Federal Court  Cour fédérale

Date: 20180914

Dockets: T-1594-06
T-699-07

Citation: 2018 FC 919

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 14, 2018

PRESENT: The Honourable Mr. Justice Roy

Docket: T-1594-06

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:

MARIO LAQUERRE,
1392 4e Avenue
Québec, Quebec G1J 3B6

Judgment debtor

and

9011-1345 QUÉBEC INC.
1392 4e Avenue
Québec, Quebec G1J 3B6

BRESSE SYNDIC INC.
5350 Henri-Bourassa Blvd.
Suite 220
Québec, Quebec G1H 6Y8

GAÉTAN LAQUERRE
743 Des Mélèzes Street
Québec, Quebec G1C 3C8

Third party

Docket: T-699-07

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ORDER AND REASONS

[1] In what has become a legal saga, Mario Laquerre, the judgment debtor, and 9011-1345 Québec Inc. [9011], the owner of an immovable that is at the centre of the dispute brought before

the Court, are seeking to have this Court set aside the order issued by my colleague Justice Bell on March 8, 2018, and the order of my other colleague Justice Martineau on April 9, 2008. The motion is made under subsection 399(2) of the *Federal Courts Rules*, SOR/98-106 [Rules], which reads as follows:

Setting aside or variance	Annulation
399(2) On motion, the Court may set aside or vary an order	399(2) La Cour peut, sur requête, annuler ou modifier une ordonnance dans l'un ou l'autre des cas suivants :
(a) by reason of a matter that arose or was discovered subsequent to the making of the order; or	a) des faits nouveaux sont survenus ou ont été découverts après que l'ordonnance a été rendue;
(b) where the order was obtained by fraud.	b) l'ordonnance a été obtenue par fraude.

[2] In this case, 9011 and Mario Laquerre are citing paragraph (2)(a). This Court lifted the corporate veil between the judgment debtor and 9011 for tax purposes 11 years ago, and thus I considered them both to be directly interested in the motion, as with the deponent. I concluded that the plaintiffs did not discharge their burden and that the motion must therefore be dismissed.

[3] Mario Laquerre has had trouble with the Canada Revenue Agency for a number of years. He is at the head of a series of companies, many of which are involved in Mario Laquerre's tax difficulties. 9011 is not one of those companies, although it is associated with Mario Laquerre and other entities. 9011 is ostensibly the owner of a property located at 1095 De la Canardière Road in Québec City, for which the plaintiffs are seeking to avoid the judicial sale ordered by this Court. After various events that need not be recounted in detail for the purposes of this motion, the Crown is seeking to sell this property by mutual agreement in order to maximize the value in payment of the tax debt of the judgment debtor, Mario Laquerre.

[4] As a result of one of the numerous manoeuvres to thwart the Crown's action, the plaintiffs have now filed this motion *in extremis* because it appears that the serving bailiff has two buyers interested in the property on De la Canardière Road. This motion, received by the Court on September 6, was the subject of the order by Justice Mactavish, of this Court, that same day, in which she ordered that there be no judicial sale until the motion has been heard and decided on. Obviously, if the motion is dismissed, Madam Justice Mactavish's order will become spent, and the way will be clear to proceed with the judicial sale. The hearing of the motion was scheduled for the General Sitting on September 11, in Montréal, because the next General Sitting in Québec City is not scheduled until October 4, and the plaintiffs' case is urgent.

[5] The motion at issue is simple. The notice of motion states that Mario Laquerre and 9011 have the same patrimony since they are considered to be one and the same person for the purposes of collecting Mario Laquerre's tax debts. The notice of motion presents new facts discovered after Justice Bell's order on March 8, 2018, and Justice Martineau's order on April 9, 2008 (2008 FC 460) for a charging order absolute pursuant to section 459 of the Rules. This would give rise to the setting aside of the order for forced surrender and judicial sale of the property in question as ordered by Justice Bell in March 2018.

[6] Contrary to all expectations, the only affidavit filed in support of the motion is that of Gaétan Laquerre, Mario Laquerre's brother. That affidavit provides little or no information. It indicates that he is the president of 9011, and he states that all facts alleged in the motion are true to his knowledge. But what facts?

[7] The motion contains no other affidavit or facts. The only other document is a memorandum of fact and law of one and a half pages. That memorandum states that Gaétan Laquerre found out from his brother, Mario Laquerre, about a document signed by the Canada Revenue Agency investigator that was allegedly produced in a Superior Court record. Gaétan Laquerre apparently learned about all this on September 1, 2018. However, no one attests to these facts or the source of this document. The motion could have potentially been dismissed on this ground alone, as it does not comply with the requirements of the Rules, but the Court preferred to examine the case on the merits.

[8] The memorandum states that the Superior Court record contains a statement that constitutes a new fact. This statement can be found in paragraph 46(G) of a 78-page document entitled [TRANSLATION] "Reasonable grounds in support of the application". The only paragraph that seems to interest the plaintiff is paragraph 46(G) since it is on that document alone that he ultimately bases his argument. I reproduce the introductory paragraph that puts 46(G) in context:

> 46) [TRANSLATION] Following his investigation, the informant had reasonable grounds to believe that the elements described in appendix A entitled "ASSETS TO BE SEIZED" from Fiducie ML, Fiducie Mario Laquerre and the companies 9015-7769 Québec Inc., 9075-3153 Québec Inc. and 9029-0065 Québec Inc. could be found at the firm of the company 9075-3146 Québec Inc. "In Memoriam, Résidence Funéraire Inc." located at 5350 3e Avenue West, Charlesbourg, Province of Quebec, and/or at 1095 Canardière, Québec, Province of Quebec, instead of at 1392 4e Avenue, Québec, Province of Quebec, as indicated in the income tax returns of the two (2) trusts and of the various corporations as mentioned in paragraphs 3) and 4) above, for the reasons that follow:

Here we can see that the property on De la Canardière Road is mentioned, but there is no reference to 9011. Paragraph 46(G), which 9011 and Mario Laquerre cite, reads as follows:

> G) [TRANSLATION] In the course of his investigation and after examining various contracts and registrations in the Quebec enterprise registrar's CIDREQ system, the informant traced the ownership of the property located at 1095 Canardière, Québec, to the company 9011-1345 Québec Inc., whose shareholders are Fiducie ML and Gaétan Laquerre, the brother of Mario Laquerre and the company's president. Mario Laquerre is the vice-president;

[9] The memorandum also states that, in that same document that can be only the Superior Court record according to the plaintiffs, this same [TRANSLATION] "distinction" is made in paragraph 8(A)(ii), at page 7 of 23. Also included in the motion record is the second document entitled [TRANSLATION] "Reasonable grounds in support of the denunciation". In actuality, as I stated earlier, there is no evidence in the motion record regarding the nature of this second document. The Court had asked counsel for the plaintiffs, during a telephone conference with the parties on September 7, to put the bulk of information presented in the motion record into some semblance of order. That same request was made during the hearing on September 11. The tax debtor and 9011 did not establish the specific source of these two documents, one of 23 pages and the other of 78 pages. They were simply filed, with no explanation or evidence. Other documents were filed in the motion record, but they were never referenced, much less used. Paragraph 8(A)(ii) reads as follows:

> 8) [TRANSLATION] In the course of his investigation, the informant reviewed the following documents and electronic data in the possession of the CRA's Québec Taxation Services Office, hereinafter referred to as the "Québec TSO":

> A) The corporation income tax (T2) returns for 9011-1345 Québec Inc. filed for the 1999 to 2002 taxation years, including the schedules and documents attached to the returns, the electronic data in the CRA's possession, and the registrations in the Quebec enterprise registrar's CIDREQ system, formerly known under the name of the Inspector General of Financial Institutions, for the years 1998 to 2004, concerning the corporation in question, and following this review, the informant knows that these indicate:
>
> ii) Fiducie ML and Gaétan Laquerre each as 50% shareholders for the 1999 and 2000 taxation years, and Mario Laquerre as a 50% shareholder for the 2001 and 2002 taxation years with no indication of the ownership of the remaining 50%, in the income tax returns; and, according to the information obtained in the enterprise registrar, the shareholders for the 1999, 2000, 2001 and 2002 taxation years are Fiducie ML and Gaétan Laquerre, each at 50%.

[10] These are the new facts 9011 and the tax debtor are submitting.

[11] The argument based on these paragraphs is that they constitute [TRANSLATION] "extrajudicial admissions" since, in those paragraphs, a Canada Revenue Agency investigator [TRANSLATION] "makes a distinction between the individual, Mario Laquerre, and the corporation, 9011-1345 Québec Inc. (paragraph 3 of the memorandum of fact and law)." Thus, Mario Laquerre's tax debt is borne by 9011, even though it is apparently a distinct corporation.

[12] Both the notice of motion and the memorandum conclude that the orders of Justices Bell and Martineau should be set aside on the basis of [TRANSLATION] "new evidence", that is, new facts.

[13] First, I will examine the order by Justice Martineau. On April 9, 2008, he rendered three orders, reported under the neutral citations 2008 FC 458, 2008 FC 459 and 2008 FC 460. The decisions 458 and 459 concerned motions to strike two jeopardy collection orders. The order in 2008 FC 460 concerns the charging order absolute. It is that charging order absolute that is of particular issue in this case. For our purposes, it is sufficient to note that 9011 is presented in that order as a third party for the purposes of the motion for a charging order absolute. An interim charging order against the immovable on De la Canardière Road had been issued on October 11, 2007, by Justice Gauthier, then of this Court. That interim charge may become absolute upon a decision by this Court under rule 459. Justice Martineau was addressing six immovables, but only the charge against the immovable on De la Canardière Road interests us here. The goal is to charge the immovable with the equivalent of a judicial hypothec (*R v Mullin*, [1985] 2 CTC 128).

[14] To do so, the Court had to conclude, as Justice Gauthier had concluded several months earlier at the interim charging order stage, that there was cause to lift the corporate veil of the companies involved, including 9011. That was necessary because the assets were sheltered in a corporate structure. The decision states that in 2008, the equity in the asset held by 9011, the immovable on De la Canardière Road, was estimated at $320,000. Therefore, Justice Gauthier expressly lifted the corporate veil of 9011 in the following terms:

> [TRANSLATION] **WHEREAS** at least *prima facie* and unless the contrary is shown, the corporate veil should be lifted and the holdings of 9067-6388 Québec Inc. and of 9011-1345 Québec Inc. should be considered part of the holdings of the following judgment debtors: Mario Laquerre, 9122-9831 Québec Inc., 9075-3153 Québec Inc., 9015-7769 Québec Inc. and 9029-0065 Québec Inc. An interim charging order should therefore be made until it is conceded that an absolute order be made in this respect only for purposes of allowing the applicant to take steps to collect the taxes owed by these judgment debtors.

[15] When Justice Martineau made Justice Gauthier's interim order absolute, he concluded that there was no need to amend the decision regarding lifting the corporate veil, in the following terms:

> [22] In conclusion, the respondents' arguments in favour of the dismissal of the judgment creditor's motion to have the corporate veil lifted are not persuasive. Given the convincing evidence presented by the applicant in dockets T-1574-06 and T-699-07, I find that it is in the interests of justice that the judgment debtors be considered one and the same person with a single patrimony for the purposes of all of the measures to collect the judgment debtors' tax debts.

[16] Therefore, the judgment debtor and 9011 are arguing that the new facts, which now date back over 10 years, were apparently suddenly revealed by Mario Laquerre to his brother on September 1, 2018, meaning that Justice Martineau's decision to lift the corporate veil should now be set aside.

[17] Next, I will examine Justice Bell's decision on March 8, 2018. That decision concerns obtaining an order for the forced surrender and judicial sale of the immovable on De la Canardière Road. Two judgments were rendered on March 8, 2018. One provided the reasons for a decision delivered from the bench on December 18, 2017. The other provided a summary of the proceedings that led to the judicial sale of the immovable on De la Canardière Road, including the lifting of the corporate veil.

[18] In that decision, the Court, through Justice Bell, notes the numerous attempts made to thwart the lifting of the corporate veil, including that in 2015 (2015 FC 440), which was unsuccessful like the others, and which was upheld by a lengthy judgment and reasons by the

Federal Court of Appeal (2016 FCA 62). Therefore, the Court allowed the motion for the forced surrender and judicial sale of the immovable on De la Canardière Road. I note that Justice Bell imposed terms and conditions regarding the bailiff fees for the sale that was ordered.

[19] As I stated at the outset, while the bailiff is preparing to close the sale of the immovable, the judgment debtor and 9011 are seeking to prevent the sale by alleging new facts that they say give rise to paragraph 399(2)(a) of the Rules.

[20] The conditions for exercising that remedy have long been established in the case law. It is not a disguised appeal or a means of reviewing an unfavourable judgment. Certainty in the law and the finality of judgments require that there be "exceptionally serious and compelling grounds" (*Collins v Canada*, 2011 FCA 171, at paragraph 12 and *Rostamiam v Canada (Minister of Employment and Immigration)*, 129 NR 394, at paragraph 5). These conditions are:

- There must be "new facts" and these "new facts" must have been recently discovered;

- Could the individual have discovered these facts by exercising due diligence?

- The "new facts" must have a potentially determining influence on the decision the individual is seeking to have set aside.

[21] In my view, this third condition is the most important; it is consistent with the rulings of the Court of Appeal indicating that the finality of judgments is to be protected and is in the public interest. If the "new facts" do not have a determining influence, the orders should not be amended. In this case, the motion meets none of these conditions.

[22] The two paragraphs cited by the judgment debtor and 9011 not only could not have had an influence on Justice Martineau's decision, but also do not constitute new facts. Counsel for the plaintiffs conceded in his reply at the hearing that paragraph 8(A)(ii) (reproduced at paragraph 8 of this decision) can be considered only observations made by the informant. A simple reading of the paragraph makes this clear. Counsel also attempted to argue that paragraph 46(G) (reproduced at paragraph 7 of this decision) was different. It is unclear how it differs. The two paragraphs are to the same effect.

[23] A reading of paragraph (G) in its context, meaning the introduction at the beginning of the paragraph, which some call the [TRANSLATION] "header", makes it clear that the informant is merely presenting the belief that the assets to be seized could potentially be located at De la Canardière Road. What follows in that document are the reasons the informant believes that the assets are in that location. This indicates that paragraph (G) is nothing more than a statement that the immovable on De la Canardière Road is the property of 9011, in which Mario Laquerre is a shareholder. The claim that the informant took a contrary [TRANSLATION] "position" to the decision to lift the corporate veil is untenable on its face.

[24] Firstly, it is not a position. An informant with a search warrant, if that is the case, does not take a position. The informant must provide facts in all candour that to his or her knowledge justify issuing a warrant (section 487 of the *Criminal Code*). In fact, if there are known facts that are unfavourable to the informant, they must nevertheless be provided. There is no position to be taken. It would be inappropriate to take a position. Moreover, nothing in paragraph (G) even suggests that these are not facts resulting from an investigation revealing the ownership of the immovable by a numbered company of which the officers and shareholders are identified. Those

are the facts. They precede a judicial decision that alone can have the effect of lifting the corporate veil.

[25] These facts about the share ownership of 9011 and the identity of its directors were clearly before Justice Martineau because he lifted the corporate veil: he knew about the company's existence and its shareholders. He lifted the veil between them. How would it be possible to state, well before the April 2008 decision, that the factual information a deponent provided regarding the existing information about the company could have any influence, much less a determining influence, on the decision to lift that same veil? In other words, paragraph 46(G) states what existed at that time, meaning that 9011 owns an immovable and who the shareholders and directors of that company are. The April 2008 decision changes what exists by lifting the corporate veil, knowing full well the situation between 9011 and its shareholders. These facts presented in a denunciation were consistent with the judicial reality at the time; they are presented in paragraph 46(G) as was appropriate, and could not have had any influence on the decision to lift the corporate veil. They were before Justice Martineau.

[26] Moreover, they are not new facts. Not only is there nothing new in the situation between 9011 and its shareholders, but what could have been new would have been considered so if, for example, a real position had been taken, a position that perhaps should have been disclosed. But no such position was taken. The corporate situation was well established and is only factual, as it had to be presented by an informant.

[27] Lastly, I cannot see where due diligence would enter into this case. On rather blatant pretences, the brother of the tax debtor is presented as the individual who very recently

discovered the two paragraphs that constitute “new facts”. The memorandum of fact and law states that the brother had been informed by the tax debtor, who has long been aware of the matter according to the abundant evidence submitted by the Crown. The tax debtor and 9011 go so far as to try to use the brother argument when a counter letter from December 1994 was submitted into evidence stating that [TRANSLATION] “despite the sales agreement [of shares] made on November 4, 1994, Mario Laquerre remains the absolute owner” of 9011. That counter letter is between Gaétan and Mario Laquerre; it confirms that [TRANSLATION] “Mario Laquerre does not or did not have the intention to sell to anyone the interests he holds in the company 9011-1345 Québec Inc.”, meaning that the sale of shares on November 4, 1994, is a [TRANSLATION] “fictitious sale”.

[28] The order by Justice Bell to sell the immovable on De la Canardière Road is based on the lifting of the corporate veil, meaning that, as the judgment debtor and 9011 agree, they are one and the same for the purposes of Mr. Laquerre’s tax debts. It follows that if the new facts have no influence on Justice Martineau’s decision, then they have none on Justice Bell’s decision.

[29] Consequently, the motion dated September 5, 2018, to strike the order dated March 8, 2018, for the forced surrender and judicial sale of the immovable located at 1095 De la Canardière Road in Québec City is dismissed. Similarly, the motion dated September 5, 2018, to strike the order dated April 9, 2008 (2008 FC 460), to make the charge absolute against six immovables, including the immovable located at 1095 De la Canardière Road, and uphold the lifting of the corporate veil regarding the company 9011-1345 Québec Inc., is dismissed.

[30] The Attorney General of Canada is seeking costs. The award of costs is a largely discretionary exercise (rule 400). One of the factors to take into consideration is whether the proceeding is improper, vexatious or unnecessary (rule 400(3)(k)(i)). This motion has all the characteristics of a dilatory proceeding. The Attorney General of Canada submits that costs of [TRANSLATION] "$3,000 would probably be appropriate". I note that Justice Bell, in his decision on March 8, 2018, that the plaintiff is seeking to have set aside, awarded costs of $1,500 to be paid by Mario Laquerre. It is clear that Mario Laquerre is the main player. Gaétan Laquerre was the deponent and 9011 is the applicant in this case. Ultimately, all the parties are closely tied, and the corporate veil was lifted long ago. The Court agrees with the suggestion by the Attorney General of Canada to impose costs of $3,000 to Mario Laquerre and 9011-1345 Québec Inc., as they are jointly and severally responsible for the payment of costs.

ORDER in T-1594-06 and T-699-07

THE COURT ORDERS that:

1. The motion dated September 5, 2018, seeking:

   (a) To strike the order dated March 8, 2018, for the forced surrender and judicial sale of the immovable located at 1095 De la Canardière Road in Québec City; and

   (b) To strike the order dated April 9, 2008 (2008 FC 460), to make the charge absolute against six immovables, including the immovable located at 1095 De la Canardière Road, and uphold the lifting of the corporate veil regarding the company 9011-1345 Québec Inc.;

   is dismissed.

2. Costs in the amount of $3,000 are to be paid to the Attorney General of Canada by Mario Laquerre and 9011-1345 Québec Inc., as they are jointly and severally responsible for the payment of costs.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1594-06; T-699-07
STYLE OF CAUSE:	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 v MARIO LAQUERRE and 9011-1345 QUÉBEC INC., BRESSE SYNDIC INC. and GAÉTAN LAQUERRE
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 11, 2018
ORDER AND REASONS:	ROY J.
DATED:	SEPTEMBER 14, 2018

APPEARANCES:

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