

**Date: 20071019**

**Dockets: T-986-05  
T-1114-05**

**Citation: 2007 FC 1083**

[ENGLISH TRANSLATION]

**Montréal, Quebec, October 19, 2007**

**PRESENT: The Honourable Mr. Justice Max M. Teitelbaum**

**T-986-05**

**BETWEEN:**

**THE MINISTER OF NATIONAL REVENUE**

**Plaintiff**

**and**

**EC GROUP INC.**

**Defendant**

**AND BETWEEN:**

**T-1114-05**

**THE MINISTER OF NATIONAL REVENUE**

**Plaintiff**

**and**

**THERMO SERVICES V.I.P. INC.**

**Defendant**

## **REASONS FOR JUDGMENT AND JUDGMENT**

### **Background**

[1] This is a motion by the Minister of National Revenue (“MNR”) for an order declaring Mr. Éric Adam, for EC Groupe Inc., and Ms. Roxanne Bourque, for the Thermo Services V.I.P. Inc. company, guilty of contempt of Court for not having complied with the order of Justice Luc Martineau, of this Court, issued on November 28, 2005 (for Mr. Adam), and the order of Justice Yvon Pinard, of this Court, issued on December 5, 2005 (for Ms. Bourque), enjoining each of them to reply to the MNR’s requirement to provide information dated January 12, 2005 (for Mr. Adam), and April 13, 2005 (for Ms. Bourque).

[2] Mr. Adam and Ms. Bourque also failed to comply with an order issued by Justice Michel M.J. Shore, of this Court, on June 19, 2006, which granted them an additional 60 days to provide the information required by the MNR.

### **Facts**

[3] On January 12, 2005, the MNR sent a requirement to provide information to Mr. Adam in his representative capacity as administrator of EC Group Inc. On April 13, 2005, the MNR sent the same request to Ms. Bourque in her representative capacity as administrator of the Thermo Services V.I.P. Inc. company. Mr. Adam and Ms. Bourque are married.

[4] In both of its requests, the MNR requested the following information: the payroll records for 2003 and 2004, the T4 Summary and the statement of remuneration paid for 2003 and 2004, the cash disbursement journal for 2003 and 2004, all the cancelled cheques and monthly bank statements from 2003 and 2004, and the minutes book. Mr. Adam's request gave him 30 days to respond (until February 11, 2005), while Ms. Bourque's request gave her a little over 45 days (until May 30, 2005).

[5] Neither of these requests received a response. On August 16, 2005, Mr. Adam signed an affidavit in which he affirmed that he could not satisfy the MNR's request because the documents in question had been lost. On November 28, 2005, Martineau J. issued an order enjoining Mr. Adam to respond in part to the MNR's request by providing all the cancelled cheques and monthly bank statements from 2003 and 2004. On November 30, 2005, Ms. Bourque signed an affidavit in which she affirmed she was willing to provide the requested documents, but she needed additional time to execute this request. On December 5, 2005, Pinard J. issued an order enjoining Ms. Bourque to fully respond to the MNR's request.

[6] Through an order issued on June 19, 2006, Shore J. extended the orders from Martineau and Pinard JJ. for a period of 60 days.

[7] During the following year, Mr. Adam and Ms. Bourque failed to comply with the Court's orders. On June 4, 2007, Prothonotary Richard Morneau issued an order enjoining them to appear before the Court to respond to the allegations of contempt of court put forward by MNR.

## **Issue**

[8] Did Mr. Adam and Ms. Bourque disobey the orders of this Court with evidence beyond reasonable doubt?

## **Submissions by the MNR**

[9] The MNR's position is simple: Mr. Adam and Ms. Bourque did not produce the documents required by the requirement, which constitutes a violation of the orders that this Court had issued to enjoin them to obey the request in question. According to the MNR, this failure on the part of Mr. Adam and Ms. Bourque proves beyond all reasonable doubt that they disobeyed the orders of the Court, hence the offence of contempt of court.

[10] The MNR claims that Mr. Adam and Ms. Bourque repeatedly refused to produce these documents in full knowledge of the facts, which forced him to initiate many legal actions and incurred many costs. For this reason, the MNR is requesting that Mr. Adam and Ms. Bourque each pay a fine of \$1,500 in addition to respective fees of over \$5,300. In both cases, the MNR also requests that the documents requested in the orders from Martineau and Pinard JJ. be produced.

**Submissions by Mr. Adam and Ms. Bourque**

[11] The claims made by both spouses differ to a certain extent, which is why I am addressing them separately.

[12] First, Mr. Adam claims that he has not been the administrator of EC Group since July 31, 2003. The Centre informatique du registre des entreprises du Québec (the “CIDREQ”) dated August 6, 2003, and a judicial declaration made by the new administrator of EC Group, Mr. Roger Sutherland, attest to the change of administrators that took place within the company. Thus, according to Mr. Adam, there is no legal link between him and the true defendant in this request, EC Group Inc. Besides, Mr. Adam disposed of his property on June 17, 2004, and therefore could not— from that date—be the administrator of the company. For these reasons, Mr. Adam claims that this Court has no jurisdiction to issue an order against him because the true party to the proceedings is EC Group Inc.

[13] Furthermore, Mr. Adam reiterates that on January 18, 2005, Mr. Sutherland, in his representative capacity as administrator of EC Group, signed a letter indicating that all the requested documents had disappeared or were still missing.

[14] Finally, Mr. Adam claims that he did not disobey the orders beyond a reasonable doubt because he acted in good faith at every stage, and the only reason he did not provide the requested documents is that the fees for producing the documents—which amounted to over \$30,000—were

too high. According to Mr. Adam, these high fees represent a *force majeure* which, under article 1693 of the *Civil Code of Quebec* (the “Civil Code”), releases him from his obligation.

[15] For her part, Ms. Bourque claims that she was also unaware that producing the documents required by the MNR would entail expenses that amounted to several thousands of dollars. Furthermore, she claims that she has not been the administrator of the Thermo Services V.I.P. Inc. company since September 2004 and that the company has not been active since December 2004. In any event, she left all matters pertaining to the company’s administration to her spouse, Mr. Adam; and, for this reason, he is the one who should have provided the requested documents. During the hearing, Ms. Bourque claimed that she was merely the cleaning lady for the Thermo Services company. She concluded by affirming that since she provided all the requested documents, she believed in good faith that she had been relieved of her obligation toward the MNR. For this reason, she claims that she does not have the *mens rea* required by the offence with which she is charged.

[16] Mr. Adam and Ms. Bourque both submit the case of *Merck & Co. v. Apotex Inc.* [2003] F.C.J. No. 837; 2003 FCA 234, to support their position that they did not have *mens rea*, that is to say, the intention required by the offence of contempt of court. On the contrary, they claim they acted in good faith at every stage. However, as I indicate later, *Merck v. Apotex*, above, actually confirms that the presence of an intention is not necessary to commit the offence of contempt of court.

## Analysis

[17] The MNR's requirement was issued in accordance with subsection 231.2(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), up to date until August 31, 2004 (the "ITA"), which reads 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 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.

231.2.(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 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.

[18] The orders of Martineau and Pinard JJ. were issued in accordance with section 237.1 of the ITA, which reads as follows:

231.7.(1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a

231.7.(1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une

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

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) 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

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) 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)).

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.

[...]

[...]

(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.

(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.

[19] Under Rule 466(b) of the *Federal Courts Rules*, a person is guilty of contempt of court if he or she disobeys a Court order as explained in the following citation:

466. Subject to rule 467, a person is guilty of contempt of Court who

466. Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque :



[...]

(b) disobeys a process or order of the Court;

[...]

b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour;

[20] Under Rule 472, the sentences that can be imposed in the event of a conviction for contempt of court are the following:

472. Where a person is found to be in contempt, a judge may order that

(a) the person be imprisoned for a period of less than five years or until the person complies with the order;

(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;

(c) the person pay a fine;

(d) the person do or refrain from doing any act;

(e) in respect of a person referred to in rule 429, the person's property be sequestered; and

(f) the person pay costs.

472. Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :

a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;

b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;

c) qu'elle paie une amende;

d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;

e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;

f) qu'elle soit condamnée aux dépens.

[21] As indicated at subsection 231.7(4) of the ITA and Rule 466(b), the offence of contempt of court is determined by the sole defiance of a court order. Mr. Adam and Ms. Bourque claim, to the contrary, that the intention of committing contempt of court is necessary to commit the offence. However, the case of *Merck v. Apotex*, above, which they submit to support their position, unfortunately does not further their cause.

[22] In *Merck v. Apotex*, above, it was up to the Federal Court of Appeal to determine whether Apotex had violated the order from Justice W. Andrew Mackay of this Court, who is now a deputy judge, concluding that the patent developed by Merck had been infringed and enjoining Apotex to cease all patent infringement. The day after the judgment was filed, Apotex was selling—for a total of \$9 million—some generic medication identified in the order. In response to Apotex’s argument regarding the issue of the intention required to commit contempt of court, Justice J. Edgar Sexton affirms the following:

Nowhere in *Baxter v. Cutter* does the Supreme Court of Canada indicate that it need be shown that the defendant intended to act in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court.

[end of paragraph 54]

[...]

Therefore, the jurisprudence establishes that it is not necessary to show that the alleged contemnor intended, by doing the action, to “interfere with the orderly administration of justice or to impair the authority or dignity of the Court”. This is too high a level of intent to require in civil contempt cases. Rather, it is sufficient to find that the Court’s intention was clear and that the alleged contemnor knowingly committed the prohibited act.

[paragraph 60]

[23] Here, Sexton J. is referring to *Baxter Travenol Laboratories of Canada, Ltd. v. Cutter (Canada), Ltd.*, [1983] 2 S.C.R. 388, that is to say, that in the case before the Supreme Court of Canada, during which it was decided that the prohibitions contained in a judgment must be complied with as soon as the reasons for the decision are delivered, even if the judgment in itself only becomes effective the moment it is signed. Following this conclusion, the Supreme Court referred the matter to the Trial Division of the Federal Court so that it make a decision on the merits of the case. Justice Jean-Eudes Dubé then concluded that the intention was not relevant to committing the offence of contempt of court and sentenced Cutter (Canada), Ltd. (“Cutter”) to a fine of \$100,000 for contempt of court (*Baxter Travenol Laboratories of Canada, Ltd. v. Cutter (Canada), Ltd.*, [1984] F.C.J. No. 272). During an appeal of this decision before the Federal Court of Appeal, Cutter did not contest the finding of contempt of court, but the amount of the fine only. In a unanimous decision that decreased the amount by half (*Baxter Travenol Laboratories of Canada, Ltd. v. Cutter (Canada), Ltd.*, [1987] F.C.J. No. 205; [1987] 2 F.C. 557), Justice John J. Urie affirmed the following:

Having said that, counsel conceded, correctly I think, that the presence or absence of good faith on the part of an alleged contemnor is not relevant in the determination of whether or not there was an act of contempt. It is relevant only in considering the penalty to be imposed, as a mitigating factor.  
[paragraph 13]

[24] Thus, it follows from the legislation and the case law cited that intention is not necessary to commit the offence of contempt of court. The very fact that Mr. Adam and Ms. Bourque failed to provide the documents requested by the MNR, which they had been ordered to do by this Court,

suffices to prove that the offence of contempt of court was committed as defined in subsection 231.7(4) of the ITA and Rule 466(b).

[25] As for the other reason put forward, Mr. Adam and Ms. Bourque claimed that they were no longer the administrators of the defendant companies and, in the case of Ms. Bourque in particular, that she in fact never held this position, leaving this mandate to her husband. The preceding argument does not satisfy me because Ms. Bourque signed documents produced by Thermo Services V.I.P. Inc. in her representative capacity as administrator of the company. Furthermore, we are not concerned with whether Mr. Adam and Ms. Bourque are still the administrators of the defendant companies, but rather whether they were during the periods of time identified by the requests for information issued by the MNR, that is to say in 2003 and 2004. The evidence indicates that they in fact were at the time. Therefore, the MNR was right to consider them to be the legitimate addressees of his requests for information.

[26] The other arguments that were mainly raised by Mr. Adam do not further satisfy me of the merits of his position. More specifically, I do not believe that article 1693 of the Civil Code, which applies in cases of *force majeure*, is relevant to this case. Mr. Adam did not prove the existence of a *force majeure* as required by the second paragraph of article 1693. A *force majeure* event must not simply render the execution of the obligation more onerous, but prevent it in an absolute and permanent way (Baudouin, Renaud, *The Annotated Civil Code of Quebec*, Volume 2, 9<sup>th</sup> edition, 2006, p. 2235). The required costs to produce the documents, though they took Mr. Adam and Ms. Bourque by surprise, do not represent a *force majeure* as such.

[27] In addition, I do not accept the position that Mr. Adam could not have violated a directive from the MNR under the pretext that the request for information dated January 12, 2005, was not sent by the MNR himself, but rather from an individual named Ms. Pauline Bachand, who works for the Canada Customs and Revenue Agency (now known as the Canada Revenue Agency). On this point, I would like to remind Mr. Adam that the Canada Revenue Agency is the designation of the department managed by the MNR and that the request for information made it crystal clear that should Mr. Adam fail to produce the required documents, he was liable to be prosecuted under the ITA, which is also managed by the MNR.

[28] For all these reasons, I find that Mr. Adam (on behalf of defendant company EC Group Inc.) and Ms. Bourque (on behalf of defendant company Thermo Services V.I.P. Inc.) both committed the offence of contempt of court as defined in subsection 231.7(4) of the ITA and Rule 466(b).

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the application be allowed and that Mr. Adam and Ms. Bourque be found guilty of contempt of court. I summon Mr. Adam and Ms. Bourque to appear before me at the Federal Court, 30, McGill Road, at Montréal, Quebec, on October 26, 2007, at 10:30 am to submit their submissions on sentencing.

“Max M. Teitelbaum”

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Deputy Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKETS:** T-986-05; T-1114-05

**STYLE OF CAUSE:** The Minister of National Revenue v. EC Group Inc.  
The Minister of National Revenue v. Thermo Services  
V.I.P. Inc.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 27, 2007

**REASONS FOR JUDGMENT:** Max M. Teitelbaum D.J.

**DATED:** October 19, 2007

**APPEARANCES:**

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