

Federal Court



Cour fédérale

Date: 20171011

Docket: T-2144-16

Citation: 2017 FC 901

Toronto, Ontario, October 11, 2017

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

DIANNE BLAKE

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant, the Minister of National Revenue (Minister), seeks an Order pursuant to Rule 466 and 467 of the *Federal Courts Rules*, SOR/98-106, (*Rules*) that the Respondent, Dianne Blake, is in contempt of Court for failing to comply with Justice Gleeson's Order dated January 18, 2017.

II. Background

[2] On March 14, 2016, the Canada Revenue Agency (CRA) issued a requirement letter to the Respondent for information and documents (Requirement) pursuant to s 231.2 of the *Income Tax Act*, RSC 1985, c 5 (5th Supp) as amended (ITA). The Respondent operates a bookkeeping business and a rental operation business.

[3] The Requirement sought the production of documents and records in order to conduct an audit of the Respondent's income tax return for the 2012 and 2013 tax years to verify that the Respondent has complied with her duties and obligations under the ITA. The Requirement letter was sent by registered mail and a copy of the Requirement was hand delivered to the Respondent on March 15, 2016.

[4] The Respondent did not provide documents or records, and the Respondent did not comply with the Requirement.

[5] On December 12, 2016, the Applicant filed a Notice of Summary Application under s 231.7 of the ITA seeking a Compliance Order to compel the Respondent to provide any access, assistance, information or documents sought from the Respondent pursuant to the Requirement dated March 14, 2016. The Notice of Summary Application was personally served on the Respondent. She did not appear in response to the Notice on the returnable date of January 17, 2017.

[6] On January 18, 2017, Justice Gleeson granted the application and issued a Compliance Order to compel the Respondent to provide the Applicant with information or documents pursuant to the letter dated March 14, 2016, within 21 days of the date of the Order.

[7] Justice Gleeson ordered that:

1. Pursuant to summary application made by the Minister under section 231.7 of the ITA, the Respondent provide to Judy McEwan, an authorized officer of the Canada Revenue Agency at the Toronto East Tax Service Office, or another authorized person who may be assigned carriage of this file, the information and documents as set out in the Requirement dated March 14, which Requirement is attached to the Order as Appendix “A”, within 21 days of the date of this order.
2. The Minister of National Revenue is authorized to effect service of this order on the Respondent by non-personal service pursuant to Rule 139 of the *Federal Courts Rules*.
3. Costs are awarded to the Minister of National Revenue in the amount of \$500.

[8] The Compliance Order was sent via registered mail to the last known address of the Respondent, as authorized by Justice Gleeson. The Respondent did not comply with the Order within the specified time period.

[9] On July 17, 2017, the Applicant brought a motion in writing pursuant to Rule 369 of the *Rules* for an order under sub-rule 467(1) of the *Rules* requiring the Respondent to appear before the Court, prepared to hear proof and present a defence of the act with which she is charged, being contempt of court for disobeying a court order under Rule 466 of the *Rules*, and sentenced under Rule 472 of the *Rules* for her failure to comply with the Compliance Order.

[10] On July 31, 2017, Prothonotary Aalto issued a Show Cause Order pursuant to Rule 467(1) of the *Rules* for failing to comply with Justice Gleeson's Order dated January 18, 2017. The Respondent was ordered to attend the Court on September 19, 2017. The Show Cause Order was sent to the Respondent by mail. The Respondent did not appear before the Court on September 19, 2017 and Justice Boswell adjourned the matter to October 10, 2017 to confirm service of the show cause order upon the Respondent.

[11] On October 10, 2017, the Respondent failed to appear and the Applicant brought an ex-parte motion for an Order validating service of the show cause order, or in the alternative, an Order for substituted service. The Court granted the motion for validated service and an Order was issued on October 11, 2017 to that effect.

III. Issue

[12] Is the Respondent guilty of contempt of Court for failing to obey the Compliance Order dated January 18, 2017?

IV. Evidence

[13] The evidence of the Respondent's contempt was provided through the oral testimony of the Applicant's witness and by affidavit pursuant to subsection 470(1) of the *Rules*.

[14] The Applicant produced one witness to support her claims that the Respondent is in contempt of Court. The witness was Ms. Judy McEwan of the Canada Revenue Agency's Audit Division, who is responsible for the Respondent's audit.

[15] On the stand, Ms. McEwan explained that she attempted, on multiple occasions, to review the Respondent's documents and records at her residence, in addition to multiple attempts to reach the Respondent by telephone. Following her failed attempts, she sought a requirement letter for the Respondent's information and documents. She indicated how the Respondent did not comply with the letter or with any other of the repeated attempts to obtain her compliance with the Requirement or Justice Gleeson's Order.

[16] In support of the Applicant's motion for an order to validate service of the Order of Justice Boswell of September 19, 2017, the Applicant filed an affidavit of service to show that the Applicant has taken reasonable steps to personally serve the show cause order at the Respondent's last known address on multiple occasions.

[17] The Applicant argued that the Respondent was aware of the proceedings before the Court regarding the Compliance Order and the Show Cause Order.

[18] The Applicant argued that the Respondent was served and is aware of Justice Gleeson's Compliance Order dated January 18, 2017 since a copy of the Compliance Order was sent by registered mail and service was effected pursuant to Rule 139 of the *Rules*.

V. Analysis

[19] A person may be found in contempt of court for disobeying an order of the Court: Rule 466. A finding of contempt shall be based on proof beyond a reasonable doubt: Rule 469; *Canada (National Revenue) v. Marangoni*, 2013 FC 1154 at para 22 [*Marangoni*]. In this context, in order to find the Respondent in contempt, the Court must be satisfied that (1) the Respondent received and is aware of the Compliance Order and that (2) the Respondent has truly failed to comply with the said order: *Marangoni*, above, para 23; *Canada (National Revenue) v. Vallelonga*, 2013 FC 1155 at para 18-19.

[20] On the evidence before the Court, I find that the Applicant has proved beyond a reasonable doubt that the Respondent was served with the Compliance Order dated January 18, 2017. I also find that the Respondent has failed to comply, by an intentional act or omission, with the terms set out in the Compliance Order requiring her to disclose certain documents and records. The Respondent has not appeared before the Court, nor has the Respondent provided any of the documents or records required by the Compliance Order in the course of the eight months since it was issued by this Court. Nor has she complied with the show cause Order or respected any of the Orders issued by the Court.

[21] Accordingly, I am satisfied beyond a reasonable doubt that the Respondent Dianne Blake is guilty of contempt of court.

[22] Before proceeding to impose sentence, the Court received and considered submissions from the Applicant as to the appropriate penalty to impose and reviewed the jurisprudence. The Respondent made no appearance and has made no submissions as to sentence. The Court considers that the submissions proposed by the Applicant are just and proportionate in the circumstances and provide ample opportunities for the Respondent to purge her contempt by demonstrating compliance with the Order of January 18, 2017 and by providing reasonable explanations to the Court for her subsequent actions and omissions.

[23] Should the Respondent fail to comply with the terms of this Order, the Applicant may apply to the Court for the issuance of a warrant for the Respondent's arrest and imprisonment.

ORDER

THIS COURT ORDERS that:

1. The Respondent Dianne Blake is, and is hereby declared to be, in contempt of Court;
2. The Respondent shall pay a fine of \$3,000 within 30 days from the date of service of this Order, and shall also pay the Applicant's legal costs in the amount of \$3969.63 within 30 days from the date of service of this Order. Failure to pay the fine and the legal costs within 30 days of the date of service of this Order shall subject the Respondent to 30 days imprisonment;
3. The Respondent shall provide the information and documents to be provided pursuant to the Compliance Order within 30 days from the date of service of this Order, failing which the Respondent shall be imprisoned for 30 days, such term to run consecutive to any other term of imprisonment imposed by this Order;
4. The Respondent shall not be imprisoned for the failure to pay the fine or the costs as ordered in paragraph 2, above, if within 30 days from the date of service of this Order, the Respondent arranges with the Minister for an oral examination under oath and provides evidence satisfactory to the Court that she is not presently able to pay the fine or the legal costs, or that she needs an extended time period in which to pay;
5. The Respondent shall not be imprisoned for the failure to produce the information and documents as ordered in paragraph 3, above, if within 30 days from the date of service of this Sentencing Order, the Respondent arranges with the Minister for an oral examination

under oath and provides evidence satisfactory to the Court that she is not able to produce the information and documents and that her inability to do so does not stem from her own intentional actions, recklessness, or negligence;

6. If the Minister informs the Court by affidavit that payment of either the fine or the legal costs as ordered in paragraph 2, above, has not been made within 30 days from the date of service of this Order and that the Respondent has not arranged with the Minister for an oral examination under oath with respect to her ability to pay the fine or the legal costs, and the Respondent has not satisfied the Court in accordance with paragraph 4 above, the Minister may apply to the Court to issue a warrant for the imprisonment of the Respondent for 30 days;

7. If the Minister informs the Court by affidavit that the Respondent has not provided the information and documents as ordered in paragraph 3, above, within 30 days from the date of service of this Order and that the Respondent has not arranged with the Minister for an oral examination under oath with respect to her ability to produce the information and documents, and the Respondent has not satisfied the Court in accordance with paragraph 5, above, then the Minister may apply to the Court to issue a warrant for the imprisonment of the Respondent for 30 days. Such term shall run consecutive to any other term of imprisonment imposed by this Order.

8. This Order may be served upon the Respondent by substituted service, pursuant to Rule 136(1) of the *Rules*, by mailing a copy of the Order by Registered Mail through Canada Post, if the Applicant is unable to effect service on the Respondent in accordance with Rule 139 of the *Rules*.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2144-16

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v DIANNE
BLAKE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 11, 2017

ORDER AND REASONS: MOSLEY J.

DATED: OCTOBER 11, 2017

APPEARANCES:

Annette Evans

FOR THE APPLICANT

SOLICITORS OF RECORD:

Attorney General of Canada

FOR THE APPLICANT