

Federal Court



Cour fédérale

Date: 20091126

**Docket: T-671-08
T-672-08**

Citation: 2009 FC 1216

Ottawa, Ontario, November 26, 2009

PRESENT: The Honourable Mr. Justice Barnes

Docket: T-671-08

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

RON KOCSIS

Respondent

Docket: T-672-08

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

KOCSIS TRANSPORT LTD.

Respondent

REASONS FOR ORDER AND ORDER

[1] These are motions for contempt brought by the Minister of National Revenue (Minister) against the Respondents, Ron Kocsis and Kocsis Transport Ltd. The Minister alleges that the Respondents are in contempt of two Orders issued by Justice Judith Snider on September 15, 2008 which required production of information and documentation pertaining to the financial and payroll affairs of Kocsis Transport Ltd. One of those Orders was directed to Mr. Kocsis in his capacity as an officer and director of that Company. The other Order was directed to Kocsis Transport Ltd. Except for the requirement to produce a current list of corporate accounts receivable, the Orders do not overlap. It was agreed by the parties that these motions were so closely related that they should be heard and dealt with as one. In the result, this single set of Reasons will apply to both motions and will be included within each file.

[2] The Order of Justice Snider in docket number T-671-08 dated September 15, 2008 required Mr. Kocsis to produce the following information or documents within 30 days of service of the Order:

- (a) Forms TD1, Employee's tax deduction declaration, completed by the employees;
- (b) Payroll records, showing wages paid, tax and Canada Pension deductions and Employments Insurance premiums for the period January 1, 2006 to July 31, 2007 inclusive;
- (c) Pay sheets for the period January 1, 2006 to July 31, 2007 inclusive and copies of the 2006 T4 supplementaries;

- (d) All cancelled cheques and bank statements for all bank accounts for the period January 1, 2006 to July 31, 2007 inclusive;
- (e) Forms PD7A receipts for remittances;
- (f) Any other books and records maintained in conjunction with its recording of wages, remuneration and benefits;
- (g) Details and amounts to contract drivers and or leased operators for the periods January 1, 2006 to July 31, 2007 inclusive; and
- (h) Current list of Accounts Receivable.

[3] The Order of Justice Snider in docket number T-672-08 dated September 15, 2008 required Kocsis Transport Ltd. to produce the following information or documents within 30 days of service of the Order:

- (a) A current, aged listing of all Accounts Receivables of Kocsis Transport Ltd. detailing the amounts due, legal name of the receivable, address, telephone number and payment terms;
- (b) A complete listing of all corporations, businesses and individuals from whom Kocsis Transport Ltd. received remuneration for the period of January 1, 2007 to October 31, 2007;
- (c) Copies of all bank statements pertaining to accounts operated or controlled by, for, or on behalf of Kocsis Transport Ltd. including any and all accounts operating in joint names with Kocsis Transport Ltd. and another or others covering the period January 1, 2007 to October 31, 2007;
- (d) A listing of makes, models, serial numbers, and years of production of all trucks, trailers and automobiles owned by Kocsis Transport Ltd. and/or Ron B. Kocsis;
- (e) A copy of a current balance sheet of Kocsis Transport Ltd.; and

- (f) Detail of all drawings, dividends and or loan proceeds paid to or on behalf of Ron B. Kocsis by Kocsis Transport Ltd. or any other corporate entity to which Ron B. Kocsis is a shareholder over the period of November 1, 2006 to October 31, 2007.

[4] The hearing of these motions was held at Saskatoon, Saskatchewan on August 11 and 12, 2009. The hearing was adjourned to September 25, 2009 at the request of Mr. Kocsis to allow him to properly subpoena a defense witness. When the hearing resumed by video-conference on September 25, 2009, Mr. Kocsis failed to appear and it was evident that he had failed to subpoena the witness. I therefore heard argument from counsel for the Minister and reserved decision. In the meantime, Mr. Kocsis has provided no explanation for his failure to appear on September 25th nor has he requested that the hearing be reopened to allow further evidence to be called.

[5] I am, of course, mindful of the legal principles that apply to a finding of contempt under Rule 466(b), *Federal Courts Rules*, SOR/98-106 (Rules). Specifically, the Applicant has the burden of proving all of the elements of contempt beyond a reasonable doubt including the existence of the Court Order, knowledge of the Order by the person alleged to be in contempt and knowing disobedience of the Order: see *Canada (Minister of National Revenue) v. Bjornstad*, 2006 FC 818, 295 F.T.R. 277.

[6] In accordance with Rule 470 of the Rules, evidence in these proceedings was given orally. As an unrepresented party, Mr. Kocsis was advised that he was not required to call evidence or to testify, but he elected to do both.

[7] There is no issue with respect to service of the two Orders that are in issue in these proceedings. Proof of personal service has been provided and Mr. Kocsis readily acknowledged that fact. There is also no issue that there has been a failure by both Respondents to fully comply with the above Orders. What is in issue is whether there is a lawful excuse or defense for that failure.

[8] I am satisfied beyond a reasonable doubt that Mr. Kocsis and his Company have wilfully failed to comply with the terms of the Orders issued previously by Justice Snider of this Court to produce the information and documentation lawfully demanded by the Minister under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). Mr. Kocsis did not deny that he had failed to produce all of the records required nor did he deny their existence. His explanations for the failure to produce this material included a lack of staff support and an inability to access the records because of alleged mould contamination.

[9] I accept that Mr. Kocsis made some efforts to comply with the Minister's demands, but for whatever reason those efforts diminished as time wore on and the business was suspended. There are a number of outstanding obligations and I accept the evidence of Messrs. Larry Langeman and Jim Yaremko in that regard. I also note that Mr. Kocsis did not seriously challenge their evidence about what had and had not been produced.

[10] Specifically, I am satisfied beyond a reasonable doubt that Mr. Kocsis failed to produce any of the items listed in paragraphs (a), (d), (g) and (h) of Justice Snider's Order in docket number T-671-08 and he has produced only partially the items listed in paragraphs (b), (c) and (e). Item (f) is not sufficiently particularized to support a finding of non-compliance. With respect to the second Order of Justice Snider, I am satisfied beyond a reasonable doubt that the Company has failed to produce any of the items listed in paragraphs (b), (e) and (f) and it has produced only partially the items listed in paragraph (a). The banking information listed in paragraph (c) and the vehicle information listed in paragraph (d) are no longer required by the Minister having been obtained from third party sources and no finding is required with respect to those items.

[11] As the sole director, shareholder and officer of the Company, Mr. Kocsis is the person responsible for effecting compliance with the Order of Justice Snider directed to the Company. He provided no evidence to the contrary and, indeed, his testimony confirmed that the failure by the Company to comply with that Order was the direct result of decisions he made. I am satisfied that he has throughout aided and abetted the Company in failing to meet the obligation particularized above: see *Manufacturers Life Insurance Co. v. Guaranteed Estate Bond Corp.*, 95 A.C.W.S. (3d) 352, [2000] F.C.J. No. 172 (QL) (F.C.T.D.).

[12] There is no question that during the relevant period Mr. Kocsis faced some hurdles in the conduct of his business affairs, but I do not accept that those setbacks constitute a lawful or meritorious excuse for failing to fulfill these disclosure obligations. It is a fundamental corporate

obligation to maintain accurate and complete business records and to be particularly scrupulous with respect to the maintenance of payroll and remittance documentation. It is not a legal excuse that the administrative burden was too onerous for Mr. Kocsis to search out the records demanded by the Minister and subsequently ordered to be produced by this Court.

[13] I am satisfied that the Minister required the records demanded for the legitimate purpose of determining what the Company owed for its tax, CPP and EI employee remittances and, latterly, in the efforts to collect amounts deemed owing.

[14] Unfortunately, the history here is one of a failure by Mr. Kocsis to deal with the Minister and with the Court Orders in a responsible and wholly responsive way. Instead, the evidence indicates a history of considerable evasion of responsibility and delay.

[15] Mr. Kocsis testified that during renovations to the Company premises in June 2008 black mould was discovered. He produced several photographs depicting black mould within the exterior wall cavities of the office and fairly extensive renovations to those areas. At least two photographs depict interior portions of the office covered in plastic sheeting.

[16] Mr. Kocsis testified that the mould was the result of water leakage into the exterior wall of the building. This necessitated the removal of the contaminated gyproc and insulation and the sealing off of the affected area from other parts of the building. When asked about how these issues related to the documents he had been ordered to produce, Mr. Kocsis stated:

THE COURT: My concern here is - - I mean, that material, is there anything in there that would help explain why the records that CRA were seeking were not produced? I'm having a little bit of difficulty understanding the relationship between these problems which you experienced, which appear quite significant, and why the records, the cancelled cheques and things of that sort weren't produced. That's the key issue for me.

MR. KOCSIS: Right, and I understand. That's where, again, everything was at the point - - like, once the reports that we, again, is the - - one which I wanted to produce was the - - again, we had taken steps based on the information we had received from Dr. Figley and the research we've done and on proper practices and handling, I would say, materials or documents within this type of environment. It's not a situation where once the building has been deemed in that state of mould infestation, like, we could not safely have - - first of all, we couldn't have staff in the building. That was - - so basically the building was shut down, we couldn't operate, that was the biggest thing. And for removal, that proper steps had been taken in regards to HEPA-Vac'ing the documents and relocating after things were all kind of put down as a wrap. Things were wrapped down as tight and then to send - - hiring accounting staff to send them in, it just was not an option. It was not recommended to do so, to send accounting staff into an environment of that, just the liability issues of sending somebody in; but, secondly, the documents themselves have to be treated. They have to be handled, they have to be HEPA vacuumed and so forth. You just couldn't take them out and take them to the neighbouring - - take them offsite and start utilizing documents. They had to be treated.

THE COURT: What's the basis? What's the factual basis for that point that you've just made? I mean, you brought documents here from the building this morning and there is a box full of them.

MR. KOCSIS: Actually, I had to take those out and I actually blew them off here this morning because those are the ones that were - - these documents here were not part of the - - these were actually in the boardroom - - anything shoved into a closet and sealed off. So when I found these here yesterday, actually late afternoon in the cart, I blew them all off here this morning. I guess - -

THE COURT: The rest of them, I take it, are in the trailer that we heard testimony - -

MR. KOCSIS: I had to take them out in June. I had them boxed, we had them blown off by - - had the guys wearing the masks. And then on removal from the trailer, we were going to have them HEPA-vac'd because we don't have a HEPA vacuum in our possession. We were going to have a cleaning firm, Service Master or First General, do the appropriate cleaning.

THE COURT: So those documents that are in the trailer, which presumably contain some of the information CRA is looking for - -

MR. KOCSIS: Right.

THE COURT: - - were moved in June of this year into the trailer - - from the building into the trailer?

MR. KOCSIS: Correct.

THE COURT: By who?

MR. KOCSIS: By myself and I hired just - - we wore the masks and stuff.

Mr. Kocsis offered additional justification for his unwillingness to handle the corporate records in the form of a number of internet articles attesting to the health and environmental problems associated with mould contamination. He also spoke of a lack of communication with Canada Revenue Agency (CRA) officials, although that point was not pressed as a justification for failing to produce the required records.

[17] The fundamental problem with Mr. Kocsis' explanation about mould contamination of the documents is that it is unproven and, in many respects, contradicted by his own conduct. He produced no evidence whatsoever that the records in question were actually contaminated by mould or that they could not be safely handled. Although he said that air quality testing had been carried

out in the building, he provided no evidence of those findings. He acknowledged, as well, that he was frequently in the building during the renovations with no protective clothing or apparatus. Mr. Kocsis also asked for an adjournment of the proceeding to allow him to properly subpoena an expert witness who would, he said, speak to the document-contamination issue. That request was granted over the objection of the Crown. When the hearing was resumed by video-conference on September 25, 2009, it became clear that Mr. Kocsis had not subpoenaed the witness. Mr. Kocsis also failed to appear despite being advised that the hearing would proceed.

[18] Mr. Kocsis' explanations for failing to abide by the Orders of this Court are not believable. He was first ordered to produce these records in August 2007 and later in November 2007. Through the remainder of 2007 and into 2008 he had extensive contact with CRA officials about what was required. All of this was well before any issue of mould contamination was evident. Even when he first raised this issue in his communications with the CRA, he only claimed that the office was shut down and was to be moved into a temporary space. At no time did he advise anyone that he had personally moved the records into the adjacent trailer for storage or that they were believed to be contaminated.

[19] Mr. Kocsis also acknowledged under cross-examination that none of the internet material he had tendered in evidence had been provided to the CRA. If Mr. Kocsis honestly believed that the records required of him could not be safely accessed or handled one would reasonably expect him to have so advised the CRA particularly when these proceedings were initiated.

[20] I reject Mr. Kocsis' explanations for failing to abide by the Orders of this Court. He was an evasive witness. Much of his testimony was either non-responsive to the issues or was designed to obfuscate. Mr. Kocsis also failed to produce evidence that could corroborate his testimony despite having sought and obtained adjournments to make that supposed evidence available to the Court. Mr. Kocsis' failure to appear for the conclusion of the hearing of this matter merely confirms my belief that he did not entertain an honest belief that these records could not be safely handled and even if there was a legitimate health issue, it would not excuse Mr. Kocsis' failure since 2008 to deal with it by taking the decontamination measures that he said were necessary.

[21] I find Mr. Kocsis' environmental explanation to be an after-the-fact attempt to create a legal justification for what, at the time, was a deliberate evasion of his obligation to abide by the Orders of this Court. I find beyond a reasonable doubt that he is in contempt of those Orders.

[22] I intend to deal with the issues of sentencing and costs by way of a video-conference hearing. Counsel for the Applicant and Mr. Kocsis should advise the Winnipeg Registry Office of their availability on any of January 12, 14 or 15, 2010 for a hearing of up to two (2) hours in duration. If no indications of availability are provided, the hearing will be set down on one of the above dates at a time convenient to the Court. If Mr. Kocsis chooses to retain legal counsel, representations on his behalf are acceptable.

ORDER

THIS COURT ORDERS and finds that the Respondent, Ron Kocsis, is in contempt of the Order of Justice Judith Snider dated September 15, 2008 in docket number T-671-08.

THIS COURT FURTHER ORDERS and finds that the Respondent, Kocsis Transport Ltd. and Ron Kocsis are in contempt of the Order of Justice Judith Snider dated September 15, 2008 in docket number T-672-08.

THIS COURT FURTHER ORDERS that argument on sentencing and costs will be heard, unless otherwise ordered, by video-conference at the Federal Court, 520 Spadina Crescent East, Saskatoon, Saskatchewan with the parties to advise the Winnipeg Registry Office of their respective availability on any of January 12, 14 or 15, 2010 by no later than Wednesday, December 2, 2009 failing which the date will be fixed by the Court.

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-671-08

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE
v.
KOC SIS

PLACE OF HEARING: Ottawa, ON

DATE OF HEARING: September 25, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Mr. Justice Barnes

DATED: November 26, 2009

APPEARANCES:

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FOR THE APPLICANT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada

FOR THE APPLICANT

Ron Kocsis
Saskatoon, SK

SELF-REPRESENTED

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-672-08

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