

Federal Court



Cour fédérale

Date: 20230719

Docket: T-2229-22

Citation : 2023 FC 980

Toronto, Ontario, July 19, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

BAMBORA INC.

Respondent

ORDER

UPON HEARING the application of the Minister of National Revenue (the “Minister”) made under subsection 231.2(3) of the *Income Tax Act*, RSC 1985, c 1, (5th Supp), as amended (the “ITA”), and subsection 289(3) of the *Excise Tax Act*, RSC 1985, c E-15 (the “ETA”) for judicial authorisation to impose on the respondent, Bambora Inc. (“Bambora”) a requirement to provide certain information relating to unnamed persons (the “Requirement”);

AND UPON reviewing the materials filed by the Minister and hearing submissions on her behalf at a hearing on June 27, 2023;

AND UPON recognizing that the respondent Bambora filed no evidence or submissions on this application and no one appeared for the respondent at the hearing on June 27, 2023, so this application is unopposed;

AND UPON RECOGNIZING that there is an affidavit before the Court advising, based on information in the records of Canada Revenue Agency (“CRA”), that:

1. Bambora is a Canadian company incorporated on December 29, 1999. Its headquarters are located in Victoria, British Columbia;
2. Bambora offers mobile payment device options and processing products and services such as card readers;
3. The Minister’s representatives at CRA identify sectors at risk of non-compliance with the *ITA* and/or the *ETA*. One of CRA’s top priorities and national strategies is finding and reducing the underground economy. CRA identified vendors or merchants using mobile payment processors as potential audit targets to assess unreported and under reported income. Examples of such merchants are those who attend trade shows, fairs, exhibitions and commissioned sales representatives of businesses involved in direct sales.
4. The Minister seeks the names of all Canadian merchants that have registered with and use Bambora’s mobile payment and processing products and services (the “**Merchants**”) for the period from January 1, 2019 to present (the “**Period**”);
5. The Minister and CRA do not know the identity of Bambora’s Merchants. This application is the only means available to the Minister to obtain that information.

6. The Minister further seeks the Merchants' contact information, banking information, and total monthly aggregate of transactions information (as defined) between the Merchants and their customers ("**Sales History**");
7. Bambora knows the names of its Merchants and maintains records that include their identities, contact information, banking information, and Sales History;
8. The Minister seeks to verify whether the Merchants have complied with their duties and obligations under the *ITA* and/or the *ETA*, including whether they properly reported all of their income during the Period and collected, reported, and remitted all goods and services tax ("**GST**") and/or net tax; and
9. Because the Minister and CRA do not know the identities of the Merchants, the Minister seeks judicial authorization to impose on Bambora a requirement to provide information and documents relating to the Merchants, including their names, contact information, banking information, and Sales History;

AND UPON RECEIVING, after the hearing, a revised draft letter containing the Requirement, which more precisely defines the Sales History information to be provided;

AND HAVING REGARD to the appellate courts' guidance about the scope of the *ITA* and *ETA* provisions relied upon in this application, discussed in *Roofmart Ontario Inc. v. Canada (National Revenue)*, 2020 FCA 85 ("*Roofmart FCA*"), at paras 45, 55; *Canada (National Revenue) v Greater Montréal Real Estate Board*, 2007 FCA 346, [2008] 3 FCR 366, at paras 21, 34 and 46-47; *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627, at pp. 636-37 and 648;

AND UPON BEING SATISFIED THAT the evidence supports a conclusion that the statutory conditions contained in paragraphs 231.2(3)(a) and (b) of the *ITA* and 289(3)(a) and (b)

of the *ETA* have been satisfied on this application, *i.e.*, that the unnamed persons are ascertainable and the proposed Requirement is being issued to verify the unnamed persons' compliance with certain duties and obligations under the statutes, as follows:

1. The Merchants are customers of and registered with Bambora. The Merchants use Bambora's products or services to process payments from their customers. Those payments presumably represent income or revenue to the Merchants, which may be reportable under the *ITA*. The payments presumably include GST collected and remittable under the *ETA*.
2. Bambora charges a fee based on the value of each transaction between each of the Merchants and each Merchant's customers. The evidence suggests that Bambora's mobile processing products and services involve many millions of dollars of payments to Merchants from their customers each year. The Merchants are in a sector targeted by CRA as having unreported and under reported income.
3. The Merchants are an "ascertainable" group as understood by the binding case law: *Roofmart FCA*, at paras 38-41, aff'ing *Canada (National Revenue) v Roofmart Ontario Inc.*, 2019 FC 506 ("*Roofmart FC*"), at paras 10-11; *Rona Inc. v Canada (National Revenue)*, 2017 FCA 118, at para 6; *eBay Canada Limited v. Canada (National Revenue)*, 2008 FCA 348, [2010] 1 FCR 145, at para 11; *Greater Montréal Real Estate Board*, at para 15. See also *Ghermezian v Canada (Attorney General)*, 2020 FC 1137, at paras 120-142.
4. The proposed requirement is being made for the purpose of verifying the Merchants' compliance with their duties and obligations under the *ITA* and/or *ETA*, also as understood by the binding case law: *Roofmart FCA*, at paras 45-47,

aff'ing *Roofmart FC*, esp. at para 13; *Greater Montréal Real Estate Board*, at paras 21, 44-45, 50, aff'ing *Canada (National Revenue) v The Greater Montréal Real Estate Board*, 2006 FC 1069, at paras 6, 9-10. Applying that law, the Minister's proposed Requirement is sufficiently tethered to the purposes of verification of compliance (*Roofmart FCA*, at paras 7, 45-47) because the affidavit evidence, including as summarized in paragraphs 1-2 immediately above, adequately ties the contents of the proposed Requirement (namely, the request for each Merchant's aggregate of gross monthly transaction amounts (as measured in Canadian dollars) processed by Bambora between the Merchant and the Merchant's customers) to the verification of compliance of obligations under the statutes related to filing and reporting revenue or income under the *ITA* and the obligations to collect, remit and report GST under the *ETA*.

AND UPON considering whether it is appropriate to provide for a condition, as contemplated by the chapeau language in *ITA* subsection 231.2(3) and *ETA* subsection 289(3), to require the Minister to take all reasonable steps to work with the respondent with a view to minimizing the administrative burden of complying with the Requirement; although there is information in the record suggesting the Requirement would cover many thousands of Merchants and that compliance with the Requirement could result in impacts on the respondent's daily business operations, that information in the record is in the form of letter from the respondent to the Department of Justice in November 2022. The respondent did not file evidence on this application and did not appear or make submissions to the Court expressing concerns about the administrative burden of complying with the Requirement (despite being served with the

application record and being provided with notice of the hearing). The Court will not add a condition to the Order in this case having regard to all the circumstances;

AND UPON noting that the authorization in this Order does not extend to the last paragraph of the proposed Requirement (see *Canada (National Revenue) v Royal Bank of Canada*, 2021 FC 830, at para 31);

THEREFORE THIS COURT ORDERS that:

1. The Minister is authorized to impose on Bambora a requirement pursuant to subsections 231.2(1) of the *Income Tax Act* and 289(1) of the *Excise Tax Act* relating to the Merchants, in substantially the form attached hereto as **Appendix “A”**.
2. There is no order as to costs.

“Andrew D. Little”

Judge

Canada Revenue
AgencyAgence du revenu
du Canada

Protected B

Appendix "A"

date

Bambora Inc.
200-1803 Douglas St
Victoria, BC V8T 5C3

Attn: Jason Penstock, Director

Dear Mr. Penstock:

This Requirement is authorized by the attached Order of the Federal Court, dated <insert date>, Court File No. <insert court file number>.

For purposes related to the administration or enforcement of the Excise Tax Act ("ETA") and the Income Tax Act ("ITA"), and in accordance with the provisions of 289(1)(a) and (b) of the ETA and section 231.2(1)(a) and (b) of the ITA, Bambora Inc. ("Bambora") is required to provide within 60 days from the date of this requirement:

- for the period from January 1, 2019 to the date of this Requirement for Information, and
- for all Merchants that have registered with and use Bambora's mobile payment and processing products and services

the following information and documents for each Merchant:

1. the Merchant's legal name, business or operating name, business address and all telephone numbers on file;
2. the Merchant's Business Number and Social Insurance Number, if known;
3. the Merchant's bank account information (financial institution names, transit numbers and account numbers);
4. the Merchant's aggregate of gross monthly transaction amounts (as measured in Canadian dollars) processed by Bambora between the Merchant and the Merchant's customers.

Bambora may achieve compliance with this requirement by providing the information and documents as required to <insert assigned analyst's name>, Analyst, Workload Development, Collection and Verification Branch, GTA West Tax Services Office, 55 Athol Street East, 4th Floor, Oshawa, ON, L1H 1J8.

PROTECTED B

-2-

Where any of the required information and documents exist in an electronic format, you are required to provide such information and documents in an electronically readable format.

Any questions about this requirement should be directed to <insert assigned analyst's name> by contacting him/her at telephone number: (xxx) xxx-xxxx or fax number: (905) 725-8040.

Failure to comply with this requirement may lead to legal proceedings being initiated against Bambora Inc. in Federal Court for a compliance order under section 289.1 of the ETA and section 231.7 of the ITA. If legal proceedings are commenced, the CRA will seek its legal costs.

Mr. Andy Schmaus
Director – GTA West Tax Services Office
5800 Hurontario St., 4th Floor
Mississauga, Ontario
L5R 4B4

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2229-22

STYLE OF CAUSE: THE MINISTER OF NATIONAL REVENUE v
BAMBORA INC.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 27, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: JULY 19, 2023

APPEARANCES:

Rita Araujo
Peter Swanstrom

FOR THE APPLICANT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE APPLICANT