

Federal Court



Cour fédérale

Date: 20230320

**Dockets: ITA-13738-07
ITA-11407-08
ITA-12811-14**

Citation: 2023 FC 371

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 20, 2023

BEFORE: The Honourable Mr. Justice Régimbald

IN THE MATTER OF THE *INCOME TAX ACT*,

and

IN THE MATTER OF AN ASSESSMENT OR ASSESSMENTS MADE BY THE MINISTER OF NATIONAL REVENUE UNDER ONE OR MORE OF THE FOLLOWING: THE *INCOME TAX ACT*, THE *CANADA PENSION PLAN*, THE *EMPLOYMENT INSURANCE ACT*,

VERSUS

**THANH LONG NGUYEN
2328 Saint-Jacques
Montréal, Quebec H3J 2M7**

Judgment Debtor

and

**THI HOANG CHAU NGUYEN
2328 Saint-Jacques
Montréal, Quebec H3J 2M7**

Third Party

ORDER AND REASONS

[1] On February 10, 2023, the Court dismissed a motion for a stay filed by the judgment debtor Than Long Nguyen [the debtor]. On January 19, 2023, the latter had filed a motion for a stay of execution pursuant to section 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], to stay the execution of orders Justice Pamel issued on January 3, 2023.

[2] In its February 10, 2023, decision, the Court explained that in his motion for a stay of execution, the debtor did not meet the tests established in *RJR-Macdonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, namely, (a) a serious question to be tried; (b) irreparable harm; and (c) the balance of inconveniences favours the granting of the stay of execution.

[3] Specifically, in light of the evidence presented in the context of the January 19, 2023, motion for a stay of execution, the Court found that in his supporting documentation, the debtor did not raise a serious question. In fact, he only raised the claim, with no documentary evidence, that the safety deposit box that was seized belonged to his wife (although his name was associated with it). The Court therefore concluded that the debtor failed to convincingly establish that the content of the safety deposit box belonged to his wife.

[4] Moreover, further to the review of the evidence, the Court found that the debtor did not show that he would suffer irreparable harm if the safety deposit box were to be opened. In fact, if an amount were to be seized and the debtor were later successful, the amount seized would be returned to him with interest. No irreparable harm could therefore arise from the seizure.

[5] Lastly, the Court ruled that in the circumstances, the balance of inconveniences favoured the Canada Revenue Agency, which had to recover an amount owing by the debtor and be fair to all taxpayers. The Court found that the debtor did not prove any harm in his affidavit or written submissions.

[6] The Court therefore dismissed the motion for a stay of execution on February 10, 2023.

[7] On February 20, 2023, the debtor filed a motion pursuant to section 397, asking the Court to reconsider the terms of the order.

[8] In support of his motion, the debtor filed a new affidavit, dated February 20, 2023, describing the items in the safety deposit box. According to the evidence in this affidavit, the safety deposit box contains objects for his children's inheritance, in particular, jewellery that has been passed down from generation to generation and that has belonged to his wife since before their marriage in 1977.

[9] The Court notes that in the debtor's affidavit in support of his previous motion for a stay of execution on January 19, 2023, his evidence only mentioned the amounts claimed by the Canada Revenue Agency, that these amounts were not shown, that the items in the safety deposit box belonged to his wife, that his name appeared on the safety deposit box so he could retrieve objects when his wife could not, and that he had not accessed the safety deposit box for more than 20 years.

[10] In his written submissions for the February 20, 2023, motion, the debtor explains that he is requesting a stay of execution to give him the time to fill in all the missing tax returns and ask the Canada Revenue Agency to provide him with the details of the amounts claimed.

[11] However, there is no evidence or written submission about the reasons the January 3, 2023, Court orders were necessary at the time, or about the steps the debtor has taken since January 3 to resolve the situation and, especially, how more time would allow him to do so.

[12] In response to the motion of February 20, 2023, the Attorney General of Canada argues that in fact, the debtor's motion is actually a motion under section 399 to set aside or vary the Court order of February 10, 2023. However, section 399 states that to set aside or vary an order, the Court must find that a matter has arisen or has been discovered subsequent to the making of the order; or the order was obtained by fraud.

[13] Relying on *Income Tax Act (Re)*, 2018 FC 1012 (*Laquerre*), the Attorney General of Canada suggests that section 399 cannot be used as a vehicle to review a judgment. Setting aside a judgment must therefore be based on exceptionally serious and compelling grounds, which is not the case here. *Laquerre* also indicates that the “new matter” on which an applicant relies to request that an order be set aside or varied must be a matter that arose or was discovered subsequent to the making of the order, the matter must not be one which was discoverable prior to the making of the order, and the “new” matter is something that would have a determining influence on the decision.

[14] As for section 397, on which the debtor is relying, and the Court's jurisdiction to reconsider its orders, this jurisdiction is limited to the following grounds: (a) the order does not accord with any reasons given for it; and (b) a matter that should have been dealt with has been overlooked or accidentally omitted. In *Sharma v Canada (Revenue Agency)*, 2020 FCA 203, the Federal Court of Appeal notes that section 397 is "not meant to be an appeal in disguise, allowing a litigant to re-argue an issue a second time, in the hope that the Court will change its mind".

[15] In this case, the debtor's motion does not present any "new" matter within the meaning of section 399. Not only did the debtor not present any tangible evidence in his original January 19, 2023, motion to stay, but the affidavit supporting this motion to review under section 397, or to set aside or vary under section 399, does not contain any "new matter" that was not discoverable by the exercise of due diligence prior to the February 10, 2023, order.

[16] Indeed, the contents of the safety deposit box were known prior to the making of the order, and the exhibits supporting this motion were existing and available.

[17] Additionally, it has not been alleged that the February 10, 2023, order was obtained by fraud.

[18] This motion therefore cannot succeed under section 399.

[19] Lastly, the motion presents some evidence that should have been presented with the original motion, which was not done. As a result, this motion essentially aims to re-argue the same motion for a stay of execution a second time, in the hope that the Court will change its mind. Section 397 does not allow such a reconsideration. Moreover, the evidence presented in the February 20, 2023, affidavit is insufficient to meet the tests in *RJR-Macdonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311.

[20] In this case, the February 10, 2023, order accords with the Court’s reasons, and no question was accidentally omitted. This motion can therefore also not succeed under section 397.

[21] As a result, the debtor’s motion dated February 20, 2023, seeking the reconsideration, setting aside or variance of the February 10, 2023, order pursuant to section 397 or 399 is dismissed.

ORDER in dockets ITA-13738-07, ITA-11407-08 and ITA-12811-14

THIS COURT ORDERS that the debtor’s motion dated February 20, 2023, seeking the reconsideration, setting aside or variance of the February 10, 2023, order is dismissed.

“Guy Régimbald”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: ITA-13738-07
ITA-11407-08
ITA-12811-14

STYLE OF CAUSE: THAN LONG NGUYEN v THI HOANG CHAU
NGUYEN

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
SECTION 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: RÉGIMBALD J.

DATED: MARCH 20, 2023

WRITTEN REPRESENTATIONS BY:

Thanh-Long Nguyen

FOR THE JUDGMENT DEBTOR
(ON HIS OWN BEHALF)

Audrey Turcotte

FOR THE JUDGMENT CREDITOR

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE JUDGMENT CREDITOR