



Date: 20130418

Docket: T-2164-12

Citation: 2013 FC 399

Calgary, Alberta, April 18, 2013

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

DANIEL M. BOSNJAK

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant seeks information from the Respondent in connection with approximately \$47,000 in unpaid taxes that the Respondent owes. As it is permitted to do under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), the Applicant served a Requirement for Information on the Respondent to produce certain information and documents, and, when the Respondent ignored the Requirement, sought the assistance of this Court.

[2] On December 19, 2012, this Court ordered the Respondent to provide the requested information and documents. The Respondent ignored this and a subsequent Order of this Court.

On April 15, 2012, the Applicant's motion for a finding of contempt and imposition of sentence was heard. Although the Respondent had been ordered to attend this hearing, he failed to do so.

[3] For the reasons set out below, I determined that the Applicant proved beyond a reasonable doubt that the Respondent is in contempt of this Court's Order of December 19, 2012 and impose the sentence described below.

Background

[4] On July 31, 2012, Jennifer Rawleigh, an officer at the Canada Revenue Agency, personally served a copy of the Requirement for Information on the Respondent. The Requirement took the form of a letter, in which the Applicant listed all the information it was seeking, noted that if the Respondent failed to comply, he could be prosecuted, and stated that "subsection 231.7(1) of the 'Income Tax Act' allows the Canada Revenue Agency to request a specific compliance order from the court in the event of non compliance. Failure to comply with that specific compliance order could lead to a finding of contempt of court".

[5] The Requirement for Information listed the following information and documents the Respondent was to provide:

- a. The names and branches of all banks in which the Respondent maintained either accounts or safety deposit boxes or both, including information of amounts on deposit as of July 26, 2012;

- b. Details of all brokerage accounts maintained by the Respondent, whether or not registered in his name, providing names and addresses of brokers and balances due as of July 26, 2012;
- c. Details of all bonds, common shares or preferred shares owned by the Respondent, whether or not registered in his name, including the individual cost-per-share and current location of each security;
- d. Details of all real property owned by the Respondent, whether or not registered in his name, including the legal descriptions, amounts of encumbrances, names and addresses of encumbrancers, and the location of the applicable registry office;
- e. Details of all insurance carried by the Respondent, with names of insurance companies, face value of policies, policy numbers, cash surrender values and accrued dividends where applicable, and locations of policies;
- f. Details of all mortgages and loans receivable in which the Respondent has a beneficial interest, giving details of the amounts due to the Respondent as of July 26, 2012, dates of registration, registry office where registered, and legal description of property encumbered, and, where applicable, details of the terms of repayment, maturity date, and names and addresses of all mortgagors or other debtors;

- g. Details of all loans and mortgages payable by the Respondent as of July 26, 2012, including the current market value of all security given, together with the legal description of all property pledged;
- h. Details of all automobiles owned by the Respondent as of July 26, 2012, including year, style and make of car, license number, names and addresses of lien holders or encumbrancers, and cost of each vehicle;
- i. Full details of any other assets owned by the Respondent, whether or not registered in his name, but not included in the foregoing;
- j. Details of all monies received by the Respondent from employment and other sources during the period of January 1, 2012 to July 26, 2012, including the name and address of the payer, and the nature of the payments;
- k. Details of all unsatisfied judgments against the Respondent, including the nature of the debt and names and addresses of judgment creditors; and
- l. Details of all payments made by the Respondent to a pension trust, fund or other type of annuity, and the exact location of each such pension trust and the current amount standing to the Respondent's credit and/or the credit of beneficiaries, but no time period in respect of which information sought was to be provided.

[6] The Respondent did not make any contact with the Canada Revenue Agency [CRA] subsequent to receipt of the Request for Information.

[7] On November 16, 2012, counsel for the Applicant sent the Respondent a letter via registered mail, advising that she would be seeking a compliance Order from this Court unless the requested information and documents were provided by November 16, 2012. In her letter, counsel for the Applicant provided contact information for the appropriate individual, whom the Respondent was to contact at CRA. The Respondent did not reply to this letter.

[8] The Applicant therefore applied to this Court to seek a compliance Order. Such an Order was issued on December 19, 2012 by Justice O'Reilly. The compliance Order identified and listed all the information documents that the Respondent had been required to produce by virtue of the Request for Information and then stated:

THIS COURT ORDERS pursuant to section 231.7 of the *Income Tax Act* that the Respondent shall comply with the Requirement issued by the Minister and shall forthwith, and in any event no later than 30 days after being served with this Order, provide the Information and Documents to the Canada Revenue Agency officer acting under the authority conferred by the *Income Tax Act* or other person designated by the Canada Revenue Agency.

[9] A process server personally served the Respondent with the compliance Order on January 7, 2013. The Respondent did not provide any of the documents or information to CRA within the 30 day time period required by the compliance Order, and, indeed, as of the present date, the Respondent has not provided any of the information or documents he was ordered to provide.

[10] On February 4, 2013, counsel for the Applicant again wrote to the Respondent, indicating that he had failed to comply with the Order of Justice O'Reilly of December 19, 2012, and that, as a result, the Applicant would be proceeding to have the Respondent held in contempt. In her letter, counsel noted that "failure to comply with an Order of the Court is punishable by fine, imprisonment and/or both". She closed her letter by suggesting the Respondent should contact CRA at his earliest convenience. She also provided her own telephone number, requesting the Applicant contact her if he had questions. The Respondent did not reply to this letter.

[11] The Applicant therefore made a further motion to this Court, seeking to have a show cause order issued, requiring the Respondent to attend before a judge of this Court to answer the allegation that he is guilty of contempt of court and to speak to sentence. The show cause Order was issued by Justice Barnes on March 7, 2013. The show cause Order stated:

The Respondent will attend at the Federal Court, 3rd Floor,
Canadian Occidental Tower, 635 Eight Avenue SW, Calgary,
Alberta, before Justice of this Court at 9:30 a.m. on 15 April, 2013
and be prepared to:

(a) hear proof of the acts of contempt with which he is charged;

- (b) present any defense that he may have to charge; and
- (c) speak to the Applicant's submissions on an appropriate sentence if he is found to be in contempt.

[12] The show cause Order also allowed the Applicant to introduce the contents of the Court file, including the correspondence contained therein, directly and without need for oral proof of the documents, and likewise permitted the Applicant to prove service of all documents served personally by way of Affidavit of Service. It further provided that the Applicant was to serve and file written submissions on sentencing at least two weeks prior to April 15, 2013 which were to include representations regarding whether the Applicant was seeking jail time for the Respondent and the range of penalties and costs.

Evidence at the hearing

[13] During the hearing on April 15, 2013, the Applicant proved the foregoing, through the testimony of Patricia Wright and the exhibits filed, which included copies of correspondence and originals of several Affidavits of Service. The evidence also established that the show cause Order of Justice Barnes, issued on March 7, 2013, was personally served on the Respondent and that a copy of the Applicant's Motion Record for the contempt motion and Submissions as to Sentence were also personally served on the Respondent more than two weeks prior to April 15, 2013. The Applicant's Submissions as to Sentence clearly state that the Applicant is seeking the imposition of a fine, in the amount of \$5000.00, its solicitor-client costs in the amount of \$11,557.65, a further order requiring the Respondent to furnish the documents and information

he was ordered to provide, and that, failing payment and production, incarceration be ordered, until the Respondent provides the documents and information.

[14] The evidence further established that the Respondent has done nothing to comply with Justice O'Reilly's Order of December 19, 2012 and has produced none of the information or documents that he was ordered to produce. Nor has he contacted the CRA to provide any explanation for his failure and, indeed, declined to even show up for the contempt hearing.

Finding of Contempt

[15] The Respondent is therefore in contempt of this Court's Order of December 19, 2012. I so held during the hearing on April 15, 2013, finding that the Applicant had established the Respondent's contempt beyond a reasonable doubt. Simply put, the Respondent has completely ignored the compliance Order Justice O'Reilly issued on December 19, 2012. The Respondent is aware of the Order because it was personally served on him. His guilt was thus established beyond a reasonable doubt.

Sentence and Costs

[16] Because I was satisfied that the Respondent had been personally served with Justice Barnes' show cause Order of March 7, 2013 and with the Applicant's Submissions as to Sentence and was therefore clearly on notice that he was liable to being sentenced for contempt on April 15, 2013, I proceeded to hear the Applicant's Submissions as to Sentence on April 15th. (This same procedure has been followed by several of my colleagues in similar matters in previous cases. See, for example, *Canada (Minister of National Revenue) v Bjornstad*, 2006 FC

818 [*Bjornstad*]; *Canada (Minister of National Revenue) v Loy Yeung Kwan*, File No T-554-05 (December 13, 2005); *Canada (Minister of National Revenue) v Hrappstead*, File No T- 2275-04 (26 May 2005); *Canada (Minister of National Revenue) v Arthur C Dwer*, File No T-1479-02 (September 30, 2003).)

[17] In imposing sentence for contempt, the factors to be considered include the gravity of the contempt, whether the instance of contempt is the first offence, the presence of any mitigating factors such as good faith or an apology and the need for deterrence (*Winnicki v Canada (Human Rights Commission)*, 2007 FCA 52 at paras 17-18 and *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788 at para 16).

[18] The Applicant submits that a sentence similar to that recently imposed by Justice Zinn in *Canada (Minister of National Revenue) v The Money Stop Ltd*, 2013 FC 133 [*Money Stop*] is appropriate. There, Justice Zinn imposed a fine of \$5000.00, payable within 30 days, ordered that the respondents pay the applicant's legal costs in the amount of \$19,905.74, also within 30 days, and that, unless they provided satisfactory proof that they were not able to pay the fine or legal costs or needed an extended period of time to pay, if the amounts ordered were not paid, the individual respondent would be imprisoned for 30 days. Justice Zinn further ordered that the respondents were to provide the documents and information sought in that case within 30 days, and that unless they provided satisfactory proof of their inability to do so and continued to fail to produce the information and documents, the individual respondent was subject to imprisonment until the earlier of the date the contempt is purged or for a period of 3 years.

[19] In *Money Stop*, however, Mr. Sutherland (the individual respondent) appeared for the contempt hearing and undertook to purge his contempt within 30 days. When he failed to do so, the above-described order issued. In my view, this represents an important distinction between this case and *Money Stop*. Here, the Respondent has not specifically breached an undertaking to the Court. Accordingly, I believe that a lesser fine is more appropriate than \$5000.00 and that a lengthy period of incarceration should not be automatically imposed in the event of non-payment of the fine, costs or failure to provide the documents ordered. That said, the sentence must however recognise the serious nature of the Respondent's situation: he has flouted an Order of this Court.

[20] I am of the view that a sentence somewhat similar to that imposed in *Bjornstad* is appropriate. There, Justice Dawson imposed a fine of \$2000.00 (but indicated the fine would have been higher if the applicant had asked that a higher amount be imposed), payment of costs on a solicitor-client basis and ordered that the matter could be brought back before the Court for Ms. Bjornstad to possibly be incarcerated in the event of continued failure to produce the documents or pay the amounts she was ordered to pay. While Justice Dawson provided that the request for imprisonment could be grounded under Rule 471 of the *Federal Courts Rules*, SOR/98-106, which provides that the Court may request the assistance of the Attorney General in relation to contempt proceedings, the Applicant argues that it is not necessary to invoke Rule 471 to bring the Respondent back before the Court to impose a period of imprisonment. I agree with this submission: Rule 472 allows the Court to impose imprisonment for a period of less than five years or until the person complies with an Order of the Court. And the Court doubtlessly has the inherent authority to issue a warrant to bring someone before it or for the arrest and detention

of an individual. (Justice Zinn just recently issued such a warrant in *Money Stop*, providing for the arrest and detention of Mr. Sutherland, who has failed to comply with Justice Zinn's sentencing order.)

[21] As concerns costs, the Applicant seeks an all-inclusive amount of \$11,557.65 and produced a draft Costs Summary in its Submissions as to Sentence. During the hearing, it became apparent that this amount included fees and disbursements incurred in respect of the compliance and show cause Orders. Both of these previous Orders, however, made provision for payment of costs by the Respondent and thus costs for these steps cannot again be ordered, as this would represent an inappropriate double-recovery for the Applicant.

[22] The materials produced by the Applicant do not provide a breakdown of how much time was expended on the earlier two orders as opposed to this motion by counsel and the paralegal who worked on the file. I have thus decided that while an award of costs equivalent to solicitor-client costs is appropriate given the Respondent's continued disregard of the Court's Order, costs will be calculated with reference to the upper end of Column V of Tariff "B" to the *Federal Courts Rules*, for Items 5, 6, 24 and 25, which provides a rough proxy for solicitor-client costs in this matter. The Applicant shall also be compensated for its disbursements incurred on this motion, which are ascertainable from the materials the Applicant filed, and is also entitled to compensation for the cost of personally serving this order on the Respondent. The total amount I have awarded for fees and disbursements is \$4115.59.

[23] Thus, I believe that an appropriate order in this matter includes an order to pay the foregoing costs, a fine of \$3000.00 and an order that the documents and information be produced, all within 30 days of the date of service of my Order. While counsel for the applicant originally sought a \$5000.00 fine, during her argument on sentencing she conceded that \$3000.00 might be more appropriate, given the differences between this case and *Money Stop*.

[24] I believe the sentence I am imposing represents an appropriate balancing of the relevant factors: this is the first instance of contempt, but the Respondent's disregard for the processes and Order of this Court has been flagrant. I also believe it appropriate that provision be made for the matter to be brought back before the Court for possible imprisonment of the Respondent in the event he does not pay the amounts ordered and does not provide the documents and information. The Respondent must realize that he cannot ignore court orders with impunity. A court order is not a suggestion; it must be obeyed. Should the Respondent fail to comply with this Order, he may well be subject to a lengthy period of incarceration.

THIS COURT ORDERS that:

- 1) The Applicant shall forthwith personally serve a copy of this Order, the Appendix to it and these Reasons for Order on the Respondent and shall file proof of service with the Court;
- 2) The Respondent shall pay a fine of \$3000.00 within 30 days from the date of service of this Order;
- 3) The Respondent shall pay the Applicant's costs of this motion in the amount of \$4115.59, within 30 days from the date of service of this Order;

- 4) The Respondent shall provide the Applicant with the information and documents, as set out in this Court's Order of December 19, 2012, which is attached to this Order as Appendix "A", within 30 days from the date of the service of this Order;
- 5) If the Respondent fails to comply with the terms of this Order, the Applicant may make a motion seeking to have a warrant issued to apprehend the Respondent and bring him before any judge of this Court to show cause why he should not be imprisoned for some period or until he complies with the Court's Order of December 19, 2012.

"Mary J.L. Gleason"

Judge

APPENDIX "A"

Federal Court



Cour fédérale

Date: 20121219

Docket: T-2164-12

Calgary, Alberta, December 19, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

DANIEL M. BOSNJAK

Respondent

ORDER

UPON the application of the Minister of National Revenue (the "Minister") coming for hearing on Wednesday, December 19, 2012, at the Courthouse located at 3rd Floor, Canadian Occidental Tower, 635 Eighth Avenue SW, Calgary, Alberta;

AND UPON reviewing the materials filed by the Minister and hearing the submissions of counsel for the Minister, and no one appearing for the Respondent;

AND UPON BEING SATISFIED that:

1. The conditions under section 231.7 of the *Income Tax Act* for granting an order against the Respondent to provide information and documents sought by the Minister have been met, such conditions being:
 - a. the Respondent was required under subsection 231.2(1) of the *Income Tax Act* to provide the information and documents sought by the Minister;
 - b. the Respondent has failed to provide the information and documents sought by the Minister; and
 - c. the information and documents sought by the Minister are not protected from disclosure by solicitor-client privilege.

2. An order be made pursuant to section 231.7 of the *Income Tax Act* that the Respondent provide the following information and documents sought by the Minister, including but not limited to:
 - a. The names and branches of all banks in which the Respondent maintains either accounts or safety deposit boxes or both, including information of amounts on deposit as at July 26, 2012;
 - b. Details of all brokerage accounts maintained by the Respondent, whether or not registered in his name, providing names and addresses of brokers, balances due as at July 26, 2012;

- c. Details of all bonds, common shares, and preferred shares owned by the Respondent, whether or not registered in his name, including the individual cost per share and current location of each security;
- d. Details of all real property owned by the Respondent, whether or not registered in his name, including the legal descriptions, amounts of encumbrances, names and addresses of encumbrancers, and the location of the applicable registry office;
- e. Details of all insurance carried by the Respondent, with names of insurance companies, face value of policies, policy numbers, cash surrender values and accrued dividends where applicable, and locations of policies;
- f. Details of all mortgages and loans receivable in which the Respondent has a beneficial interest, giving details of the amounts due to him as at July 26, 2012, dates of registration, registry office where registered, and legal description of property encumbered. Where applicable, provide terms of repayment, maturity date, and names and addresses of all mortgagors or other debtors;
- g. Details of all loans and mortgages payable by the Respondent at July 26, 2012, including the current market value of all security given, together with the legal description of all property pledged;

- h. Details of all automobiles owned the Respondent as at July 26, 2012, including year, style and make of car, license number, names and addresses of lien holders or encumbrancers, and cost of each vehicle;
- i. Full details of any other assets owned by the Respondent, whether or not registered in his name but not included in the foregoing;
- j. Details of all moneys received by the Respondent from employment and other sources during the period of January 1, 2012 to July 26, 2012, including the name and addresses of the payer, and the nature of the payments;
- k. Details of all unsatisfied judgments against the Respondent, including the nature of the debt and names and addresses of the judgment creditors;
- l. For the period of to, a list with dates and individual amounts of all payments made to pension trust, fund, or other type of annuity, giving the exact location of such pension trust, and the current amount standing to the Respondent's credit and/or the credit of the beneficiaries.

(collectively the "Information and Documents")

- 3. The Respondent has not provided the Minister with the Information and Documents; and

4. The Information and Documents are not protected from disclosure by solicitor-client privilege within the meaning of subsection 232(1) of the *Income Tax Act*.

THIS COURT ORDERS pursuant to sections 231.7 of the *Income Tax Act* that the Respondent shall comply with the Requirement issued by the Minister and shall forthwith, and in any event not later than 30 days after being served with this Order, provide the Information and Documents to a Canada Revenue Agency officer acting under the authority conferred by the *Income Tax Act* or other person designated by the Commissioner of the Canada Revenue Agency.

THIS COURT FURTHER ORDERS that the Minister is authorized to effect service of this Order on the Respondent by personal service pursuant to Rule 128 and Rule 130 of the Federal Courts Rules.

THIS COURT FURTHER ORDERS the Respondent to pay to the Minister costs in the amount of \$1000.00.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2164-12

STYLE OF CAUSE: *Minister of National Revenue v Daniel M. Bosnjak*

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: April 15, 2013

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

DATED: April 18, 2013

APPEARANCES:

Margaret McCabe

FOR THE APPLICANT

No appearance

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney,
Deputy Attorney General of Canada
Calgary, Alberta

FOR THE APPLICANT

Self-represented

FOR THE RESPONDENT
(ON HIS OWN BEHALF)