Federal Court Cour fédérale

Date: 20190116

Docket: T-1386-18

Citation: 2019 FC 63

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 16, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

ANTHONY IZMIRLIAN

Respondent

ORDER AND REASONS

[1] This is an application by the respondent, Anthony Izmirlian, to set aside the jeopardy collection order [the Order], issued on July 20, 2018, by Justice Roger Lafrenière on the *ex parte* application of the Minister of National Revenue [the Minister], authorizing the immediate fulfillment of the actions described in paragraphs 225.1(1)(a) to (g) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act].

[2] At the review stage, according to subsection 225.2(11) of the Act, 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. Having considered the application and response records, as well as their additional comments, I find that the Order should be confirmed.

[3] The respondent has worked as a mortgage broker since 2000. He had already been audited by the revenue agency [CRA] for the taxation years 2004 and 2005, this audit having been completed in 2007. In September 2008, he incorporated the real estate company Investissement Simacorp Inc. [Simacorp], of which he is the only shareholder and director. In 2012, the CRA opened an audit of the taxation years 2008 to 2010, but it was not until February 22, 2016, that the Minister issued reassessments. About $2.813 million in extra revenue was found, meaning that the unpaid amount in taxes, penalties and interest (from taxation years 2008 to 2011) would be $860,281.99. In May 2016, the respondent made an objection. In November 2016, during the opposition stage, he paid $150,000 to the CRA. In May 2018, he filed an appeal notice before the Tax Court of Canada [TCC].

[4] In principle, according to subsection 225.1(3) of the Act, when a taxpayer files an appeal with the TCC, the Minister cannot take any of the actions described in paragraphs (1)(a) to (g) of the Act until the taxpayer's appeal has been disposed of or the taxpayer has abandoned it. However, according to subsection 225.2(2) of the Act, collection actions can be taken immediately if the judge, on *ex parte* application from the Minister, "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".

Ex parte application to the Court

[5] On July 20, 2018, an *ex parte* application for the issuance of a jeopardy collection order was submitted to the Court. The Minister relied on facts reported by Amélie Desjardins [Ms. Desjardins], a CRA auditor, in her affidavit dated July 18, 2018, and by Julie Papineau [Ms. Papineau], the complex case officer at the CRA who was responsible for the respondent's recovery file, in her affidavit dated July 19, 2018 [first affidavit]. The trigger for this application was on July 9, 2018, when the CRA learned that a conditional sale was made on the family residence that the respondent had held in undivided co-ownership with his spouse, Arosiak Babikian [Ms. Babikian], since May 2009. This is the only major tangible asset that the respondent had not yet disposed of by that time. After deducting the hypothecary debt on the family residence and from Ms. Babikian, the equity for the respondent's share would be at most $495,064. Ms. Papineau explains in the first affidavit that the respondent's other known assets will be insufficient to pay for the amounts assessed. It was impossible for her to determine the value of the shares that the respondent owns in Simacorp; the only asset from Simacorp is a note receivable recorded on the balance sheet for $1.6 million. However, Ms. Papineau believes this is a doubtful debt. Although Saxxcorp Inc. [Saxxcorp], of which Joe Caprera is the sole shareholder and director, has acknowledged that it owes this amount to Simacorp, Simacorp's assets seem insufficient to justify such a loan. In addition, even if Simacorp's claim is secured by a second-ranking hypothec on a property owned by Saxxcorp, the first-ranking creditor holds a hypothec with a value almost equivalent to the value of Saxxcorp's property on the property roll. Simacorp's financial history also suggests that it would not have been able to lend this amount to Saxxcorp.

[6] Based on the evidence submitted in support of the Minister's *ex parte* application, the respondent's previous behaviour seems to show his clear intent, after the issuance of the reassessments, to keep all cash out of the hands of the tax authorities. In particular, in the first affidavit, Ms. Papineau notes that on November 16, 2016, the respondent received an amount of $1.5 million from Simacorp. On July 27, 2017, he transferred $1 million to his daughter-in-law and $500,000 to his son-in-law. Then, on August 11, 2017, he published three deeds of gift of $500,000 each, appearing on the Register of Personal and Movable Real Rights, to his daughter, daughter-in-law and son-in-law [collectively the children]. The three gifts, totalling $1.5 million, were all made under a stipulation of unseizability for a period of 20 years. Each deed of gift states that the $500,000 paid to the recipients is to support him or her, as a serious and legitimate interest. That being said, a few days after the publication of the deeds, and still in August 2017, the respondent's daughter- and son-in-law each transferred $500,000 to an Ontario law firm. In September 2017, the daughter-in-law transferred $500,000 to the respondent's daughter, and in December 2017, the latter transferred that amount to another Ontario law firm.

[7] In fact, Ms. Papineau explains in the first affidavit that the Minister wishes to bring a Paulian action before the Superior Court of Quebec without further delay, because the deeds of gift to the children have rendered the respondent insolvent and are therefore "deemed to be made with fraudulent intent" according to article 1633 of the *Civil Code of Québec*, CQLR c CCQ-1991 [Code]. Moreover, under article 1635 of the Code, the action will be forfeited unless the creditor brings it within one year of becoming aware of the transaction. The Minister learned of the existence of the gifts on January 31, 2018, so this action will therefore be prescribed in February 2019. In the absence of a jeopardy collection order, the Minister will lose his or her

action before the TCC appeal is disposed of and the debt owing to the Crown is recoverable through normal channels.

[8] With respect to the respondent's personal financial situation, Ms. Papineau also provides a negative balance sheet in the first affidavit. As of July 27, 2017, following the transfer of $1.5 million to the children, the respondent would have become insolvent. Prior to the transfer, the respondent had a net worth of almost $304,000. As discussed above, as of the date the *ex parte* application was submitted, Ms. Papineau did not attribute any value to the Simacorp shares, because the note receivable of $1.6 million is a doubtful debt. However, at the time of the gifts, the respondent's only remaining assets were the value of the respondent's equity in the family residence and his money in the bank, while his liabilities were half of the balance of the hypothec on the family residence, the debt to the CRA ($760,905.46) and the debt to Revenu Québec ($760,905.46). The Minister would later explain that the amount due to Revenu Québec was estimated [TRANSLATION] "on the generally accepted premise that the taxes payable under provincial tax laws are similar to those payable under the Act."

[9] What is more, Ms. Papineau explains in the first affidavit that, since he has been under tax audit, the respondent has disposed of approximately $550,000 in bank assets:

a) In November 2015, the respondent liquidated the entire balance of almost $53,000 in shares from his investment portfolio with the National Bank, which he transferred to a TD Canada Trust [TD] bank account held jointly with his spouse. Shortly thereafter, the respondent transferred $50,000 from this TD account to his sister-in-law. In fact, between November 2012 and September 2015, the

respondent closed four bank accounts he held with TD. On February 8, 2018, the respondent had only two bank accounts with TD, which contain almost $3,000; and

b) Since April 2014, the respondent has disposed of USD 500,000 held in a Royal Bank of Canada [RBC] account. In April 2014, USD 500,000 was deposited into the account, and a week later, the respondent transferred USD 240,000 to an American law firm. Subsequently, the account balance decreased by approximately USD 260,000 according to the banking statement of this RBC account between January 2014 and June 2016. As of July 2017, the respondent had four bank accounts with RBC containing approximately USD 9,000 in total.

[10] Ms. Papineau also explains in the first affidavit that Simacorp's real estate assets have disappeared since the audit began. Essentially, at the end of its 2011 fiscal year, Simacorp had almost $19.4 million in gross real estate assets, but the Corporation no longer had any real estate assets by 2016:

a) The seven properties that Simacorp purchased on De Jouvence Street in Montréal in 2010 were sold for a significantly lower price than their value on the property roll. The first was sold on June 22, 2012, which is 10 days after the respondent was informed of the audit, for a value equivalent to its value on the property roll. The six other properties were sold together on July 17, 2012, for less than their value on the property roll. Ms. Papineau takes the values from the property roll "as recorded in the deed of sale" and reproduced a comparative table of the amounts in question; and

b) On August 1, 2016, six months after the notice of reassessment, Simacorp sold two properties on Des Érables Street in Pierrefonds-Roxboro for $12.15 million, which is the value of the two properties on the property roll. The buyer assumed the mortgage on the properties and paid the balance of the sale price to Simacorp. On October 10, 2016, Simacorp sold its last property, located in Sainte-Julie, for $4.25 million, at its property roll value.

[11] Finally, in the first affidavit, Ms. Papineau alleges that the respondent was reckless in his tax obligations. He has not kept adequate records of his business activities. He claimed rental expenses without supporting documents. He also failed to report significant income. Moreover, he did not declare in his income a $180,000 dividend that Simacorp nonetheless claims to have paid to its shareholder in 2017 on its balance sheet. In addition, based on Ms. Desjardins' affidavit, in the memorandum in support of the *ex parte* application, the Minister also points out that the respondent used companies as nominees. Although not necessarily illegal, this practice allows the defendant to hide assets and make it even more difficult to collect tax debts.

Issuance of the Order

[12] Based on the evidence filed by the Minister on July 20, 2018, my colleague, Justice Roger Lafrenière, issued the Order because there are reasonable grounds to believe that granting the respondent a delay would compromise the collection of the Crown debt.

[13] Since the issuance of the Order, the Court issued a certificate on July 20, 2018, under subsection 223(3) of the Act. It certifies that the respondent is indebted to the Crown in the

amount of $801,040.71. This certificate allowed the Minister to register a legal hypothec in favour of the Crown on the family residence for an amount corresponding to the respondent's 50% share. In fact, the family residence has since been sold. On November 7, 2018, an amount of $331,378.77, which corresponds to the respondent's share of the property, was withheld by the notary from the proceeds of the sale. At the hearing, the parties confirmed that this amount was remitted to the Crown and that it was charged against the respondent's tax debt and therefore reduced by that much the respondent's tax debt balance, which was $469,661.94 at the amount the application for review was heard.

[14] Moreover, on July 25, 2018, the Attorney General of Canada applied to the Superior Court of Quebec (Civil Division) for a judicial declaration that the three deeds of gift made to the children subject to a stipulation of unseizability are unenforceable against him. The motion to institute proceedings asks the Superior Court to declare the three gifts unenforceable and to order the children jointly to pay the Minister the sum of $1.5 million up to the unpaid balance of the respondent's tax debt. The parties agreed that the proceeding in Quebec be suspended until the hearing and adjudication of this motion, which was heard in December 2018.

The present application for review

[15] In this case, the respondent contends that the Minister did not make a full and frank disclosure to the Court in July 2018 and has not sufficiently demonstrated that allowing the taxpayer a delay will jeopardize the collection of the tax debt. The respondent submits that the Minister has painted a negative picture of the respondent as a taxpayer and that he wanted to give the false impression that the respondent has become insolvent and does not have sufficient assets

to pay the tax debt. Moreover, with respect to the $1.5 million in gifts to the children, there is nothing to prevent the Minister from making assessments under section 160 of the Act. Indeed, the respondent submits that the long delays in the audit and TCC proceedings, which are attributable to the Minister, contradict the argument that further delay would jeopardize the collection of the tax debt. The respondent was cross-examined by the Minister on October 1, 2018.

[16] In particular, the respondent submits that Ms. Papineau made several calculation or presentation errors in the first affidavit, while the following additional facts and explanations from the respondent should be considered. Thus, the respondent explains:

a) With respect to the seven properties on De Jouvence Street, which Simacorp sold in June and July 2012, the municipal tax bills show that they had an overall value on the property roll of almost $5.62 million in 2012, while the total sale price of the seven properties in 2012 was $6.2 million. Ms. Papineau incorrectly used the amounts reported in the two sales contracts indicating the value of the transfer taxes;

b) The respondent also points out that these seven properties are located in a disadvantaged neighbourhood; 24 units were vacant; there was still a lot of work to be done; and the respondent had become too old to manage them. All seven properties were sold at fair market value. This situation has been duly explained to the CRA;

c) The respondent explains that the advances he received as shareholder were the proceeds of the two real estate sales that took place in 2016. In November 2016 Simacorp transferred a $1.5 million advance to him as shareholder. In fact, after paying off the hypothec balances, Simacorp had approximately $3.26 million in liquid assets at its disposal;

d) Ontario law firms subsequently transferred the proceeds of the three gifts to the children to an Ontario construction company, managed by a friend of the respondent, as a loan on each child’s share. However, the three loans are secured by mortgages on three separate Ontario properties for the benefit of the children. The loan agreements provide that the borrower may repay the loan no earlier than six months after the agreements are signed, respectively in August 2017 for two of the children and December 2017 for the third, but must repay them 18 months after the agreements are signed;

e) However, it should be noted here that during his cross-examination on October 1, 2018, the respondent admitted that the borrower had not yet made payments to the children;

f) Simacorp’s $1.6 million claim is not a doubtful debt. The two properties in Pierrefonds-Roxboro were sold for $12.5 million in August 2016 to Joe Caprera Inc. [JCI], Mr. Caprera’s other company (not Saxxcorp);

g) This transaction can be explained as follows: to finance the purchase, JCI granted a new hypothec of $1.8 million to a financing company, and JCI took on

Simacorp's hypothec with a remaining balance of $8.7 million. JCI immediately paid Simacorp the $1.8 million it received in financing. The remaining sum of $1.6 million is a balance payable to Simacorp on August 1, 2018, which is the same date as the hypothec granted by JCI for $1.8 million is due;

h) The respondent explains that on August 1, 2018, JCI will receive a second financing and pay the balance to Simacorp. As support for his affidavit, the respondent filed an acknowledgement of debt ("Acknowledgement of Debt Agreement"), between Simacorp and JCI on August 31, 2016, for $1.6 million. It is important to note that on August 31, 2016, JCI and Mr. Caprera solidarily guaranteed the amount of $1.6 million. That being said, although the deed of sale is published in the index of immovables, the respondent admits that the acknowledgement of debt is not published and has never been delivered to the CRA. Therefore, at the *ex parte* application stage, the Minister was not aware that there was a remaining balance of $1.6 million on this sale. The respondent explains that this balance is the note receivable of $1.6 million in Simacorp's balance sheet on December 31, 2017;

i) However, it should also be noted here that during his cross-examination on October 1, 2018, the respondent acknowledged that JCI had not paid this balance to Simacorp. However, he stated that it was the financing company that was late in paying JCI, not JCI that was late in paying Simacorp;

j) The respondent also explained that his sister-in-law loaned him $50,000, without a written record, to make the simultaneous purchase of the seven properties on De

Jouvence Street in Montréal in August 2010. He repaid the loan three years after the sale of the seven properties, which took place in June and July 2012, and that she invested this money [TRANSLATION] “because she has a very limited income”; and

k) Finally, the fact that the respondent has few liquid assets today can be explained: his receipts and personal income have decreased because he is 74 years old and much less active.

[17] In his response record, the Minister submitted a second affidavit from Ms. Papineau, dated October 25, 2018, to which is attached an email from the Minister’s counsel, dated September 24, 2018:

a) Ms. Papineau admits that, in the first affidavit, she incorrectly compared the sale price of the seven neighbouring properties sold in 2012 to their property roll values in a table. Each amount in the table was the value for transfer tax purposes and not the value on the property roll for municipal tax purposes. The properties were therefore not sold at prices below their value on the property roll (first affidavit at para 65);

b) Ms. Papineau stated in the first affidavit that the respondent failed to declare a dividend of $180,000 received from Simacorp in 2017 in order to demonstrate that he was reckless in his tax obligations. She withdrew this allegation because the respondent filed an income tax return that shows that he did indeed declare the dividend in question (first affidavit at para 69d);

c) Ms. Papineau stated in the first affidavit that Saxxcorp was Simacorp's debtor for the $1.6 million note receivable, but it is another company of which Mr. Caprera is the shareholder and sole director, JCI, and Mr. Caprera himself who are the true debtors of that amount (first affidavit at para 20);

d) Ms. Papineau stated in the first affidavit that she doubted the accuracy of Simacorp's financial statements, which indicated that $1.95 million was paid to the respondent as a shareholder in the fiscal year ending December 31, 2016. She claimed that no loan justified such an advance. She withdraws this allegation because the respondent explained that it was the two sales, in August and October 2016 by Simacorp, that allowed the payment of this amount to the respondent (first affidavit at para 25);

e) Ms. Papineau explains that in the first affidavit, she omitted the home equity line of credit for $199,125 in calculating the balance of the hypothecary debt on the family residence. This error was repeated by the Minister in his *ex parte* memorandum. The exact amount of the respondent's equity in the family residence was therefore $395,502 and not $495,064 (first affidavit at para 16);

f) Ms. Papineau explains that in the respondent's personal balance sheet he made the gifts to the children in July 2017, the amount of his equity in the family residence (according to the municipal assessment) should have been divided in two to reflect the fact that he is an undivided owner for half. The correct amount would have been $288,351.21 instead of $576,702 (first affidavit at para 40, p 162 H); and

g) Ms. Papineau stated in the first affidavit that the respondent closed four bank accounts with TD. In fact, he closed three bank accounts with TD and cancelled a credit card (first affidavit at para 48).

[18] The respondent chose not to cross-examine Ms. Papineau on her affidavit, but he did cross-examine Ms. Desjardins on September 25, 2018. While acknowledging that there are some errors in Ms. Papineau's first affidavit, the Minister considers that they are not determinative in this case, since the errors were made in good faith.

The Minister's full and frank disclosure

[19] A taxpayer obviously does not have the opportunity to provide his own submissions when the Minister makes an *ex parte* application, so the Minister has an obligation to make a frank and full disclosure of known, relevant and material facts and known weaknesses in his case (*Canada* (*National Revenue*) *v Robarts*, 2010 FC 875 at para 35 [*Robarts*]; *Canada* (*National Revenue*) *v Reddy*, 2008 FC 208 at paras 32-36; *Services ML Marengère* (*Re*), [2000] 1 CTC 229, [1999] FCJ No 1840 (QL) at para 72 [*Marengère*]). It should also be understood that there is generally no need to intervene if the errors made by the Minister at the *ex parte* application stage would not have altered the outcome had the judge hearing the *ex parte* application been aware of them (*Papa* (*Re*), 2009 FC 49 at para 23; *Fiducie Dauphin* (*Re*), 2009 FC 346 at paras 93-96).

[20] In my opinion, the Minister did not breach his duty of full and frank disclosure: he disclosed all known and material facts in his *ex parte* application. In any event, I agree with the

Minister that the errors identified by the respondent in Ms. Papineau's first affidavit are not determinative: even if the judge hearing the Minister's application had been aware of these errors at the *ex parte* stage, he would still have granted the Order for the following reasons.

[21] In my opinion, the following facts submitted to the Court at the *ex parte* stage are now proven and would have been sufficient to grant the Order at that time:

a) Since May 2018, the respondent has been appealing the reassessments to TCC, and the appeal could result in a delay of more than one year;

b) The imminent sale of the respondent's family residence, the only known, non-liquid asset that the respondent had not yet disposed of at the date of issuance of the Order, could have deprived the Minister of an amount in excess of $330,000;

c) Simacorp sold ten properties between 2012 and 2016. Since 2016, Simacorp no longer owns any real estate assets;

d) The respondent made gifts totalling $1.5 million to the three children in July 2017. He admits that this amount comes from the proceeds of sale of these properties; and

e) Since April 2014, the respondent has emptied his bank accounts of more than $550,000. The respondent admits that he borrowed $50,000 from his sister-in-law in 2010 to buy the seven properties, that she has a very limited income, and that he repaid his sister-in-law in 2015, three years after the sale of the seven neighbouring properties, after she reminded him to repay the loan. Moreover, the

respondent transferred USD 240,000 to an American law firm, which is outside the Minister's jurisdiction.

[22] At the risk of repeating myself, the Minister's errors were made in good faith, and ultimately did not cause the Court to be decisively misled. The Minister has therefore satisfied his obligation of full and frank disclosure.

Reasonable grounds to believe that a delay would compromise recovery

[23] I also considered all the evidence in the record and the relevant case law. In determining whether the authorization granted on July 20, 2018, should be confirmed, set aside or varied, and like my colleague Justice Lafrenière, I believe that there are reasonable grounds to believe that granting a delay in payment would compromise the collection of the tax debt, in light of all the evidence currently on the record. Moreover, according to the authorities which have been brought to my attention by counsel or of which I have reviewed on my own initiative, several factors may be considered in determining whether there are reasonable grounds to believe that granting a delay would compromise the Minister's recovery, including: unorthodox transactions by the taxpayer, the liquidation or transfer of his assets beyond the Minister's control or to another jurisdiction, or the squandering of the taxpayer's property (*Tehrani* (*Re*), 2011 FC 1232 at para 57 [*Tehrani*]; *Danielson v Canada* (*Deputy Attorney General*), [1986] 2 CTC 380, 7 FTR 42 at para 8; *Canada* (*National Revenue*) *v 684761 BC Ltd*, 2016 FC 791 at para 26; *Robarts* at paras 72-74).

[24] In this case, it is clear that granting a delay to the respondent would compromise the Minister's chances of collecting the tax debt. Even if we assume that the respondent is currently solvent, when looking at his past behaviour, there is every indication that he could in the short term protect the assets he still owns from seizure and make subsequent recovery from the Minister impossible. The respondent's assets include the net amount of $312,000 shown as Simacorp's cash on its balance sheet on December 31, 2017, and the few thousand dollars still held in his bank accounts. If the Order is not maintained, the Minister has reasonable grounds to believe that he will lose his right to bring a Paulian action.

[25] A few additional observations are in order here.

[26] First, to say the least, the respondent behaved in an "unorthodox" manner when the tangible assets he owned were liquidated and transferred. It is clear that, as a result of the two real estate transactions that followed the notice of reassessment, the respondent transferred $1.5 million to his children and, overall, his bank assets decreased by $550,000. Therefore, an amount of $2.05 million has been removed from the respondent's patrimony since he is under audit. This is of great concern in this case. I believe the Minister's concerns are well founded.

[27] In particular, USD 500,000 was withdrawn from an RBC account by six withdrawals ranging from USD 5,000 to USD 240,000 each between April 2014 and August 2015. Nor is there any doubt that these transactions are highly suspicious and that the respondent's explanations are implausible at first sight. In my opinion, these transactions raise more than mere suspicions. For example, the respondent never convincingly explained the transfer of the

USD 240,000 from his RBC account to a U.S. law firm, or the payment of $50,000 from his TD account to his low-income sister-in-law to repay a loan five years later. Indeed, the respondent's explanations that the amounts held in his RBC accounts have decreased because they were [TRANSLATION] "used in the context of the cost of living over a period of several years" and that [TRANSLATION] "the use of my bank accounts is inevitable to pay for my current expenses" are also difficult to believe considering the large sum of the five withdrawals, of nearly USD 260,000, over a period of about nine months while the respondent was under audit.

[28] In any event, regardless of the respondent's real intentions, today the respondent has almost no assets left, while the proceeds of real estate sales, already made by Simacorp, have essentially been put out of the Minister's reach. Only Simacorp's net cash assets of $312,000 remain, and a few thousand dollars remain in the respondent's personal bank accounts. In my opinion, if the Order is set aside and the respondent is granted an additional period of time to pay the balance of the tax debt, being the period of more than one year to wait for the TCC to make a final decision, there are reasonable grounds to believe that the respondent's remaining assets will disappear and that the Minister will be unable to collect the balance of his claim. In short, the Minister had to demonstrate by objective and conclusive evidence that because of the delay in the appeal, the respondent will be less able to pay the tax debt in whole or in part. In this case, the Minister has indeed discharged this burden.

[29] In addition, I also believe that confirmation of the Order is necessary so that the Paulian action before the Superior Court is not forfeited because it was not brought within one year. It should be noted that the Paulian action is of a protective nature and aims to have a fraudulent

transaction declared unenforceable against a creditor (articles 1631 and 1636 of the Code). However, it is only when the debt is liquid and exigible, and the transaction in question is declared unenforceable by the Superior Court, that intervening creditors may subsequently take enforcement action to seize and sell the property subject to it (articles 1634 and 1636 of the Code). A Paulian action is a lawsuit brought to court by the Minister to recover the unpaid amount, according to paragraphs 225.1(1)(a) of the Act, and is not permitted in the absence of a jeopardy order (*Tehrani* (*Re*), 2011 FC 1232 at paras 51, 59). Moreover, the certificate issued by the Court under section 223 of the Act states that the amount of the tax debt is liquid and payable, and allows the Minister to obtain a judgment from the Superior Court declaring the transactions unenforceable.

[30] In this respect, the collection measures described in subsection 225.1(1) of the Act are intended to commence legal proceedings in a court (a), certify the amount of the debt (b), require a person or institution to make a payment under subsections 224(1), 224(1.1), and 224.3(1) of the Act governing garnishments (c, d, f), or receive a certificate under section 225 of the Act to seize movable property of the taxpayer (g). All of these measures are intended to allow the Minister to collect or liquidate, in one way or another, a tax debt in the hands of the taxpayer or a third party liable to make a payment to the taxpayer. It is not for this Court to tell the Minister how he should proceed today to recover the amount of the tax debt and what particular means of collection he should favour.

[31] I also note that the Minister considers that an assessment under section 160 of the Act is not adequate in the circumstances because the gifts are protected by 20-year stipulations of

unseizability. Although the Minister may be able to assess each of the children under section 160 of the Act, he may not be able to subsequently collect, or otherwise seize, the amounts assessed because of the stipulation of unseizability (see subsection 225(5) of the Act). It should be noted that if the Minister had made a decision to assess to the three children under section 160 of the Act instead of requesting the issuance of the Order and bringing a Paulian action, it would still have been open to the children to object to the Minister's assessments. The latter would find himself without recourse, for at least several months, if he did not obtain a jeopardy order against the children. On the other hand, if the Superior Court declares that the gifts are unenforceable against the Minister, the amounts will automatically become seizable in the hands of the children. Prudence is required: collection actions already undertaken under paragraphs (1)(a) to (g) of section 225.1 of the Act may therefore continue accordingly.

[32] Finally, in passing, with respect to the delays attributable to the Minister, it must be understood that the Minister's counsel obtained an additional delay before the TCC to adequately defend the appeal of the reassessments. It is also true that the auditing process prior to the issuance of reassessments was relatively long. The delay for an application referred to in subsection 225.2(2) of the Act is strictly that which may put the collection of the Crown debt in jeopardy: therefore, a delay attributable to the appeal process (*Marengère* at para 63). In my view, the delay in issuing a notice of reassessment is irrelevant to the question of whether, at the date of the application for review, any further delay would compromise the Minister's collection (*Deschênes* (*Re*), 2013 FC 87 at para 36).

[33] For all these reasons, the respondent's motion is dismissed. The jeopardy collection order issued by the Court on July 20, 2018, is confirmed. By agreement of counsel, the successful party is entitled to costs of $4,500.

ORDER in docket T-1386-18

THE COURT ORDERS that the respondent's motion be dismissed. The jeopardy collection order issued by the Court on July 20, 2018, is confirmed. The Minister is entitled to costs of $4,500.

"Luc Martineau"
Judge

Certified true translation
This 11th day of March, 2019.
Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1386-18
STYLE OF CAUSE:	MINISTER OF NATIONAL REVENUE v ANTHONY IZMIRLIAN
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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