

Federal Court



Cour fédérale

Date: 20220324

Docket: ITA-143-22

Citation: 2022 FC 408

Ottawa, Ontario, March 24, 2022

PRESENT: Madam Justice Walker

BETWEEN:

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*, *Employment Insurance Act*, the *Income Tax Act*, against:

CHARLES SHAKER
1 Canada Square – 37th floor
London,
E14 4EF
United Kingdom

ORDER AND REASONS
(re Blue Jays Way property)

[1] At the show cause hearing of this matter pursuant to Rules 458(1)(a)(i), 459, 462 and 399(1) of the *Federal Courts Rules*, SOR/98-106 (the Rules), Mr. Charles Shaker, also the moving party by Notice of Motion pursuant to Rule 462, seeks to discharge the interim charge (the Interim Charge) against the property, 36 Blue Jays Way, Suite 1505, Toronto, Ontario (the Blue Jays Way Property) obtained by the Department of Justice on behalf of Her Majesty the Queen in Right of Canada and the Canada Revenue Agency (the CRA and, together, the

Respondents) on March 4, 2022 by order of Justice Sadrehashemi (the Interim Order). Mr. Shaker argues that the Interim Charge must be discharged because his interest in the Blue Jays Way Property is solely that of a trustee and Rule 458 cannot be applied to a trustee's legal interest in trust property held on behalf of the beneficiaries of a trust in order to secure the trustee's personal debt.

[2] At the hearing, the Respondents withdrew their request that the Interim Charge be made absolute and requested that the net proceeds of the pending sale of the Blue Jays Way Property be paid into court to allow the Respondents the opportunity to cross-examine Mr. Shaker on the affidavit filed in support of his Rule 462 motion (the Shaker Affidavit).

[3] For the reasons that follow in this Order and Reasons, (1) Mr. Shaker's motion is granted and the Interim Charge is discharged; and (2) the Respondents' request that the net proceeds of the pending sale of the Blue Jays Way Property be paid into court is refused.

I. Proceedings in the Federal Court

[4] On January 25, 2022, the CRA registered with the Court a certificate against Mr. Shaker claiming a tax debt in the amount of \$4,757,887.07 plus interest (the Tax Debt) pursuant to section 223 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) (ITA). The CRA also obtained a writ of execution, which has been filed with the cities of Ottawa and Toronto.

[5] On February 28, 2022, the Respondents filed an *ex parte* motion with the Court to obtain the Interim Charge to secure payment of the Tax Debt against Mr. Shaker's interest in the Blue

Jays Way Property. The legal description of the Blue Jays Way Property is set out in Schedule A to this Order and Reasons. At the hearing of their motion, the Respondents asserted that Mr. Shaker has a legal interest in the Blue Jays Way Property as trustee and, accordingly, has an interest in the Property within the meaning of Rule 458.

[6] According to the CRA, the Tax Debt derives principally from Notices of Reassessment dated March 31, 2017 reassessing Mr. Shaker's income tax liability for the 2008 and 2009 taxation years in the amounts of \$3,287,273.19 and \$463,382.65, respectively. There are also modest assessments outstanding for the 2007, 2006 and 2005 taxation years, and accrued interest on all outstanding amounts of \$1,017,923.60 as of February 24, 2022. This information is set out in the affidavit of Mr. John Falco, an officer with the CRA in the Collections and Verifications Branch - Aggressive Tax Planning, filed by the Respondents in support of their *ex parte* motion (the Falco Affidavit). Copies of the 2017 Notices of Reassessment have not been filed with the Court.

[7] On March 4, 2022, Justice Sadrehashemi issued the Interim Order, granted the Respondents' motion and charged the Blue Jays Way Property with the Tax Debt set out in the certificate. The Interim Order required Mr. Shaker to appear before the Court at a hearing to be held on March 22, 2022 to show cause why the Interim Charge should not be made absolute (Rule 459(1)).

[8] The hearing date was subsequently amended by the Court to Monday, March 21, 2022 and was assigned to me. In advance of the hearing, Mr. Shaker served and filed his motion pursuant to Rule 462 to discharge the Interim Charge.

[9] On March 21, 2022, prior to the hearing, the Respondents provided to the Court and to Mr. Shaker's counsel a draft Order requesting that the Court (1) adjourn the show cause hearing; (2) order payment into court of the proceeds of disposition from the sale of the Blue Jays Way Property, net of transaction costs (real estate commissions, legal fees); (3) order the Interim Charge discharged upon such payment into court; and (4) order Mr. Shaker to make himself available to be cross-examined.

[10] The closing of the sale of the Blue Jays Way Property to a third party is fixed for March 28, 2022.

II. Ruling regarding Respondents' requested Order

[11] At the commencement of the show cause hearing, the Respondents and Mr. Shaker provided submissions to the Court regarding the Respondents' requested Order.

[12] After adjourning the hearing and considering the parties' respective submissions, the evidence and argument upon which the Respondents obtained the Interim Charge in the Rule 458(1) motion, and the prejudice each party alleges they, or the trust beneficiaries, would suffer as a result of the Court granting the Respondents' request, I refused to issue the requested Order and indicated that we would proceed with the hearing of the merits of the show cause

hearing. The determinative factor in my refusal was the theory, argument and evidence upon which the Respondents obtained the Interim Charge and the fact that Mr. Shaker's evidence and submissions in the show cause hearing do not dispute the Respondents' evidence or the fact that he is a trustee of the trust that holds the Blue Jays Way Property. As the Respondents reverted to the requests made in their draft Order, with modifications, as substantive submissions in the hearing, I explain further my conclusions in the analysis section of this Order and Reasons.

III. Background – Mr. Shaker

[13] Mr. Shaker is a financial advisor and wealth manager. He began his practice in Ottawa and moved it to the United Kingdom in 2009. Mr. Shaker advises his clients on complex tax matters and trust assets. One aspect of his practice is the provision of assistance in the creation and implementation of Canadian trusts to hold investment properties.

[14] Over the years, Mr. Shaker has founded or been involved in the establishment of three corporations which figure, or have figured, in the structure of the financing for the purchase of the Blue Jays Way Property. In 2002, Mr. Shaker founded and became a director of OCA Financial Group Ltd. (OCA Financial), a Canadian corporation that provided financial planning and consulting services. In 2008, Mr. Shaker assisted in establishing, and became a director of, Providence Wealth Inc. (later renamed Providence Wealth Corporation) (PW Corp), another Canadian corporation, which is engaged in a similar business. On May 5, 2009, Mr. Shaker was removed as a director of PW Corp retroactive to December 30, 2008.

[15] In 2009, Mr. Shaker founded Providence Wealth Corporation Limited (PWCL) in London, England. Mr. Shaker continues to act as a director of PWCL.

IV. Vinyl Spin Investment Trust and the Blue Jays Way Property

[16] The evidence before the Court establishes that Mr. Shaker has a legal interest in the Blue Jays Way Property by virtue of his position as trustee of the Vinyl Spin Investment Trust (VSI Trust). There is no dispute between the parties in this regard.

[17] The VSI Trust was settled in 2008 with Mr. Shaker, Mr. Ralph Karam and Mr. Chadwick Boyd as co-trustees. In the Shaker Affidavit, Mr. Shaker states that he is not and has not been a beneficiary of the VSI Trust, has no direct or indirect interest in the assets of the VSI Trust, and is not and has not been an officer, director or shareholder of any beneficiary of the VSI Trust. I make no finding as to whether Mr. Shaker has a beneficial interest in the VSI Trust and have not considered Mr. Shaker's statements in the Shaker Affidavit in this regard.

[18] The VSI Trust purchased the Blue Jays Way Property in 2008 for a purchase price of \$1,650,000. The title documents to the property identify Mr. Shaker and Mr. Karam as trustees for the Property. Mr. Shaker signed all required documents in his capacity as trustee.

[19] In October 2008, a charge in the amount of the purchase price was registered against the Blue Jays Way Property by OCA Financial. Mr. Shaker states that funds for the purchase price were loaned by clients (VSI Lenders) of OCA Financial to the VSI Trust. The charge was transferred to PW Corp in 2009 and to PWCL in 2018.

V. Issues

[20] The issues before the Court are:

1. Whether the Interim Charge should be discharged; and
2. Whether the Court should grant the Respondents' request that the net proceeds of sale of the Blue Jays Way Property be paid into court pending cross-examination of Mr. Shaker, primarily as to the existence of any beneficial interest on his part in the VSI Trust.

VI. Analysis

[21] Rule 458(1)(a)(i) provides in part that, on *ex parte* motion of a judgment creditor, the Court may, for the purpose of securing payment of an ascertained amount, make an order imposing an interim charge on an interest in real property if a judgment debtor holds, directly or indirectly, an interest in the real property, including a beneficial interest. The Court may also order the judgment debtor to show cause why the charge should not be made absolute (Rule 458(1)(b)). Pursuant to Rule 459(1), the Court must make absolute or discharge the interim charge at the show cause hearing. Finally, on motion by the judgment debtor, or any other person with an interest in the property charged, the Court may discharge or vary the charging order on such terms as to costs as it considers just (Rule 462).

[22] The full text of the relevant legislative provisions of the *ITA* and the Rules is set out in Schedule B to this Order and Reasons.

[23] In their written representations in support of the Rule 458(1) *ex parte* motion, the Respondents requested the Interim Charge to secure the Tax Debt owing by Mr. Shaker solely on the basis of Mr. Shaker's position as a trustee of the VSI Trust. Their argument was:

- A. A trustee of a trust is the legal owner of the property held in trust;
- B. A legal owner of a property has an interest in that property;
- C. Mr. Shaker is one of the trustees of the VSI Trust; and, accordingly
- D. Mr. Shaker is one of the owners of the Blue Jays Way Property and has an interest in the Property within the meaning of Rule 458(1)(a)(i).

[24] At the show cause hearing, the Respondents conceded that the Blue Jays Way Property cannot be charged to secure Mr. Shaker's personal debt solely because he is one of the trustees of the VSI Trust. As a result, the Respondents agree that the Interim Charge should be discharged.

[25] Mr. Shaker indicates that he will contest the Tax Debt in separate proceedings. I make no finding as to Mr. Shaker's ability to contest the Tax Debt, the substance of any arguments he has made or may make in this regard, and any likely outcome of such separate proceedings. I assume for purposes of this Order and Reasons, and for no other purpose, that the Tax Debt exists and that Mr. Shaker is a tax debtor for purposes of the *ITA*.

Whether the Interim Charge should be made absolute based on Mr. Shaker's role as trustee of the VSI Trust

[26] I acknowledge the Respondents' concession regarding discharge of the Interim Charge but will address briefly the trust principles at issue.

[27] Mr. Shaker agrees that he is one of the trustees of the VSI Trust and that a trustee holds legal title to trust property (*Spencer v Riesberry*, 2012 ONCA 418 at para 53; see the Respondents' authority, *Hussaini v Crowe Soberman Inc.*, 2019 ONSC 642 at para 67). However, Mr. Shaker argues that, in his capacity as a trustee of the VSI Trust, he is not a judgment debtor who has an interest in the Blue Jays Way Property as contemplated in Rule 458 because:

1. The Respondents' interpretation of the term "judgment debtor" ignores the fact that he incurred the Tax Debt in his personal capacity and not in his capacity as a trustee of the VSI Trust; and
2. A trustee holding trust property does not "hold an interest" in that trust property within the meaning of Rule 458.

[28] I agree with Mr. Shaker.

[29] The terms "judgment debtor" and "interest in real property" as used in Rule 458 must be read in their ordinary and grammatical sense, consistent with the scheme and purpose of the Rules. The Respondents' evidence is that the Tax Debt is Mr. Shaker's personal debt. For purposes of Rule 458(1)(a)(i), Mr. Shaker is a judgment debtor in his personal capacity and not in his capacity as a trustee of the VSI Trust. The Respondents' interpretation of the term "judgment debtor" in Rule 458 ignores a trustee's distinct roles.

[30] A person who is a trustee acts in two distinct capacities: their personal capacity and their capacity as trustee. As a trustee, they act as a fiduciary for the benefit of the trust beneficiaries. A trustee is required to maintain the distinction between their personal affairs and the affairs and properties of the trust and to safeguard the interests of the trust beneficiaries. Trust property is

not available to the creditors of a trustee where the debt in question is the trustee's personal debt (*Waters' Law of Trusts in Canada* (5th ed.) at p 14). In this case, the Tax Debt is not a debt of the VSI Trust and the trust property, the Blue Jays Way Property, is not available to the CRA to satisfy Mr. Shaker's debt. To conclude otherwise would improperly and adversely impact the interests of the third-party beneficiaries of the VSI Trust.

[31] Mr. Shaker submits that the reference in Rule 458(1)(a)(i) to a judgment debtor's "interest in real property" does not extend to his legal interest in the Blue Jays Way Property as a trustee of the VSI Trust. He has no personal (and monetary) property right to the Blue Jays Way Property to which the Interim Charge can be applied.

[32] Mr. Shaker's argument finds support in the basic principles of trust law and in the jurisprudence. The common law recognizes a distinction between legal and beneficial ownership. A person having beneficial ownership in property can enforce their beneficial ownership rights against the holder of legal title. As Mr. Shaker points out in his written representations, the Supreme Court of Canada has recently had occasion to consider the fundamentals of trust law. In *Valard Construction Ltd. v Bird Construction Co.*, 2018 SCC 8 (*Valard*), Justice Brown for the majority stated (at para 16):

[16] As to that general law [of trusts], first principles are instructive. At its core, a "trust" refers to:

. . . the relationship which arises whenever a person (called the trustee) is compelled in equity to hold property . . . for the benefit of some persons . . . or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.

[33] Justice Brown also observed that a trustee holds trust property solely for the beneficiaries' enjoyment and cannot profit personally from their dealings with the trust property or with the beneficiaries of the trust (*Valard* at para 17). Justice Côté echoed these principles in 2021 in *Canada v Canada North Group Inc.*, 2021 SCC 30 at paragraph 47, stating “[p]roperty held in trust cannot be said to belong to the trustee because “in equity, it belongs to another person” (*Henfrey*, at p. 31)”. It follows that a trustee cannot use trust property to satisfy a personal debt.

[34] There are few decisions of the Court regarding the meaning of an “interest in real property” for purposes of Rule 458. The Respondents cite Justice Russell’s decision in *Canada (National Revenue) v McDonald*, 2010 FC 340 (*McDonald*). In that case, Mr. McDonald argued that the Rule does not permit the registration of a charge where the property interest at issue was an indirect and contingent beneficial interest in a gift of real property in his father’s will. Justice Russell disagreed, stating that Rule 458 places no limitation on the nature or extent of a judgment debtor’s interest in real property (*McDonald* at para 6).

[35] In my opinion, Justice Russell’s language does not assist the Respondents. In *McDonald*, the Court was focused on a beneficial and contingent interest in real property. Justice Russell was not required to consider the nature of a trustee’s interest in trust property.

[36] In summary, I find that (1) Mr. Shaker is a judgment debtor for purposes of the Tax Debt and Rule 458 in his personal capacity only; and (2) Mr. Shaker’s interest in the Blue Jays Way Property as a trustee is not an interest in the Property within the meaning of Rule 458(1)(a)(i).

Respondents' request for payment into court and cross-examination of Mr. Shaker

[37] As stated above, the Respondents concede that the Interim Charge should be discharged but now seek to vary the Interim Order. They argue that the net proceeds of sale of the impending sale of the Blue Jays Way Property must be paid into court to permit them the opportunity to cross-examine Mr. Shaker. The Respondents submit that the variation of the charging order in this manner safeguards all parties' interests by providing adequate time to determine the nature of Mr. Shaker's interest in the VSI Trust.

[38] The Respondents' primary reason for seeking cross-examination of Mr. Shaker is to probe his statement in the Shaker Affidavit that he has no beneficial interest in the VSI Trust. They argue that the Court cannot make a finding of fact regarding this issue on an affidavit that has not been subject to cross-examination. The Respondents also argue that they have no information about the VSI Trust as the constituting trust documents were not filed with the Shaker Affidavit.

[39] I am not persuaded by the Respondents' arguments.

[40] At the risk of repetition, the theory of the Respondents' *ex parte* motion pursuant to Rule 458(1)(a)(i) was that Mr. Shaker has a legal interest in the Blue Jays Way Property as a trustee of the VSI Trust sufficient to support a charge against the Property to secure payment of his personal Tax Debt.

[41] The Respondents argue that there was no impropriety in their reliance on Rule 458(1) to bring their *ex parte* motion on the narrow ground of Mr. Shaker's legal interest as trustee in the VSI Trust. I agree. However, I do not agree with their argument that, having secured the Interim Order, they are now able to abandon their legal theory and argument before Justice Sadrehashemi and engage in a comprehensive cross-examination of Mr. Shaker because he has responded and shown cause why the Interim Charge must be discharged. A Rule 458(1) *ex parte* motion should not be used as a gateway proceeding.

[42] The Respondents and Mr. Shaker agree that he is a trustee of the VSI Trust. The parties' evidence in this respect is consistent. Until the hearing on March 21, 2022, the Respondents made no assertion, nor does their evidence establish or suggest, that Mr. Shaker is a beneficiary of the VSI Trust or has a beneficial interest in the Blue Jays Way Property.

[43] Mr. Shaker was required to attend the show cause hearing and to answer to the allegations, evidence and relief sought by the Respondents in the Rule 458(1) motion. He has done so. The information and exhibit evidence furnished in the Shaker Affidavit that addresses his role as trustee complements that filed by the Respondents. Mr. Shaker's arguments rebut the basis on which the Interim Charge was imposed.

[44] My decision ordering the Interim Charge discharged is based on the principles of trust law and jurisprudence distinguishing the interests of a trustee and the beneficiaries of a trust in trust property. Mr. Shaker's statement in the Shaker Affidavit that he has no beneficial interest in the VSI Trust is not relevant to the issue before me nor have I considered Mr. Shaker's statement

in arriving at my conclusions. Mr. Shaker was not required to include copies of the VSI Trust documents as exhibits to his Affidavit as the Respondents had expressed no concern as to the existence of the Trust or the status of the trustees.

[45] I find that the Respondents cannot rely on ancillary information in the Shaker Affidavit to substantively change the theory upon which they sought to charge the Blue Jays Way Property. Their unsubstantiated concern that Mr. Shaker may have a beneficial interest in the VSI Trust is not a basis for the Court to permit a general inquiry into Mr. Shaker's affairs.

VII. Conclusion

[46] Mr. Shaker's motion is granted. The Interim Charge imposed against the Blue Jays Way Property, the legal description of which is set forth in Schedule A, will be discharged. The Respondents' request for an Order that the net proceeds from the sale of the Blue Jays Way Property be paid into court is refused. Additional relief regarding documents registered on title to the Blue Jays Way Property is as set out in the Order attached to these reasons.

[47] Following the hearing on March 21, 2022, both parties provided submissions regarding costs to the Court. As the successful party, costs will be awarded to Mr. Shaker. Mr. Shaker claims a lump sum amount of \$50,000 in costs in reliance on Rules 400(3) and (4). The Bill of Costs submitted in support of his request indicates total fees and disbursements in the amount of \$11,017.50 calculated under Tariff B. Mr. Shaker argues that, although lump sum costs awards typically fall within the range of 20 - 50% of actual legal costs, the Court may award an elevated sum depending on factors in the case before it. Mr. Shaker argues that an elevated costs award is

justified in this matter for a number of reasons. While I agree with certain of Mr. Shaker's submissions, specifically the Respondents' decision to change the basis upon which they obtained the Interim Order which they now concede is not substantiated, I have made no finding regarding a number of the other arguments made in the costs submissions. As a result, and in the exercise of my discretion, I award a lump sum of \$12,000 inclusive of all legal fees, disbursements and applicable taxes, in favour of Mr. Shaker. This award is an aggregate award made in respect of this Order and my order of the same date concerning the property referred to as the Navy Wharf Property.

ORDER IN ITA-143-22

THIS COURT ORDERS that:

1. The motion to set aside the Interim Charge is granted.
2. The Interim Charge against the Blue Jays Way Property, being all of PIN 12555-0192 (LT), with the legal description set forth in Schedule A to this Order, is discharged.
3. The Land Registrar for the Land Titles Division of Toronto No. 80 is directed to delete the Application to Register Court Order registered as AT6009388, which was registered March 7, 2022, from PIN 12555-0192 (LT), with the legal description set forth in Schedule A to this Order.
4. The interest of the Crown claimed under any Writ(s) of Seizure and Sale filed with the Sheriff of the City of Ottawa and/or the Sheriff of the City of Toronto is hereby released with respect to the Blue Jays Way Property, and the Sheriff of the City of Ottawa and/or the Sheriff of the City of Toronto shall not take any steps to enforce any such Writs of Seizure and Sale registered as against the Blue Jays Way Property.
5. The request of the Department of Justice, on behalf of Her Majesty the Queen in Right of Canada and the Canada Revenue Agency, that the net proceeds from the sale of the Blue Jays Way Property be paid into Court is refused.

6. Costs of the motion are awarded in favour of Mr. Charles Shaker in the amount of \$12,000.00 inclusive of all legal fees, disbursements and applicable taxes, in total in respect of this Order and my order of the same date concerning the property referred to as the Navy Wharf Property.

"Elizabeth Walker"

Judge

SCHEDULE A

UNIT 5, LEVEL 8, TORONTO STANDARD CONDOMINIUM
PLAN NO. 1555 AND ITS APPURTENANT INTEREST. THE
DESCRIPTION OF THE CONDOMINIUM PROPERTY IS :
PART OF LOT 20 ON THE WEST SIDE OF BLUE JAYS PL
D-263, AND PT LOT 9 BLOCK O PLAN MILITARY RESERVE
PLAN PT 4 PLAN 66R-20629, CITY OF TORONTO. S/T AND
T/W AS SET OUT IN DECLARATION AT-331427.

SCHEDEULE B

Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.)

223 (1) For the purposes of subsection 223(2), ***an amount payable*** by a person means any or all of

- (a) an amount payable under this Act by the person;
- (b) an amount payable under the *Employment Insurance Act* by the person;
- (b.1) an amount payable under the *Unemployment Insurance Act* by the person;
- (c) an amount payable under the *Canada Pension Plan* by the person; and
- (d) an amount payable by the person under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act.

Certificates

(2) An amount payable by a person (in this section referred to as a “debtor”) that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor

Registration in court

(3) On production to the Federal Court, a certificate made under subsection 223(2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by

Loi de l'impôt sur le revenu, L.R.C. (1985), ch. 1 (5e suppl.)

223 (1) Pour l’application du paragraphe (2), le montant payable par une personne peut être constitué d’un ou plusieurs des montants suivants :

- a) un montant payable par elle en application de la présente loi;
- b) un montant payable par elle en application de la *Loi sur l’assurance-emploi*;
- b.1) un montant payable en application de la *Loi sur l’assurance-chômage*;
- c) un montant payable par elle en application du *Régime de pensions du Canada*;
- d) un montant payable par elle en application d’une loi provinciale et que le ministre doit recouvrer aux termes d’un accord conclu par le ministre des Finances pour le recouvrement des impôts payables à la province en vertu de cette loi.

Certificat

(2) Le ministre peut, par certificat, attester qu’un montant ou une partie de montant payable par une personne — appelée « débiteur » au présent article — mais qui est impayé est un montant payable par elle.

Enregistrement à la cour

(3) Sur production à la Cour fédérale, un certificat fait en application du paragraphe (2) à l’égard d’un débiteur est enregistré à cette cour. Il a alors le même effet que s’il s’agissait d’un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts courus jusqu’à la date du paiement comme le prévoit les lois visées au paragraphe (1) en

the statute or statutes referred to in subsection 223(1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

Federal Courts Rules, SOR/98-106

Setting aside or variance

399 (1) On motion, the Court may set aside or vary an order that was made

(a) *ex parte*; or

(b) in the absence of a party who failed to appear by accident or mistake or by reason of insufficient notice of the proceeding,

if the party against whom the order is made discloses a *prima facie* case why the order should not have been made.

Order for interim charge and show cause

458 (1) On the *ex parte* motion of a judgment creditor, the Court may, for the purpose of enforcing an order for the payment of an ascertained sum of money,

(a) make an order imposing an interim charge for securing payment of that sum and any interest thereon

(i) on real property or immovables, or on an interest in real property or a right in immovables, if the judgment debtor, directly or indirectly, owns the real property or immovables, holds an interest in the real property,

application desquelles le montant est payable, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Dans le cadre de ces procédures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit ces lois.

Règles des Cours fédérales, DORS/98-106

Annulation sur preuve *prima facie*

399 (1) La Cour peut, sur requête, annuler ou modifier l'une des ordonnances suivantes, si la partie contre laquelle elle a été rendue présente une preuve *prima facie* démontrant pourquoi elle n'aurait pas dû être rendue :

- a) toute ordonnance rendue sur requête *ex parte*;
- b) toute ordonnance rendue en l'absence d'une partie qui n'a pas comparu par suite d'un événement fortuit ou d'une erreur ou à cause d'un avis insuffisant de l'instance.

Ordonnance de charge provisoire et de justification

458 (1) Aux fins de l'exécution d'une ordonnance exigeant le paiement d'une somme déterminée, la Cour peut, sur requête *ex parte* du créancier judiciaire, rendre une ordonnance :

- a) constituant une charge à titre provisoire en vue de garantir le paiement de la somme et des intérêts y afférents :

(i) soit sur un immeuble ou un bien réel ou sur un droit immobilier ou un intérêt dans un bien réel lorsque le débiteur judiciaire, même indirectement, est propriétaire de l'immeuble ou du bien réel, détient un

including a beneficial interest, or holds an immoveable right or has a claim to the immoveables, including as beneficiary under a trust or succession, in Form 458A, or

(ii) on any interest or right, including a beneficial interest, in any shares, bonds or other securities specified in the order, to which the judgment debtor is directly or indirectly entitled, in Form 458B; and

(b) order the judgment debtor to show cause, at a specified time and place, why the charge should not be made absolute.

Service of show cause order

(2) Unless the Court directs otherwise, an order made under subsection (1) shall be served on the judgment debtor and, where the order relates to property referred to in subparagraph (1)(a)(ii), on the corporation, government or other person or entity by whom the securities were issued, at least seven days before the time appointed for the hearing.

Show cause hearing

459 (1) At a show cause hearing referred to in paragraph 458(1)(b), the Court shall make the interim charge absolute, in Form 459, or discharge it.

Enforcement of charging order

(2) A charge made absolute has the same effect, and is enforceable in the same manner, as a charge made by the judgment debtor.

intérêt dans le bien réel, y compris un intérêt bénéficiaire, ou est titulaire d'un droit immobilier ou d'une réclamation portant sur l'immeuble, y compris à titre de bénéficiaire d'une fiducie ou d'une succession, auquel cas l'ordonnance est établie selon la formule 458A,

(ii) soit sur un droit ou un intérêt, y compris un intérêt bénéficiaire, sur des actions, des obligations ou d'autres valeurs mobilières et précisées dans l'ordonnance, à l'égard desquelles le débiteur judiciaire a un droit même indirect auquel cas l'ordonnance est établie selon la formule 458B;

b) précisant les date, heure et lieu de l'audience à laquelle le débiteur judiciaire peut faire valoir les raisons pour lesquelles la charge ne devrait pas être maintenue.

Signification de l'ordonnance

(2) Sauf directives contraires de la Cour, l'ordonnance rendue en vertu du paragraphe (1) est signifiée au débiteur judiciaire et, si elle porte sur les biens visés au sous-alinéa (1)a)(ii), à la personne morale, au gouvernement ou à toute autre personne ou entité qui a émis les valeurs mobilières, au moins sept jours avant la date fixée pour l'audience.

Sort de l'ordonnance provisoire

459 (1) À l'audience visée à l'alinea 458(1)b), la Cour déclare définitive la charge provisoire, selon la formule 459, ou l'annule.

Exécution de l'ordonnance

(2) La charge déclarée définitive a le même effet que s'il s'agissait d'une charge constituée par le débiteur judiciaire, et son exécution peut être poursuivie de la même manière que l'exécution de cette dernière.

Disposition by judgment debtor

460 No disposition by a judgment debtor of an interest in property subject to an interim or absolute charge under rule 458 or 459 is valid against the judgment creditor.

Transfer of securities prohibited

461 (1) Unless the Court orders otherwise, no person or entity on whom an order was served under subsection 458(2) shall permit the transfer of any security specified in the order or pay to any person a dividend or any interest payable thereon.

Liability of transferor

(2) If, after service of an order under rule 458, a person or entity on whom it was served makes a transfer or payment prohibited by subsection (1), the person or entity shall be liable to pay to the judgment creditor an amount equal to the value of the security transferred or the amount of the payment made, as the case may be, or as much of it as is sufficient to satisfy the judgment debt.

Discharge or variance of charging order

462 The Court may, on the motion of a judgment debtor or any other person with an interest in property subject to an interim or absolute charge under rule 458 or 459, at any time, discharge or vary the charging order on such terms as to costs as it considers just.

Aliénation par le débiteur judiciaire

460 L’aliénation, par le débiteur judiciaire, d’un droit sur les biens grevés par une charge provisoire ou définitive n’est pas opposable au créancier judiciaire.

Transfert interdit des valeurs mobilières

461 (1) Sauf ordonnance contraire de la Cour, la personne ou l’entité qui reçoit signification d’une ordonnance selon le paragraphe 458(2) ne peut autoriser aucun transfert des valeurs mobilières visées par l’ordonnance, ni payer à quiconque des dividendes ou des intérêts sur celles-ci

Obligation de l’auteur du transfert

(2) Si la personne ou l’entité procède au transfert ou au paiement interdits par le paragraphe (1) après avoir reçu signification de l’ordonnance, elle peut être contrainte à verser au créancier judiciaire une somme égale à la valeur des valeurs mobilières transférées ou au montant du paiement, ou toute partie de celle-ci requise pour acquitter la dette constatée par le jugement.

Annulation ou modification de l’ordonnance

462 La Cour peut, sur requête du débiteur judiciaire ou de toute autre personne ayant un droit sur les biens grevés par une charge provisoire ou définitive, annuler ou modifier l’ordonnance constituant la charge, aux conditions qu’elle estime équitables quant aux dépens.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: ITA-143-22

STYLE OF CAUSE: 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, Employment
Insurance Act*, the *Income Tax Act*, against:
CHARLES SHAKER, 1 Canada Square – 37th floor,
London, E14 4EF, United Kingdom

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 21, 2022

ORDER AND REASONS: WALKER J.

DATED: MARCH 24, 2022

APPEARANCES:

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