

Date: 20060106

Docket: T-751-05

Citation: 2006 FC 15

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

AND

NICOLE LAUZON, NOTARY

and

167835 CANADA INC.

and

ANANTHA KRISHNAN

Respondents

REASONS FOR ORDER

PROTHONOTARY MORNEAU

[1] This case involves Respondent Lauzon's motion under subsection 50(1) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, as amended, to obtain the stay of these proceedings before our Court.

Background

[2] In this case, Respondent Lauzon is a practising notary who received from the Minister of National Revenue (the Minister) under subsection 231.2(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.) (the Act), a letter of requirement requesting the communication, under penalty of penal proceedings, documents that the latter considers, after consulting with the Chambre des notaires du Québec (the Chambre), to be documents protected by the notaries' professional privilege.

[3] These reasons and the accompanying order will be applied *mutatis mutandis* to docket T-394-05 in which a similar situation is found.

[4] At the Chambre's behest, Respondent Lauzon essentially refused to produce documents and on June 20, 2005, the Minister appealed to this Court via application for judicial review to obtain, under section 231.7 of the Act, an order requiring the respondent to submit the documents sought. Respondent Lauzon wants this application for judicial review to be stayed.

[5] The above-mentioned sections of the Act read as follows:

231.2. (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable

231.2. (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application et l'exécution de la présente loi, y compris la perception d'un montant payable par une personne en vertu de la présente loi, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne, dans le délai

time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

231.7. (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

(2) An application under subsection (1) must not be heard before the end of five clear days from the day the notice of application is served on the person against whom the order is sought.

(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

(4) If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

raisonnable que précise l'avis:

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

231.7. (1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit:

a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.

(2) La demande n'est entendue qu'une fois écoulés cinq jours francs après signification d'un avis de la demande à la personne à l'égard de laquelle l'ordonnance est demandée.

(3) Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.

(4) Quiconque refuse ou fait défaut de se conformer à une ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.

(5) L'ordonnance visée au paragraphe (1) est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet de suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

[6] Please note that subsection 232(1) of the Act nevertheless mentions an exception to the requirement imposed by subsection 231.2(1) and by section 231.7 to provide any information or produce documents upon the Minister's request. This exception is the «privilege of communications between client and lawyer.» Subsection 232(1) of the Act reads as follows:

232. (1) In this section,

«custodian» « gardien «

«custodian» means a person in whose custody a package is placed pursuant to subsection 232(3);

«judge» « juge «

«judge» means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court;

«lawyer» « avocat «

«lawyer» means, in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor;

«officer» « fonctionnaire «

«officer» means a person acting under the authority conferred by or under sections 231.1 to 231.5;

«solicitor-client privilege» « privilège des communications entre client et avocat «

«solicitor-client privilege» means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a

232. (1) Les définitions qui suivent s'appliquent au présent article.

« avocat « «lawyer»

« avocat « Dans la province de Québec, un avocat ou notaire et, dans toute autre province, un barrister ou un solicitor.

« fonctionnaire « «officer»

« fonctionnaire « Personne qui exerce les pouvoirs conférés par les articles 231.1 à 231.5.

« gardien « «custodian»

« gardien « Personne à la garde de qui un colis est confié conformément au paragraphe (3).

« juge « «judge»

« juge « Juge d'une cour supérieure compétente de la province où l'affaire prend naissance ou juge de la Cour fédérale.

« privilège des communications entre client et avocat « «solicitor-client privilege»

« privilège des communications entre client et avocat « Droit qu'une personne peut posséder, devant une cour supérieure de la province où la question a pris naissance, de refuser de divulguer une communication orale ou documentaire pour le motif que celle-ci est une communication entre elle et son avocat en confiance professionnelle sauf que, pour l'application du présent article, un relevé comptable d'un avocat, y compris toute

communication.

pièce justificative ou tout chèque, ne peut être considéré comme une communication de cette nature.

[Non souligné dans l'original.]

[7] Moreover, since several other notaries have also previously been subject to similar requests from the Minister, on April 28, 2005, the Chambre pursued in the Superior Court of Québec an originating motion through which it asks the Superior Court to declare inapplicable sections 231.2, 231.7 and 232 of the Act that give rise to seizures or searches through letters of requirement addressed to notaries stating that they flagrantly violate professional privilege and notaries' independence as well as the obligations of discretion and loyalty owed to their clients, all in contravention of the *Constitution of Canada* and, in particular, sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*.

[8] It should be noted that, in addition to the Canada Revenue Agency and the Attorney General of Canada, the Attorney General of Quebec and the Barreau du Québec also appeared before the Superior Court as part of the Chambre's recourse.

Analysis

[9] In the *WIC Premium Television Ltd. v. General Instrument Corp.*, [1999] F.C.J. No. 862, Judge Gibson, in paragraph 12 of his decision, mentions the following with respect to subsection 50(1) of the *Federal Courts Act*:

While the criteria specified in subsection 50(1) of the *Federal Court Act* are proceedings in another court or jurisdiction and the interest of justice, I am satisfied that those criteria comprehend avoidance of risk of inconsistent finding, excessive costs in duplication of effort [See *Compulife Software Inc. v. Compuoffice Software Inc.* (1977), 77 C.P.R. (3d) 451 (F.C.T.D).] Apart from the fact that it is the Alberta action that is broader in scope than is this action, rather than the reverse, I am satisfied that the words of Mr. Justice Forget are entirely applicable on this application.

[10] If we transpose these different criteria to the facts of the case, it seems that all the essential facts and reasons in point of law invoked in these proceedings are included in the Superior Court proceedings. The latter proceedings present a context, a scope larger than that of these proceedings, and it cannot be ruled out that the resolution of these proceedings in Superior Court will lead to the quick resolution of these proceedings in our Court. In my opinion, wanting to proceed in this Court and in Superior Court would lead to the possibility of contradictory findings, excessive costs and a significant duplication of proceedings.

[11] If we add to these criteria the assessment of prejudice on both sides, the balancing also leans in favour of the respondent for the granting of a stay of these proceedings.

[12] In fact, in her affidavit, Respondent Lauzon emphasizes the unfairness of having to proceed alone in this case while in Superior Court, all the relevant institutions were together, including the Chambre, which actually initiated this dispute between the respondent and the Minister. Respondent Lauzon points out that it would be somewhat excessive to make her bear the weight of the conflict between professional privilege and the legislative provisions at issue while the Attorney General of Canada, the Chambre and the Barreau du Québec have the authority and experience necessary to tackle this conflict.

[13] With respect to the applicant, namely the Minister, the latter essentially alleges that the various applicable limitations regarding its collection actions against the debtors, who are ultimately the subject of this docket and docket T-394-05, would be affected if the stay of these dockets were ordered here.

[14] As for this docket, docket T-751-05, the Minister has not filed any specific affidavit to establish a specific prejudice in this regard. It also appears that, in general, any limitation in favour of the tax debtor would not be acquired until around March 2014. For the moment, there is no risk of loss for the Minister.

[15] As for docket T-394-05, although the end of the one-year timeframe to initiate a Paulian action under article 1635 of the *Civil Code of Québec* may come in April 2006, this timeframe will occur for the Minister whether or not this Court stays docket T-394-05. Moreover, paragraphs 8 and

9 of Mr. John Drozd's affidavit dated October 19, 2005, and submitted by the Minister in support of his responding application record clearly implies that the Minister already has all the evidence, or at least enough evidence, to initiate any Paulian action within the timeframe and thus interrupt the timeframe for applicable limitation. These paragraphs 8 and 9 read as follows:

- 8) On April 22, 2005, I obtained proof that Dow Dot Corporation Limited was only a nominee for David Nadler;
- 9) It was therefore only on that date that I obtained proof that the May 24, 2000, assignment of debt had been made to the detriment of the interests of the Canada Revenue Agency as a creditor;

[16] For these reasons, the Court will issue an order allowing Respondent Lauzon's motion and ordering the stay of these proceedings until a final judgment is made in Superior Court docket number 500-17-025479-059.

[17] There is no reason to award costs as part of this motion.

[18] As previously mentioned, these reasons and the accompanying order will be applicable, *mutatis mutandis*, in docket T-394-05, and a copy of this order will be added to this docket.

«Richard Morneau»

Prothonotary

Montreal, Quebec
January 6, 2006

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-751-05

STYLE OF CAUSE: THE MINISTER OF NATIONAL REVENUE
AND
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and
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PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: NOVEMBER 28, 2005

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: JANUARY 6, 2006

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