

**Date: 20070712**

**Dockets: A-547-05  
A-548-05**

**Citation: 2007 FCA 254**

**Present : NOËL J.A.**

**A-547-05**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**ADELA GILBERT**

**Respondent**

**A-548-05**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**PIERRE GILBERT**

**Respondent**

Motion in writing decided without appearance of the parties.

Order delivered at Ottawa, Ontario, on July 12, 2007.

**REASONS FOR ORDER:**

**NOËL J.A.**

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**A-548-05**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**PIERRE GILBERT**

**Respondent**

**REASONS FOR ORDER**

**NOËL J.A.**

[1] Pierre and Adela Gilbert are seeking to stay the enforcement of the decision made by our Court against them in each of the above-mentioned dockets until the Supreme Court has decided their motion for leave to appeal, and if need be their appeal.

[2] In support of their motion, the respondents allege as irreparable harm the fact that if a stay is not granted, they will have to sell their principal residence to satisfy the tax debt confirmed by the judgment under appeal. They submit that the fees paid to the real estate agent, the penalty for the anticipated repayment of the hypothec, the moving expenses as well as the rushed sale at a reduced price are amounts which could not be compensated by the award of damages in the event that they should succeed before the Supreme Court.

[3] Presuming that these amounts would not be recoverable and that their loss could amount to an irreparable harm, the record indicates that the Crown undertook to respect the collections policy of the Canada Revenue Agency in regard to the respondents' residence in that it cannot be seized or sold. On this point, the collections officer states at paragraph 7 of his affidavit:

[TRANSLATION]

In the event that the Federal Court of Appeal decides in favour of Her Majesty the Queen in regard to the motion to stay, with regard to Mr. and Mrs. Gilbert's principal residence, the Agency will only publish a legal hypothec on that principal residence for the debt of each of respondents and will not effect any seizure or sale of that property, in accordance with Agency's directive, until the Supreme Court has made a final decision.

[4] In my opinion, this undertaking provides a complete answer to the irreparable harm alleged by the respondents.

[5] Faced with this undertaking, the respondents tried to argue that other assets could be seized by the Agency so that they could be forced nevertheless to sell their principal residence. That for now at least is a hypothetical argument that does not establish the existence of an irreparable harm.

[6] In any event, the public interest militates in favour of the collection of lawfully due tax debts. While the collection measures contemplated by the Agency inconvenience and adversely affect the respondents, the tax authority also risks being left empty-handed if these measures are suspended. In my opinion, the respondents are incorrect when they state in their arguments that the balance of convenience is in their favour.

[7] I thereby find, assuming that the motion for leave to appeal to the Supreme Court raises a serious question, that the respondents have not established the other elements necessary to justify the issuance of an interlocutory stay. Accordingly, the motion is dismissed.

“Marc Noël”

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J.A.

Certified true translation

Kelley A. Harvey, BCL, LLB

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:** A-547-05, A-548-05

**STYLE OF CAUSE:** A-547-05  
HER MAJESTY THE QUEEN AND  
ADELA GILBERT  
A-548-05  
HER MAJESTY THE QUEEN AND  
PIERRE GILBERT

**MOTION IN WRITING DECIDED WITHOUT APPEARANCE OF THE PARTIES**

**REASONS FOR JUDGMENT:** NOËL J.A.

**DATE OF REASONS:** July 12, 2007

**WRITTEN SUBMISSIONS:**

Jane Meagher

FOR THE APPELLANT

Pierre and Adéla Gilbert

REPRESENTING THEMSELVES

**SOLICITORS OF RECORD:**

JOHN H. SIMS Q.C.  
Deputy Attorney General of Canada  
Montréal, Quebec

FOR THE APPELLANT

PIERRE and ADÉLA GILBERT  
Kirkland, Quebec

REPRESENTING THEMSELVES