

Federal Court



Cour fédérale

Date: 20200407

Docket: ITA-4714-19

Citation: 2020 FC 490

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 7, 2020

PRESENT: The Honourable Mr. Justice Gascon

IN THE MATTER OF the *Income Tax Act*,

and

IN THE MATTER OF ONE or more assessments by the Minister of National Revenue
under the *Income Tax Act*

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
AS REPRESENTED BY
THE MINISTER OF NATIONAL REVENUE**

Creditor

AND:

**CHRISTIAN BOILY
27-9340, RUE LAJEUNESSE
MONTRÉAL, QUEBEC H2M 1S4**

Judgment Debtor/Respondent

AND:

**9381-2592 QUÉBEC INC.
10242, RUE WAVERLY
MONTRÉAL, QUEBEC H3L 2W1**

Garnishee

AND:

**LUCE PAQUET
10242, RUE WAVERLY
MONTRÉAL, QUEBEC H3L 2W1**

Third Party

ORDER AND REASONS

I. Overview

[1] The creditor, Her Majesty the Queen in Right of Canada [Her Majesty], represented by the Minister of National Revenue [Minister], submits that the judgment debtor, Christian Boily [Mr. Boily], sold an immovable located at 10240 and 10242 Waverly Street in Montreal [Immovable] with the intention of defrauding the Minister. The Minister alleges that Mr. Boily sold the Immovable to the garnishee, 9381-2592 Québec Inc. [2592 Québec Inc.], for the benefit of the third party, Luce Paquet [Ms. Paquet], to avoid repaying his tax debt to Her Majesty. This tax debt totals an amount owing of \$99,367.35. The Minister maintains that the notarial sales contract between Mr. Boily and 2592 Québec Inc. may not be set up against him, by virtue of the principles of Paulian action provided for in articles 1631 and 1633 of the *Civil Code of Quebec*, CQLR c CCQ-1991 [CCQ].

[2] On August 19, 2019, the Court issued an interim charging order against the Immovable [Order], in response to the *ex parte* motion filed by the Minister under sections 358 *et seq.* and 458 *et seq.* of the *Federal Courts Rules*, SOR/98-106 [Rules]. The Court then declared itself to be satisfied, *prima facie* and subject to evidence to the contrary, that Mr. Boily has an interest in the Immovable and that an interim charging order should be made. The Order also provides that unless sufficient reasons to justify a decision to the contrary are presented at a hearing during which the Court will examine in detail the Minister's allegations, the Immovable will be permanently encumbered with a charge for the payment of the monies owed by Mr. Boily and the related costs.

[3] Pursuant to a motion presented in response to the Minister's *ex parte* motion, Mr. Boily, 2592 Québec Inc. and Ms. Paquet are now asking the Court to set aside the Order, to declare the sale of the Immovable valid and enforceable against Her Majesty, to declare valid and enforceable against Her Majesty the assignment to Ms. Paquet of the rights, titles and interests of Mr. Boily in her share of the balance of the sale price of the Immovable, and to write off the interim charge registered on the Immovable by Her Majesty. Mr. Boily makes three main claims in support of his objection: (1) the sale of the Immovable is valid since it was not concluded fraudulently; (2) the transfer of the balance of the sale price of the Immovable to Ms. Paquet is not a gratuitous act or a donation, but constitutes a reimbursement of the debt that Services d'entretien Boily Ltd. [Boily Ltd.] owed to Ms. Paquet; and (3) Mr. Boily was solvent at the time of the sale and the sale did not have the effect of making him insolvent.

[4] The Court must therefore determine, following the Order to guarantee payment of the monies owed to Her Majesty by Mr. Boily, whether the interim charge imposed and registered must permanently encumber the Immovable, and whether the sale of the Immovable to 2592 Québec Inc. and the assignment of Boily's rights to Ms. Paquet is invalid and unenforceable against Her Majesty.

[5] For the reasons that follow, Mr. Boily's motion will be dismissed. After considering the evidence presented by Mr. Boily and the Minister's motion record, and considering the written and oral submissions of the parties, I am not persuaded that Mr. Boily has presented sufficient reasons to set aside the Order. Rather, it is necessary to declare the sale of the Immovable and the assignment to Ms. Paquet unenforceable against Her Majesty and to permanently encumber the

Immovable with a charge for the payment of Mr. Boily's tax debt and the costs relating to this motion.

II. Factual Background

[6] Mr. Boily is an accountant, president of Boily Ltd., as well as president and sole shareholder of 9024-8188 Québec Inc. [8188 Québec Inc.]. Boily Ltd.'s shares are held by 8188 Québec Inc. Mr. Boily declares that he was the *de facto* spouse of Ms. Paquet from 1992 until their separation in May 2018.

[7] Boily Ltd. was subject to a tax audit by the Minister, which revealed that between January 18, 2010, and December 15, 2015, Boily Ltd. Had allegedly cashed, without declaring them as income, at least 346 cheques totaling \$485,077. The audit also revealed an appropriation by Mr. Boily of Boily Ltd.'s funds, the latter having personally cashed those cheques.

[8] Notices of reassessment [Notices] were therefore established by the Minister against Mr. Boily for the years 2010 to 2015. These notices are as follows:

<i>Year</i>	<i>Date of the reassessment procedure</i>	<i>Assessment amount</i>	<i>Disputed or not</i>
2010	March 2, 2017	\$21,742.92	Disputed
2011	March 2, 2017	\$38,804.62	Disputed
2012	March 2, 2017	\$51,867.38	Disputed
2013	March 16, 2017	\$58,420.20	Disputed
2014	July 17, 2017	\$17,269.83	Not Disputed
2015	July 17, 2017	\$76,625.44	Not Disputed

[9] Since the notices for the years 2010 to 2013 are disputed by Mr. Boily before the Tax Court of Canada, the Minister could not take recovery action against them. The Minister therefore initiated recovery procedures for Mr. Boily's tax debt covering the years 2014 to 2016.

Mr. Boily's tax debt, which was the subject of the Minister's appeal in this case is \$99,367.35, and comes from the two Notices for the years 2014 and 2015 and from a first notice of assessment for the year 2016. This amount bears interest compounded daily at the rate specified in the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) [ITA].

[10] On April 9, 2019, a certificate bearing the number ITA-4714-19 and having, under the terms of section 223 of the ITA, the same effect as a judgment from the Court, was issued attesting to the debt of Mr. Boily to Her Majesty. This certificate established that an amount of \$94,715.47 had not been paid by Mr. Boily on that date. Following various garnishment attempts made by the Minister, less than \$2,000 was able to be seized from Mr. Boily's financial institutions on April 29, 2019.

[11] The facts relating to the Immovable at the heart of this case can be summarized as follows. They are mainly found in Brigitte Raynault's affidavit, the Minister's collection officer and person responsible for Mr. Boily's file, filed by the Minister in support of the *ex parte* motion. In 2001, Mr. Boily and Ms. Paquet jointly acquired the Immovable, and they held it in co-ownership until its sale in August 2018. On August 1, 2018, Mr. Boily and Ms. Paquet sold the immovable to 2592 Québec Inc., a company created just a month earlier in July 2018 and which is administered and owned solely by Ms. Paquet.

[12] The Immovable was sold to 2592 Québec Inc. for \$729,000. At the time of the sale, the Immovable was encumbered with two mortgages, namely, (1) a conventional mortgage which had been jointly signed by Mr. Boily and Ms. Paquet in favour of the National Bank of Canada

[NBC] in January 2014, and whose balance was \$368,699.58; and (2) a legal hypothec published by the Ministère du Revenu du Québec [MRQ] on behalf of Mr. Boily, for the amount of \$45,389.49. The MRQ hypothec was published on June 7, 2018, less than a month before the creation of 2592 Québec Inc. and two months before the sale of the Immovable. During the sale of the Immovable, 2592 Québec Inc. also contracted a new real estate mortgage of \$425,000 with TD Bank.

[13] According to the statement of disbursements provided by 2592 Québec Inc., the proceeds from the sale of the Immovable were distributed as follows: (1) \$368,669.58 to the NBC for the balance of its conventional mortgage; (2) \$45,489.94 to the MRQ representing all of the legal hypothec; (3) \$725 for notary fees; and (4) \$9,200.48 to Mr. Boily and Ms. Paquet. The deed of sale provided that the balance of the sale price of \$305,015 was payable only to Ms. Paquet on or before August 1, 2028, Mr. Boily having ceded all rights, titles and interests in the balance of the sale price.

[14] The Minister alleges that Mr. Boily therefore made, at the time of the sale of the Immovable, a donation of \$152,075 to Ms. Paquet, representing half of the balance of sale, when he was in debt to Her Majesty and that he then became insolvent (or would have become insolvent by the effect of the sale).

[15] The Minister's research indicated that Mr. Boily has little or no assets. More specifically, Mr. Boily had liquidated almost all of his RRSPs when he was in debt to Her Majesty, withdrawing \$111,292 from the National Bank Trust in 2015, \$47,540 in 2016, and finally

\$18,227 in 2017. In terms of Mr. Boily and Boily Ltd.'s tax returns, Mr. Boily only reported a net rental income of \$5,242 and a capital gain of \$26,230 for the year 2018. As for Boily Ltd., it has not declared any income since July 31, 2015, and also has a tax debt of \$319,193.63 owed to Her Majesty. The Minister considers that the possibility of collecting this debt is almost nonexistent. As for Boily Ltd.'s property, the Register of Personal and Movable Real Rights indicates that Boily Ltd. was the owner or lessor of several vehicles that were sold or transferred during the year 2018 to 9373-7179 Québec Inc. [7179 Québec Inc.], a company created in February 2018, which is also administered and owned solely by Ms. Paquet.

[16] Furthermore, the evidence also indicates that the Minister encountered several difficulties locating Mr. Boily and that he was unable to question him about his property. Despite numerous attempts to serve by a bailiff at three different addresses associated with Mr. Boily, it was not possible to serve Mr. Boily with the proceedings filed in this case. Neither the manager for the apartment that Mr. Boily rents on Lajeunesse Street nor Ms. Paquet were able to indicate his whereabouts. On the other hand, a neighbour of Mr. Boily at 10240 rue Waverly indicated to Ms. Raynault, on June 11, 2019, that Mr. Boily still seemed to live at this address. She also mentioned that she sees his truck in the parking lot every night, and that she saw him at the residence about two weeks earlier.

[17] On December 3, 2019, Mr. Boily assigned his property under the terms of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [BIA], and a notice of stay of proceedings was sent to the Court by Mr. Boily's trustee in bankruptcy on December 23, 2019. Pursuant to an order issued by the Court on January 13, 2020, to adjourn the hearing of this motion until February 26, 2020,

the Court indicated that it was of the opinion that Her Majesty is a secured creditor and that under paragraph 69.3(2) of the BIA, the notice of stay of proceedings relating to Mr. Boily does not apply to the Order and to Her Majesty's recourse in this case, because such a stay cannot prejudice secured creditors. The Court reiterated this finding at the hearing on February 26, 2020, when it dismissed a motion filed at the hearing by Mr. Boily to obtain a stay of proceedings.

III. Analysis

[18] Mr. Boily, 2592 Québec Inc. and Ms. Paquet submit that the sale of the Immovable is valid and was not initiated with fraudulent intent, because the payment of the balance of the sale price to Ms. Paquet was made as a reimbursement and did not constitute a donation, and Mr. Boily was solvent at the time of the sale of the Immovable and was not rendered insolvent following this sale.

[19] According to Mr. Boily, the proceeds from the sale of the Immovable were used to settle his exclusive debts in the order of \$414,059.52 (or the amounts of \$368,669.58 owed to the NBC on his conventional mortgage and \$45,389.94 owed to the MRQ for his legal hypothec). According to Mr. Boily, the sale of the Immovable had the dual objective of discharging his own debts and reimbursing Ms. Paquet for financing the operations of Boily Ltd., which she allegedly carried out with her personal accounts over the years. Mr. Boily maintains that in January 2014, he allegedly obtained, jointly with Ms. Paquet, a line of credit with the NBC (before being granted the conventional mortgage for the benefit of the NBC), but that this line of credit had allegedly been used mainly for the purposes of Boily Ltd.. The joint real estate mortgage on the

Immovable, granted by the NBC on January 31, 2014, aimed to guarantee this line of credit. Thus, according to Mr. Boily, although the line of credit and the conventional mortgage were both worded in the joint names of Ms. Paquet and himself, he was entirely responsible for the monies owed to the NBC. Mr. Boily also claims that, since the proceeds of the sale were used exclusively for his own ends and those of his company Boily Ltd., it was allegedly agreed between the parties that the balance of the sale price of the Immovable would be paid to Ms. Paquet as partial reimbursement for her share of co-ownership in the Immovable.

[20] I am not satisfied by Mr. Boily's submissions and by the evidence presented by Mr. Boily, 2592 Québec Inc., and Ms. Paquet to have the Order set aside. On the contrary, for the reasons that follow, I conclude instead that, on a balance of probabilities, the evidence before me establishes that the sale of the Immovable to 2592 Québec Inc. and the assignment to Ms. Paquet of Mr. Boily's interests in the Immovable are invalid and unenforceable against Her Majesty, and that the interim charge imposed and registered following the Order to guarantee payment of the monies owed to Her Majesty by Mr. Boily must permanently encumber the Immovable.

[21] The notarial sales contract between Mr. Boily, for his half of the Immovable's co-ownership, and 2592 Québec Inc., may be declared unenforceable against Her Majesty, under the principles of the action for unenforceability provided for in articles 1631 *et seq.* of the CCQ, if the following three elements are satisfied: (1) all the criteria of the action for enforceability are met; (2) the act concluded is partly a gratuitous contract as defined by article 1381 of the CCQ, such that the irrefutable presumption of the fraudulent intention provided for in article 1633 of

the CCQ is triggered; and (3) the act made Mr. Boily insolvent. In my opinion, the evidence before me establishes, on a balance of probabilities, that these conditions are all met.

[22] The relevant provisions of the CCQ are as follows:

1015. The shares of co-owners are presumed equal.

Each co-owner has the rights and obligations of an exclusive owner as regards his share. Thus, each may alienate or hypothecate his share and his creditors may seize it.

...

1381. A contract is onerous when each party obtains an advantage in return for his obligation.

When one party obligates himself to the other for the benefit of the latter without obtaining any advantage in return, the contract is gratuitous.

...

Paulian action

1631. A creditor who suffers injury through a juridical act made by his debtor in fraud of his rights, in particular an act by which the debtor renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor, may obtain

1015. Les parts des indivisaires sont présumées égales.

Chacun des indivisaires a, relativement à sa part, les droits et les obligations d'un propriétaire exclusif. Il peut ainsi l'aliéner ou l'hypothéquer, et ses créanciers peuvent la saisir.

...

1381. Le contrat à titre onéreux est celui par lequel chaque partie retire un avantage en échange de son obligation.

Le contrat à titre gratuit est celui par lequel l'une des parties s'oblige envers l'autre pour le bénéfice de celle-ci, sans retirer d'avantage en retour.

...

De l'action en inopposabilité

1631. Le créancier, s'il en subit un préjudice, peut faire déclarer inopposable à son égard l'acte juridique que fait son débiteur en fraude de ses droits, notamment l'acte par lequel il se rend ou cherche à se rendre insolvable ou accorde, alors qu'il est

a declaration that the act may not be set up against him.	insolvable, une préférence à un autre créancier.
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...

...

1633. A gratuitous contract or a payment made in performance of such a contract is deemed to be made with fraudulent intent, even if the other contracting party or the creditor was unaware of the facts, where the debtor is or becomes insolvent at the time the contract is formed or the payment is made.

1633. Un contrat à titre gratuit ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder, même si le cocontractant ou le créancier ignorait ces faits, dès lors que le débiteur est insolvable ou le devient au moment où le contrat est conclu ou le paiement effectué.

[23] Under the terms of these articles, a certain number of criteria must be satisfied before a declaration of unenforceability of the sale of the Immovable can be pronounced by the Court: (1) the sale must be a juridical act; (2) the contested sale must cause prejudice to Her Majesty; (3) the sale must have been done in fraud of Her Majesty's rights, which includes the act by which Mr. Boily becomes insolvent; (4) the claim must be certain, liquid and exigible at the time the Paulian action is instituted (or the objection is instituted by Her Majesty in a judicial proceeding), and must precede the sale; and (5) the declaration of inoperability must be sought within one year from the day on which Her Majesty learned of the injury (*Déziel (Re)*, 2006 FC 1481 at paras 47, 52, 75; *Vaillancourt v Vaillancourt*, 2007 FC 1294 [*Vaillancourt*] at para 7; *Realstar Hotel Services Corp c 3099-1103 Québec Inc.*, 2005 QCCA 555 at paras 20 *et seq.*; *Duchesne c Demers*, [2004] RJQ 2909, 2004 CanLII 39140 (QCCA) at para 33).

[24] The evidence shows that all of these criteria are met here. It is not disputed that the sale of the Immovable is a juridical act, that Her Majesty's tax claim against Mr. Boily was certain,

liquid and exigible at the time the objection was instituted by Her Majesty as part of the these judicial proceedings that this claim preceded the sale of the Immovable, and that the declaration of inoperability was sought within one year from the day on which Her Majesty learned of the injury. It remains to be determined whether the sale of the Immovable was concluded in fraud of Her Majesty's rights, whether it causes her prejudice and whether the sale made Mr. Boily insolvent.

[25] Article 1633 of the CCQ creates an irrefutable presumption of fraud of the rights of a creditor when his debtor concludes a gratuitous contract, where the debtor is or becomes insolvent at the time the contract is signed or the payment is made. Article 1381 of the CCQ stipulates for its part that a contract is gratuitous when one party obligates himself to the other for the benefit of the latter without obtaining any advantage in return, Finally, article 1015 of the CCQ provides that the notarial deed which designates the parties as co-owners and which does not mention the respective shares of each party creates a presumption of equality of shares.

[26] Mr. Boily and Ms. Paquet were both co-owners of the Immovable, and they were also both debtors under the conventional mortgage granted by the NBC. According to the evidence on the record, from the sale price of \$729,000, the common expenses of Mr. Boily and Ms. Paquet amounted to \$725 for the notarial services and to \$368,699.58 for the balance of the mortgage due to the NBC. Assuming that the seller's net profit of \$9,200 was shared between the two, a balance of \$175,187.71 (or \$350,375.42 divided by 2) was due to each of Mr. Boily and Ms. Paquet. However, Mr. Boily only received a discharge from the MRQ for \$45,389.94. I agree with the Minister that, in the circumstances, this imbalance between the monies owed and

received leads to the conclusion that Mr. Boily's intentions were fraudulent, that is, Mr. Boily intended to benefit Ms. Paquet and her company 2592 Québec Inc., without just consideration.

[27] In support of their motion to set aside the Order and the interim charge on the Immovable, Mr. Boily, 2592 Québec Inc. and Ms. Paquet produced affidavits by Mr. Boily and Ms. Paquet, both dated on September 16, 2019. According to the assertions contained in those affidavits and the written claims resumed at the hearing by their lawyer, Mr. Boily submitted that the Order was without basis in fact and in law and that the sale of the Immovable was fully enforceable against Her Majesty because the sale of the Immovable was onerous and that he did not become insolvent at the time of the sale.

[28] Mr. Boily claims that the line of credit obtained jointly with Ms. Paquet was used exclusively by him and for the purposes of Boily Ltd. I am not satisfied. Following my review of the evidence on record, I conclude that the evidence presented by Mr. Boily and Ms. Paquet on the use of the joint line of credit is not credible and is clearly contradictory, and that it does not allow one to conclude that the conventional mortgage granted by the NBC constituted, as Mr. Boily claims, an exclusive debt of the latter. Whereas Mr. Boily stated in his affidavit that the line of credit was used [TRANSLATION] "exclusively" for the purposes of Boily Ltd. and that [TRANSLATION] "at no time was the line of credit used for the personal purposes of [Ms. Paquet] or for the couple's daily expenses", Ms. Paquet's version is quite different. Rather, Ms. Paquet stated that the line of credit was used [TRANSLATION] "mainly" for the purposes of Boily Ltd., and that it [TRANSLATION] "was rarely used for my own benefit or the couple's daily expenses". I also observe that, according to the documents in support of Mr. Boily's affidavit, a significant

part of the transfers from the mortgage line of credit to Mr. Boily (\$144,000) were made for his personal expenses. However, there is nothing to determine, on a balance of probabilities, that these amounts were allegedly used exclusively for Mr. Boily and not for the couple's expenses.

[29] Mr. Boily also stated that he allegedly transferred amounts from his personal account to the account of Boily Ltd., and that the latter allegedly used those amounts in the course of its activities. However, although according to Mr. Boily, the line of credit was used in excess of \$367,000 at the end of July 2014, and that at least \$227,500 constituted advances made to Boily Ltd. from January to May 2014, no trace of these payments or monies owed to a shareholder appears in the financial statements of Boily Ltd.. Similarly, the evidence from Ms. Raynault's affidavit in response indicates that no amount of this nature appears on the balance sheet of 8188 Québec for the year ending July 31, 2014, nor is it found in the company's debts. In other words, the amounts that Mr. Boily claims were paid for the purposes of Boily Ltd. from the line of credit do not appear anywhere in that business's books.

[30] In addition, Mr. Boily claims that Ms. Paquet transferred personal funds to the Boily Ltd. accounts. He therefore submits that, since the proceeds of the sale were allegedly used exclusively for the benefit of Mr. Boily, it was agreed between the parties that the balance of the sale price of the Immovable would be paid to Ms. Paquet [TRANSLATION] "as reimbursement", and therefore in return for her contribution to the Boily Ltd. business. Ms. Paquet's affidavit echoes these comments by laconically indicating that the balance of the sale price of the Immovable was allegedly [TRANSLATION] "paid to her as a reimbursement" and that she had consented that they represent [TRANSLATION] "receipt for monies owed". But nowhere in her

affidavit does Ms. Paquet indicate the nature of this reimbursement or the amounts that were allegedly owed to her by Boily Ltd. Nor did Ms. Paquet's affidavit mention, in any way, that she allegedly funded Boily Ltd.'s operations from her personal accounts over the years, and she does not provide any details in this regard. There are only the general assertions contained in the written submissions from counsel for Mr. Boily to the effect that Ms. Paquet allegedly transferred significant amounts from her accounts and personal lines of credit to the accounts of Boily Ltd. in order to assist this company in financing its daily business activities. But there is no clear, convincing and cogent evidence on the record in this regard from Ms. Paquet, which would show the funding of Boily Ltd. by Ms. Paquet, and which would be sufficient to satisfy the balance of probabilities test. In other words, the relevant evidence does not allow me to determine that, in all likelihood, the fact alleged by Mr. Boily took place (*FH v McDougall*, 2008 SCC 53 at paras 45-46).

[31] According to Mr. Boily and Ms. Paquet, the sale of the Immovable was an onerous contract, and the irrefutable presumption of article 1633 of the CCQ would not be applicable in this case. In support of their argument, they submit that the Québec Court of Appeal has recognized that there was no intention of defrauding in the context of a married couple who transferred assets between them so as not to put at risk the future of their company as well as the financial future of the family (*Kiliaris c Agence du Revenu du Québec*, 2015 QCCA 416). Moreover, they argue that they were not related persons at the date of the sale of the immovable as they allegedly broke up around May 1, 2018. Therefore, Ms. Paquet's knowledge of Mr. Boily's insolvency should not apply. For the reasons set out above, I do not agree with these submissions, since there is simply no proof that amounts were transferred from Mr. Boily to the

company Boily Ltd. I consider instead that the sale of the Immovable can be described as a gratuitous contract because Mr. Boily found himself receiving a consideration far below the value of his assets (*Hotte c Lajeunesse*, 2013 QCCS 6944 [*Hotte*] at paras 80-81).

[32] According to the preponderance of evidence, the assignment to Ms. Paquet of Mr. Boily's rights, titles and interests in the balance of the sale price and the deferral of payment has all the attributes of an act by gratuitous title, deemed to be done with the intention to defraud. The deed of sale provides that Mr. Boily assigns all his rights, titles and interests in the \$305,015 balance of the sale price to Ms. Paquet, and that the final payment is payable only on August 1, 2028, with the possibility of prepayment. All of the evidence before me convinces me that with respect to Mr. Boily, the sale of the Immovable is a gratuitous contract.

[33] In terms of solvency, Mr. Boily submits that he was not insolvent at the time the sale of the Immovable was concluded or when the payment was made. He argues that at the time of the sale and after, he was still able to discharge his debts and obligations as they became due (*National Bank of Canada v. B.(C.)*, [2000] RJQ 658, 2000 CanLII 11303 (QCCA)).

[34] Again, however, neither Mr. Boily nor Ms. Paquet provided any evidence whatsoever on Mr. Boily's creditworthiness. On this point, Mr. Boily's affidavit comes down to a few words that are not corroborated by any supporting material: Mr. Boily is content to state that at the time of the sale, he was [TRANSLATION] "solvent". No further details are provided. I point out that at no time did Mr. Boily state that he was able to discharge his debts and obligations as they became due, and even more, that he could in particular, pay monthly rent, Hydro-Québec bills or

monthly credit card bills. Only written submissions from his lawyer do so. Ms. Paquet's affidavit is equally silent on the creditworthiness of Mr. Boily. Ms. Paquet is content to reiterate that to the best of her knowledge, Mr. Boily [TRANSLATION] "was creditworthy", without any other details.

[35] Faced with this total absence of clear, convincing and cogent evidence of solvency on the part of Mr. Boily, I note that the two affidavits signed by Ms. Raynault contain multiple details on Mr. Boily's lack of assets, on his debts to other creditors, on the multiple transactions that Mr. Boily made to liquidate his RRSPs, to offload his assets and to transfer the assets of his companies to a company owned by Ms. Paquet, on the gift of his co-ownership in the Immovable (worth \$152,075) to Ms. Paquet, and on the fruitless steps taken by the Minister to try to trace Mr. Boily's personal assets. I accept the facts contained in Ms. Raynault's affidavit, which are not seriously disputed by Mr. Boily. In summary, I am satisfied that all of the evidence on the record shows that Mr. Boily has divested himself of his assets so that his liabilities exceed them. In addition, the facts show that the Immovable was the only property against which Her Majesty could have enforced her tax claim against Mr. Boily.

[36] In this context, I have no hesitation in concluding that, on the preponderance of the evidence before me, Mr. Boily was insolvent at the time of the sale of the Property, or that at the very least, the sale of the Immovable and the assignment of all of his interests in the Immovable to Ms. Paquet made him insolvent. Also, the sale of the Immovable and the assignment to Ms. Paquet of Mr. Boily's rights, titles and interests in the Immovable's balance of the sale price

caused prejudice to Her Majesty by depriving her of Mr. Boily's equity in the only property against which Her Majesty could have enforced her claim against Mr. Boily.

[37] Furthermore, I share the Minister's opinion that, in the circumstances of this case, Ms. Paquet could not have been ignorant of Mr. Boily's insolvency, because the courts have recognized that there is a presumption of knowledge of the insolvency of the debtor by the creditor in the case of related persons (*Hotte* at para 87). I add that, despite Mr. Boily's claims that he and Ms. Paquet allegedly live separately and that he has allegedly been living at an address on Lajeunesse Street in Montreal since May 2018, the evidence contained in Ms. Raynault's affidavits indicates that, on a balance of probabilities, Mr. Boily does not live on rue Lajeunesse but allegedly still lives in the Immovable. Finally, I note that, in the months preceding the sale of the Immovable, Ms. Paquet suddenly found herself in charge of the management and operation of several of Mr. Boily's businesses via 7179 Québec Inc. and 2592 Québec Inc.

[38] For all of these reasons, I share the Minister's opinion to the effect that the sale of the Immovable and the assignment of Mr. Boily's interests to Ms. Paquet was concluded in fraud of Her Majesty's rights, which caused her prejudice, and that it made Mr. Boily insolvent.

IV. Conclusion

[39] For the foregoing reasons, the motion of Mr. Boily, 2592 Québec Inc. and Ms. Paquet is dismissed, the sale of the Immovable to 2592 Québec Inc. and the assignment of Mr. Boily's interests to Ms. Paquet are declared unenforceable against Her Majesty, and the Immovable is

permanently encumbered with a charge for the payment of Mr. Boily's tax debt and the costs relating to this motion. The Court recognized in *Vaillancourt* that an interim charging order could be made in respect of an immovable registered in the name of a third party, as is the case here.

[40] Her Majesty is entitled to her costs against Mr. Boily, 2592 Québec Inc. and Ms. Paquet.

JUDGMENT in ITA-4714-19

THE COURT DECLARES AND ORDERS that:

1. The motion of the judgment debtor, the garnishee and the third party to set aside the interim charging order dated August 19, 2019, is dismissed, with costs.
2. The sale and assignment of the real property described in Appendix A, which occurred on August 1, 2018, by deed of sale between the judgment debtor, the garnishee and the third party, as well as the assignment to the third party of the rights, titles and interests of the judgment debtor in his share of the balance of the sale price of the immovable, is unenforceable against the creditor.
3. The immovable at issue described in Appendix A be permanently encumbered with a charge for the payment to the creditor of the judgment debtor's unpaid amount of the claim at issue and the costs associated with both the motion that led to issuing the orders of August 19, 2019, and this motion, which is dismissed with costs.

“Denis Gascon”

Judge

Certified true translation
On this 5th day of May 2020
Sebastian Desbarats, Translator

APPENDIX A

[TRANSLATION]

DESCRIPTION

A SITE facing onto Waverly Street, in the City of Montréal (borough of Ahuntsic—Cartierville), known and designated as lot number ONE MILLION FOUR HUNDRED EIGHTY-SIX THOUSAND TWO HUNDRED TWENTY-ONE (1,486,221) of the CADASTRE OF QUEBEC, in the registration division of Montréal.

WITH all the buildings erected thereon, and in particular the building bearing civic numbers 10240 and 10242, Waverly Street, City of Montréal (borough of Ahuntsic—Cartierville), province of Quebec, H3L 2W1, whose northwest wall is adjoining, together with all appurtenances and dependencies. SUBJECT to a servitude in favour of the City of Montréal established in accordance with deed number 4 461 026, published in Montréal.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: ITA-4714-19

STYLE OF CAUSE: IN THE MATTER OF THE *INCOME TAX ACT*,
BETWEEN HER MAJESTY IN RIGHT OF THE
QUEEN AND
CHRISTIAN BOILY AND 9381-2592 Québec Inc.
AND LUCE PAQUET

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 26, 2020

**REASONS FOR JUDGMENT
AND JUDGMENT:** GASCON J.

DATED: APRIL 7, 2020

APPEARANCES:

Stéphanie Lauriault FOR THE CREDITOR

Piero Iannuzzi FOR THE JUDGMENT DEBTOR, GARNISHEE
AND THIRD PARTY

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE CREDITOR
Montréal, Quebec

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Montréal, Quebec AND THIRD PARTY