

Federal Court



Cour fédérale

Date: 20220422

Docket: T-792-22

Citation: 2022 FC 586

Toronto, Ontario, April 22, 2022

PRESENT: Madam Justice Go

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

11421417 CANADA INC.

Respondent

ORDER AND REASONS

I. Nature of the Matter

[1] This is an *ex parte* application brought by the Minister of National Revenue [Minister] held via teleconference at Toronto, pursuant to Rule 316.1 of the *Federal Court Rules*; section 225.2 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), as amended [ITA] and *An Act to Amend the Income Tax Act, (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*, SC 2020, c.13, assented to November 19, 2020.

[2] The Minister seeks an Order permitting collection action forthwith with respect to the income tax debt of the Respondent.

[3] I grant the application for the reasons set out below.

II. Background

The Nature of the Tax Debt

[4] In support of their application, the Minister filed an affidavit of Kayla Cormier, an officer with the Collections and Verification Branch of the New Brunswick Tax Services of the Canada Revenue Agency [CRA]. The facts outlined below are drawn from Ms. Cormier's affidavit.

[5] The Respondent was incorporated on May 21, 2019. On December 2, 2021, the Respondent made an application for six Canada Emergency Rent Subsidy [CERS] claims with the CRA. The CERS was a federal rent subsidy program set up to provide emergency financial assistance to commercial tenants and businesses as a result of the COVID-19 pandemic. The Respondent's CERS claims were for rent subsidy assistance for four industrial properties [Leased Properties] that the Respondent claimed it leased for business purposes.

[6] On December 29, 2021, CRA issued cheques to the Respondent in a total amount of \$482,160.97 for all six CERS claims. The funds were deposited by the Respondent to its bank account at Scotiabank.

[7] On or about January 18, 2022, the Fraud Deterrence Department at Scotiabank made enquiries as to whether the cheques delivered to the Respondent for the CERS claims were properly issued by the Receiver General for Canada. Scotiabank also raised a concern that either the intended payee of the CERS funds have not received them and someone else had deposited the funds, or that the Respondent should not be entitled to the CERS funds provided.

[8] As a result of the Scotiabank enquiries, CRA sought additional information from the Respondent in respect of the CERS claims. Among other things, CRA requested copies of the lease agreements for the Leased Properties, as well as copies of bank account statements confirming that the Respondent had made rent payments to the landlords of the Leased Properties for the periods claimed under CERS.

[9] Based on the lease agreements provided by the Respondent – all of which used the same “fill in the blank” template form from the Ontario Real Estate Association [OREA] - CRA contacted each of the landlords listed in the lease agreements to confirm the Respondent’s tenancy. Based on the information provided by the landlords, CRA determined that the Respondent is not a tenant of any of the Leased Properties.

[10] On March 22, 2022, CRA issued and delivered Notices of Redetermination and Notices of Reassessment to the Respondent denying the six CERS claims that were paid.

[11] Prior to the CRA’s redetermination, the Respondent had provided the CRA with copies of its purported RBC business bank statements under which account the Respondent had

purportedly made rent payments to the landlords of the Leased Properties. Pursuant to a Requirement for Information issued to RBC, the RBC advised CRA on March 29, 2022 that it has no record of the said business account for the Respondent. Rather, RBC advised that it had a business account for the Respondent bearing a different account number and that account – with little activity – was closed on September 9, 2002.

[12] Also on March 29, 2022, Scotiabank provided CRA with a copy of the bank account statements of the Respondent's account. The information from Scotiabank indicated that the account had been opened on January 4, 2022. The bank account statement shows that one deposit was made 7 days later for the amount of \$482,160.97, which is the total amount of the 6 CERS claims disbursed to the Respondent. No other transactions were made since, other than deductions for bank fees. The closing balance as at February 28, 2022 was \$482,147.47.

Information about the Respondent's Assets

[13] The registered head office of the Respondent is listed as 5015 Maingate Drive, Mississauga, Ontario. CRA carried out a real property search in the Region of Peel and was unable to locate any information that the Respondent owns any real property in Peel. CRA has no other information of any real property ownership in the name of the Respondent.

[14] CRA also conducted a credit bureau search of the Respondent and found no information on the credit bureau report other than a lien registered by the TD Bank in respect of inventory, equipment and other accounts. The same lien by the TD Bank appeared on a personal property

search of the Respondent. A motor vehicle search of the Respondent indicated no motor vehicles registered under the Respondent's name.

[15] Further information gathered by CRA indicated that the Respondent has not filed any T4 information, records or filings for its employees, if any, since its incorporation. Similarly, CRA has no record or filings made by the Respondent in respect of any corporate income tax, payroll remittance or HST tax obligations. The Respondent has not completed its required annual corporate filings for 2020 and 2021.

[16] Finally, aside from the CERS fund amounts deposited in the Scotiabank account, CRA has no further information of any assets or business activity of the Respondent.

The Alleged Danger of Loss

[17] As noted above, the CERS funds were deposited into the Scotiabank account. Scotiabank has presently placed a temporary restriction in dealing with the account pending review by or any further action by CRA to seek recovery of the funds.

[18] Given the manner in which the Respondent made application for the CERS funds, the results of the searches conducted by CRA, and the CRA review of the document provided by the director on behalf of the Respondent, the Minister believes that the collection of all or any part of the CERS amount reassessed in respect of the Respondent would be jeopardized by a delay in the collection thereof.

III. Issue

[19] The only issue is whether the Court should grant the order sought by the Minister.

IV. Analysis

[20] Subsection 225.1 of the *ITA* provides that, if a taxpayer has been assessed under the *ITA*, the Minister shall not take collection action before the day that is 90 days after the mailing of the notice of assessment.

[21] However, subsection 225.2(2) provides that, notwithstanding subsection 225.1, if a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed would be jeopardized by a delay in the collection of that amount, the judge shall on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith collection action [jeopardy order].

[22] In making the application for authorization to take collection action, the Minister must show reasonable grounds that collection would be jeopardized by a delay in collection: *Canada (Deputy Minister of National Revenue - MNR) v Quesnel*, [2001] 2 CTC 75, 2001 DTC 5602 (BCSC), at para 22.

[23] The Court observed in *Re Cormier-Imbeault*, [2009] 6 CTC 45, 2009 DTC 5165 (FC) [*Re Cormier-Imbeault*] at para 7, that the presence of one or more of the following factors may justify the issuance of a jeopardy order:

- a) there are reasonable grounds to believe that the taxpayer has acted fraudulently;
- b) the taxpayer has proceeded to liquidate or transfer his or her assets;
- c) the taxpayer is evading his or her tax liabilities;
- d) the taxpayer has assets that could potentially lessen in value over time, deteriorate or perish;
- e) the amount of the debt in relation to income and expenses.

[24] While historically the standard of proof was the balance of probabilities (*1853-9049 Québec Inc. v The Queen*, 87 DTC 5903 (FCTD) at 5097), the Court in *Re Cormier-Imbeault*, at paras 5-6, confirmed that the standard was “evidence demonstrating a bona fide belief based on credible evidence in a serious possibility that the granting of a delay to the taxpayer would jeopardize the collection of the debt, which is a lesser burden of proof than that of the balance of probabilities.”

[25] Applying these principles to the case at hand, I find that the Minister has discharged the burden of demonstrating reasonable grounds to believe that collection would be jeopardized by the delay.

[26] As a starting point, I should note that I am satisfied that the Minister has fulfilled the obligation to make full and frank disclosure of all relevant and material facts relating to the application, as required by case law: *Minister of National Revenue v Robarts*, 2010 DTC 5145, [2011] 1 CTC 17 (FC).

[27] At the hearing, counsel confirmed that the Minister’s position is that the CERS claims filed by the Respondent were “not authentic.” In my view, the Minister’s position is amply

supported by the record. The Respondent was incorporated merely months before submitting the CERS claims. It does not appear to have filed any corporate or payroll accounts with the CRA. The Respondent opened a bank account with Scotiabank just seven days before receiving the CERS funds, and the account has no activities other than bank fee deductions. The lease agreements the Respondent provided to CRA to verify their claims are all based on the OREA template form. All the landlords named on the lease agreements advised CRA that the Respondent was not one of their tenants. Above all, the account from which the Respondent had purportedly made rent payments to the landlords of the Leased Properties does not exist.

[28] These facts appear to support at least one of the grounds for issuing a jeopardy order, namely that there are reasonable grounds to believe the taxpayer has acted fraudulently. While in seeking an *ex parte* order under s. 225.2 of the *ITA*, the Minister needs not prove that the Respondent is motivated by *mala fides* intentions, there are reasonable grounds in this case to question the authenticity of the Respondent's CERS claims, when the facts are viewed on an objective and realistic basis: *Minister of National Revenue v Services M.L. Marengère Inc.*, 2000 DTC 6032 (FCTD).

[29] In addition, based on the information gathered by the CRA, the Respondent does not appear to have any assets – other than the Scotiabank account with the CERS funds – which CRA could seize as part of the collection action. This fits into two other factors supporting this application, namely, the taxpayer has assets that could potentially lessen in value over time, deteriorate or perish; and the amount of the debt is high in relation to income and expenses.

[30] As to the temporary restriction that Scotiabank has placed on the Respondent's account, counsel for the Minister advised the Court at the hearing that Scotiabank has no legal obligation to continue to hold the funds for CRA. Further, counsel advised that upon request by the Respondent, Scotiabank would have no legal basis to refuse releasing the funds as requested. This last piece of information persuades me that an authorization under subsection 225.2 is warranted, as the temporary restriction placed on the Respondent's account could not stop the taxpayer from liquidating or transferring the funds out of Scotiabank.

[31] Based on all of the above, I find the Minister has demonstrated that there are reasonable grounds to believe that the collection of the CERS claims would be jeopardized by a delay in the collection.

[32] I will therefore grant the application.

[33] There is no order as to costs.

ORDER in T-792-22

THIS COURT ORDERS that:

1. That a Jeopardy Order issue under subsection 225.2(2) of the *Income Tax Act* authorizing the Applicant to take forthwith the actions described in paragraphs 225.1(1)(a) to (g) with respect to the amounts assessed in respect of the Respondent;
2. That the Applicant is authorized to effect service of the Jeopardy Order after the Applicant has delivered a Requirement to Pay by sending a copy of the Order to the Respondent by ordinary mail at: 5015 Maingate Drive, Unit #6A, Mississauga, Ontario, L4W 1G4, being the Respondent's last known address; and
3. That together with the Jeopardy Order the Applicant is to serve on the Respondent a copy of a Notice to the Respondent in the form attached as Annex A to this Order.

"Avvy Yao-Yao Go"

Judge

Annex “A”: NOTICE TO THE RESPONDENT

TAKE NOTICE that an *ex parte* application, filed under Court File No. T-792-22, for a Jeopardy Order was commenced against you pursuant to subsection 225.2 of the *Income Tax Act*. The Jeopardy Order authorizes the Minister of National Revenue to take forthwith some or all of the actions described in paragraphs 225.1(1)(a) through (g) of the *Income Tax Act* with respect to your assessed tax debt. Some of the relevant provisions of subsections 252.1 and 252.2 of the *Income Tax Act* are attached hereto.

AND TAKE NOTICE that pursuant to subsection 225.2(8) of the *Income Tax Act* you may, upon six (6) clear days’ notice to the Deputy Attorney General of Canada, apply to a Judge of the Federal Court to review the Court Order.

AND TAKE NOTICE that pursuant to subsection 225.2(9) of the *Income Tax Act* your application must be brought within 30 days from the date that the Court Order was deemed to be served on you, or within such further time as a Judge may allow, provided that you can satisfy the Judge that your application was made as soon as practicable.

Copies of the *Federal Courts Rules*, information concerning the local office of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

Annex “B”: Relevant Legislation

Income Tax Act (RSC 1985, c. 1 (5th Supp.))
Loi de l'impôt sur le revenu (LRC 1985, ch. 1 (5e suppl.))

<p>Collection Collection restrictions</p> <p>225.1 (1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:</p> <ul style="list-style-type: none"> (a) commence legal proceedings in a court, (b) certify the amount under section 223, (c) require a person to make a payment under subsection 224(1), (d) require an institution or a person to make a payment under subsection 224(1.1), (e) [Repealed, 2006, c. 4, s. 166] (f) require a person to turn over moneys under subsection 224.3(1), or (g) give a notice, issue a certificate or make a direction under subsection 225(1). <p>Collection-commencement day</p> <p>(1.1) The collection-commencement day in respect of an amount is</p> <ul style="list-style-type: none"> (a) in the case of an amount assessed under subsection 188(1.1) in respect of a notice of intention to revoke given under subsection 168(1) or any of subsections 149.1(2) to (4.1), one year after the day on which the notice was mailed; 	<p>Recouvrement Restrictions au recouvrement</p> <p>225.1 (1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes :</p> <ul style="list-style-type: none"> a) entamer une poursuite devant un tribunal; b) attester le montant, conformément à l'article 223; c) obliger une personne à faire un paiement, conformément au paragraphe 224(1); d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe; e) [Abrogé, 2006, ch. 4, art. 166] f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1); g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1). <p>Jour du début du recouvrement</p> <p>(1.1) Le jour du début du recouvrement d'un montant correspond :</p> <ul style="list-style-type: none"> a) dans le cas du montant d'une cotisation établie en vertu du paragraphe 188(1.1) relativement à un avis d'intention de révoquer l'enregistrement délivré en vertu du paragraphe 168(1) ou l'un des paragraphes 149.1(2) à (4.1), un an après la date de mise à la poste de l'avis d'intention;
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(b) in the case of an amount assessed under section 188.1, one year after the day on which the notice of assessment was sent; and

(c) in any other case, 90 days after the day on which the notice of assessment was sent.

Definition of judge

225.2 (1) In this section, judge means a judge or a local judge of a superior court of a province or a judge of the Federal Court.

Authorization to proceed forthwith

(2) Notwithstanding section 225.1, where, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) with respect to the amount.

Notice of assessment not sent

(3) An authorization under subsection 225.2(2) in respect of an amount assessed in respect of a taxpayer may be granted by a judge notwithstanding that a notice of assessment in respect of that amount has not been sent to the taxpayer at or before the time the application is made where the judge is satisfied that the receipt of the notice of assessment by the taxpayer would likely further jeopardize the collection of the amount, and for the purposes of sections 222, 223, 224, 224.1, 224.3 and 225, the amount in respect of which an authorization is so granted shall be deemed to be an amount payable under this Act.

b) dans le cas du montant d'une cotisation établie en vertu de l'article 188.1, un an après la date d'envoi de l'avis de cotisation;

c) dans les autres cas, 90 jours suivant la date d'envoi de l'avis de cotisation.

Définition de juge

225.2 (1) Au présent article, juge s'entend d'un juge ou d'un juge local d'une cour supérieure d'une province ou d'un juge de la Cour fédérale.

Recouvrement compromis

(2) Malgré l'article 225.1, sur requête ex parte du ministre, le juge saisi autorise le ministre à prendre immédiatement des mesures visées aux alinéas 225.1(1)a) à g) à l'égard du montant d'une cotisation établie relativement à un contribuable, aux conditions qu'il estime raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à ce contribuable d'un délai pour payer le montant compromettrait le recouvrement de tout ou partie de ce montant.

Recouvrement compromis par la réception d'un avis de cotisation

(3) Le juge saisi peut accorder l'autorisation visée au paragraphe (2), même si un avis de cotisation pour le montant de la cotisation établie à l'égard du contribuable n'a pas été envoyé à ce dernier au plus tard à la date de la présentation de la requête, s'il est convaincu que la réception de cet avis par ce dernier compromettrait davantage, selon toute vraisemblance, le recouvrement du montant. Pour l'application des articles 222, 223, 224, 224.1, 224.3 et 225, le montant visé par l'autorisation est réputé être un montant payable en vertu de la présente loi.

<p>Affidavits</p> <p>(4) Statements contained in an affidavit filed in the context of an application under this section may be based on belief with the grounds therefor.</p> <p>Service of authorization and of notice of assessment</p> <p>(5) An authorization granted under this section in respect of a taxpayer shall be served by the Minister on the taxpayer within 72 hours after it is granted, except where the judge orders the authorization to be served at some other time specified in the authorization, and, where a notice of assessment has not been sent to the taxpayer at or before the time of the application, the notice of assessment shall be served together with the authorization.</p> <p>How service effected</p> <p>(6) For the purposes of subsection 225.2(5), service on a taxpayer shall be effected by</p> <p style="padding-left: 40px;">(a) personal service on the taxpayer; or (b) service in accordance with directions, if any, of a judge.</p> <p>Application to judge for direction</p> <p>(7) Where service on a taxpayer cannot reasonably otherwise be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.</p> <p>Review of authorization</p> <p>(8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of</p>	<p>Affidavits</p> <p>(4) Les déclarations contenues dans un affidavit produit dans le cadre de la requête visée au présent article peuvent être fondées sur une opinion si des motifs à l'appui de celle-ci y sont indiqués.</p> <p>Signification de l'autorisation et de l'avis de cotisation</p> <p>(5) Le ministre signifie au contribuable intéressé l'autorisation visée au présent article dans les 72 heures suivant le moment où elle est accordée, sauf si le juge ordonne qu'elle soit signifiée dans un autre délai qui y est précisé. L'avis de cotisation est signifié en même temps que l'autorisation s'il n'a pas été envoyé au contribuable au plus tard au moment de la présentation de la requête.</p> <p>Mode de signification</p> <p>(6) Pour l'application du paragraphe (5), l'autorisation est signifiée au contribuable soit par voie de signification à personne, soit par tout autre mode ordonné par le juge.</p> <p>Demande d'instructions au juge</p> <p>(7) Lorsque la signification au contribuable ne peut par ailleurs être raisonnablement effectuée conformément au présent article, le ministre peut, dès que matériellement possible, demander d'autres instructions au juge.</p> <p>Révision de l'autorisation</p> <p>(8) Dans le cas où le juge saisi accorde l'autorisation visée au présent article à l'égard d'un contribuable, celui-ci peut, après avis de six jours francs au sous-procureur</p>
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Canada, apply to a judge of the court to review the authorization.

Limitation period for review application

(9) An application under subsection 225.2(8) shall be made

(a) within 30 days from the day on which the authorization was served on the taxpayer in accordance with this section; or

(b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

Hearing in camera

(10) An application under subsection 225.2(8) may, on the application of the taxpayer, be heard in camera, if the taxpayer establishes to the satisfaction of the judge that the circumstances of the case justify in camera proceedings.

Disposition of application

(11) On an application under subsection 225.2(8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make such other order as the judge considers appropriate.

Directions

(12) Where any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect thereto, a judge may give such direction with regard thereto as, in the opinion of the judge, is appropriate.

No appeal from review order

(13) No appeal lies from an order of a judge made pursuant to subsection 225.2(11).

général du Canada, demander à un juge de la cour de réviser l'autorisation.

Délai de présentation de la requête

(9) La requête visée au paragraphe (8) doit être présentée :

a) dans les 30 jours suivant la date où l'autorisation a été signifiée au contribuable en application du présent article;

b) dans le délai supplémentaire que le juge peut accorder s'il est convaincu que le contribuable a présenté la requête dès que matériellement possible.

Huis clos

(10) Une requête visée au paragraphe (8) peut, à la demande du contribuable, être entendue à huis clos si le contribuable démontre, à la satisfaction du juge, que les circonstances le justifient.

Ordonnance

(11) Dans le cas d'une requête visée au paragraphe (8), le juge statue sur la question de façon sommaire et peut confirmer, annuler ou modifier l'autorisation et rendre toute autre ordonnance qu'il juge indiquée.

Mesures non prévues

(12) Si aucune mesure n'est prévue au présent article sur une question à résoudre en rapport avec une chose accomplie ou en voie d'accomplissement en application du présent article, un juge peut décider des mesures qu'il estime les plus aptes à atteindre le but du présent article.

Ordonnance sans appel

(13) L'ordonnance rendue par un juge en application du paragraphe (11) est sans appel.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-792-22

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v 11421417
CANADA INC.

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: APRIL 21, 2022

ORDER AND REASONS: GO J.

DATED: APRIL 22, 2022

APPEARANCES:

Frank D'Alessandro N

FOR THE APPLICANT

SOLICITORS OF RECORD:

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Ottawa, Ontario

FOR THE APPLICANT