

Federal Court



Cour fédérale

**Date: 20131114**

**Docket: T-695-12**

**Citation: 2013 FC 1155**

**Ottawa, Ontario, November 14, 2013**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**THE MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**ROSARIO VALLELONGA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] The Minister of National Revenue [the “Applicant”] seeks an Order pursuant to sections 466 and 467 of the *Federal Courts Rules*, SOR/98-106, [the “Rules”] that Mr. Rosario Vallelonga [the “Respondent”] is in contempt of Court.

[2] This proceeding is a hearing for the Respondent to hear proof of an act with which he is charged and which is outlined below and to be prepared to present any defense that he may have.

## **II. Factual background**

[3] The Applicant sent a Requirement for Information dated November 16, 2011 to the Respondent in order to obtain from him information and documents with regard to undeclared revenues [the “Information and Documents”]. The required material was to be provided on or before December 21, 2011. The Applicant sought to obtain the following information:

1. accounting records and registers, i.e. general ledger, trial balance, grouping of accounts that tie to the tax returns, adjusting entries, etc.;
2. a list of bank accounts and the related statements for each month of the civil years 2008 and 2009;
3. a list of all credit card accounts and the related statements for each month of the civic years 2008 and 2009;
4. a clear conciliation of the occupancy for all properties for civil years 2008 and 2009;
5. investment statements for each month of the civil years 2008 and 2009 held with the following financial institutions:
  - a) Laurentian Bank of Canada;
  - b) Royal Bank of Canada;
  - c) National Bank of Canada;
  - d) Community Bank;

- e) Other financial institutions in the United States;
6. invoices and proof of payment of the following expenses for:
- a) 350 boul. de la Concorde (Laval):
    - i. maintenance and repairs respectively, \$30,041 and \$9,157 for 2008 and 2009;
    - ii. insurance, \$9,730 for both years;
    - iii. utilities respectively, \$17,352 and \$2,148;
    - iv. motor vehicle expenses; please show calculation and a list of all costs included;
    - v. property taxes; please provide statements for both years;
  - b) 6015 rue Bocage (Montreal):
    - i. maintenance and repairs respectively, \$13,858 and \$21,607 for 2008 and 2009;
    - ii. property taxes; please provide statements for both years.
  - c) 6035 rue Bocage (Montreal):
    - i. maintenance and repairs respectively, \$18,396 and \$24,998 for 2008 and 2009;
    - ii. property taxes; please provide statements for both years;
    - iii. interest expenses respectively, \$3,126 and \$3,277; please provide statements;
    - iv. legal accounting and professional fees; please provide related statements;
  - d) 8672 Bloomfield (Montreal):
    - i. maintenance and repairs \$11,366 for 2008.

7. dispositions contracts and all statements supporting the dispositions cost for the following properties:

- a) 8680 Champagneur;
- b) 6828 Clark;
- c) 7455 Lajeunesse;
- d) 8615 Bloomfield;
- e) 8672 Bloomfield.

[4] The Respondent failed to provide the Information and Documents requested.

[5] The Applicant then sought an Order from this Court on May 7, 2012. By Order (the “Compliance Order”), this Court ordered the Respondent to comply with the Applicant’s Request for Information. More specifically, the Court stated the following:

**THIS COURT ORDERS** pursuant to section 231.7 of the *Income Tax Act* that the respondent shall comply with the notice 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 such other person designated.

[6] The Compliance Order was personally served on the Respondent on May 15, 2012.

[7] The Respondent once again failed to provide the required material.

[8] On February 18, 2013, Madam Prothonotary Mireille Tabib, satisfied of the existence of a *prima facie* case of contempt committed by the Respondent, granted an Order (the “Show Cause Order”) pursuant to section 467 of the *Rules* which directed the Respondent to appear before this Court on April 15, 2013, and to be prepared to present any defense that he may have to the charge that he is guilty of contempt of Court for breaching the Compliance Order. More specifically, the Court stated the following:

**THIS COURT ORDERS THAT:**

1. The Respondent appears before a Judge of the Federal Court in the City of Montreal in the province of Quebec on Monday, the 15<sup>th</sup> day of April, 2013 at 9:30 a.m. to hear proof of the following acts, purportedly committed by him, with which he is charged herein and to be prepared to present any defence that he may have to the charge that he is guilty of contempt of this Honourable Court for breaching the Order of the Honourable Justice Simon Noël dated May 7, 2012, that is:
  - a) by Order of the Federal Court dated May 7, 2012 (the “Compliance Order”) the Respondent was ordered to provide the Information and Documents sought by the Applicant pursuant to subsections 231.2 and 231-7 of the *Income Tax Act*;
  - b) the Compliance Order was personally served on the Respondent on May 15, 2012; and
  - c) the Respondent has not provided the Information and Documents as required by the Compliance Order within the thirty (30) days stipulated in the Order, or at all.

**THIS COURT FURTHER ORDERS THAT:**

1. Service of this Show Cause Order on the Respondent shall include copies of:
  - a) the Affidavit of Siradiou Barry, sworn February 11, 2013;
  - b) the Affidavit of Jean Caron, sworn May 15, 2012;

- c) the Order of the Honourable Justice Simon Noël, dated May 7, 2012.

[9] The Show Cause Order was personally served on the Respondent on March 1, 2013.

[10] The hearing resulting from the Show Cause Order has been deferred for health reasons.

### **III. Issue**

[11] Is the Respondent guilty of contempt of Court and if so, what is the appropriate penalty?

### **IV. Relevant legislation**

[12] Contempt proceedings in this Court are governed by Rules 466 to 472 of the *Rules*. The relevant provisions for the case at bar are reproduced in the Appendix A to this document.

### **V. Evidence**

[13] The evidence given was provided orally to the Court pursuant to subsection 470(1) of the *Rules*.

[14] The Applicant produced two witnesses in support of her claims. The first witness was Mr. Siradiou Barry, of the Canada Revenue Agency's Audit Division, who was responsible for the Respondent's case. Mr. Barry's testimony spoke of the numerous occasions on which the Canada Revenue Agency tried to obtain the requested Information and Documents from the Respondent. The second testimony came from Mr. Jean Caron, bailiff, who testified as to the service of the various documents emanating from the Applicant to the Respondent. The

Applicant also produced a number of elements of proof, all of which refer to the facts of the case at bar that are listed in the “Facts” section above.

[15] The Applicant argues that the Respondent was aware of this Court’s Compliance Order dated May 7, 2012, as it was personally served on him on May 15, 2012. According to the Compliance Order, the Respondent had 30 days following being served with the Order to comply with the Request for Information. The Applicant has yet to receive any of the requested Information and Documents. Furthermore, the Respondent was served with the Show Cause Order dated February 18, 2013 on March 1, 2013.

[16] The Applicant submits that the Respondent was made aware of the Request for Information, of the Compliance Order and of the Show Cause Order and that he has still not produced any of the Information and Documents requested. The Applicant adds that the Respondent, by not providing said Information and Documents, has failed to comply with the Compliance Order and is therefore to be held in contempt.

[17] The Applicant did not testify and chose to produce his submissions by way of a written document which serves no purpose with regard to the charges against him. However, he indicated that he understood the matter and that he would produce the Information and Documents requested in the 60 days following this Order.

**VI. Analysis**

[18] Under paragraph 466(b) of the *Rules*, a person who disobeys an Order of the Court is guilty of contempt of Court, and according to section 469 of the *Rules*, a finding of contempt must rely on proof beyond a reasonable doubt. Thus, the Applicant bears the onus of proving the existence of contempt beyond a reasonable doubt.

[19] In order to find the Respondent in contempt of Court, this Court must therefore be satisfied that the Respondent has had notice of the Order with which he is charged to have failed to comply and that the Respondent indeed breached this Order.

[20] First, regarding the Compliance Order, the certificate of service prepared by the bailiff Jean Caron following service states that the Respondent was indeed personally served with the Compliance Order on May 15, 2012.

[21] Moreover, the Respondent was served with the Show Cause Order on March 1, 2013, as indicated in the certificate of service prepared by the bailiff Jean Caron. He had therefore received notice of the Show Cause Order pursuant to subsection 467(4) of the *Rules* and knew exactly what would be expected of him as a result of this Order.

[22] On the evidence before the Court, I find that the Applicant proved beyond a reasonable doubt that the Respondent had been personally served with the Compliance Order and the Show Cause Order.



[23] Second, this Court needs to determine whether the Respondent has indeed breached the Compliance Order by not complying with its terms. The Applicant submitted that the Respondent did fail to provide the information it first required under the Requirement for Information. In this regard, the Respondent acknowledged having failed to produce the requested Information and Documents but indicated having the intention of doing so in the following 60 days.

[24] The evidence presented to the Court is to the effect that the Respondent was personally made aware of the Compliance Order requiring him to disclose the cited Information and Documents, that he has failed to do so in the allotted time, and that he has yet to do it, despite having been served with the Compliance Order and the Show Cause Order. While this Court recognizes the fact that the Respondent has undertaken to provide the Applicant with the requested Information and Documents, this situation in no way changes the reality of the present matter: contempt of Court indeed occurred. Therefore, considering such evidence, this Court is satisfied beyond a reasonable doubt that the Respondent is guilty of contempt of Court.

## **VII. Sentence**

[25] In the present matter, the Applicant seeks the following sentence:

1. The Respondent will pay a fine of \$3,000 and \$14,731.59 in solicitor-client costs to the Applicant, including the costs of the contempt hearing, within 30 days from the date of service of the Order, failing which the Respondent shall be subject to imprisonment for 30 days.

2. If, within 30 days from the date of service of the Order, the Respondent arranges with the Applicant for an oral examination under oath and provides evidence satisfactory to the Court that the Respondent is not able to pay the fine or the costs, or both, or that he needs an extended period of time to pay, then the Respondent shall not be imprisoned for failure to pay the fine or costs, or both.
  
3. If the Applicant informs the Court by affidavit that either the fine or the costs or both have not been paid within 30 days from the date of service of the Order, and that the Respondent has not arranged with the Applicant for an oral examination under oath with respect to the Respondent's ability to pay the fine or the costs or both, the Court shall issue a warrant for the Respondent's imprisonment for 30 days.
  
4. The Respondent is to provide the Information and Documents, as set out in the Compliance Order, within 60 days from the date of service of the Order, or provide the Applicant with an affidavit explaining why he is not able to provide the Information and Documents, failing for which the Respondent shall be imprisoned until such time as the Respondent complies with the Compliance Order.
  
5. If the Applicant informs the Court by affidavit that the Respondent has not, within 60 days of service of this Order, provided the Information and Documents and has not provided an affidavit explaining why he is not able to provide the Information and Documents, the Court shall issue a warrant for the Respondent's imprisonment for a

maximum of three years or until such time as the Respondent complies with the Compliance Order.

[26] The penalties that may be imposed on a finding of contempt are listed in section 472 of the *Rules*. However, the determination of this kind of sentence also requires the consideration of certain factors or principles set out in case law. In *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788 at para 16, [2006] FCJ No 1008 [*Marshall*], Justice Kelen summarized these relevant factors in the case of contempt proceedings pertaining to the *Income Tax Act*, RSC 1985, c 1 (5th Supp.):

- a) The primary purpose of imposing sanctions is to ensure compliance with orders of the court. Specific and general deterrence are important to ensure continued public confidence in the administration of justice;
- b) Proportionality of sentencing requires striking a balance between enforcing the law and what the Court has called "temperance of justice;"
- c) Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court; and
- d) Mitigating factors might include good faith attempts to comply (even after the breach), apologize or accept responsibility, or whether the breach is a first offence.

[27] In determining the sentence to be imposed in the present matter, this Court took into account the Respondent's conduct throughout the proceedings: he completely ignored the Requirement for Information and demonstrated no true intention of ever cooperating with the Applicant. Reading the parties' factums, I clearly noticed that the Respondent ignored several

letters sent and meetings set up by the Applicant; however, when he did not ignore said letters, the Respondent opted to reply by sending long and tedious letters – and various other pseudo-legal documents – demanding the immediate payment of advance costs, setting out requirements and conditions for the “delicate contract negotiations” entailed by the communications and went so far as charging fees to the Applicant (prescribed in a detailed fees schedule) for his cooperation. The Applicant went so far as sending bills to the Applicant and ceasing all of the little cooperation he had shown so far until payment was made.

[28] The fact that the Respondent appeared before the Court and undertook to provide the Applicant with the requested Information and Documents is a mitigating factor not to be ignored. That being said, the Respondent continuously failed to deliver the Information and Documents required by the Applicant all the while knowing that he was lawfully obligated to do so, and this constitutes an aggravating factor. And despite this being the Respondent’s first breach, this Court feels it appropriate to grant, subject to a few minor changes, the Order and the penalties requested by the Applicant, which I deem reasonable and proportionate and which facilitate the achievement of the primary purpose of the sanctions, i.e. compliance with the Orders of the Court.

[29] Thus, this Court concludes that given the circumstances of the case the Applicant is to pay a fine, to pay the Applicant’s costs and to comply with this Court’s Compliance Order dated May 7, 2012 by providing the Information and Documents listed in the Applicant’s Requirement for Information dated November 16, 2011 according to the terms of this present Order.

**ORDER**

**THIS COURT ORDERS that:**

1. The Respondent is guilty of contempt of Court and shall pay a fine of \$3,000 and \$14,731.59 in solicitor-client costs to the Applicant, including the costs of the contempt hearing, within 60 days from the date of service of this Order. Failure to pay the fine or the costs, or both, shall result in the imprisonment of the Respondent under the conditions set out in paragraphs 2 and 3, below.
2. The Respondent shall not be imprisoned for failure to pay the fine or costs, or both, if, within 30 days from the date of service of this Order, the Respondent arranges with the Applicant for an oral examination under oath and provides evidence satisfactory to the Court that the Respondent is not able to pay the fine or the costs, or both, or that he needs an extended period of time to pay.
3. If the Applicant informs the Court by affidavit that either the fine or the costs, or both, have not been paid within 60 days from the date of service of this Order, and that the Respondent has not arranged with the Applicant for an oral examination under oath with respect to the Respondent's ability to pay the fine or the costs, or both, the Court shall issue a warrant for the Respondent's imprisonment for a maximum of 30 days or until such time as the Respondent pays the fine and the costs.

4. The Respondent shall provide the Information and Documents, as set out in the Compliance Order, within 60 days from the date of service of this Order, or provide the Applicant with an affidavit explaining why he is not able to provide the Information and Documents. Failure to provide said Information and Document shall result in the imprisonment of the Respondent under the conditions set out in paragraph 5, below.
  
5. If the Applicant informs the Court by affidavit that the Respondent has not, within 60 days of service of this Order, provided the Information and Documents and has not provided an affidavit explaining why he is not able to provide the Information and Documents, this Court shall issue a warrant for the Respondent's imprisonment for a maximum of three years or until such time as the Respondent complies with the Compliance Order.
  
6. The sentences set out in paragraphs 3 and 5 above are to run concurrently.

"Simon Noël"

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Judge

**APPENDIX A – RELEVANT LEGISLATION**

<i>Federal Court Rules, SOR/98-106</i>	<i>Règles des Cours fédérales, DORS/98-106</i>
<b>Contempt Orders</b>	<b>Ordonnances pour outrage</b>
Contempt	Outrage
<b>466.</b> Subject to rule 467, a person is guilty of contempt of Court who	<b>466.</b> Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque :
[...]	[...]
(b) disobeys a process or order of the Court;	b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour;
[...]	[...]
Right to a hearing	Droit à une audience
<b>467. (1)</b> Subject to rule 468, before a person may be found in contempt of Court, the person alleged to be in contempt shall be served with an order, made on the motion of a person who has an interest in the proceeding or at the Court's own initiative, requiring the person alleged to be in contempt	<b>467. (1)</b> Sous réserve de la règle 468, avant qu'une personne puisse être reconnue coupable d'outrage au tribunal, une ordonnance, rendue sur requête d'une personne ayant un intérêt dans l'instance ou sur l'initiative de la Cour, doit lui être signifiée. Cette ordonnance lui enjoint :
(a) to appear before a judge at a time and place stipulated in the order;	a) de comparaître devant un juge aux date, heure et lieu précisés;
(b) to be prepared to hear proof of the act with which the person is charged, which shall be described in the order with sufficient particularity to enable the person to know the	b) d'être prête à entendre la preuve de l'acte qui lui est reproché, dont une description suffisamment détaillée est donnée pour lui permettre de connaître la nature des

nature of the case against the person; and      accusations portées contre elle;

(c) to be prepared to present any defence that the person may have.      c) d'être prête à présenter une défense.

Ex parte motion      Requête ex parte

(2) A motion for an order under subsection (1) may be made ex parte.      (2) Une requête peut être présentée ex parte pour obtenir l'ordonnance visée au paragraphe (1).

Burden of proof      Fardeau de preuve

(3) An order may be made under subsection (1) if the Court is satisfied that there is a prima facie case that contempt has been committed.      (3) La Cour peut rendre l'ordonnance visée au paragraphe (1) si elle est d'avis qu'il existe une preuve prima facie de l'outrage reproché.

Service of contempt order      Signification de l'ordonnance

(4) An order under subsection (1) shall be personally served, together with any supporting documents, unless otherwise ordered by the Court.      (4) Sauf ordonnance contraire de la Cour, l'ordonnance visée au paragraphe (1) et les documents à l'appui sont signifiés à personne.

[...]      [...]

Burden of proof      Fardeau de preuve

**469.** A finding of contempt shall be based on proof beyond a reasonable doubt.      **469.** La déclaration de culpabilité dans le cas d'outrage au tribunal est fondée sur une preuve hors de tout doute raisonnable.

Evidence to be oral      Témoignages oraux

**470. (1)** Unless the Court directs otherwise, evidence on a motion for a contempt order, other than an order under      **470. (1)** Sauf directives contraires de la Cour, les témoignages dans le cadre d'une requête pour une



subsection 467(1), shall be oral.

ordonnance d'outrage au tribunal, sauf celle visée au paragraphe 467(1), sont donnés oralement.

Testimony not compellable

Témoignage facultatif

(2) A person alleged to be in contempt may not be compelled to testify.

(2) La personne à qui l'outrage au tribunal est reproché ne peut être contrainte à témoigner.

[...]

[...]

Penalty

Peine

**472.** Where a person is found to be in contempt, a judge may order that

**472.** Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :

(a) the person be imprisoned for a period of less than five years or until the person complies with the order;

a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;

(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;

b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;

(c) the person pay a fine;

c) qu'elle paie une amende;

(d) the person do or refrain from doing any act;

d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;

(e) in respect of a person referred to in rule 429, the person's property be sequestered; and

e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;

(f) the person pay costs.

f) qu'elle soit condamnée aux dépens.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-695-12

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v ROSARIO VALLELONGA

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** November 4, 2013

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

**DATED:** November 14, 2013

**APPEARANCES:**

Amelia Fink	FOR THE APPLICANT
Rosario Vallelonga	FOR THE RESPONDENT (ON HIS OWN BEHALF)

**SOLICITORS OF RECORD:**

William F. Pentney Deputy Attorney General of Canada	FOR THE APPLICANT
Rosario Vallelonga	FOR THE RESPONDENT (ON HIS OWN BEHALF)