

**Date: 20070718**

**Docket: T-499-06**

**Citation: 2007 FC 754**

**Ottawa, Ontario, July 18, 2007**

**Present: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**JUS D'OR INC.**

**Applicant**

**and**

**CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**Introduction**

[1] This is an application for judicial review of a “Requirement to Pay” (administrative seizure) issued by the Canada Customs and Revenue Agency (respondent) on January 25, 2006, to the National Bank of Canada requiring it to remit the sum of \$58,200.75, property of Jus d’Or Inc. (applicant), to the Receiver General on account of the liability of the tax debtor, Jus d’Or Inc.

**Facts**

[2] The applicant operates a restaurant, hotel and bar business. The payroll management for its staff is contracted out to third parties, 9145-5287 Québec Inc, 9079-1526 Québec Inc. and 6369910 Canada Inc.

[3] The respondent sought to determine whether the amounts deducted from the wages of the applicant's employees under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th supp.) (the *ITA*) and the *Employment Insurance Act*, R.S.C. 1996, c. 23 (the *EIA*) had been remitted. Having failed to obtain the relevant documents from the applicant and the third-party companies, the respondent issued a first notice of assessment against the applicant on January 17, 2006, in the amount of \$58,100.39. This figure represented the source deductions from the wages of the applicant's employees for the period from April 1, 2005 to December 31, 2005.

[4] The amount claimed was payable immediately. In fact, on January 26, 2006, the respondent sent an administrative seizure to the National Bank of Canada for \$58,200.75, naming the applicant as the tax debtor. This amount was remitted to the respondent the following day.

[5] On March 6, 2006, the applicant sent the respondent a notice of objection to the notice of assessment issued on January 17, 2006, under the *ITA*.

[6] On March 10, 2006, after the respondent had obtained more information about the source deductions from the wages of the applicant's employees, a new notice of assessment was issued against the applicant requiring payment of \$96,275.28.

### **Issues**

- (1) Did Canada Customs and Revenue Agency err in assessing the applicant?
- (2) Did the administrative seizure comply with the time limits in subsection 225.1 of the *ITA*?
- (3) Did the second notice of assessment nullify the administrative seizure that had been sent to the National Bank of Canada?

### **Analysis**

- (1) Did Canada Customs and Revenue Agency err in assessing the applicant?

[7] According to the applicant, two distinct legal entities were responsible for hiring, dismissing and paying the employees who worked in the applicant's businesses. The applicant therefore maintains that, under the principles developed in *Roy v. Québec*, SOQUIJ AZ-40194689 [2003], the respondent erred in assessing Jus d'Or Inc. for non-payment of the source deductions. According to this decision, where a third party is responsible for paying employees' wages, the same company should be responsible for statutory deductions. However, this Superior Court decision does not apply here at all because this is an application for judicial review to the Federal Court of a notice of assessment issued under the *ITA* and the *EIA*, not a notice of assessment issued by the Minister of Revenue of Quebec under the *Ministry of Revenue Act*.

[8] It should be noted that the jurisdiction of this Court is much narrower than that of the Québec Superior Court. In fact, the jurisprudence of this Court is clear: the Federal Court has no jurisdiction on a judicial review to vacate or review tax assessments (*McCaffrey v. Canada*, [1992] F.C.J. No. 1108 at paragraph 23; *Scott Slipp Nissan Ltd. v. Canada*, [2004] F.C.J. No. 1327 at paragraph 13; *Albion Transportation Research Corp. v. Canada*, [1997] F.C.J. No. 901 at paragraph 31). In *Albion Transportation Research Corp.*, above, Mr. Justice Gibson wrote at paragraph 31:

It is clear that the claim for wrongful seizure, in the sense that the seizure was without legal justification, cannot be adjudicated by this Court by operation of section 18.5. To argue that there was not legal justification for the seizure would entail an attack on the validity of the tax assessment which is already provided for by a right of appeal to the Tax Court of Canada pursuant to section 171 of the *Income Tax Act*. Section 18.5 bars this Court from adjudicating a claim that would entail a challenge to the validity of the tax assessment because an alternative appeal right exists to the Tax Court of Canada.

[9] More recently, Mr. Justice O’Keefe stated at paragraph 13 of *Scott Slipp Nissan Ltd.*, above:

Although this Court has no jurisdiction over proceedings framed as judicial review that ultimately seek to have tax assessments vacated or reviewed, this application is not a disguised attempt by SSNL to challenge its assessments.

In view of this jurisprudence, it is clear that the Court cannot grant the relief requested on an application for judicial review.

[10] The legislation establishes the procedure that must be followed by anyone who objects to a notice of assessment issued under the *ITA* or the *EIA*. The procedure is set out in sections 165 and

following of the *ITA* and in sections 92 and 103 of the *EIA*. These provisions provide that an objection to a notice of assessment must be served on the Minister and that it may be appealed to the Tax Court of Canada and from there to the Federal Court of Appeal. Accordingly, to allow this Court on an application for judicial review to vacate or review a notice of assessment would create a duplicity of proceedings, which is not acceptable under section 18.5 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

(2) Did the administrative seizure comply with the time limits in subsection 225.1 of the *ITA*?

[11] The purpose of the administrative seizure of January 26, 2006, was to recover the amounts that had been deducted from the wages of the applicant's employees from April 1, 2005, to December 31, 2005, pursuant to the *ITA* and the *EIA*.

[12] The collection of amounts due on account of tax is suspended during the time periods specified in subsections 225.1(1) to (5) of the *ITA*. The exceptions to this suspension are set out in subsection 225.1(6) of the *ITA*. The relevant provisions can be found in the Appendix.

[13] As indicated in this provision, particularly subsection 225.1(6) of the *ITA*, collection activity is not suspended for "an amount required to be deducted or withheld, and required to be remitted or paid." That said, subsection 153(1) of the *ITA* specifies that deductions from an employee's wages are "amount[s] required to be deducted or withheld, and required to be remitted or paid."

[14] Consequently, the respondent was entitled to proceed by way of administrative seizure on January 26, 2006, to recover the amounts deducted for tax from the wages of the applicant's employees. I also accept that there is no restriction on the collection of amounts deducted from employees' wages under the *EIA*.

[15] In short, there was no restriction on the applicant in collecting amounts due under the *ITA* or the *EIA*.

(3) Did the second notice of assessment nullify the administrative seizure that had been sent to the National Bank of Canada?

[16] A first notice of assessment was issued against the applicant on January 17, 2006, in the amount of \$58,100.39 to recover the amounts deducted from the wages of the applicant's employees from April 1, 2005 to December 31, 2005. On January 25, 2006, the respondent sent an administrative seizure to the National Bank of Canada to collect the amount of \$58,100.39. Last, on March 10, 2006, a second notice of assessment was issued against the applicant in the amount of \$96,275.28 for the deductions from employees' wages from April 1, 2005, to February 16, 2006.

[17] It should be noted that the applicant's requirement to pay acknowledged that the \$58,200.75 seized on January 27, 2006, should be applied to the \$96,275.28 that was indicated in the second notice of assessment.

[18] That being said, the applicant maintains that the second notice of assessment issued on March 10, 2006, replaced the first notice of assessment issued on January 17, 2006, and therefore any collection action before March 10, 2006, under the first notice of assessment should be set aside. Accordingly, the applicant seeks reimbursement of the \$58,200.75 that was seized on January 25, 2006.

[19] This position is not consistent with the jurisprudence of the Federal Court. In *Lambert v. Canada*, [1977] 1 F.C. 199, the Federal Court of Appeal wrote:

It follows that a reassessment of tax does not nullify the liability to pay the tax covered by the previous tax [sic] as long as that tax is included in the amount reassessed. As there can be no basis for the appellant's contention on this motion unless the “amount payable” on which the certificate was based had ceased to be “payable” and as the material before us does not show that it had ceased to be payable, in our view, the appeal had to be dismissed. Indeed, the appeal was argued, as we understood the argument, on the assumption that the amounts on which the certificate was based were carried forward into the new assessments.

[Emphasis added.]

[20] I would add that the Federal Court of Appeal repeated these statements in *Optical Recording Corp. v. Canada*, [1991] 1 F.C. 309.

[21] In light of this jurisprudence, I am of the view that the administrative seizure that took place on January 27, 2006, is valid because the second notice of assessment did not nullify the amount of tax payable established in the first notice of assessment. The applicant may pursue its opposition to

the assessment before the appropriate courts. If it is successful at the end of this process, it may be entitled to a refund pursuant to subsections 164(4.1) of the *ITA* and 96(3) of the *EIA*.

[22] For these reasons, the Court dismisses the application for judicial review with costs.



**ORDER**

**THE COURT ORDERS** that the application for judicial review is dismissed with costs.

“Danièle Tremblay-Lamer”

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Judge

Certified true translation  
Mary Jo Egan, LLB

## APPENDIX

Section 255.1 of the *ITA* reads as follows:

**225.1. (1)** Where a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, for the purpose of collecting the amount,

- (a) commence legal proceedings in a court,
- (b) certify the amount under section 223,
- (c) require a person to make a payment under subsection 224(1),
- (d) require an institution or a person to make a payment under subsection 224(1.1),
- (e) require the retention of the amount by way of deduction or set-off under section 224.1,
- (f) require a person to turn over moneys under subsection 224.3(1), or
- (g) give a notice, issue a certificate or make a direction under subsection 225(1)

until after the day that is 90 days after the day of the mailing of the notice of assessment.

**(2)** Where a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) until after the day that is 90 days after the day on which notice is mailed to the taxpayer that the Minister has confirmed or varied the assessment.

**(3)** Where a taxpayer has appealed from an assessment of an amount payable under this Act to the Tax Court of Canada, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) before the day of mailing

**225.1. (1)** Dans le cas où un contribuable est redevable du montant d'une cotisation établie en vertu de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du 90<sup>e</sup> jour suivant la date de mise à la poste de l'avis de cotisation:

- a) entamer une poursuite devant un tribunal;
- b) attester le montant, conformément à l'article 223;
- c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);
- d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;
- e) exiger la retenue du montant par déduction ou compensation, conformément à l'article 224.1;
- f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);
- g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

**(2)** Dans le cas où un contribuable signifie en vertu de la présente loi un avis d'opposition à une cotisation pour un montant payable en vertu de cette loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant le lendemain du 90<sup>e</sup> jour suivant la date de mise à la poste d'un avis au contribuable où il confirme ou modifie la cotisation.

**(3)** Dans le cas où un contribuable en appelle d'une cotisation pour un montant payable en vertu de la présente loi, auprès de la Cour canadienne de l'impôt, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées

of a copy of the decision of the Court to the taxpayer or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

**(4)** Where a taxpayer has agreed under subsection 173(1) that a question should be determined by the Tax Court of Canada, or where a taxpayer is served with a copy of an application made under subsection 174(1) to that Court for the determination of a question, the Minister shall not take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) for the purpose of collecting that part of an amount assessed, the liability for payment of which will be affected by the determination of the question, before the day on which the question is determined by the Court.

**(5)** Notwithstanding any other provision in this section, where a taxpayer has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the taxpayer, the Minister may take any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) for the purpose of collecting the amount assessed, or a part thereof, determined in a manner consistent with the decision or judgment of the Court in the other action at any time after the Minister notifies the taxpayer in writing that

(a) the decision of the Tax Court of Canada in that action has been mailed to the Minister,

(b) judgment has been pronounced by the Federal Court of Appeal in that action, or

(c) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

**(6)** Subsections 225.1(1) to 225.1(4) do not apply with respect to

(a) an amount payable under Part VIII;

(b) an amount required to be deducted or

aux alinéas (1)a) à g) avant la date de mise à la poste au contribuable d'une copie de la décision de la cour ou la date où le contribuable se désiste de l'appel si celle-ci est antérieure.

**(4)** Dans le cas où un contribuable convient de faire statuer conformément au paragraphe 173(1) la Cour canadienne de l'impôt sur une question ou qu'il est signifié au contribuable copie d'une demande présentée conformément au paragraphe 174(1) devant la Cour canadienne de l'impôt pour qu'elle statue sur une question, le ministre, pour recouvrer la partie du montant d'une cotisation, dont le contribuable pourrait être redevable selon ce que la cour statuera, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant la date où la cour statue sur la question.

**(5)** Malgré les autres dispositions du présent article, lorsqu'un contribuable signifie, conformément à la présente loi, un avis d'opposition à une cotisation ou en appelle d'une cotisation devant la Cour canadienne de l'impôt et qu'il convient par écrit avec le ministre de retarder la procédure d'opposition ou la procédure d'appel jusqu'à ce que la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada rende jugement dans une autre action qui soulève la même question, ou essentiellement la même, que celle soulevée dans l'opposition ou l'appel par le contribuable, le ministre peut prendre les mesures visées aux alinéas (1)a) à g) pour recouvrer tout ou partie du montant de la cotisation établi de la façon envisagée par le jugement rendu dans cette autre action, à tout moment après que le ministre a avisé le contribuable par écrit que, selon le cas:

a) le jugement de la Cour canadienne de l'impôt dans l'action a été posté au ministre;

b) la Cour d'appel fédérale a rendu jugement dans l'action;

c) la Cour suprême du Canada a rendu jugement dans l'action.

**(6)** Les paragraphes (1) à (4) ne s'appliquent pas:

a) aux montants payables en application de la partie VIII;

b) aux montants à déduire ou à retenir, et à remettre ou à payer, en application de la

withheld, and required to be remitted or paid, under this Act or the Regulations;

(c) an amount of tax required to be paid under section 116 or a regulation made under subsection 215(4) but not so paid;

(d) the amount of any penalty payable for failure to remit or pay an amount referred to in paragraph 225.1(6)(b) or 225.1(6)(c) as and when required by this Act or a regulation made under this Act; and

(e) any interest payable under a provision of this Act on an amount referred to in this paragraph or any of paragraphs 225.1(6)(a) to 225.1(6)(d).

[Emphasis added]

présente loi ou de son règlement;

c) à l'impôt à payer en application de l'article 116 ou d'un règlement d'application du paragraphe 215(4) et qui n'a pas encore été payé;

d) aux pénalités payables pour défaut de remettre ou de payer un montant visé à l'alinéa b) ou c) de la manière et dans le délai prévus à la présente loi ou à son règlement;

e) aux intérêts payables en application de la présente loi sur l'un des montants visés au présent alinéa ou aux alinéas a) à d).

[Je souligne]

Subsection 153(1) of the *ITA* states:

**153. (1)** Every person paying at any time in a taxation year

(a) salary, wages or other remuneration, other than amounts described in subsection 212(5.1),

(b) a superannuation or pension benefit,

(c) a retiring allowance,

(d) a death benefit,

(d.1) an amount described in subparagraph 56(1)(a)(iv),

(e) an amount as a benefit under a supplementary unemployment benefit plan,

(f) an annuity payment or a payment in full or partial commutation of an annuity,

(g) fees, commissions or other amounts for services, other than amounts described in subsection 212(5.1),

(h) a payment under a deferred profit sharing plan or a plan referred to in section 147 as a revoked plan,

**153. (1)** Toute personne qui verse au cours d'une année d'imposition l'un des montants suivants:

a) un traitement, un salaire ou autre rémunération, à l'exception des sommes visées au paragraphe 212(5.1);

b) des prestations de retraite ou de pension;

c) une allocation de retraite;

d) une prestation consécutive au décès;

d.1) une somme visée au sous-alinéa 56(1)a)(iv);

e) une somme à titre de prestation dans le cadre d'un régime de prestations supplémentaires de chômage;

f) un paiement de rente ou un paiement découlant de la conversion totale ou partielle d'une rente;

g) des honoraires, commissions ou autres sommes pour services, à l'exception des sommes visées au paragraphe 212(5.1);

h) un paiement dans le cadre d'un régime de

- (i) (Repealed by S.C. 1996, c. 23, s. 175.)
- (j) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",
- (k) an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,
- (l) a payment out of or under a registered retirement income fund or a fund referred to in subsection 146.3(11) as an "amended fund",
- (m) a prescribed benefit under a government assistance program,
- (m.1) (Repealed by S.C. 1994, c. 21, s. 77(1).)
- (n) one or more amounts to an individual who has elected for the year in prescribed form in respect of all such amounts,
- (o) an amount described in paragraph 115(2)(c.1),
- (p) a contribution under a retirement compensation arrangement,
- (q) an amount as a distribution to one or more persons out of or under a retirement compensation arrangement,
- (r) an amount on account of the purchase price of an interest in a retirement compensation arrangement
- (s) an amount described in paragraph 56(1)(r), or
- (t) a payment made under a plan that was a registered education savings plan
- participation différée aux bénéficiaires ou d'un régime désigné à l'article 147 comme régime dont l'agrément est retiré;
- i) (Abrogé par L.C. 1996, ch. 23, art. 175.)
- j) un paiement provenant ou fait en vertu d'un régime enregistré d'épargne-retraite ou d'un régime appelé "régime modifié" au paragraphe 146(12);
- k) une somme au titre ou en paiement intégral ou partiel du produit de l'abandon, de l'annulation ou du rachat d'un contrat de rente à versements invariables;
- l) un paiement fait dans le cadre d'un fonds enregistré de revenu de retraite ou d'un fonds appelé "fonds modifié" au paragraphe 146.3(11);
- m) une prestation, visée par règlement, prévue par un programme d'aide gouvernemental,
- m.1) (Abrogé par L.C. 1994, ch. 21, art. 77(1).)
- n) une ou plusieurs sommes à un particulier qui a fait un choix pour l'année selon le formulaire prescrit à l'égard de cette ou ces sommes;
- o) une somme visée à l'alinéa 115(2)c.1);
- p) une cotisation dans le cadre d'une convention de retraite;
- q) un montant provenant d'une convention de retraite attribué à une personne ou réparti entre plusieurs;
- r) un montant au titre du prix d'achat d'un droit sur une convention de retraite,
- 153(.1)s) une somme visée à l'alinéa 56(1)r),
- t) un paiement effectué dans le cadre d'un régime enregistré d'épargne-études,
- doit en déduire ou en retenir la somme fixée selon les modalités réglementaires et doit, au moment fixé par règlement, remettre cette somme au receveur général au titre de l'impôt du bénéficiaire ou du dépositaire pour l'année en vertu de la présente partie ou de la partie XI.3. Toutefois, lorsque la personne est visée par règlement à ce moment, la
- shall deduct or withhold from the payment the amount determined in accordance with prescribed rules and shall, at the prescribed time, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a designated financial

institution.

somme est versée au compte du receveur général dans une institution financière désignée.

Subsections 85(1-2) of the *EIA* provide:

85. (1) The Minister may assess an employer for an amount payable by the employer under this Act, or may reassess the employer or make such additional assessments as the circumstances require, and the expression “assessment” when used in this Act with reference to any action so taken by the Minister under this section includes a reassessment or an additional assessment.

(2) After assessing an employer for an amount payable under this Act, the Minister shall send the employer a notice of assessment, and when the notice is sent the assessment is valid and binding subject to being vacated or varied on appeal under this Act, and the employer is liable to pay the amount to Her Majesty without delay.

[Emphasis added]

85. (1) Le ministre peut établir une évaluation initiale, une évaluation révisée ou, au besoin, des évaluations complémentaires de ce que doit payer un employeur, et le mot « évaluation », lorsqu’il est utilisé dans la présente loi pour désigner une initiative ainsi prise par le ministre en vertu du présent article, s’entend également de l’évaluation révisée ou complémentaire.

(2) Après toute évaluation d’une somme payable par un employeur en vertu de la présente loi, le ministre lui envoie un avis d’évaluation. Dès l’envoi de cet avis, l’évaluation est réputée valide et obligatoire sous réserve de modification ou d’annulation sur appel prévu par la présente loi, et l’employeur est tenu de payer immédiatement à Sa Majesté la somme indiquée.

[Je souligne]

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-499-06

**STYLE OF CAUSE:**  
**JUS D'OR INC.**

**Applicant**

**and**

**CANADA CUSTOMS AND REVENUE AGENCY**

**Respondent**

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** July 16, 2007

**REASONS FOR JUDGMENT BY:** THE HONOURABLE MADAM JUSTICE  
TREMBLAY-LAMER

**DATED:** July 18, 2007

**APPEARANCES:**

Sébastien Sénéchal FOR THE APPLICANT

Claude Bernard  
Per: Department of Justice FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Sébastien Sénéchal  
1010 de la Gauchetière West  
Suite 2250, Montréal, Quebec  
H3B 2N2

FOR THE APPLICANT

Claude Bernard  
Department of Justice  
Montréal, Quebec

FOR THE RESPONDENT