

Federal Court



Cour fédérale

Date: 20140627

**Docket: ETA-3276-13
ETA-3614-12
ITA-4064-13
ITA-3378-09**

Citation: 2014 FC 633

Ottawa, Ontario, June 27, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

**Dockets: ETA-3276-13
ETA-3614-12**

BETWEEN:

**IN THE MATTER OF THE *Excise Tax Act*,
*R.S.C. 1985, c. E-15***

and

**IN THE MATTER OF an assessment or
assessments by the Minister of National Revenue
under one or more of the *Excise Tax Act*,
against:**

**SHARI LYNN MATVIESHEN
1425 McCURDY Road East,
KELOWNA, BRITISH COLUMBIA V1P 1B4**

Docket: ITA-4064-13

AND BETWEEN:

IN THE MATTER OF THE *Income Tax Act*

and

IN THE MATTER OF an assessment or assessments by the Minister of National Revenue under one or more of the *Income Tax Act*, *Canada Pension Plan*, *Employment Insurance Act*, the *Income Tax Act*, against:

**SHARI LYNN MATVIESHEN
1425 McCURDY Road East,
KELOWNA, BRITISH COLUMBIA V1P 1B4**

Docket: ITA-3378-09

AND BETWEEN:

IN THE MATTER OF THE *Income Tax Act*

and

IN THE MATTER OF an assessment or assessments by the Minister of National Revenue under one or more of the *Income Tax Act*, *Canada Pension Plan*, *Employment Insurance Act*, the *Income Tax Act*, against:

**MICHAEL BRADLEY MATVIESHEN
(SOMETIME KNOWN AS MIKE
MATVIESHEN, BRADLY ALAN
MATVIESHEN, MICHAEL MATVIESHEN,
AND MICHAEL BRADLEY ALLEN
MATVIESHEN) 999 SUTCLIFFE COURT
KELOWNA, BRITISH COLUMBIA V1P 1B6**

JUDGMENT AND REASONS

I. Overview

[1] In an effort to collect some of the tax debt owed by two individuals – Michael Matvieshen and Shari Matvieshen – the Minister of National Revenue obtained writs of seizure and sale from this Court. Pursuant to those writs, the Court Bailiff seized personal property from the Matvieshens' land. That property consisted of some farm equipment (*eg*, a tractor) and some recreational vehicles (*eg*, snowmobiles).

[2] These reasons relate to Court File Numbers ETA-3276-13; ETA-3614-12; ITA-4064-13 and ITA-3378-09. The original of the reasons will be filed in ETA-3276-13, and copies will be placed in the other three files.

[3] Two applicants have now come forward claiming that they are the true owners of the seized property, not the Matvieshens. One applicant is Mr Morris Kuchma, Shari Matvieshen's father. The other is Mr Derek Bannister (and his company, Banngate Holdings Ltd), a friend and business associate of Michael Matvieshen. The applicants seek declarations that they are the legal and beneficial owners of the seized property, and other related relief.

[4] Having reviewed the evidence of alleged ownership put forward by both applicants, I cannot grant the orders they have requested. As described below, that evidence is simply inconclusive.

[5] The sole issue is whether the applicants have proved their ownership. The applicants suggest that I must also consider other questions, such as whether the seizure was valid, whether a deemed trust existed in the seized goods, whether the applicants are entitled to equitable relief, and whether damages and costs are payable to them. In my view, all of these additional issues depend in whole or in part on a finding that the applicants had some kind of ownership interest in the seized property. Since I am not persuaded that the applicants had any ownership of the goods, I need not consider any other issues.

II. Preliminary Issues

[6] At the hearing, the applicants wished to tender fresh evidence showing that claims by the Canada Revenue Agency against Mr Matvieshen were disallowed in his bankruptcy proceedings. I reserved on the issue of admissibility of that evidence pending review.

[7] Assuming that this evidence is relevant to the issues before me, it now appears that the disallowances were subsequently reversed. Accordingly, the proffered evidence cannot assist the applicants, and I will not consider it.

[8] The Minister also wished to file a supplementary affidavit relating to the storage costs for the seized property. The Minister may submit that affidavit in relation to the issue of costs, a question on which I have agreed to receive further written submissions.

III. Factual Background

A. *The farm equipment*

[9] Mr Kuchma is a retired farmer. He claims that in 2010 and 2011 he invested between \$25,000 and \$28,000 in building a garage suite on the Matvieshens' property. In return, Shari Matvieshen agreed to give Mr Kuchma a security interest in a trailer she owned. In 2013, when she received an offer to purchase the trailer, Ms Matvieshen allegedly transferred to Mr Kuchma ownership in the farm equipment in place of the trailer.

[10] As evidence of his ownership, Mr Kuchma has provided receipts relating to his construction of the garage suite, a list of the farm equipment in issue, a statutory declaration relating to the transfer of the farm equipment, and a Contract of Sale of Goods.

B. *The recreational vehicles*

[11] Mr Bannister sells and maintains recreational vehicles. In 2010, on request, he loaned Mr Matvieshen \$5000.00 and wrote him a cheque in that amount. A few months later, Mr Matvieshen asked for another \$3,000.00 and Mr. Bannister complied, paying in cash. To address Mr Bannister's concerns about repayment, Mr Matvieshen allegedly agreed to transfer title in the recreational vehicles to Mr. Bannister until the loan was repaid.

[12] As evidence of his ownership, Mr Bannister has provided a Bill of Sale dated January 15, 2011, and three Insurance Corporation of British Columbia Transfer/Tax Forms (one for each vehicle).

IV. Have the applicants proved ownership in the seized goods?

[13] To succeed on this kind of proceeding, an applicant must put forward “strong evidence ... to support his claim” (*Canada (Minister of National Revenue) v Stickle*, 2001 FCT 1019, at para 14).

A. *The farm equipment*

[14] The evidence Mr Kuchma relies on is insufficient to prove ownership in the farm equipment.

[15] The statutory declaration Mr Kuchma has presented does not refer to a sale of the equipment from Ms Matvieshen. It refers to a loan or investment for unspecified equipment, pending repayment. Further, the Contract of Sale of Goods is unsigned by Mr Kuchma, and was backdated.

[16] In fact, other evidence shows that Ms Matvieshen owned the equipment. She is named as the purchaser on an invoice from the vendor, who also confirmed to the Bailiff that she was the owner.

[17] At most, this evidence shows that Mr Kuchma may have had an unperfected security interest in the farm equipment, but not ownership.

B. *The recreational vehicles*

[18] Mr Bannister's evidence does not show that he owned the vehicles.

[19] The Bill of Sale does not actually indicate a transfer of title. It refers to a "release" "in lieu of monies owed for services rendered". It is not clear what form of release was intended, and whether there were, in fact, any services rendered. Further, the insurance transfer forms are undated, unsigned, and unexecuted.

[20] In fact, the preponderance of the evidence does not support Mr Bannister's claim. At the time of the seizure, Mr Matvieshen's son said that his grandfather owned the vehicles. While Mr Matvieshen may have owed Mr Bannister \$8,000.00, the vehicles were then worth at least \$18,000.00. It is unlikely that Mr Matvieshen would have transferred ownership in all three vehicles for a debt amounting to \$10,000.00 less than their worth. Finally, the vehicles remained in Mr Matvieshen's possession at all times.

V. Conclusion and Disposition

[21] The applicants have failed to discharge their burden to show ownership in the seized property. I must, therefore, dismiss their applications, with costs, including the cost of storing the seized property. As agreed at the hearing, the parties may make additional written submissions on costs so long as they are filed with the Court within 10 days of the issuance of this judgment.

JUDGMENT

THIS COURT JUDGMENT is that:

1. Both motions are dismissed with costs, including the cost of storing the seized property.
2. The Court will consider any written submissions that are filed within 10 days of the issuance of this judgment.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: ETA-3276-13; ETA-3614-12;ITA-4064-13;ITA-3378-09

STYLE OF CAUSE: IN THE MATTER OF THE EXCISE TAX ACT, R.S.C. 1985, C. E-15 AND IN THE MATTER OF AN ASSESSMENT OR ASSESSMENTS BY THE MINISTER OF NATIONAL REVENUE UNDER ONE OR MORE OF THE *EXCISE TAX ACT*, AGAINST: SHARI LYNN MATVIESHEN, ET AL AND BETWEEN IN THE MATTER OF THE *INCOME TAX ACT* AND IN THE MATTER OF AN ASSESSMENT OR ASSESSMENTS BY THE MINISTER OF NATIONAL REVENUE UNDER ONE OR MORE OF THE *INCOME TAX ACT, CANADA PENSION PLAN, EMPLOYMENT INSURANCE ACT, THE INCOME TAX ACT*, AGAINST:MICHAEL BRADLEY MATVIESHEN (SOMETIME KNOWN AS MIKE MATVIESHEN, BRADLY ALAN MATVIESHEN, MICHAEL MATVIESHEN, AND MICHAEL BRADLEY ALLEN MATVIESHEN)

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 21, 2014

JUDGMENT AND REASONS: O'REILLY J.

DATED: JUNE 27, 2014

APPEARANCES:

Thomas Kent
Terry McCaffrey

FOR THE THIRD PARTY APPLICANTS

Nicole Johnston
Jason Levine

FOR THE RESPONDENT

SOLICITORS OF RECORD:

RIDOUT BARRON

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William F. Pentney
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Attorney General

FOR THE RESPONDENT