

Date: 20090513

Docket: T-773-09

Citation: 2009 FC 499

Ottawa, Ontario, May 13, 2009

PRESENT: The Honourable Mr. Justice Shore

IN THE MATTER OF the *Income Tax Act*,

-and-

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

AGAINST:

DENISE CORMIER-IMBEAULT
509, rue Principale
Beresford, New Brunswick E8K 1Y1

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] Subsection 225.2(2) of the *Income Tax Act* (hereafter the “ITA”) provides the following:

**Authorization to proceed
forthwith**

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

Recouvrement compromis

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

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

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

(Subsection 225.2(2) of the *Income Tax Act*, R.S.C. (1985), c. 1 (5th Supp.), Tab D of the motion record)

[2] In *Danielson v. Canada*, the Federal Court defined the test to be applied when issuing an authorization under subsection 225.2(2) of the ITA as follows:

(...) The test of “whether it may reasonably be considered” is susceptible of being reasonably translated into the test of whether the evidence on balance of probability is sufficient to lead to the conclusion that it is more likely than not that collection would be jeopardised by delay.

(*Danielson v. Deputy Attorney General of Canada and Minister of National Revenue*, 7 F.T.R. (1986), 42, page 43, paragraph 7)

[3] The Federal Court of Appeal clarified this test in *Golbeck*:

(...) The question was whether, on the basis of the material put before the Court, it appeared that the Minister had reasonable grounds for believing that the taxpayer would waste, liquidate or otherwise transfer his assets so as to become less able to pay the amount assessed and thereby jeopardizing the Minister’s debt.

(*The Queen v. Golbeck et al.*, 90 D.T.C. 6575, page 6576)

[4] Subsequent decisions by the Federal Court applied the test developed in *Danielson* and *Golbeck* despite the amendment made in 1988 to subsection 225.2(2) of the ITA (*Minister of National Revenue v. Services M.L. Marengère*, 2000 D.T.C. 6032).

[5] In *514659 B.C. Ltd.*, the Federal Court clarified the burden of proof that must be met:

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*, 2001 FCA 399 (CanLII), [2002] 3 F.C. 3 (C.A.)).

(*Minister of National Revenue v. 514659 B.C. Ltd.*, 2003 D.T.C. 5150)

[6] In other words, the Court issues an authorization on the basis of evidence demonstrating a bona fide belief based on credible evidence in a serious possibility that the granting of a delay to the taxpayer would jeopardize the collection of the debt, which is a lesser burden of proof than that of the balance of probabilities.

[7] In this regard, the case law has determined that the presence of one or more of the following factors can justify the issuance of an authorization under subsection 225.2(2) of the ITA:

- a) there are reasonable grounds to believe that the taxpayer has acted fraudulently;
- b) the taxpayer has proceeded to liquidate or transfer his or her assets;
- c) the taxpayer is evading his or her tax liabilities;
- d) the taxpayer has assets that could potentially lessen in value over time, deteriorate or perish;

- e) the amount of the debt in relation to income and expenses.

II. Analysis

[8] For the following reasons, it is reasonable to believe in this case that the collection of all or any part of the total amount assessed would be jeopardized by granting the respondent a delay to pay her debt arising from the two notices of assessment made on May 13, 2009, before an order is issued:

- a) Ms. Denise Cormier-Imbeault (hereafter “Ms. Imbeault”) owes the Agency a tax debt of \$406,532.70;
- b) Ms. Imbeault’s only assets known to the Agency having a realizable value are the amounts held in a bank account totalling \$580,859.76 as at March 24, 2009, and half of the undivided ownership of the residence at 509, rue Principale, assessed at \$54,400.00;
- c) The amount of \$580,859.76 seems to be a realizable asset that is essential to the payment of Ms. Imbeault’s tax debt;
- d) On March 24, 2009, Ms. Noëlla Cormier, an officer of the Caisse populaire de Beresford, mentioned during a phone interview that the money placed in the bank account could be withdrawn at any time;
- e) In fact, in the past, there have been many withdrawals made as shown in the following table:

Withdrawals made from account 5902 since January 1, 1999

Dates	Withdrawals
February 9, 1999	\$7,200.00
August 31, 1999	\$300.00

December 13, 1999	\$3,200.00
December 17, 1999	\$1,500.00
December 24, 1999	\$400.00
December 30, 1999	\$5,000.00
January 4, 2000	\$3,300.00
October 31, 2000	\$15,000.00
August 31, 2001	\$20,000.00
TOTAL	\$55,900.00

- f) At this time, according to the Caisse, Ms. or Mr. Imbeault can at any moment withdraw all or part of this amount;
- g) In fact, according to the Caisse, even if the amount consists of term deposits, Ms. or Mr. Imbeault can withdraw the amount, but they would incur penalties on the income from the interest generated on the capital;
- h) Mr. Imbeault's previous conduct indicates that he is not trustworthy:
- 1) he pleaded guilty to offences of wilfully evading or attempting to evade payment of a tax established under the ITA in accordance with paragraph 239(1)(d) of the ITA and of wilfully evading or attempting to evade payment or remittance of the tax (HST) that he should have paid to Her Majesty under paragraph 327(1)(c) of the ETA;
 - 2) he transferred his half of the undivided ownership to his wife upon learning that the Agency was in a position to undertake collection measures;
 - 3) he always hid the existence of the bank account and the amount of \$580,859.76 therein from the Agency;

- i) It is urgent and imperative that the Agency be in a position to seize the bank account as Mr. Imbeault knows that the Agency was aware of the existence of the bank account and the amount of money therein;

III. Conclusion

[9] For these reasons, the Agency is authorized to take forthwith any or all of the actions described in paragraphs 225.1(1)(a) to (g) of the ITA in order to collect or guarantee payment of the amounts owed by the respondent since there are reasonable grounds for believing that the respondent will waste, liquidate or otherwise transfer her assets so as to become less able to pay the total amount assessed and thereby jeopardizing the Agency's debt.

[10] A period of seventy-two (72) hours is granted before the officials of this Court's registry serve the order to be made on the respondent.

ORDER

THE COURT ORDERS:

1. the moving party to take forthwith any or all of the actions described in paragraphs 225.1(1)(a) to (g) of the ITA in order to collect or guarantee payment of the amounts owed by the respondent further to the two (2) notices of assessment made on May 13, 2009, amounting to a total of \$406,532.70;
2. the moving party to serve any proceeding on the respondent, in the event that it cannot be done personally, by means of a sealed envelope, addressed to her attention, to be deposited in the mailbox of the respondent's house located at 509, rue Principale in Beresford, in the province of New Brunswick;
3. the officials of this Court's registry not to serve this order on the respondent further to the obligation provided for in rule 395 of the *Federal Courts Rules* before the expiry of the period of seventy-two (72) hours from the issuance of the order;
4. the moving party to serve the notice of assessment made on May 13, 2009, on the respondent at the same time as the order to be issued and in the above-mentioned manner, in accordance with subsection 225.2(3) of the ITA;

WITH COSTS.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-773-09

STYLE OF CAUSE: **IN THE MATTER OF** the *Income Tax Act*,
-and-
IN THE MATTER OF assessments established by the
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v.
DENISE CORMIER-IMBEAULT
509, rue Principale
Beresford, New Brunswick E8K 1Y1

PLACE OF HEARING: Ottawa, Ontario (by conference call)

DATE OF HEARING: May 13, 2009

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

DATED: May 13, 2009

APPEARANCES:

Martin Lamoureux	FOR THE APPLICANT
No one for the applicant	FOR THE RESPONDENT

SOLICITORS OF RECORD:

JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE APPLICANT
No one for the applicant	FOR THE RESPONDENT