

Date: 20060719

Docket: ITA-11539-04

Citation: 2006 FC 895

Ottawa, Ontario, July 19, 2006

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

GREGORINA ALESSANDRO

Applicant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR ORDER AND ORDER

[1] At the root of this dispute between the parties is a contested tax assessment for the 1997 tax year. The Canada Customs and Revenue Agency, now the Canada Revenue Agency (Agency), is seeking payment of tax arrears from Gregorina Alessandro in the amount of \$54,508.48. In pursuit of its claim, the Agency registered a Certificate of indebtedness with this Court under section 223 of the *Income Tax Act* R.S.C. 1985, Chapter 1 (5th Supp.) (Act). It also registered two Notices of Lien against properties owned by Ms. Alessandro in Ontario. Those enforcement steps were taken in

November and December of 2004. At that time, it is conceded that Ms. Alessandro's tax debt was outstanding and subject to collection by the Agency.

[2] Subsequently, Ms. Alessandro brought an appeal in the Tax Court of Canada in which she challenged the Agency's claim to tax arrears. That appeal was filed on March 30, 2005 after the Tax Court granted an extension of time to appeal by an Order issued on the same day.

[3] Ms. Alessandro contends that the subsequent acceptance of her Tax Court appeal obliges the Agency to remove its Certificate of indebtedness from this Court and the two liens registered against her real properties. The Agency declined to accommodate those demands and Ms. Alessandro is now seeking an Order to cancel the Certificate and to vacate the liens. She contends that the collection restrictions contained within section 225.1 of the Act can be applied, after the fact, to reverse the enforcement steps that were lawfully carried out by the Agency before her appeal was launched.

[4] Although the Agency concedes that section 225.1 of the Act prevents it from taking fresh collection steps against Ms. Alessandro, it says that the Act does not require that it reverse any enforcement steps which were lawfully taken at the time. In furtherance of that view, the Agency did withdraw an outstanding and active Notice of Garnishment that had been sent to Ms. Alessandro's bank; however, it refused any further relief.

Issue

The issue before the Court is whether section 225.1 of the Act requires the Agency to reverse all of its collection actions in the face of a subsequent appeal of the tax assessment to the Tax Court of Canada.

Analysis

[5] In the ordinary course, section 225.1 of the Act does preclude the Agency from taking any collection action against a taxpayer within ninety days of the mailing of a Notice of Assessment. Thereafter, the affected taxpayer can hold the Agency at bay by filing a Notice of Objection or a Notice of Appeal to the Tax Court within the prescribed time. In those instances, section 225.1 of the Act continues to apply. So long as the taxpayer acts in a timely way, section 225.1 of the Act offers seamless protection from collection of claimed tax arrears up to the conclusion of a Tax Court appeal.

[6] This case is anomalous because Ms. Alessandro's Tax Court appeal was initiated well beyond the ninety day filing deadline and, during that time, the Agency proceeded lawfully to enforce its claim by filing a Certificate of indebtedness and by registering its liens.

[7] Counsel for Ms. Alessandro concedes that the Act does not expressly oblige the Agency to reverse lawful collection steps in the face of a subsequently launched appeal; however, he contends that the failure by the Agency to withdraw the Certificate and to vacate its liens violates the spirit or intent of this protective statutory provision.

[8] A plain reading of subsection 225.1(3) of the Act indicates that the Minister is prohibited from actively pursuing collection action against a taxpayer in the face of an outstanding Tax Court appeal. In those circumstances, this provision prevents the following enforcement actions:

(a) commence legal proceedings in a court,	a) entamer une poursuite devant un tribunal;
(b) certify the amount under section 223,	b) attester le montant, conformément à l'article 223;
(c) require a person to make a payment under subsection 224(1),	c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);
(d) require an institution or a person to make a payment under subsection 224(1.1),	d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;
(e) require the retention of the amount by way of deduction or set-off under section 224.1,	e) exiger la retenue du montant par déduction ou compensation, conformément à l'article 224.1;
(f) require a person to turn over moneys under subsection 224.3(1), or	f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);
(g) give a notice, issue a certificate or make a direction under subsection 225(1).	g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

[9] The fact that the Act does not address the problem arising in this case does not mean that the spirit or underlying intent of this protective scheme has been breached by the Agency's conduct. If Parliament had intended that the Agency ought to be required to take active steps to reverse its previous and lawful collection actions, it could easily have said so. Indeed, in other provisions of

the Act, the Agency is expressly required to repay funds or to release security in the face of challenges by a taxpayer (see section 164).

[10] It is also noteworthy that Ms. Alessandro has obtained a substantial benefit from the statutory collection restrictions which are created by these provisions. The Agency is prevented from taking further steps to collect the amount it claims to be owed. The Certificate of indebtedness and liens merely constitute passive security interests in favour of the Agency. If the liens are interfering with Ms. Alessandro's ability to deal with her real estate holdings, she has the ability to substitute the security or to negotiate reasonable alternate arrangements with the Agency.

[11] Although the circumstances in the case of *Topol v. Canada (Minister of National Revenue - M.N.R.)* [2003] F.C.J. No. 858, 2003 FCT 658 were somewhat different from those arising here, I accept as correct the following statements by Justice Carolyn Layden-Stevenson concerning the scope of section 225.1 of the Act:

22 Moreover, submits Topol, the position that the writ was lawfully obtained is inconsistent with the purpose of the provision. Referring again to section 225.1, he maintains that the Minister is precluded from taking steps to collect the taxes in dispute for the duration of the dispute, i.e., from assessment through to objection and appeal to the Tax Court. Topol argues that there is, however, a gap in section 225.1 because it does not address the situation where a taxpayer begins the objection or appeal process outside of the time limits specifically prescribed within the section. To give effect to their purpose, the provisions must be interpreted liberally to protect taxpayers when the objection or appeal procedure is commenced beyond the prescribed times. Topol contends that to conclude otherwise means that a taxpayer, unable to adhere to the prescribed time limitation for reasons beyond his or her control and subject to a garnishment issued by the Minister, who is subsequently granted leave to file a notice of objection, will not be able to have the garnished funds returned to him. That taxpayer will have paid the taxes in dispute before an impartial hearing has been concluded.

Since he was permitted to file a notice of objection to the 1996 and 1998 tax years on September 24, 2001, more than 90 days after the relevant notices of assessment, if the writ is not lifted, Topol contends that he will have, in effect, paid the taxes in dispute before an impartial hearing has been concluded. Such a result is inconsistent with the purpose of both section 225.1 and subsection 164(1.1) of the Act and should not be permitted in the absence of express wording to that effect in the Act.

...

29 I note Topol's hypothetical argument that a taxpayer, who for reasons beyond his or her control fails to file a notice of objection within the prescribed time limits and who is subsequently granted leave to file a notice of objection, may be prejudiced and lose the benefit of subsection 164(1.1) if the meaning I have ascribed to "security" is adopted. My observations in this respect are twofold. First, there is nothing in the record to indicate that Topol was unable to file his notices of objection in a timely manner because of reasons beyond his control. In this sense, it may be said that he is the author of his own misfortune. Second, if indeed there exists a gap in the legislation, it is for Parliament, not the court, to remedy. Neither the statute nor the provision support the meaning of the word "security" advanced by Topol. Thus, I conclude that the Minister's decision was not only reasonable, it was correct. This does not and should not be taken to mean, however, that the Minister is at liberty to execute on the writ while the objections with respect to the 1996 and 1998 taxation years remain alive.

[12] In this case, there is no legal basis for requiring the Agency to withdraw the Certificate of indebtedness filed with the Court or to lift the liens against Ms. Alessandro's real properties.

[13] In the result, this application is dismissed with costs payable to the Respondent in the amount of \$1,250.00 inclusive of disbursements.

ORDER

THIS COURT ORDERS that this application is dismissed with costs payable to the Respondent in the amount of \$1,250.00 inclusive of disbursements.

"R. L. Barnes"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: ITA-11539-04

STYLE OF CAUSE: GREGORINA ALESSANDRO

and

HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 26, 2006

**REASONS FOR ORDER
AND ORDER BY:** Barnes J.

DATED: July 19, 2006

APPEARANCES:

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