

Date: 19981106

Docket: ITA-2380-96

MONTRÉAL, QUEBEC, THE 6th DAY OF NOVEMBER 1998

PRESENT: RICHARD MORNEAU, PROTHONOTARY

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, THE *CANADA PENSION PLAN*, AND THE *UNEMPLOYMENT
INSURANCE ACT*

AGAINST:

RAYMOND BÉRUBÉ

Judgment debtor

-and-

CONSTRUCTION RAYMOND BÉRUBÉ INC.

Garnishee

REASONS FOR ORDER AND

GARNISHMENT ORDER ABSOLUTE

(Rule 451 of the *Federal Court Rules, 1998*)

RICHARD MORNEAU, PROTHONOTARY:

[1] UPON hearing counsel for Her Majesty the Queen and upon reading the affidavit of Louise Laberge, an authorized official of the Department of National Revenue, filed in support

of the motion of Her Majesty the Queen and attached to which was a Certificate bearing Court file number ITA-2380-96 that was filed in the Registry of this Court on March 13, 1996, under section 223 of the *Income Tax Act*;

[2] WHEREAS it was certified in the Certificate, which has the same force and effect as a judgment of this Court, that the judgment debtor is indebted to Her Majesty the Queen in right of Canada in the sum of \$455,067.54 plus compound daily interest on \$455,067.54 pursuant to the *Income Tax Act* for the period from March 13, 1996, to the day of payment;

[3] WHEREAS the sum of \$455,067.54 and the interest remain due and unpaid;

[4] WHEREAS it appears that an interim garnishment order was made on December 9, 1996, whereby it was ordered that all sums owing or accruing from the garnishee to the judgment debtor, excluding salary or wages exempt from seizure under section 553 of the *Quebec Code of Civil Procedure*, but including that portion of any salary or wages owing or accruing from the garnishee to the judgment debtor that is not exempt from seizure under section 553 of the *Quebec Code of Civil Procedure* and all movable property belonging to the judgment debtor that is held by the garnishee, should be attached to answer the Certificate entered in the Federal Court of Canada on March 13, 1996;

[5] WHEREAS by affidavit dated February 19, 1997, the garnishee stated through its president and one of its directors, Mr. Raymond Bérubé, that the judgment debtor had been obliged to markedly reduce his activities in the garnishee company for health reasons, and that the garnishee neither paid nor was paying any salary nor providing any benefits to him, but that his wife, Thérèse Bérubé, had been obliged to become more involved in the firm Construction Raymond Bérubé Inc., hence the reduction in the judgment debtor's salary and the increase in his wife's salary;

[6] WHEREAS on April 11, 1997, as president and one of the directors of the garnishee, Mr. Raymond Bérubé was examined on that negative affidavit;

[7] WHEREAS that examination brought out the following facts:

1. The judgment debtor checks the accounts payable, signs the cheques and goes to the sites to see what is going on (page 5 of the examination);
2. The judgment debtor does business with the clients and signs the contracts (page 13 of the examination);
3. The judgment debtor signs the tenders (page 24 of the examination);
4. The judgment debtor deals with the suppliers and particularly, as regards the exchange of correspondence, with potential problems, signing security bonds and affidavits (pages 29, 31 and 32 of the examination);
5. The judgment debtor signs the cheques, loans and line of credit renewals (pages 33 and 34 of the examination);
6. The judgment debtor signs the resolutions of the garnishee company and the resolutions

of shareholders (page 40 of the examination);

[8] WHEREAS Mr. Raymond Bérubé filed a supplementary affidavit dated February 9, 1998, alleging that he had resigned as president and director of the garnishee company as of September 18, 1997, and that his wife, Thérèse Bérubé, was president of the garnishee company as of that date;

[9] WHEREAS Her Majesty the Queen conducted an examination of Mr. Raymond Bérubé on that affidavit on October 2, 1998. A document entitled [TRANSLATION] "Contractor and Building Contractor Licence Renewal Application for Construction Raymond Bérubé Inc." was produced during that examination as Exhibit I-1, showing at page 2 of that document that Raymond Bérubé signed as an officer of Construction Raymond Bérubé Inc. (p. ii and 20) on October 30, 1997, notwithstanding the alleged resignation of Mr. Bérubé as president and director of the garnishee;

[10] WHEREAS it appears from the affidavit of Louise Laberge that until October 15, 1994, the garnishee company was paying Mr. Raymond Bérubé a bimonthly net sum of \$1,420.62, and that as of that date, his salary was reduced to \$376.35 net every two weeks;

[11] WHEREAS it appears from the affidavit of Louise Laberge that until October 15, 1994, the garnishee company was paying Mrs. Thérèse Bérubé a bimonthly net sum of \$465.97, and that as of that date, her salary was increased to \$1,269.27 net every two weeks;

[12] WHEREAS section 649 of the Quebec *Code of Civil Procedure* reads:

If the garnishee declares that the debtor works for him without remuneration, or if the remuneration paid by the garnishee is clearly less than the value of the services rendered, any creditor may, by motion presented five days at least after service upon the debtor and upon the garnishee, apply to a judge to value the debtor's services and fix an adequate remuneration therefor; such remuneration shall be deemed to be that of the debtor from the date of the application until it is shown that the amount so fixed should be changed. The decision of the judge shall be without appeal.

[13] WHEREAS, in view of the preponderant evidence submitted by the judgment creditor, it is reasonable to declare that Mr. Raymond Bérubé has remained actively involved in the garnishee company from October 15, 1994, to this day. It thus appears to the Court that he has remained its directing mind at all material times and that his services to the garnishee company have remained of constant value at all times even though they may have varied in nature and been performed in various capacities;

[14] WHEREAS it is reasonable to declare that the difference in salary paid to Mrs. Thérèse Bérubé as of October 15, 1994, should have continued to be paid to Mr. Raymond Bérubé;

[15] WHEREAS it is reasonable and fair to declare and value the services rendered by the judgment debtor to the garnishee at a bimonthly net remuneration of \$1,420.62 or more;

[16] In the view of the Court, the declarations *supra* are directly related to the enforcement of the judgment against the judgment debtor. These declarations are therefore within the jurisdiction of the Court as per *Le Bois de Construction du Nord (1971) Ltée v. The Queen*, [1986] 2 C.T.C. 227, at pp. 228 and 234.

[17] WHEREAS this remuneration of \$1,420.62 is deemed to be the judgment debtor's remuneration as of October 1994, at which time Raymond Bérubé was under investigation and was aware of that investigation;

[18] WHEREAS there is no doubt, given the importance and responsibility of the judgment debtor's duties, that the net sum of \$1,420.62 every two weeks is reasonable and fair;

[19] ACCORDINGLY, IT IS ORDERED that for the garnishment in the instant case, the judgment debtor's salary is fixed at the net sum of \$1,420.62 or more every two weeks as of December 9, 1996, the date the interim garnishment order was made against the garnishee;

[20] THE GARNISHEE IS DIRECTED, in person or by registered or certified mail within ten days of being served with this order, to pay into the Registry of this Court that portion of what it owes the judgment debtor that is not exempt from seizure, retroactively to December 9, 1996, that is, an amount of \$30,569.80, as was established on the evidence. This amount represents the difference between Raymond Bérubé's true remuneration and that paid by Construction Raymond Bérubé Inc. since December 9, 1996, less the amounts already paid by Construction Raymond Bérubé Inc. to the Department of National Revenue. Thereafter, the garnishee shall so declare and pay again every month and serve a copy of its first declaration on the judgment creditor by registered or certified mail, and a copy of that declaration shall also be served in the same manner on the judgment debtor by the judgment creditor, and proof of this service shall also be filed in the Registry of this Court;

[21] IT IS ORDERED that this garnishment shall continue to apply to that portion that is not exempt from seizure for as long as the judgment debtor retains his employment and the full debt to the judgment creditor is not satisfied;

[22] IT IS ORDERED that ten days after the garnishee's first declaration has been served on the judgment debtor, the sums paid into the Registry of this Court should be paid to the judgment creditor at her request unless there is any objection or claim;

[23] LAST, IT IS DECLARED that the sum of \$1,419.92, representing the costs to the judgment creditor of the garnishment proceedings in file ITA-4479-95, is sufficient to cover her costs in the instant case and in file ITA-4479-95. There is therefore no need here to add any sum to those costs.

Richard Morneau

Prothonotary

Certified true translation

Peter Douglas

Federal Court of Canada

Court No. ITA-2380-96

BETWEEN

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*, the *Canada Pension Plan* and the *Unemployment Insurance Act*

AGAINST:

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FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.:

STYLE OF CAUSE:

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Garnishee

PLACE OF HEARING:Montréal, Quebec

DATE OF HEARING:October 30, 1998

REASONS FOR ORDER OF RICHARD MORNEAU, PROTHONOTARY

DATE OF REASONS FOR ORDER:November 6, 1998

APPEARANCES:

Daniel Beauchamp for Her Majesty the Queen

Aaron Rodgers for the garnishee

SOLICITORS OF RECORD:

Morris Rosenbergfor Her Majesty the Queen

Deputy Attorney General of Canada

Spiegel Sohmerfor the garnishee

Aaron Rodgers

Montréal, Quebec