

Federal Court



Cour fédérale

**Date: 20100601**

**Docket: T-369-10**

**Citation: 2010 FC 594**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, June 1, 2010**

**PRESENT: The Honourable Mr. Justice Beaudry**

**IN THE MATTER OF** the *Income Tax Act*,

**- and -**

**IN THE MATTER OF** assessments by the Minister of National Revenue under the *Income Tax Act*;

**AGAINST:**

**GÉRARD ROSS  
47, rue de la Réserve  
Les Escoumins, Quebec G0T 1K0**

**AND**

**CLAIRE ROSS  
47, rue de la Réserve  
Les Escoumins, Quebec G0T 1K0**

**Debtors-Respondents**

**REASONS FOR ORDER AND ORDER**

[1] This is an application by Gérard Ross (male applicant) and Claire Ross (female applicant) under subsection 225(8) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1 (Act), to have the

amended order made by Justice Mactavish on March 15, 2010, reviewed. The relevant provisions of the Act are included in the appendix to this order.

[2] Gérard Ross is a crab fisherman in Les Escoumins and is married to Claire Ross. They are Indians under the *Indian Act* and live on the Issipit Reserve.

[3] Since 2005, the Canada Revenue Agency (Agency) has issued eight notices of reassessment to the male applicant:

- a. on April 18, 2005, for the 2000 to 2003 taxation years;
- b. on September 1, 2005, for the 2004 taxation year;
- c. on September 25, 2006, for the 2005 taxation year;
- d. on November 13, 2007, for the 2006 taxation year;
- e. on February 26, 2010, for the 2007 and 2008 taxation years.
- f. on March 10, 2010, the amount owing was \$724,568.17. The notices of reassessment are the subject of a notice of objection.

[4] On March 11, 2010, the Agency issued a notice of assessment in the amount of \$581,181.32 to the female applicant in accordance with her liability under subsection 160(1) of the Act.

[5] Furthermore, it appears that the male applicant also owes a tax debt to the Minister of Revenue of Quebec. It is currently being disputed in the Court of Québec.

[6] On March 15, 2010, Justice Mactavish issued the order under review, authorizing the Agency to take forthwith all of the actions provided under paragraphs 225.1(1)(a) to (g) of the Act in order to collect or secure payment of the amounts owed by Gérard Ross further to the notices of reassessment. The order also authorized the Agency to take forthwith all of the actions provided under paragraphs 225.1(1)(a) to (g) of the Act in order to collect or secure payment of the amounts owed by Claire Ross further to the notice of assessment dated March 11, 2010, despite the fact that the notice of assessment had not yet been sent to her. The Court found, on the basis of the affidavit of Thérèse Gauthier (the Agency officer responsible for Gérard and Claire Ross' file), that there are reasonable grounds to believe that the collection of all or any part of the amount would be jeopardized by a delay in the collection of that amount. The order was issued *ex parte* in accordance with subsection 225.2(2) of the Act.

[7] In their written submissions, the applicants maintain that the grounds on which the order of March 15, 2010, was issued are erroneous and that there was no serious investigation by the Agency. The applicants provide their own analysis of the grounds raised in the *ex parte* order and argue that the statements in Thérèse Gauthier's affidavit are inaccurate or untrue. They rely on the statutory declarations of Gérard Ross, Claire Ross and Dave Ross as well as the allegations of the erroneous interpretations in Ms. Gauthier's affidavit.

[8] According to the case law of this Court, an application under subsection 225.2(8) is an extraordinary remedy and must be granted only if there are reasonable grounds to believe that the collection of all or any part of the amount would be jeopardized by a delay in the collection of that

amount. Thus, “the issue is not whether the collection *per se* is in jeopardy but rather whether the actual jeopardy arises from the likely delay in the collection” (*Canada (Minister of National Revenue - MNR) v Services ML Marengère inc* (1999), 176 FTR 1, [1999] FCJ No 1840 at paragraph 63). The case law sets out that the Agency may act as such in cases of fraud or similar situations and in cases where the taxpayer may waste, liquidate or otherwise transfer his or her property to escape the authorities (*Services ML Marengère inc* at paragraph 63). However, intent to deceive is not part of the legal test. Fraud, deceit or a bad motive need not be proven; it is the result or effect of the handling of the taxpayer’s assets that is important (*Services ML Marengère inc* at paragraph 72(4)).

[9] After analyzing the documents submitted in this case, the Court is of the view that there are reasonable grounds to believe that the collection of all or any part of the amount would be jeopardized by a delay in the collection of that tax debt. The evidence submitted by the applicants does not raise any doubt that the criterion set out in subsection 225.2(2) of the Act was not met and the additional evidence submitted by the Agency reinforces the reasonable grounds to believe that the delay arising from the opposition process would jeopardize the collection.

[10] Thérèse Gauthier’s affidavit dated May 6, 2010, shows that the taxpayers converted substantial assets that were otherwise seizable into assets that they consider exempt from seizure (Ms. Gauthier’s affidavit, May 6, 2010, paragraphs 12 to 46).

[11] This evidence is in addition to the evidence in her affidavit dated March 12, 2010, which states that the applicants, along with their counsel and tax advisors, looked at how to transfer the fishing company (which contains most of their assets) to their son while protecting them from the tax authorities or a possible bankruptcy (pages 77 to 87, *ex parte* motion record).

[12] In his affidavit, the male applicant states that he has no intention of selling his company to his son before the Court of Québec makes its decision and that, if the Agency had taken the time to check, it would have found that the fishing licence linked to the company was never the subject of a transfer request. That statement is contradicted by the evidence submitted by the Agency. The male applicant verbally requested that his fishing licence be transferred to his son around mid-February 2010 (Exhibit 14, page 141, record in reply to the application for review appended to Thérèse Gauthier's affidavit dated May 6, 2010).

[13] In light of the circumstances, the applicants' tax debts, the action plan created and the steps undertaken by the male applicant to transfer his company to his son, the Court cannot but conclude that the Agency demonstrated that it had reasonable grounds to believe that the collection of the amounts owing would be jeopardized by a delay in the collection of that tax debt.

[14] Finally, the evidence submitted does not enable the Court to state, as the applicants suggest, that the Agency acted in bad faith or intended to mislead the judge who issued the amended order on March 15, 2010.

[15] With respect to costs, at the suggestion of the Court, the parties had the opportunity to provide input on the award of an amount as a lump sum.

**ORDER**

**THE COURT ORDERS** that the application be dismissed. The jeopardy collection order dated March 15, 2010, is upheld. The applicants shall pay costs to the Agency in a lump sum in the amount of \$5,000 including the disbursements.

“Michel Beaudry”

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Judge

Certified true translation  
Janine Anderson, Translator

## APPENDIX

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

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:

- (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).

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.

(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

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 :

- 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).

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.

(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.



respect to the amount.

(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.

...

(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 Canada, apply to a judge of the court to review the authorization.

...

(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.

(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.

(...)

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

(...)

(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.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-369-10

**STYLE OF CAUSE:** *Income Tax Act*  
against Gérard Ross and Claire Ross

**PLACE OF HEARING:** Québec, Quebec

**DATE OF HEARING:** May 13, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Beaudry J.

**DATED:** June 1, 2010

**APPEARANCES:**

Martin Lamoureux FOR THE JUDGMENT-CREDITOR  
Isabelle Matthieu-Millaire

Daniel Des Aulniers FOR THE DEBTORS-RESPONDENTS  
Sophie Gingras

**SOLICITORS OF RECORD:**

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