucune disposition du présent paragraphe n'est toutefois réputée limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi.
[...]

160 (2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

160 (2) Le ministre peut, en tout temps, établir une cotisation à l'égard d'un contribuable pour toute somme payable en vertu du présent article. Par ailleurs, les dispositions de la présente section s'appliquent, avec les adaptations nécessaires, aux cotisations établies en vertu du présent article comme si elles avaient été établies en vertu de l'article 152.

160 (3) Where a particular taxpayer has become jointly and severally liable with another taxpayer under this section in respect of part or all of a liability under this Act of the other taxpayer,

160 (3) Dans le cas où un contribuable donné devient, en vertu du présent article, solidairement responsable, avec un autre contribuable, de tout ou partie d'une obligation de ce dernier en

vertu de la présente loi, les règles suivantes s'appliquent :

(a) a payment by the particular taxpayer on account of that taxpayer's liability shall to the extent of the payment discharge the joint liability; but

a) tout paiement fait par le contribuable donné au titre de son obligation éteint d'autant l'obligation solidaire;

(b) a payment by the other taxpayer on account of that taxpayer's liability discharges the particular taxpayer's liability only to the extent that the payment operates to reduce that other taxpayer's liability to an amount less than the amount in respect of which the particular taxpayer is, by this section, made jointly and severally liable.
[...]

b) tout paiement fait par l'autre contribuable au titre de son obligation n'éteint l'obligation du contribuable donné que dans la mesure où le paiement sert à réduire l'obligation de l'autre contribuable à une somme inférieure à celle dont le contribuable donné est solidairement responsable en vertu du présent article.
[...]

223. (1) For the purposes of subsection 223(2), an "amount payable" by a person means any or all of

223. (1) Pour l'application du paragraphe (2), le montant payable par une personne peut être constitué d'un ou plusieurs des montants suivants :

(a) an amount payable under this Act by the person;

a) un montant payable par elle en application de la présente loi;

(b) an amount payable under the Employment Insurance Act by the person;

b) un montant payable par elle en application de la Loi sur l'assurance-emploi;

(b.1) an amount payable under the Unemployment Insurance Act by the person;

b.1) un montant payable en application de la Loi sur l'assurance-chômage;

- | | |
|--|---|
| <p>(c) an amount payable under the Canada Pension Plan by the person; and</p> | <p>c) un montant payable par elle en application du Régime de pensions du Canada;</p> |
| <p>(d) an amount payable by the person under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act.</p> | <p>d) un montant payable par elle en application d'une loi provinciale et que le ministre doit recouvrer aux termes d'un accord conclu par le ministre des Finances pour le recouvrement des impôts payables à la province en vertu de cette loi.</p> |
| <p>(2) An amount payable by a person (in this section referred to as a “debtor”) that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.</p> | <p>(2) Le ministre peut, par certificat, attester qu'un montant ou une partie de montant payable par une personne — appelée « débiteur » au présent article — mais qui est impayé est un montant payable par elle.</p> |
| <p>(3) On production to the Federal Court, a certificate made under subsection 223(2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection 223(1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her</p> | <p>(3) Sur production à la Cour fédérale, un certificat fait en application du paragraphe (2) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit les lois visées au paragraphe (1) en application desquelles le montant est payable, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Dans le cadre de ces procédures, le certificat est réputé être un</p> |

Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit ces lois.

(4) All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate made under subsection 223(2) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(4) Les frais et dépens raisonnables engagés ou payés en vue de l'enregistrement à la Cour fédérale d'un certificat fait en application du paragraphe (2) ou de l'exécution des procédures de recouvrement du montant attesté dans le certificat sont recouvrables de la même manière que s'ils avaient été inclus dans ce montant au moment de l'enregistrement du certificat.

(5) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection 223(3), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing

(5) Un document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur en application du paragraphe (3), un bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (ce document ou bref ou cette notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge un bien du débiteur situé dans une province, ou un droit sur un tel bien, de la même manière qui peut l'être, au titre ou en

application de la loi provinciale,
un document faisant preuve :

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

a) soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;

(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

b) soit d'un montant payable ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

may be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

(6) If a memorial has been filed, registered or otherwise recorded under subsection 223(5),

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or

(b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph 223(5)(a) or an amount referred to in paragraph 223(5)(b), and the charge, lien, priority or binding interest created shall be subordinate to

(6) Une fois l'extrait produit, enregistré ou autrement inscrit en application du paragraphe (5), une sûreté, une priorité ou une autre charge grève un bien du débiteur situé dans la province, ou un droit sur un tel bien, de la même manière et dans même la mesure que si l'extrait était un document faisant preuve du contenu d'un jugement visé à l'alinéa (5)a) ou d'un montant visé à l'alinéa (5)b). Cette sûreté, priorité ou autre charge prend rang après tout autre sûreté, priorité ou charge à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont été prises avant la

any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

(7) If a memorial is filed, registered or otherwise recorded in a province under subsection 223(5), proceedings may be taken in the province in respect of the memorial, including proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect

production, l'enregistrement ou autre inscription de l'extrait.

(7) L'extrait produit, enregistré ou autrement inscrit dans une province en application du paragraphe (5) peut, de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (5)a) ou d'un montant visé à l'alinéa (5)b), faire l'objet dans la province de procédures visant notamment :

a) à exiger le paiement du montant attesté par l'extrait, des intérêts y afférents et des frais et dépens payés ou engagés en vue de la production, de l'enregistrement ou autre inscription de l'extrait ou en vue de l'exécution des procédures de recouvrement du montant;

b) à renouveler ou autrement prolonger l'effet de la production, de l'enregistrement

of any of the property or interests affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph 223(5)(a) or an amount referred to in paragraph 223(5)(b), except that if in any such proceeding or as a condition precedent to any such proceeding any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or a judge or official of the court.

ou autre inscription de l'extrait;

c) à annuler ou à retirer l'extrait dans son ensemble ou uniquement en ce qui concerne un ou plusieurs biens ou droits sur lesquels l'extrait a une incidence;

d) à différer l'effet de la production, de l'enregistrement ou autre inscription de l'extrait en faveur d'un droit, d'une sûreté, d'une priorité ou d'une autre charge qui a été ou qui sera produit, enregistré ou autrement inscrit à l'égard d'un bien ou d'un droit sur lequel l'extrait a une incidence.

Toutefois, dans le cas où la loi provinciale exige — soit dans le cadre de ces procédures, soit préalablement à leur exécution — l'obtention d'une ordonnance, d'une décision ou d'un consentement de la cour supérieure de la province ou d'un juge ou d'un fonctionnaire de celle-ci, la Cour fédérale ou un juge ou un fonctionnaire de celle-ci peut rendre une telle ordonnance ou décision ou donner un tel consentement. Cette ordonnance, cette décision ou ce consentement a alors le même effet dans le cadre des procédures que s'il était rendu ou donné par la cour supérieure de la province ou par un juge ou un fonctionnaire de celle-ci.

(8) If

(a) a memorial is presented for filing, registration or other recording under subsection 223(5) or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection 223(7) to any official in the land, personal property or other registry system of a province, it shall be accepted for filing, registration or other recording, or

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording, the access shall be granted

in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph 223(5)(a) or an amount referred to in paragraph 223(5)(b) for the purpose of a like proceeding, as the case may be, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided

(8) L'extrait qui est présenté pour production, enregistrement ou autre inscription en application du paragraphe (5), ou un document concernant l'extrait qui est présenté pour production, enregistrement ou autre inscription dans le cadre des procédures visées au paragraphe (7), à un agent d'un régime d'enregistrement foncier ou des droits sur des biens meubles ou autres droits d'une province est accepté pour production, enregistrement ou autre inscription de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (5)a) ou d'un montant visé à l'alinéa (5)b) dans le cadre de procédures semblables. Aux fins de la production, de l'enregistrement ou autre inscription de cet extrait ou ce document, l'accès à une personne, à un endroit ou à une chose situé dans une province est donné de la même manière et dans la même mesure que si l'extrait ou le document était un document semblable ainsi délivré ou établi. Lorsque l'extrait ou le document est délivré par la

with or to have accompanied the memorial or document as so required.

(9) Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection 223(2), interest on the amount and costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

Cour fédérale ou porte la signature ou fait l'objet d'un certificat d'un juge ou d'un fonctionnaire de cette cour, tout affidavit, toute déclaration ou tout autre élément de preuve qui doit, selon la loi provinciale, être fourni avec l'extrait ou le document ou l'accompagner dans le cadre des procédures est réputé avoir été ainsi fourni ou accompagner ainsi l'extrait ou le document.

(9) Malgré les lois fédérales et provinciales, ni le shérif ni une autre personne ne peut, sans le consentement écrit du ministre, vendre un bien ou autrement en disposer ou publier un avis concernant la vente ou la disposition d'un bien ou autrement l'annoncer, par suite de l'émission d'un bref ou de la création d'une sûreté, d'une priorité ou d'une autre charge dans le cadre de procédures de recouvrement d'un montant attesté dans un certificat fait en application du paragraphe (2), des intérêts y afférents et des frais. Toutefois, si ce consentement est obtenu ultérieurement, tout bien sur lequel un tel bref ou une telle sûreté, priorité ou charge aurait une incidence si ce consentement avait été obtenu au moment de l'émission du bref ou de la création de la sûreté, priorité ou charge, selon le cas, est saisi ou autrement

(10) If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection 223(9), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when the consent of the Minister is given under that subsection, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person having complied with this subsection is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

(11) A sheriff or other person who is unable, by reason of subsection 223(9) or 223(10), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an ex parte application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

(11.1) When a charge, lien, priority or binding interest created under subsection 223(6)

grevé comme si le consentement avait été obtenu à ce moment.

(10) Dans le cas où des renseignements qu'un shérif ou une autre personne doit indiquer dans un procès-verbal, un avis ou un document à établir à une fin quelconque ne peuvent, en raison du paragraphe (9), être ainsi indiqués, le shérif ou l'autre personne doit établir le procès-verbal, l'avis ou le document en omettant les renseignements en question. Une fois le consentement du ministre obtenu pour l'application de ce paragraphe, une autre procès-verbal, avis ou document indiquant tous les renseignements doit être établi à la même fin. S'il se conforme au présent paragraphe, le shérif ou l'autre personne est réputé se conformer à la loi, à la disposition réglementaire ou à la règle qui exige que les renseignements soient indiqués dans le procès-verbal, l'avis ou le document.

(11) S'il ne peut se conformer à une loi ou à une règle de pratique en raison des paragraphes (9) ou (10), le shérif ou l'autre personne est lié par toute ordonnance rendue, sur requête ex parte du ministre,

by filing, registering or otherwise recording a memorial under subsection 223(5) is registered in accordance with subsection 87(1) of the Bankruptcy and Insolvency Act, it is deemed

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

(12) Notwithstanding any law of Canada or of a province, in any certificate made under subsection 223(2) in respect of a debtor, in any memorial evidencing the certificate or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate making up that total; and

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed under this Act applicable from time to time on amounts payable to the Receiver General without indicating the specific

par un juge de la Cour fédérale visant à donner effet à des procédures ou à une sûreté, une priorité ou une autre charge.

(11.1) La sûreté, la priorité ou l'autre charge créée selon le paragraphe (6) par la production, l'enregistrement ou autre inscription d'un extrait en application du paragraphe (5) qui est enregistrée en conformité avec le paragraphe 87(1) de la Loi sur la faillite et l'insolvabilité est réputée, à la fois :

a) être une réclamation garantie et, sous réserve du paragraphe 87(2) de cette loi, prendre rang comme réclamation garantie aux termes de cette loi;

b) être une réclamation visée à l'alinéa 86(2)a) de cette loi.

(12) Malgré les lois fédérales et provinciales, dans le certificat fait à l'égard d'un débiteur en application du paragraphe (2), dans l'extrait faisant preuve du contenu d'un tel certificat ou dans le bref ou document délivré en vue du recouvrement d'un montant attesté dans un tel certificat, il suffit, à toutes fins utiles :

a) d'une part, d'indiquer, comme montant payable par le débiteur, le total des montants payables par celui-ci et non les montants distincts qui forment ce total;

rates of interest to be charged on each of the separate amounts or to be charged for any particular period of time.
[...]

225.1 (1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

- (a) commence legal proceedings in a court,
- (b) certify the amount under section 223,
- (c) require a person to make a payment under subsection 224(1),
- (d) require an institution or a person to make a payment under subsection 224(1.1),
- (e) [Repealed, 2006, c. 4, s. 166]
- (f) require a person to turn over moneys under

b) d'autre part, d'indiquer de façon générale le taux d'intérêt prescrit en application de la présente loi sur les montants payables au receveur général comme étant le taux applicable aux montants distincts qui forment le montant payable, sans détailler les taux applicables à chaque montant distinct ou pour une période donnée.
[...]

225.1 (1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes :

- a) entamer une poursuite devant un tribunal;
- b) attester le montant, conformément à l'article 223;
- c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);
- d) obliger une institution ou une personne visée au

subsection 224.3(1), or

(g) give a notice, issue a certificate or make a direction under subsection 225(1).

[...]

225.2 (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 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.

[...]

paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;

e) [Abrogé, 2006, ch. 4, art. 166]

f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);

g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

[...]

225.2 (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 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.

[...]

[...]

458. (1) On the ex parte motion of a judgment creditor, the Court may, for the purpose of enforcing an order for the payment of an ascertained sum of money,

(a) make an order imposing an interim charge for securing payment of that sum and any interest thereon

(i) on real property or immoveables, or on an interest in real property or immoveables, of a judgment debtor, in Form 458A, or

(ii) on any interest to which the judgment debtor is beneficially entitled in any shares, bonds or other securities specified in the order, in Form 458B; and

(b) order the judgment debtor to show cause, at a specified time and place, why the charge should not be made absolute.

(2) Unless the Court directs otherwise, an order made under subsection (1) shall

[...]

458. (1) Aux fins de l'exécution d'une ordonnance exigeant le paiement d'une somme déterminée, la Cour peut, sur requête ex parte du créancier judiciaire, rendre une ordonnance :

a) constituant une charge à titre provisoire en vue de garantir le paiement de la somme et des intérêts y afférents :

(i) soit sur un immeuble, un bien réel ou un droit immobilier du débiteur judiciaire, laquelle ordonnance est établie selon la formule 458A,

(ii) soit sur tout droit que le débiteur judiciaire possède sur des actions, des obligations ou autres valeurs mobilières précisées dans l'ordonnance, laquelle est établie selon la formule 458B;

b) précisant les date, heure et lieu de l'audience à laquelle le débiteur judiciaire peut faire valoir les raisons pour lesquelles la charge ne devrait pas être maintenue.

(2) Sauf directives contraires de la Cour, l'ordonnance rendue en

be served on the judgment debtor and, where the order relates to property referred to in subparagraph (1)(a)(ii), on the corporation, government or other person or entity by whom the securities were issued, at least seven days before the time appointed for the hearing.

vertu du paragraphe (1) est signifiée au débiteur judiciaire et, si elle porte sur les biens visés au sous-alinéa (1)a)(ii), à la personne morale, au gouvernement ou à toute autre personne ou entité qui a émis les valeurs mobilières, au moins sept jours avant la date fixée pour l'audience.

459. (1) 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.

459. (1) À l'audience visée à l'alinéa 458(1)b), la Cour déclare définitive la charge provisoire, selon la formule 459, ou l'annule.

(2) A charge made absolute has the same effect, and is enforceable in the same manner, as a charge made by the judgment debtor. [...]

(2) La charge déclarée définitive a le même effet que s'il s'agissait d'une charge constituée par le débiteur judiciaire, et son exécution peut être poursuivie de la même manière que l'exécution de cette dernière. [...]

Civil Code of Québec, S.Q. 1991, c. 64

[...]
1631. A creditor who suffers prejudice through a juridical act made by his debtor in fraud of his rights, in particular an act by which he renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor may obtain a declaration that the act may not be set up against him.

[...]
1631. Le créancier, s'il en subit un préjudice, peut faire déclarer inopposable à son égard l'acte juridique que fait son débiteur en fraude de ses droits, notamment l'acte par lequel il se rend ou cherche à se rendre insolvable ou accorde, alors qu'il est insolvable, une préférence à un autre créancier.

1632. An onerous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent if the contracting party or the creditor knew the debtor to be insolvent or knew that the debtor, by the juridical act, was rendering himself or was seeking to render himself insolvent.

1633. A gratuitous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent, even if the contracting party or the creditor was unaware of the facts, where the debtor is or becomes insolvent at the time the contract is formed or the payment is made.

1634. The creditor may bring a claim only if it is certain at the time the action is instituted, and if it is liquid and exigible at the time the judgment is rendered. He may bring the claim only if it existed prior to the juridical act which is attacked, unless that act was made for the purpose of defrauding a later ranking creditor.

1635. The action is forfeited unless it is brought within one year from the day on which the creditor learned of the injury resulting from the act which is attacked, or, where the action is brought by a trustee in

1632. Un contrat à titre onéreux ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder si le cocontractant ou le créancier connaissait l'insolvabilité du débiteur ou le fait que celui-ci, par cet acte, se rendait ou cherchait à se rendre insolvable.

1633. Un contrat à titre gratuit ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder, même si le cocontractant ou le créancier ignorait ces faits, dès lors que le débiteur est insolvable ou le devient au moment où le contrat est conclu ou le paiement effectué.

1634. La créance doit être certaine au moment où l'action est intentée; elle doit aussi être liquide et exigible au moment du jugement sur l'action. La créance doit être antérieure à l'acte juridique attaqué, sauf si cet acte avait pour but de frauder un créancier postérieur.

1635. L'action doit, à peine de déchéance, être intentée avant l'expiration d'un délai d'un an à compter du jour où le créancier a eu connaissance du préjudice résultant de l'acte attaqué ou, si l'action est intentée par un

bankruptcy on behalf of all the creditors, from the date of appointment of the trustee.
[...]

syndic de faillite pour le compte des créanciers collectivement, à compter du jour de la nomination du syndic.
[...]

1806. Gift is a contract by which a person, the donor, transfers ownership of property by gratuitous title to another person, the donee; a dismemberment of the right of ownership, or any other right held by the person, may also be transferred by gift.

1806. La donation est le contrat par lequel une personne, le donateur, transfère la propriété d'un bien à titre gratuit à une autre personne, le donataire; le transfert peut aussi porter sur un démembrement du droit de propriété ou sur tout autre droit dont on est titulaire.

Gifts may be inter vivos or mortis causa.

La donation peut être faite entre vifs ou à cause de mort.

1807. A gift which entails actual divesting of the donor in the sense that the donor actually becomes the debtor of the donee is a gift inter vivos.

1807. La donation entre vifs est celle qui emporte le dessaisissement actuel du donateur, en ce sens que celui-ci se constitue actuellement débiteur envers le donataire.

The fact that the transfer or delivery of the property is subject to a term or that the transfer affects a certain and determinate property which the donor undertakes to acquire or a property determinate only as to kind which the donor undertakes to deliver does not prevent the divesting of the donor from being actual divesting.
[...]

Le fait que le transfert du bien ou sa délivrance soient assortis d'un terme, ou que le transfert porte sur un bien individualisé que le donateur s'engage à acquérir, ou sur un bien déterminé quant à son espèce seulement que le donateur s'engage à délivrer, n'empêche pas le dessaisissement du donateur d'être actuel.
[...]

1824. The gift of movable or immovable property is made, on pain of absolute nullity, by notarial act en minute, and shall

1824. La donation d'un bien meuble ou immeuble s'effectue, à peine de nullité absolue, par acte notarié en minute; elle doit

be published.

être publiée.

These rules do not apply where, in the case of the gift of movable property, the consent of the parties is accompanied by delivery and immediate possession of the property.
[...]

Il est fait exception à ces règles lorsque, s'agissant de la donation d'un bien meuble, le consentement des parties s'accompagne de la délivrance et de la possession immédiate du bien.
[...]

2818. The recital, in an authentic act, of the facts which the public officer had the task of observing or recording makes proof against all persons.

2818. Les énonciations, dans l'acte authentique, des faits que l'officier public avait mission de constater ou d'inscrire, font preuve à l'égard de tous.

2819. To be authentic, a notarial act shall be signed by all the parties; it then makes proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly relate to the act.

2819. L'acte notarié, pour être authentique, doit être signé par toutes les parties; il fait alors preuve, à l'égard de tous, de l'acte juridique qu'il renferme et des déclarations des parties qui s'y rapportent directement.

Where the parties are unable to sign, their declaration or consent shall be given before a witness who signs. Minors, persons of full age who are unable to give consent and persons who have an interest in the act may not be witnesses.
[...]

Lorsque les parties ne peuvent pas signer, leur déclaration ou consentement doit être reçu en présence d'un témoin qui signe. Ne peuvent servir de témoins, les mineurs, les majeurs inaptes à consentir, de même que les personnes qui ont un intérêt dans l'acte.
[...]

2821. Improbation is necessary only to contradict the recital in the authentic act of the facts which the public officer had the task of observing.

2821. L'inscription de faux n'est nécessaire que pour contredire les énonciations dans l'acte authentique des faits que l'officier public avait mission de constater.

Improbation is not required to contest the quality of the public officer or witnesses or the signature of the public officer. [...]

2847. A legal presumption is one that is specially attached by law to certain facts; it exempts the person in whose favor it exists from making any other proof.

A presumption concerning presumed facts is simple and may be rebutted by proof to the contrary; a presumption concerning deemed facts is absolute and irrefutable.

Elle n'est pas requise pour contester la qualité de l'officier public et des témoins ou la signature de l'officier public. [...]

2847. La présomption légale est celle qui est spécialement attachée par la loi à certains faits; elle dispense de toute autre preuve celui en faveur de qui elle existe.

Celle qui concerne des faits présumés est simple et peut être repoussée par une preuve contraire; celle qui concerne des faits réputés est absolue et aucune preuve ne peut lui être opposée.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: ITA-4042-01

STYLE OF CAUSE: ALBERT VAILLANCOURT
and
DENIS VAILLANCOURT

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 27, 2007

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

DATED: December 10, 2007

APPEARANCES:

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Louis-Philippe Delage FOR THE MINISTÈRE OF
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