

Date: 19971112

Docket: ITA-5210-97

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, Unemployment Insurance Act*,

AGAINST:

2786885 CANADA INC.

"S.C.R.I. Canada"

Debtor/Opponent

REASONS FOR ORDER

RICHARD MORNEAU, ESQ., PROTHONOTARY

[1] This is a motion in opposition by the debtor under article 596 of the *Code of Civil Procedure* of Quebec seeking the nullity of a seizure of moveable property carried out by the judgement creditor on July 16, 1997 on the basis of writs of *Fieri Facias* issued further to the registration on July 4, 1997 of certificates ITA-5209-97 and ITA-5210-97.

[2] It appears that certificate ITA-5209-97 pertains to the debtor's corporate income taxes whereas certificate ITA-5210-97 relates to an alleged failure on the part of the debtor to deduct or withhold amounts under the *Income Tax Act*, R.S.C. 1985, c.2 (5th Supp.).

[3] As to amounts allegedly not withheld by the debtor, the latter alleges that it had filed in due course a notice of objection with the Minister of National Revenue and, therefore, should not

have been the object of any measure of execution by the Minister until the end of the appeal process.

[4] In theory the debtor is right. However, I am unable to locate in the evidence that notice of objection. The only notice of objection attached by the debtor to its instant motion is one which it filed with the Quebec Minister of Revenue. I cannot accept or understand, under the present circumstances, the allegation made by debtor's counsel that the Quebec Minister of Revenue is to be considered the agent of his federal counterpart and that, therefore, a notice of objection sent to the Quebec Minister of Revenue is to be considered one filed with the Minister of National Revenue.

[5] Therefore, I consider that no valid reason has been put forward by the debtor to halt the execution of certificate ITA-5210-97. Consequently, since the seizure in the case at bar was carried out under both certificates ITA-5210-97 and ITA-5209-97, this motion in opposition must be denied on that basis alone.

[6] I do not have to come to any firm conclusion, therefore, on the allegation made by the debtor that it has never received a notice of assessment with respect to its corporate income taxes (ITA-5209-97) and that, consequently, any measure of execution on the part of the Minister of National Revenue on July 16, 1997 was premature.

[7] I shall just note that the debtor did not raise that allegation in its original notice of motion in opposition filed on August 5, 1997. The debtor raised it for the first time in its amended notice of motion filed on October 9, 1997. One might question why such an obvious situation was not raised by the debtor in the first place.

[8] For the above reasons, this motion is dismissed with costs.

[9] These Reasons for Order are applicable as well to file ITA-5209-97.

Richard Morneau Prothonotary

MONTREAL, QUEBEC

November 12, 1997

FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO.:

STYLE OF CAUSE:

ITA-5210-97

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, Unemployment Insurance Act*,

AGAINST:

2786885 CANADA INC.

"S.C.R.I. Canada"

Debtor/Opponent

PLACE OF HEARING:Montreal, Quebec

DATE OF HEARING:November 3, 1997

REASONS FOR ORDER BY:Richard Morneau, Esq.,

Prothonotary

DATE OF REASONS FOR ORDER:November 12, 1997

APPEARANCES:

Mr. Claude Bernard for Her Majesty the Queen

Mr. Martin J. Sklar for the Debtor/Opponent

SOLICITORS OF RECORD:

Mr. Claude Bernard for Her Majesty the Queen

Department of Justice Canada

Montreal, Quebec

Mr. Martin J. Sklar for the Debtor/Opponent

Sklar & Pitts

Montreal, Quebec