

Date: 20070419

Docket: ITA-3436-06

Citation: 2007 FC 418

[ENGLISH TRANSLATION]

Montréal, Quebec, April 19, 2007

PRESENT: Richard Morneau, Esq., Prothonotary

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 following acts: The *Income Tax Act*, the *Canada Pension Plan*, the *Employment Insurance Act*,

Against:

PIERRE LACHAPELLE

Judgment Debtor

and

B.M.T. 06 CAPITAL CORPORATION

(Bull Market Trading)

and

TD WATERHOUSE CANADA INC.

(formerly Ameritrade Canada)

Third Parties

and

ANIMATION JL INC.

Mis en cause

REASONS FOR ORDER AND ORDER

[1] This is a motion by the mis en cause for leave to file two additional affidavits under Rule 84 of the *Federal Courts Rules* (the Rules).

[2] This motion arises as part of the examination on one of the affiants' affidavits that was filed by the Queen (the seizing creditor), within the context of a garnishment procedure where normally one should consider that the evidence on the merits of the seizing creditor and the mis en cause was complete at the time when the examinations on affidavit took place.

[3] However, and this is what gives rise to the motion under review, the mis en cause argues that, on three elements, its examination of affiant Marco Gagnon regarding the affidavit that he swore in support of the seizing creditor's application for the temporary garnishment order raises new facts that came up as a surprise during that examination. According to the mis en cause, it could not predict that those answers or elements would be put forward by Mr. Gagnon, hence its motion so that it can answer them.

[4] However, I do not intend to grant this motion by the mis en cause because, upon review, it appears that paragraphs 5, 8, and 11 of Mr. Gagnon's affidavit were sufficiently argued and precise to lead the mis en cause, during the stage when its evidence on the merits was filed, to seek any affiant, including Mr. Aghiles Kheffache, and thus seek to cover the elements that it is now seeking to cover. Referring to Mr. Gagnon's answers during his examination to argue that those answers provide new, surprising facts can only be seen as an excuse by the mis en cause regarding the

potential insufficiency of its evidence on the merits. In my assessment, during his examination, Mr. Gagnon merely elaborated on or specified, without truly providing any relevant new evidence, the allegations in his affidavit.

[5] Therefore, despite the argument by counsel for the mis en cause in Court to demonstrate its position regarding the presence of new facts that arose by surprise during Mr. Gagnon's examination, the written submissions and the authorities filed by counsel for the seizing creditor still stand in their essential nature.

[6] Moreover, the mis en cause did not enclose with its motion record Mr. Robert Landry's affidavit, which it wanted to add. The situation is the same with respect to Mr. Kheffache. As for the latter, even if the mis en cause argues that he is a third party not under the control of the mis en cause, it did not provide evidence that it had sought to contact him during its evidence on the merits or during the introduction of the motion under review so that he could file an affidavit.

ORDER

The motion by the mis en cause is therefore dismissed, costs in the cause.

“Richard Morneau”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: ITA-3436-06

STYLE OF CAUSE: INCOME TAX
against:
PIERRE LACHAPELLE ET AL

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 16, 2007

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: April 19, 2007

APPEARANCES:

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Louis-Frédéric Côté FOR THE MIS EN CAUSE

SOLICITORS OF RECORD:

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