Federal Court  Cour fédérale

Date: 20120424

Docket: T-691-11

Citation: 2012 FC 480

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 24, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SUZIE DUVAL

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Duval is entitled to be upset with the actions of the Canada Revenue Agency (CRA). After all, the CRA seized her money to reimburse the tax debt of her common-law spouse, Claude Hubert. She objected, but without success. Instead, she was personally the subject of an audit. She is now appearing before this Court to get her money back.

[2] Ms. Duval is not represented by counsel. She has not taken proper steps in this matter by submitting an application for judicial review of the CRA's various actions. She should have,

instead, cited section 56 of the *Federal Courts Act*, which looks to provincial law, Quebec law in this case. Articles 596 *et seq.* of the *Code of Civil Procedure* permit her to oppose the seizure.

[3] Should the CRA benefit from unjust enrichment because Ms. Duval did not know how to do so despite the fact that her intentions were perfectly clear from the beginning? Let us recall Mr. Justice Pigeon's remarks in *Hamel v Brunelle*, [1977] 1 SCR 147, at page 156: " . . . that procedure be the servant of justice not its mistress". With this comment in mind, I will depart from what is, in fact, a seizure, and order that the money be returned to Ms. Duval.

FACTS

[4] Without a shadow of a doubt, Claude Hubert is indebted to the CRA.

[5] Without a shadow of a doubt, Ms. Duval and Mr. Hubert live together as common-law spouses.

[6] Without a shadow of a doubt, Ms. Duval and Mr. Hubert opened a joint bank account in their two names at a Caisse populaire branch.

[7] Without a shadow of a doubt, the CRA has the duty to collect, to the best of its ability, tax indebted to it.

[8] The CRA sent information requirements to two Caisses populaires with respect to Claude Hubert's tax debt. The Agency sought to obtain information on Suzie Duval's accounts, citing paragraphs 231.2(1)(*a*) and (*b*) of the *Income Tax Act.* One of the Caisses populaires communicated the existence of a joint account. As part of the recovery of Claude Hubert's debt, the CRA requested, in accordance with section 224 of the Act, that the Caisse populaire pay the Receiver General, on account of Claude Hubert's liability of around $90,000, the amount in the account. The said Caisse populaire therefore sent it a cheque in the amount of $1,791.31, emptying the joint account completely.

[9] Ms. Duval challenged the allocation of this amount for the payment of Mr. Hubert's debt by specifying that the amount used belongs to her and not to Mr. Hubert. Her objections were unsuccessful; the amount was not reimbursed to her. She was personally the subject of an audit. Ms. Duval was furious.

[10] She therefore finds herself before this Court to challenge in judicial review the various steps taken by the CRA and to get her money back. She went too far with her actions. She tried to obtain, without success, an injunction to suspend the audit undertaken by the CRA. She accused the CRA of bad faith. She alleged a violation of her Charter rights. None of her allegations are justified.

DECISION

[11] One week before the hearing of this application for judicial review, the respondent submitted a leave application to submit a supplementary affidavit from one of the tax auditors. I granted that motion during the hearing. The reason for the filing of the affidavit was to establish that, despite Ms. Duval's objections, she cooperated with the audit of her income. The CRA was satisfied that Mr. Hubert was not transferring money to his spouse's bank accounts to try to avoid paying his tax debt, and Ms. Duval's case was closed. Consequently, that aspect of the hearing is moot. However, I note that the CRA is indeed entitled to proceed with such an audit. It is still possible that some spouses transfer amounts of money amongst themselves to avoid their tax obligations.

[12] It therefore appears that Ms. Duval's audit was in no way in bad faith on the part of the CRA. We live in a system of self-reporting and self-assessing and anyone may be the subject of an audit, as if it were a lottery: see *R v McKinlay Transport Ltd*, [1990] 1 SCR 627, 106 NR 385 and *C.B. Powell v Canada (Border Services Agency)*, 2009 FC 528, [2009] FCJ No 685 (QL), rev'd on other grounds at 2010 FCA 61, [2011] 2 FCR 332.

[13] This must not be taken to mean that such discretion is absolute. However, this case does not involve a vexatious audit by the CRA. Mr. Justice Rand stated the following in *Roncarelli v Duplessis*, [1959] SCR 121, at page 140:

> . . . there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator;

> no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute.

In *C.UP.E. v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 SCR 539, at paragraph 91, Mr. Justice Binnie cited another excerpt from those same reasons:

> The Minister does not claim an absolute and untrammelled discretion. He recognizes, as Rand J. stated more than 40 years ago in *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 140, that "there is always a perspective within which a statute is intended to operate".

[14] Ms. Duval is seeking to obtain the judicial review of several decisions, such as those to send information requirements and that of seizing the amount in the joint bank account to pay Mr. Hubert's debt. However, what she is really challenging is the CRA's decision to not pay her the amount seized, that is, $1,791.31.

[15] Rule 302 of the *Federal Courts Rules* provides for the following:

Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.	Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[16] The respondent did not refer to Rule 302. No harm was caused. I therefore order that all of the issues be addressed in the context of this application for judicial review.

[17] Regarding the information requirements, Ms. Duval maintains that prior authorization from the Court is required in accordance with subsection 231.2(2) of the Act. This is not the case. That

subsection applies only to unnamed persons. Mr. Hubert and Ms. Duval were both named in those requests.

[18] The greatest difficulty for me is that the CRA instructed the Caisse populaire to remit to it the amount seized from the joint account of Ms. Duval and Mr. Hubert. However, after due consideration, I am satisfied that that decision is not subject to judicial review. It is inappropriate to give prior notice to the party concerned in this type of situation because it may well be that the money would disappear.

[19] The CRA never informed Ms. Duval of the payment request that it sent to the Caisse populaire. The respondent now claims that it was too late for Ms. Duval to submit an application for judicial review because the 30-day time limitation set out in section 18.1 of the *Federal Courts Act* had passed. That section also sets out that the time limitation begins as of the first communication, by the decision-maker, of the decision to the party concerned; this was not done in this case. However, it is unnecessary to examine this point more closely or to consider the relevance, if any, of the fact that the CRA's actions were eventually brought to the attention of Ms. Duval.

[20] That being said, because I define this matter as an opposition to seizure, the 30-day time limitation does not apply. Given that involuntary execution of seizures in accordance with the *Income Tax Act* derives from the certificates submitted before this Court, section 56 of the *Federal Courts Act* provides that the provincial law governing the opposition process applies: see the decision of this Court dated February 6, 2012, in *In The Matter of the Income Tax Act and In the*

Matter of an Assessment or Assessments by the Minister of National Revenue Under One or More of the Income Tax Act, Canada Pension Plan, Employment Insurance Act, and the Applicable Provincial Tax Legislation against Atomic Machine Shop Ltd (Court file ITA-7298-10). Under Quebec law, Ms. Duval is entitled to oppose the seizure, and that is, in fact, what she did.

[21] I cite Rule 57 of the *Federal Courts Rules*, which sets out the following:

> An originating document shall not be set aside only on the ground that a different originating document should have been used.
>
> La Cour n'annule pas un acte introductif d'instance au seul motif que l'instance aurait dû être introduite par un autre acte introductif d'instance.

[22] Furthermore, in addition to *Hamel v Brunelle*, above, Mr. Justice Binnie ruled the following for the Supreme Court in *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585, at paragraph 18:

> This appeal is fundamentally about access to justice. People who claim to be injured by government action should have whatever redress the legal system permits through procedures that minimize unnecessary cost and complexity. The Court's approach should be practical and pragmatic with that objective in mind.

[23] A garnishment cannot be applied against a joint bank account with the purpose of recovering the debt of one of its co-depositors [TRANSLATION] "unless it is established that the funds in the account are solely the property of the judgment debtor": see Nicole L'heureux, Édith Fortin & Marc Lacoursière, *Droit bancaire*, 4nd ed, Cowansville: Éditions Yvons Blais, 2004, at page 109.

[24] This principle was also adopted by M.H. Ogilvie in *Canadian Banking Law*, 2nd ed, Scarborough: Carswell, 1998, at page 531:

> The overwhelming preponderance of cases have held that a joint account, even where the joint account holders are spouses, cannot be made subject to a garnishee order in respect of a debt owed only by one, but not all of joint account holders. In contrast to the rules about set-off where the bank is the creditor and acts pursuant to a joint and several liability of the joint account holders to it, in respect to garnishment the bank is a mere third party holder of funds and the liability is between the joint account holder and a creditor who seeks recompense for an indebtedness.

[25] Most recently, in *Canada Trustco Mortgage Co. v Canada*, 2011 SCC 36, [2011] 2 SCR 635, the Minister himself conceded not being able to attach funds in a joint account, a position the Supreme Court did not contradict.

[26] Ms. Duval's uncontradicted evidence is that she is the financial provider of the couple and that the main bank account is in her name only. In order to meet their household needs, she transfers money to the joint account open in her name and that of Mr. Hubert. The money belongs to her and not to Mr. Hubert. As a result, it was wrong for the CRA to keep that money. Her challenge is well founded.

[27] Even though in this judicial review Ms. Duval succeeded in having her money reimbursed, she is not entitled to costs. She initiated improper proceedings and was clearly wrong in challenging the audit of her income.

ORDER

FOR THE REASONS GIVEN ABOVE;

THE COURT DECLARES that the amount of money seized by the Canada Revenue Agency from the joint bank account of Ms. Duval and Mr. Hubert, that is, $1,791.31, belongs to Ms. Duval.

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review for a declaration that the information requirements sent to two Caisses populaires are invalid and illegal be dismissed.
2. The application for judicial review of the decision by the Canada Revenue Agency for an audit of the applicant's tax returns be dismissed.
3. The Canada Revenue Agency shall reimburse $1,791.31 to Ms. Duval, and any applicable interest, if permitted by law.
4. Without costs.

"Sean Harrington"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-691-11
STYLE OF CAUSE:	DUVAL v AGC
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	APRIL 10, 2012
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	APRIL 24, 2012

APPEARANCES:

Suzie Duval	THE APPLICANT (SELF-REPRESENTED)
Julie Mousseau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

	THE APPLICANT (SELF-REPRESENTED)
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT