Date: 20080521

Dockets : T-1960-06
T-1961-06
T-1962-06

Citation: 2008 FC 605

BETWEEN:

HUGH STANFIELD – DIRECTOR OF RAGLAN HOLDINGS INC., RAGLAN HOLDING INC., and HUGH STANFIELD

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of three related Requests for Information that were issued by the respondent on October 11, 2006, under section 231.2 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "ITA"), concerning the tax liability of Candice Stanfield (the "taxpayer").

* * * * * * * *

[2] Hugh Stanfield (the "applicant") was married to the taxpayer until her death in 2005, upon which he became the executor of her estate. He is also the sole shareholder and a director of Raglan Holdings Inc. In his affidavits, Mr. Stanfield describes the facts leading up to the Requirements for Information that are in dispute in this application, as follows:

> 6. The Taxpayer was a participant in the UnionCAL Trading Joint Venture (the "Business"). She paid USD $9,500 for her units in the Business. In 1998, the Taxpayer suffered a business loss (the "Loss") in the amount of $1,220,650 as a result of her participation in the Business.
>
> 7. In her 1998 taxation year, the Taxpayer deducted the Loss in computing her income on her tax return. As a consequence, the Taxpayer had a non-capital loss (the "Resulting Loss") in her 1998 taxation year. The Taxpayer carried back a portion of the Resulting Loss and deducted non-capital losses in the amounts of $20,159, $20,304 and $47,544 from her net income in the Taxpayer's 1995, 1996 and 1997 taxation years, respectively. […]
>
> 8. In 1999, the Taxpayer received a profit from the Business (the "Profit") in the amount of $1,223,897.
>
> 9. In her 1999 taxation year, the Taxpayer reported the Profit in computing her income. The Appellant carried forward a portion of the Resulting Loss and deducted a non-capital loss in the amount of $641,378 from her net income in the Taxpayer's 1999 taxation year. […]

[3] Although the respondent initially accepted the taxpayer's computations, in 2002, it issued Notices of Reassessment (the "Reassessments") for each year between 1995 and 1999, disallowing the deduction of the Loss for each year but including the Profit in the taxpayer's 1999 taxation year. The taxpayer filed Notices of Objection, but the Reassessments were confirmed. On April 1, 2005, the taxpayer filed an appeal to the Tax Court of Canada, which has not yet been heard.

[4] The taxpayer died on April 30, 2005.

[5] On October 11, 2006, K. Markowski caused three Requirements for Information to be issued, to Hugh Stanfield – Director of Raglan Holdings Inc., to Raglan Holdings Inc., and to Hugh Stanfield. The first two Requirements for Information seek "[a]ll books and records of Raglan Holdings Inc for the period January 1, 2005 until October 5, 2006." The third Requirement for Information seeks a copy of the taxpayer's most recent will and testament, along with a list of all assets held by the taxpayer on her death and of any assets that have since been transferred, and a copy of all bank statements, cancelled cheques and deposit books for the taxpayer's estate.

[6] According to the Affidavit of Donald Bagno, the Collections Enforcement Officer who had taken charge of the taxpayer's collection account from Mr. Markowski,

> . . . the requirement to provide information was issued for purposes related to the enforcement and administration of the ITA, specifically, to assist with collection of amounts assessed against the Deceased and to determine if there was any jeopardy to the Minister. Mr. Markowski sent the RFI to obtain information and documents about the Deceased's assets and whether those assets were being transferred or liquidated.

[7] The applicants brought three separate applications challenging the Requirements for Information, in files T-1960-06, T-1961-06, and T-1962-06. The three applications were consolidated into one by Order of Prothonotary Lafrenière, dated February 27, 2007.

* * * * * * *

[8] The following are the relevant provisions of the ITA:

152. (8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.	**152**. (8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.
[…]	[…]
169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either (*a*) the Minister has confirmed the assessment or reassessed, or (*b*) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed, but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.	**169.** (1) Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut interjeter appel auprès de la Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation : *a*) après que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation; *b*) après l'expiration des 90 jours qui suivent la signification de l'avis d'opposition sans que le ministre ait notifié au contribuable le fait qu'il a annulé ou ratifié la cotisation ou procédé à une nouvelle cotisation; toutefois, nul appel prévu au présent article ne peut être interjeté après l'expiration des 90 jours qui suivent la date où avis a été expédié par la poste au contribuable, en vertu de l'article 165, portant que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation.
[…]	[…]
225.1 (1) If 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, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:	**225.1** (1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions 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 jour du début du recouvrement du montant, prendre les mesures suivantes :

(*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*) [Repealed, 2006, c. 4, s. 166]
(*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).

[…]

(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 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.

[…]

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) [Abrogé, 2006, ch. 4, art. 166]
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).

[…]

(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 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.

[…]

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a comprehensive tax information exchange agreement between Canada and another country or jurisdiction that is in force and has effect or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord général d'échange de renseignements fiscaux entre le Canada et un autre pays ou territoire qui est en vigueur et s'applique ou d'un traité fiscal conclu avec un autre pays, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne, dans le délai raisonnable que précise l'avis :

stipulated in the notice, (*a*) any information or additional information, including a return of income or a supplementary return; or (*b*) any document.	*a*) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire; *b*) qu'elle produise des documents.

[9] The following provision of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, is also relevant to the analysis:

69.3 (1) Subject to subsections (2) and (3) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or may commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged.	**69.3** (1) Sous réserve des paragraphes (2) et (3) et des articles 69.4 et 69.5, à compter de la faillite d'un débiteur, les créanciers n'ont aucun recours contre le débiteur ou contre ses biens et ne peuvent intenter ou continuer aucune action, exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite, et ce jusqu'à la libération du syndic.

* * * * * * *

[10] The only issue that arises in this application is whether the Minister erred in issuing the Requirements for Information.

[11] Essentially, the applicants submit that, in light of the challenge to the Reassessments, the respondent could not issue the Requirements for Information. According to the applicants, "[t]he Requirements are unreasonable because the Inflated Debt is illusory and the inconsistent Reassessments are being challenged in the Tax Court of Canada." The applicants also argue that the Requirements for Information amount to collection on the contested debt, which the respondent is

prohibited from doing, by subsections 225.1(1) and (3) of the ITA, while a taxpayer is pursuing their appeal rights.

[12] The respondent, however, notes that assessments are deemed to be valid until they are varied or vacated by the Tax Court of Canada. What the applicants essentially seek is a determination by this Court that the Reassessments are invalid or illegal, which is solely within the jurisdiction of the Tax Court of Canada. Concerning the applicants' arguments about collection, the respondent submits that the applicants' submissions would result in the addition of a new prohibition to subsection 225.1(1).

[13] Subsection 231.2(1) allows the respondent to require information "for any purpose related to the administration or enforcement of this Act." According to the Federal Court of Appeal, the test is "not whether the information requested will be relevant in determining the applicant's Canadian tax liability, but rather whether the information is relevant to the administration of the Act" (*Saipem Luxembourg S.A. v. The Canada Customs and Revenue Agency*, 2005 FCA 218, [2005] F.C.J. No. 1022 (C.A.) (QL), leave to appeal to S.C.C. refused [2005] S.C.C.A. No. 368).

[14] As the respondent has pointed out, the basis for the applicants' submission that the Requirements for Information are unreasonable is their argument that the Reassessments are flawed. However, in accordance with subsection 152(8) of the ITA, a reassessment is deemed to be valid unless it is varied or vacated on objection or appeal. As that has not occurred in this case, the Reassessments are deemed to be valid (*Canada (Minister of National Revenue) v. Parsons*, [1984] 2 F.C. 331 (C.A.), [1984] C.T.C. 352). Even if the position of the applicants is correct, that the tax

liability will no longer exist once the Tax Court of Canada has ruled on the matter, it is not the role of this Court to enquire into the merits of an assessment.

[15] Mr. Bagno has affirmed that the purpose of the Requirements for Information is to assist with the collection of the amount owed by the taxpayer, as determined by the Reassessments, a purpose which is clearly relevant to the administration of the ITA. Therefore, the Requirements for Information fall within the requirements of subsection 231.1(1) of the ITA.

[16] Concerning the applicants' submission that the Requirements for Information are inappropriate because the respondent cannot proceed with collection while the proceedings are pending before the Tax Court of Canada, I am in agreement with the respondent's submissions. The Minister's power set out at section 231.2 of the ITA does not relate to collection and is not a collection action. In *Donald Fabi v. The Minister of National Revenue*, 2006 FCA 22, [2006] F.C.J. No. 43 (QL), the Federal Court of Appeal stated the following:

> [11] With respect, I am of the view that the requests for information by the Minister, made in this case to determine, for tax purposes, the existence or value of an asset which might be concealed or the amount of its selling price or price of disposal, do not constitute an action in view of collecting claims provable in bankruptcy. The Minister is responsible for implementing and enforcing the Act. This duty, which he performs in the public interest, includes the determination of a taxpayer's tax debt. Determining a taxpayer's tax obligation is an objective relating to the administration and enforcement of the Act. In order to carry out this duty properly, the Minister must be able to ask questions in order to obtain and determine the facts and amounts: *Tower v. M.N.R.*, [2004] 1 F.C.R. 183 (F.C.A.).
>
> [12] At this stage, according to the evidence, this is the objective pursued by the requests for production of information and documents made by the Minister. If the Minister thereafter wishes to proceed to

> the next stage, that is the collection of the new tax debt so established, if any, then paragraph 69.1(1)(*a*) of the *Bankruptcy and Insolvency Act* will come into play. It cannot be assumed at this point, and there is no evidence to this effect in the record, that the Minister will ignore paragraph 69.1(1)(*a*) of the *Bankruptcy and Insolvency Act* and will not proceed to collect the new tax debt by way of an amended claim, as he is allowed to do by section 121 of that Act.

[17] Indeed, in the context of the *Bankruptcy and Insolvency Act*, which imposes a stay on any proceedings concerning a debt on the bankruptcy of the debtor, the Federal Court has ruled that a Request for Information under subsection 231.2 is not a "proceeding", and is therefore not caught by that stay (*Minister of National Revenue v. Stern*, 2004 FC 763, [2004] F.C.J. No. 935 (T.D.) (QL)).

* * * * * * *

[18] For all the above reasons, the application for judicial review must be dismissed, with costs, in each case, namely T-1960-06, T-1961-06 and T-1962-06.

"Yvon Pinard"

Judge

Ottawa, Ontario
May 21, 2008

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	T-1960-06, T-1961-06, T-1962-06
STYLE OF CAUSE:	HUGH STANFIELD – DIRECTOR OF RAGLAN HOLDINGS INC., RAGLAN HOLDING INC., and HUGH STANFIELD v. THE MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 1, 2008
REASONS FOR JUDGMENT:	Pinard J.
DATED:	May 21, 2008

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