

Federal Court



Cour fédérale

Date: 20100614

Docket: GST-2486-10

Citation: 2010 FC 646

Toronto, Ontario, June 14, 2010

PRESENT: The Honourable Mr. Justice Blanchard

**IN THE MATTER OF an assessment or assessments
by the Minister of Revenue under the *Income Tax Act***

BETWEEN:

SATPAL KAUR

Applicant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR ORDER AND ORDER

[1] By notice of motion dated May 12, 2010, the applicant, Satpal Kaur, seeks a writ of *mandamus* requiring the respondent, Her Majesty the Queen in Right of Canada, to discharge a lien alleged to be improperly registered against certain properties pursuant to a certificate issued under Federal Court No. GST-2486-10. The motion was brought at general sittings in Vancouver on May 17, 2010.

[2] At the hearing of the motion, the Court directed that further written submissions be filed to address the issue of the Court's jurisdiction in respect to the relief sought and particularly whether proceeding by way of motion was the proper procedure.

[3] The parties filed their written submissions and supporting materials on May 25, 2010 as directed.

Background

[4] The applicant, Ms. Kaur, is indebted to Her Majesty the Queen in Right of Canada in the amount of \$455,169.64 (and related interest) under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA) (the tax debt). The notice of assessment was issued on December 24, 2009. On April 6, 2010, a certificate was registered with respect to the tax debt in the Federal Court, pursuant to subsection 316(2) of the ETA (Federal Court No. GST-2486-10).

[5] On April 27, 2010, pursuant to subsection 316(4) of the ETA, a lien was registered against seven of the applicant's properties in British Columbia.

Applicant's position

[6] The applicant claims that she is not the beneficial owner of four of the seven properties (the disputed properties) but holds them as a bare trustee for other entities. These properties are:

1. City of Vancouver, PID 026-091-569;

2. City of Vancouver, PID 026-091-534;
3. City of Coquitlam, PID 002-249-812;
4. Village of Anmore PID 027-687-279.

[7] The applicant contends that since she is not the beneficial owner of the disputed properties, it is not open to the respondent to execute against the said properties. Further, she maintains that as a result of the execution proceedings initiated by the respondent, the beneficial owners of the disputed properties are suffering prejudice and financial harm.

[8] The applicant argues that the Federal Court has jurisdiction to deal with her request because the motion relates to the enforcement of the certificate, a judgment of the Federal Court. She argues that pursuant to Rule 423 of the *Federal Courts Rules*, SOR/2004-283, s. 2, all matters relating to enforcement of orders must be brought before the Federal Court.

[9] The applicant further argues that the Court has the jurisdiction to grant a *mandamus* order sought, in this case, pursuant to subsection 17(5) and section 44 of the *Federal Courts Act*, 2002, c. 8, s. 14. Alternatively, the applicant requests the Court issue either or both of the following: an order granting a stay of execution of the certificate against the disputed properties; and/or a declaration that the applicant has no beneficial interest in the disputed properties.

Respondent's position

[10] The respondent's position is that the applicant cannot obtain the relief sought on an interlocutory motion. The respondent argues that *mandamus* is an extraordinary remedy which can only be obtained on application for judicial review made under section 18.1 of the *Federal Courts*

Act. Further, the respondent invites the Court to exercise its discretion and decline jurisdiction in favour of that available under provincial jurisdiction. It is submitted that this is a matter concerning enforcement procedures set out in provincial legislation, namely, the *Court Order Enforcement Act* (the COEA) which provides for the registration of a judgment under the British Columbia *Land Title Act*, R.S.B.C. 1996 c. 250.

[11] Alternatively, should the Court exercise jurisdiction and regardless of the procedural vehicle, the respondent seeks an adjournment, full documentary disclosure, an examination for discovery and viva voce testimony. The respondent argues the credibility of the applicant will need to be tested.

Legal Framework

[12] Subsections 316(1) to 316(4) of the ETA state:

316. (1) Any tax, net tax, penalty, interest or other amount payable or remittable by a person (in this section referred to as the “debtor”) under this Part, or any part of any such amount, that has not been paid or remitted as and when required under this Part may be certified by the Minister as an amount payable by the debtor.

(2) On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor shall be registered in the Court and

316. (1) Tout ou partie des taxes, taxes nettes, pénalités, intérêts ou autres montants à payer ou à verser par une personne — appelée « débiteur » au présent article — aux termes de la présente partie qui ne l’ont pas été selon les modalités de temps ou autres prévues par cette partie peuvent, par certificat du ministre, être déclarés payables par le débiteur.

(2) Sur production à la Cour fédérale, le certificat fait à l’égard d’un débiteur y est enregistré. Il a alors le même

when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest and penalty thereon as provided under this Part to the day of payment and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.

(3) All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate made under subsection (1) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(4) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (2), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a “memorial”) may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a

effet que s’il s’agissait d’un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts et pénalités courus comme le prévoit la présente partie jusqu’au jour du paiement, et toutes les procédures peuvent être engagées à la faveur du certificat comme s’il s’agissait d’un tel jugement. Aux fins de ces procédures, le certificat est réputé être un jugement exécutoire de la Cour contre le débiteur pour une créance de Sa Majesté.

(3) Les frais et dépens raisonnables engagés ou payés pour l’enregistrement à la Cour fédérale d’un certificat ou de l’exécution des procédures de perception du montant qui y est attesté sont recouvrables de la même manière que s’ils avaient été inclus dans ce montant au moment de l’enregistrement du certificat.

(4) Un document délivré par la Cour fédérale et faisant preuve du contenu d’un certificat enregistré à l’égard d’un débiteur en application du paragraphe (2), un bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (ce document ou bref ou cette notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de

binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

...

grever d'une sûreté, d'une priorité ou d'une autre charge un bien du débiteur situé dans une province, ou un droit sur un tel bien, de la même manière que peut l'être, au titre ou en application de la loi provinciale, un document faisant preuve :

a) soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;

b) soit d'un montant payable ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

[...]

Analysis

[13] For the following reasons, I am satisfied the Court has jurisdiction to dispose of the questions raised on the within motion.

[14] The motion concerns relief against execution of a registered certificate, which by law is a deemed judgment of this Court (subsection 316(2) of the ETA).

[15] The main issue on the motion is whether the respondent can execute against the applicant's interest in the disputed properties. In order to determine this issue, the Court will need to consider the various interests in the disputed properties, including the effects of the impugned trust agreements.

[16] These issues, to be decided, are in my view incidental to the Court's power to ensure the execution of its judgments (*Le Bois de Construction du Nord (1971) Ltée v. The Queen*, [1986] 2 CTC 227 (F.C.A.), at 233; *Canada (Minister of National Revenue) v. Gadbois*, 2002 FCA 28, at paras. 14 and 27).

[17] Although the relief requested by the applicant in her notice of motion is framed in the nature of *mandamus*, it is in reality a request for an order discharging a lien against the disputed properties. The applicant should not be denied an appropriate remedy when the substance of the relief requested is clear.

[18] In my view, it is open to the Court to grant such relief on an interlocutory basis, in the appropriate circumstances. The matter can be adequately dealt with by way of a motion, and need not proceed by way of an application.

[19] Further, the issue of whether the respondent can execute against the applicant's interest in the disputed properties can be adequately argued on the basis of documentary evidence, affidavit evidence and cross-examination of the affiant (*Gadbois*, at para. 29). The respondent has the right

to cross-examine the applicant on her affidavit, pursuant to Rule 83 of the *Federal Courts Rules*. To that end, the respondent's request for an adjournment will be granted. Following the cross-examination of the applicant, it will be open to the respondent to seek leave from the Court for further disclosure, if the respondent so requires.

ORDER

THIS COURT ORDERS that

1. The parties are to proceed with the cross examination of the applicant's affidavit as soon as possible and, in any event, no later than within two weeks of the date of the within reasons for order and order.
2. Subsequent to the cross examination, it will be open for either party to request that the matter be set down for hearing.

"Edmond P. Blanchard"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: GST-2486-10

STYLE OF CAUSE: SATPAL KAUR v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: May 17, 2010

**REASONS FOR ORDER
AND ORDER:** Blanchard J.

DATED: June 14, 2010

APPEARANCES:

Ms. Satpal Kaur	FOR THE APPLICANT
Self-represented	
Ms. Neva Beckie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ms. Satpal Kaur	FOR THE APPLICANT
Myles J. Kirvan	FOR THE RESPONDENT
Deputy Attorney General of Canada	