Federal Court Cour fédérale

**Date: 20110304**

**Docket: T-349-11**

**Citation: 2011 FC 263**

**Vancouver, British Columbia, March 4, 2011**

**PRESENT: The Honourable Mr. Justice Shore**

IN THE MATTER OF SUNG YOUN PARK
and an application by the Minister of National Revenue
under section 225.2 of the *Income Tax Act*

**BETWEEN:**

**THE MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**SUNG YOUN PARK**

**Respondent**

# REASONS FOR ORDER AND ORDER

## I. Introduction

[1] Based on the disclosure of one's income and its sources which does not constitute a self-imposed affliction but constitutes a legal imperative, the paying of taxes, thereby, does not arise of choice, but derives from a legal obligation.

II. Background

[2] The Respondent's former spouse Doo Chun Park, also known as Don Park (Doo), is indebted to the Minister for unpaid income tax in the current amount of $1,847,734.66 in respect of the 2001, 2002, and 2003 taxation years. He last filed a tax return in 2003 (Affidavit of A. Hamilton, para 7).

[3] Doo, now retired, owned and operated a Super 8 Motel and liquor store in Alberta. That property was sold in 2002 for about $2,700,000. Doo's tax assessment was relevant to unpaid tax on capital gains arising from the sale of the Alberta motel business (Affidavit of A. Hamilton, para 8).

[4] The Respondent's son, Hugo Hyun Park (Hugo), was the registered owner of real property located at 2088 W. 62nd Ave. S.W. Marine, Vancouver, British Columbia, and bearing a legal description of 010-292-675 Lot A of Lots 244 to 246 Block B District Lot 325A Plan 8031 (the Subject Property) (Affidavit of A. Hamilton, para 9, Exhibit "A").

[5] This Property was originally purchased by him in 2004 for $1,030,000. At this time, Hugo was a student and was studying in Puerto Rico. His reported income for this year was $7,885. (Affidavit of A. Hamilton, para 10, Exhibit "A").

[6] Hugo obtained the funds relevant to his purchase of the Subject Property from Doo (the Loan). The Loan was documented by means of a separation agreement (the Separation Agreement) dated July 31, 2005, between Doo and the Respondent, Sung Youn Park (Sung).

The amount of the Loan was $2,253,558.53 USD (approximately $2,789,454.75 CDN). The Separation Agreement states that the Loan occurred in 2004 and that it was to be repaid by Hugo to both Doo and Sung (Affidavit of A. Hamilton, para 11, Exhibit “B”).

[7] Hugo used the funds relevant to the Loan to also make a loan to Sung in the amount of $196,000. The funds were apparently provided to Sung so that she could provide them to her children (including Hugo) as down-payments relevant to the purchase of condos. Her daughter, Hannah, sold her condo on July 31, 2009. Her sons’, Hugo and Hans, condos remain registered in their names. It is unclear if Sung retained any interest in these properties (Affidavit of A. Hamilton, para 12, Exhibits “B” to “E”).

[8] In an affidavit filed by him relevant to jeopardy proceedings taken against him by the Applicant, Hugo deposed that his condo was originally owned by his father, transferred to his mother, and acquired by him pursuant to his father’s instructions. He also denied that the Loan was in fact a loan, but verified that the monies were provided to him by Doo (Affidavit of A. Hamilton, para 13, Exhibit “C”).

[9] Relevant to the remaining $1.5 million (or so) he received from his father pursuant to the Loan, Hugo deposed that all monies that he received from his father were, for the most part, returned to Doo. He says also that his father orchestrated all financial transactions between them, including those relevant to the Subject Property, and that further to his Korean heritage he did not question his father’s motives and simply complied with his father’s instructions (Affidavit of A. Hamilton, para 14, Exhibit “C”).

[10] Hugo did not reside in the Subject Property because at all material times, he was studying or working abroad. He allowed his mother and father to reside at the Property in exchange for their payment of the expenses relevant to it. Sung had power of attorney with respect to Hugo's affairs. This is set out in the Separation Agreement (Affidavit of A. Hamilton, para 15, Exhibits "B" and "F").

[11] The Separation Agreement also provided for payment of Doo's tax debt as it was at that time. Both Sung and Doo were to pay the debt. A 'Satisfaction Piece' entered into between Sung and Doo likewise provided for the debt's repayment. Notwithstanding this, no payments have been made in respect of Doo's tax debt. The CRA does, however, statutorily set-off Doo's Canada Pension Plan and Old Age Security payments against his tax debt (Affidavit of A. Hamilton, para 16, Exhibits "B" and "G").

[12] Relevant to the Subject Property, Hugo obtained a $700,000 mortgage from the Bank of Montreal (BMO). As with the Loan, Hugo has deposed that this mortgage was arranged by his father and the funds relevant to it actually went to Doo. This mortgage is no longer registered against title to the Subject Property and was either assumed by Sung or a new mortgage was obtained in its stead given that another mortgage in favour of BMO in the amount of $780,000 was then registered against title to the Property (the BMO Mortgage). The BMO Mortgage was guaranteed by Hannah and signed by Sung on her behalf as her power of attorney (Affidavit of A. Hamilton, para 17, Exhibits "C", "H", and "I").

[13] A Requirement to Pay (RTP) was issued to Hugo in 2007 by the Minister under subsection 224(1) of the ITA relevant to the Loan. Hugo failed to comply with the RTP and, accordingly, was assessed in respect of this non-compliance for the amount of $1,639,959.66. The Minister then obtained a jeopardy order against Hugo in respect of this assessment (Federal Court File No. T-1035-08). That jeopardy order was reviewed unsuccessfully by him. Sung paid Hugo's costs as awarded to the Minister relevant to this litigation (Affidavit of A. Hamilton, para 18, Exhibits "J" and "K").

[14] Hugo was also assessed pursuant to section 160 of the ITA in respect of deposits to his bank accounts made by Doo in the total amount of $17,293,548.39. This included the Loan monies (Affidavit of A. Hamilton, para 19, Exhibit "L").

[15] With respect to his assets more generally, Hugo has deposed that all assets were created and placed in his name by his father and all transfers of money between accounts, including those in Canada, California and Puerto Rico, were done on his father's instructions. The only exception to this appears to be with regards to a line of credit obtained by Hugo from the Toronto-Dominion Bank (TD) so that he could pay out his student loans relevant to his education, which line of credit is secured by a mortgage registered against title to Hugo's condo (in addition to several other financial encumbrances). It is signed by Sung as power of attorney for Hugo (Affidavit of A. Hamilton, para 20, Exhibits "C" and "D").

[16] Hugo also appears to imply in his Affidavit that at all material times, both he and his mother were Doo's mere nominees with respect to the family assets generally, including the Subject Property (Affidavit of A. Hamilton, para 21, Exhibit "C").

[17] Sung has likewise deposed in an affidavit, sworn by her relevant to proceedings initiated by the Minister in respect of her failure to comply with a Requirement for Information (RFI) (Federal Court No, T-317-06), that she and Doo maintained a traditional Korean marriage which meant that she primarily assumed the role of wife and mother. This was notwithstanding that Sung was a director and shareholder of several of the family corporations (Affidavit of A. Hamilton, para 22, Exhibit "M").

[18] In 2005, Hugo transferred the Subject Property to Sung. Sung paid consideration of $1. The Subject Property was valued at $1,126,000 at the time of the transfer (Affidavit of A. Hamilton, para 23, Exhibits "N" and "O").

[19] Hugo has deposed that this transfer was also made on Doo's instructions (Affidavit of A. Hamilton, para 24, Exhibit "C").

[20] Sung was assessed on November 18, 2010, relevant to this transfer pursuant to section 160 of the ITA (the "Assessment") in the amount of $1,397,999 (the Debt) (Affidavit of A. Hamilton, para 25, Exhibit "P").

[21] The Assessment concerning the Debt was sent to Sung by ordinary mail at the Subject Property, being her last known address (Affidavit of A. Hamilton, para 26, Exhibit “Q”).

[22] Sung has made no voluntary payments towards the Debt since the Assessment was issued (Affidavit of A. Hamilton, para 27).

[23] Sung has, through her counsel, filed a Notice of Objection (Objection) to the Assessment. She is represented by William A. Ruskin (Ruskin) of Clark Wilson LLP (Clark Wilson). As such, her Debt is subject to the collection restrictions imposed by the ITA which restrictions will not lift until Sung’s Objection and/or appeal have concluded (Affidavit of A. Hamilton, para 28).

[24] Accordingly, it is not known at this time when the collection restrictions period relevant to Sung’s Debt will lift (Affidavit of A. Hamilton, para 29).

[25] Two of the companies controlled by the Park family — 835667 Alberta Ltd. (835667) and 214 Holdings Ltd. (214 Holdings) — were/are likewise indebted to the Minister and, at least relevant to 835667, were the subject of jeopardy proceedings (Affidavit of A. Hamilton, para 30, Exhibit “R”).

[26] 214 Holdings is indebted to the Minister in the current amount of $74,015.35 for unpaid capital gains. 214 Holdings was controlled by Doo and owned by Doo and Sung. It was struck in 2006 (Affidavit of A. Hamilton, para 30, Exhibit “B1”).

[27] 835667 is controlled by Hugo, who is also its sole shareholder. The Applicant issued two separate section 160 assessments against 835667; one relevant to the transfer of real property in Alberta from Doo to 214 Holdings and then to 835667; and the second in regards to the transfer of funds from Doo to 835667. Per Federal Court File Number T-1888-07, the assessments were jeopardized, which Order was not reviewed. Later, the appeals division vacated the first assessment pertaining to the transfer of the real property in Alberta because adequate consideration in respect of the transfer had been provided. The second assessment has been appealed but a decision relevant to it has not yet been rendered. Both assessments were paid from the proceeds of sale relevant to the Alberta property (Affidavit of A. Hamilton, para 31, Exhibit “R”).

A. *The Assets*

[28] Sung is believed to have no exigible assets of value in Canada save the sale proceeds relevant to the Subject Property and shares in 1208922 Alberta Ltd. (1208922) (Affidavit of A. Hamilton, paras 32 to 33, Exhibits “O”, “S” to “V”).

[29] The Subject Property was recently listed for sale for $1,680,000 and sold in January 2011. The closing date was on or about February 28, 2011. The sale price was $2,020,000 (Affidavit of A. Hamilton, para 34, Exhibit “W”).

[30] Sung is estimated to have had equity in the Subject Property of $1,232,295.90, having considered the amount owing by her relevant to the mortgages registered against title to the Subject Property, and the sale price of the Subject Property (Affidavit of A. Hamilton, para 35, Exhibits “W” to “A1”).

[31] In this regard, and as noted above, the Property was encumbered by the BMO Mortgage. The balance owing on the BMO mortgage was $687,704.17 (Affidavit of A. Hamilton, para 35, Exhibit “X”).

[32] The Subject Property was also encumbered by a mortgage in favour of TD (the TD Mortgage). The face value of this mortgage was $100,000. The balance owing on the TD Mortgage is not known (Affidavit of A. Hamilton, para 35, Exhibit “Z”).

[33] The assessed value of the Subject Property is $2,175,000 (Affidavit of A. Hamilton, para 35, Exhibit “A1”).

[34] Sung additionally has shares in 1208922 as noted above. This company operates the Peace Valley Inn in Peace River, Alberta. Sung is a 15% shareholder. The value of these shares is unknown but is estimated to be $290,994.60. Sung receives annual dividends relevant to these shares, beginning in 2006. Those dividends have been:

| **Year** | **Dividend** |
|---|---|
| 2006 | $53,874.81 |
| 2007 | $30,000.00 |
| 2008 | $61,191.95 |
| 2009 | $27,324.23 |

(Affidavit of A. Hamilton, paras 36 to 38, Exhibits “B1” to “C1”)

[35] Sung also had shares in 214 Holdings and 1207642 Alberta Ltd. but, because these companies have been struck, these shares are likely worthless (Affidavit of A. Hamilton, para 36, Exhibit “B1”).

[36] Relevant to 1208922, Sung also received $118,296 in T4 income in 2007. She has received no other T4 income from the company in other years. Sung also works as a nurse on a part-time basis. In recent years, her income from her nursing job has averaged approximately $26,000 (averaged for 2005 to 2009) (Affidavit of A. Hamilton, para 38).

[37] Additionally, Sung was the registered owner of real property located at 1606 - 2979 Glen Drive, Coquitlam, British Columbia, and bearing a legal description of 027-318-842 Strata Lot 93 District Lot 386 Group 1 New Westminster District Strata Plan BCS2656 (the Rental Property). This property was rented out by Sung and then sold by her in 2010 to Mojgan Sheykholeslami (Sheykholeslami), a realtor, for $398,000. She realized proceeds of $78,489.16. Sung was indebted to the Minister at this time. No funds were provided to the Minister in respect of this sale and I am unclear what Sung did with the sale proceeds (Affidavit of A. Hamilton, para 39, Exhibits “C”, “D1” to “F1”).

[38] On a 2005 Personal Financial Statement, Sung declared her net worth to be $2,136,000. This was made up of $30,000 in cash held with TD, a $193,000 GIC also held with TD, her equity in the Subject Property, a $60,000 vehicle, $450,000 in stocks/bonds and $30,000 in household/personal effects. The current status of these assets (with the exception of her equity

position relevant to the Subject Property) is not known (Affidavit of A. Hamilton, para 42, Exhibit “I1”).

[39] Also unknown is the current status of Sung’s bank accounts/investments with Canada Trust and TD. The Applicant has issued Requirements for Information to these banking establishments but has not yet received the requested information (Affidavit of A. Hamilton, paras 35 and 43, Exhibits “Y” and “J1”).

B. *Sale of the Subject Property*

[40] As noted, the Subject Property sold for $2,020,000 and Sung realized proceeds of about $1,232,295.90 (Affidavit of A. Hamilton, para 34, Exhibit “W”).

[41] The notary for Sung relevant to the handling of the conveyance in respect of the Subject Property was Wanda Wong Wilson of Vancouver. Given that the sale relevant to the Subject Property has just closed, the Agency is hopeful that the sale proceeds remain with her (Affidavit of A. Hamilton, paras 34 and 47, Exhibit “W”).

[42] It is assumed that Sung will not provide the sales proceeds, or any portion of the sales proceeds, to the Minister in respect of her Debt, particularly as she failed to do this relevant to the sale of the Rental Property (Affidavit of A. Hamilton, para 45).

[43] Additionally, because Doo seemingly controls what occurs with respect to the Subject Property and the family’s finances generally, it is assumed that Sung will provide the sales proceeds

to him or, because such transfers have traditionally been done through Hugo, to Hugo who will then give them to Doo (Affidavit of A. Hamilton, para 46).

[44] If the sale proceeds are provided to Sung, the Agency is hopeful that she will deposit the sale proceeds into a Canadian bank account in order to effect a transfer to Doo or Hugo (Affidavit of A. Hamilton, para 47).

C. *Offshore Connection*

[45] The Park family is known to have connections to Asia. Doo is believed to presently reside in South Korea (Affidavit of A. Hamilton, paras 48 and 49).

[46] Hugo had connections to Puerto Rico and now resides in the USA. Both Hannah and Hans are believed to reside in British Columbia (Affidavit of A. Hamilton, para 50).

[47] Sung is said to have received funds from Doo, even when purportedly separated, that come from offshore sources. She also appears to send money to Korea (Affidavit of A. Hamilton, para 51, Exhibits “L1” and “M1”).

[48] Historically, large sums of cash relevant to the family’s assets including the Subject Property have been transferred to Hugo outside of Canada and eventually to Doo (Affidavit of A. Hamilton, para 52).

D. *Unorthodox Behaviour*

[49] The Applicant is of the view that Sung has been conducting her affairs in an unorthodox fashion (Affidavit of A. Hamilton, para 53).

[50] For example, the financial dealings relevant to both the Subject and Rental Properties, generally, are unorthodox and illustrate that Doo uses both Hugo and Sung as his nominees. All financial transactions relevant to the family are orchestrated by Doo and Doo appears to ultimately be the recipient of much of the family's monies (Affidavit of A. Hamilton, para 54).

[51] Sung acquired the Subject Property from Hugo for no consideration and Hugo acquired it by means of money provided to him by his father. Additional funds provided to Hugo by Doo were eventually returned to Doo by Hugo. Some of the funds from Doo to Hugo were also provided to Sung who gave them back to Hugo, and to Hans and Hannah, to purchase condos. Funds borrowed by Hugo relevant to the Subject Property were also given by Hugo to Doo (Affidavit of A. Hamilton, para 55).

[52] Both Hugo and Sung have sworn affidavits that suggest that they are mere nominees of Doo (Affidavit of A. Hamilton, para 56).

[53] Accordingly, and given that Doo is believed to be in South Korea, it seems likely that the sale proceeds relevant to the Subject Property will be transferred outside of Canada to him. They may also be provided to Hugo in New York, who will then provide the funds to his father in Korea (Affidavit of A. Hamilton, para 57).

[54] As well, when Sung sold the Rental Property, and notwithstanding that she was indebted to the Minister at this time, she failed to pay the sales proceeds, or any portion thereof, to the Minister (Affidavit of A. Hamilton, para 58).

[55] Given its nature, Sung's Assessment is itself unorthodox. Likewise are the assessments relevant to Hugo, 214 Holdings and 835667, some of which were the subject of jeopardy orders (Affidavit of A. Hamilton, para 59).

[56] Sung and Doo continue to intertwine their finances despite being separated. For example, in her 2005 personal financial statement, Doo is identified as being Sung's spouse, notwithstanding the Separation Agreement (Affidavit of A. Hamilton, para 60, Exhibit "I1").

E. *Service/Intended Collection Action*

[57] From a review of the records of the Canada Revenue Agency (CRA) concerning Sung, her last known mailing address is at the Subject Property (Affidavit of A. Hamilton, para 62, Exhibit "Q").

[58] Additionally, Sung is represented by Mr. William Ruskin at Clark Wilson in respect of her tax affairs (Affidavit of A. Hamilton, para 63).

[59] As such, the intention of the Applicant, if permitted, is to effect service of the Jeopardy Order on her by personally serving her; or by sending a copy of the Order to her by ordinary mail to the Subject Property; and in care of Mr. Ruskin at Clark Wilson (Affidavit of A. Hamilton, para 64).

[60] Historically, attempts to make direct contact with the family have been difficult. The CRA last made contact with Doo in 2004 and direct contact with Hugo has never been made. Sung last contacted the Agency in November 2010 to confirm that the amount owing relevant to her Assessment was an amount due (Affidavit of A. Hamilton, para 65).

[61] It is also the intention of the Applicant to issue Requirements to Pay pursuant to subsections 224(1) or 224(1.1) of the ITA to Sung's notary relevant to the conveyance of the Subject Property, Ms. Wanda Wong Wilson, as well as to her known banking establishments, so that it can attach any proceeds generated from the sale of the Subject Property. The CRA would, however, like to take any of the collection measures available under section 225.1 of the ITA, if permitted (Affidavit of A. Hamilton, para 66).

## C. Issue

[62] Do reasonable grounds exist to believe that the collection of all or any part of the $1,397,999 in income tax assessed in respect of the Respondent would be jeopardized by a delay in the collection of that amount?

## D. Analysis

[63] The Court fully agrees with the position of the Applicant. Therefore, the following reasons demonstrate why the Court has answered to the affirmative in regard to the issue in question.

A. *Collection Restrictions*

[64] Section 225.1 of the ITA limits, with certain exceptions, the Minister's right to recover unpaid taxes where the taxpayer disputes his or her assessed amounts and an impartial hearing has not concluded (*Income Tax Act*, section 225.1, Brief of Authorities, Tab 1).

[65] Section 225.1(1) of the ITA provides that, with certain exceptions, the Minister shall not take any of the listed collection actions against a taxpayer until after the day that is 90 days after the day that a Notice of Assessment (or Reassessment) is mailed to the taxpayer, or if the taxpayer files a notice of objection or an appeal of the assessment, until the objection or appeal has been dealt with finally (*Income Tax Act*, section 225.1, Brief of Authorities, Tab 1).

B. *Authorization to Proceed Forthwith*

[66] Section 225.2 of the ITA provides that, notwithstanding section 225.1, a judge of this Court, on an *ex parte* application by the Minister, may grant an order (a Jeopardy Order) authorizing the Minister to take collection action forthwith if the judge 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." (*Income Tax Act*, section 225.2, Brief of Authorities, Tab 2).

[67] A review of the legislative intent and history is found in the case of *1853-9049 Quebec v The Queen* a decision of Justice Paul Rouleau of this Court. At page 5095, Justice Rouleau refers to the following extracts from a speech to the House of Commons by the parliamentary secretary to

the Minister of Finance. The extracts are taken from the House of Commons debates for September 24, 1985:

> In addition, the proposed Bill includes safety features against possible abuses of the new system. Where there are reasons to believe that the granting of a delay could jeopardize the collection of the amounts in controversy, the Bill allows Revenue Canada to take forthwith recovery action. On the other hand, the taxpayer has a right to ask a Judge to review the opinion of Revenue Canada that the collection of the amount in controversy would be jeopardized by such a delay.

*(1853-9049 Quebec Inc. v The Queen* (1986), 87 DTC 5093 (FCTD) at 5095, Brief of Authorities, Tab 3)

[68] In *Laframboise v The Queen*, Justice Marcel Joyal of this Court commented on the specific wording of paragraph 225.2(1) of the ITA [with reference to the phrase "…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"] and stated (at pages 6398 to 6399):

> The expression has sufficiently liberal qualifications to it that its ambit appears to me of far greater scope than that found in Mareva injunctions. The word "may" and the expression "reasonably considered", when read together, provide considerable latitude to the Minister, a latitude which I believe is not found whenever one deals with a seizure before judgment

(*Laframboise v The Queen* (1986), 86 DTC 6396 (FCTD) at 6398 to6399, Brief of Authorities, Tab 4)

[69] In 1988, the provisions of the ITA were once again revisited and section 225.2 was amended to require prior authorization by a Court before such jeopardy collection procedures could be

initiated. It is due to this amendment that the Minister is required to avail himself of the special collection provisions contained in section 225.2 of the ITA.

C. *Test for Granting an Order under Section 225.2*

[70] This Court has held that the test on an application by the Minister under section 225.2 of the ITA (a Jeopardy Application) is whether the evidence before the Court on a balance of probabilities or a "standard of proof that 'while falling short of a balance of probabilities, nevertheless connotes a bona fide belief in a serious possibility based on credible evidence'" (the Standard of Proof) is sufficient to lead to the conclusion that collection would jeopardized by delay. This Court has also held that the issue is not whether the collection *per se* is in jeopardy but whether the actual jeopardy arises from the likely delay in the collection (*Canada (Minister of National Revenue – MNR) v 514659 B.C. Ltd.* [2003] FCJ No. 207 (TD) at para 6, Brief of Authorities, Tab 5; *Danielson v Minister of National Revenue*, [1986] 86 D.T.C. 6518 (FCTD), at 6519, Brief of Authorities, Tab 6).

[71] Therefore, in order for a Jeopardy Application to succeed, the onus is on the Minister to prove that collection will be in jeopardy as a result of a delay in the collection efforts of the Minister. Justice John McNair in *Danielson*, above, held (at page 6519):

> In my judgment, the issue goes to the matter of collection jeopardy by reason of the delay normally attributable to the appeal process. The wording of subsection 225.1(1) would seem to indicate that it is necessary to show that because of the passage of time involved in an appeal the taxpayer would become less able to pay the amount assessed.
>
> …
>
> …the mere suspicion or concern that delay may jeopardize collection would not be sufficient *per se*. The test of "whether it may reasonably be considered" is susceptible of being reasonably translated into the test of whether the evidence on balance of probability is sufficient to

> lead to the conclusion that is more likely than not the collection would be jeopardized by delay.
>
> …
>
> …In my opinion the issue is not whether the collection *per se* is in jeopardy but rather whether the actual jeopardy arises from the likely delay in the collection thereof.

(*Danielson*, above, at 6519, Brief of Authorities, Tab 6)

[72] In making its application for jeopardy order, the Minister has an obligation to make full and frank disclosure and to exercise the utmost good faith both in respect of the relevant facts, and the applicable jurisprudence (*Canada (National Revenue) v Robarts*, 2010 FC 875 (Sept 3, 2010), at paras 33 to 35, Brief of Authorities, Tab 7).

[73] Lack of income is not, in and of itself, a sufficient justification for the granting of a jeopardy order. Nor is the fact that the taxpayer's assets are entirely liquid in nature and so can be easily wasted, liquidated or transferred (*Danielson*, above, at 6519, Brief of Authorities, Tab 6; *Robarts*, above, at paras 72 and 73, Brief of Authorities, Tab 7).

[74] As well, where a taxpayer has sold real estate that is the only asset available to satisfy the debt and the cash received on the sale is still available to satisfy that debt, the sale in and of itself does not constitute grounds for a jeopardy order (*Canada (Minister of National Revenue) v Landru*, [1993] 1 CTC 93 (Sask QB), Brief of Authorities, Tab 8).

[75] Further, where there are additional collections avenues available to the Minister which would see the debt paid notwithstanding the collections restrictions period, a jeopardy order is not warranted (*Steele (Re)* [1995] SJ No 784 (SKQB) [QL], at para 12, Brief of Authorities, Tab 9).

[76] If there is compelling evidence on the part of the Minister as to dissipation of the taxpayer's assets or the movement of assets out of the jurisdiction beyond the reach of the Minister and other potential creditors, this is persuasive. Speaking of the evidence that must be adduced by the Minister, Justice McNair in *Danielson*, above, stated (at page 6519):

> Cogent evidence on the part of the Minister as to the dissipation of the taxpayer's assets or the movement of assets out of the jurisdiction beyond the reach of the Minister and other potential creditors, could be very persuasive and compelling. A more difficult borderline case might be the situation where the taxpayer's assets are of a wasting nature, or likely to decline in value with the mere passage of time.

(Brief of Authorities, Tab 6)

[77] Unorthodox behaviour which raises a reasonable apprehension that it would be difficult to trace funds or recover them for the tax debt may provide reasonable grounds that a jeopardy order is warranted (*Deputy Minister of National Revenue v Quesnel*, 2001 BCSC 267, Brief of Authorities, Tab 10).

[78] As set out by Justice Luc Martineau of this Court in *Robarts*, above, (at para 61) 'unorthodox behaviour' has not been specifically defined by the jurisprudence, although it has given examples of what it considers to be unorthodox behaviour:

(a) Keeping large amounts of cash in places such as one's apartment, safety deposit boxes, and a cold storage depot locker (*Rouleau*, above);

(b) Keeping large amounts of cash, untraceable through normal banking records, in the trunk of an automobile (*Minister of National Revenue v Arab*, 2005 FC 264, [2005] 2 CTC 107 at para 20);

(c) Keeping double accounts for a restaurant, with one being for entries in the sales ledger and income tax returns, and the other being for additional sales not reported by the holding company of the restaurant (*Delaunière, re,* 2007 FC 636, 2008 DTC 6274 (Eng) at para 4);

(d) Keeping large amounts of cash in a safety deposit box, a filing cabinet in one's house and in the pocket of a housecoat (*Mann v Minister of National Revenue*, 2006 FC 1358, [2007] 1 CTC 243 at para 43); and

(e) Advancing funds to a company about to be dissolved in order to avoid paying income tax (*Laquerre, re*, 2008 FC 459, 2009 DTC 5596 (Eng) at para 11; *Robarts*, at para 61, Brief of Authorities, Tab 7).

[79] Also, in *Laquerre, re,* the Court considered the Respondent's unorthodox behaviour, in addition to that of his non-arm's length companies and family trusts (*Laquerre, re,* 2008 FC 459 (Can LII) at para 38, Brief of Authorities, Tab 11).

[80] Similarly, in *Canada (Minister of National Revenue) v Services M.L. Marengère,* the Court considered the unorthodox behaviour of the Respondent and its affiliated corporations, and director, in rendering its decision as to whether the Jeopardy Order was appropriate (*Canada (Minister of*

*National Revenue) v Services M.L. Marengère*, [1999] Can LII 9004 (Can LL), Brief of Authorities, Tab 12).

[81] A summary of the principles relevant to the making of a Jeopardy Order was set out by Justice Clancy of the Supreme Court of British Columbia in *Deputy Minister of National Revenue v Quesnel* at para 27:

> Jeopardy orders have been considered in a number of authorities. A useful summary of the principles that emerge from those authorities was provided by counsel for Ms. Quesnel. The principles relevant to the circumstances before me are:
>
> i. the facts must provide reasonable grounds for believing the taxpayer will waste, liquidate or otherwise transfer property so as to make it unavailable to the Minister: *Canada v. Golbeck* (1990), 90 DTC 6575 (F.C.A.);
>
> ii. it must be more likely than not that collection will be jeopardized by delay: *Danielson v. Minister of National Revenue* (1986), 86 DTC 6495 (F.C.T.D.); *Satellite Earth Station, supra*;
>
> iii. mere suspicion or concern is not sufficient to establish reasonable grounds: *Danielson, supra*, *Satellite Earth Station, supra*;
>
> iv. where a taxpayer has never taken any steps to hinder collection proceedings, it suggests that collection will not be jeopardized: *Danielson*, *supra*;
>
> v. where a taxpayer has sold real estate that is the only asset to satisfy the cash debt and the cash received on the sale is still available to satisfy the debt, the sale itself does not constitute grounds for a jeopardy order: *Canada (Minister of National Revenue) v. Landru*, [1993] 1 C.T.C. 93 (Sask. Q.B.);
>
> vi. unorthodox behaviour which raises a reasonable apprehension that it would be difficult to trace funds or recover them for the tax debt may provide reasonable grounds: *Laframboise, supra*; *Rouleau*, *supra*.

(*Quesnel*, above at para 27, Brief of Authorities, Tab 10; see also *Minister of National Revenue v Thériault-Sabourin*, CarswellNat 172, 2003 FCT 124 at paras 13 and 14, Brief of Authorities, Tab 13)

[82] In *Minister of National Revenue v Cormier-Imbeault* (at para 7) cited were factors that can justify a jeopardy order:

(a) there are reasonable grounds to believe that the taxpayer has acted fraudulently;

(b) the taxpayer has proceeded to liquidate or transfer his or her assets;

(c) the taxpayer is evading his or her tax liabilities;

(d) the taxpayer has assets that could potentially lessen in value over time, deteriorate or perish; and

(e) the amount of the debt in relation to income and expenses.

(*Minister of National Revenue v Cormier-Imbeault,* 2009 FC 499, [2009] 6 CTC 45, at para 7, Brief of Authorities, Tab14)

[83] The raising of the assessments may itself raise reasonable apprehension that the taxpayer has not been conducting his or her affairs in an orthodox fashion. In *Minister of National Revenue v Rouleau,* Judge Frederick Gibson held (at pages 2 to 4):

> These reassessments were based on net worth statements which the applicant alleges are inaccurate. The net worth statements were in part developed on the basis of information garnered through search warrants obtained by the Minister of National Revenue in May 1994 and a later date, also in May, 1994. In the execution of the search warrants, it was discovered that the applicant had $25,000.00 in cash in his apartment, approximately $92,000.00 in cash in safety deposit boxes and over $96,000.00 in cash in a cold storage depot locker maintained by the applicant.
>
> …
>
> As I indicated earlier, I am not satisfied that the applicant discharged the initial burden on him to show that there are reasonable grounds to doubt that the test for a jeopardy collection order has been met. In *Laframboise* v. *The Queen* [1986] 3 F.C. 521, Mr. Justice Joyal stated at page 524:

> I find that the nature of the Reassessments itself raises reasonable apprehensions that the taxpayer had not been conducting his affairs in what might be called unorthodox fashion. There is reasonable apprehension that in placing surplus funds or investment purposes through the hands of a third party instead of directly, there would be difficulty in retracing these funds or in recovering them.

> I find the foregoing quotation apt to the circumstances before me. Certainly the nature of the Reassessments against the applicant indicates a range of income to the applicant quite out of scale with the incomes disclosed by the applicant in his annual returns to the Minister of National Revenue. The way in which he held assets certainly disclosed a conducting of affairs that could be called unorthodox. It also disclosed practices that would have made it very simple for the applicant to spirit away substantial assets if he had been so inclined so that there conceivably could have been difficulty in retracing the assets and in recovering them.

(*Minister of National Revenue v Rouleau,* [1995] FCJ No 1209 at pages 2 to 4, Brief of Authorities, Tab 9)

[84] In *Canada (Minister of National Revenue) v MacIver et al*, Justice Karen Sharlow heard the Respondents' application for a review of the jeopardy orders that had been made pursuant to subsection 225.2(2) of the ITA, and stated (at paragraph 7):

> The tax dispute will be resolved in another forum. It is beyond my jurisdiction to consider whether or not the assessments are correct. For present purposes, I am bound by section 152(8), which deems the assessments to be valid unless and until they are varied on objection or appeal.

(*Canada (Minister of National Revenue) v MacIver et al,* [1999] 99 DTC 5524 (FCTD) at para 7, Brief of Authorities, Tab 16)

[85] Likewise, in *Marengère*, above, (at paragraphs 67 and 72 (subparagraph 4)), Justice François Lemieux said:

> [67]…This case does not turn on intent or on tax planning; it calls to be determined looking at the matter objectively and realistically on the ground so to speak. In other words, it is the effect or result of the taxpayer's action in dealing with its assets that is important and relevant in the assessment of the appropriateness of a collection jeopardy order. Tax liability is not an issue in such proceedings.
>
> [72](4) the Minister does not have to prove fraud or deceit or bad motive.

(*Marengère*, above, at paras 67 and 72, Brief of Authorities, Tab 12)

*D. Evidence in the Present Case*

[86] In the present case, the Court fully agrees with the Applicant that the evidence before the Court is sufficient on the Standard of Proof that collection of the Debt of the Respondent would be jeopardized by delay.

[87] The collections restrictions period relevant to the debt will not expire until the objections and/or any appeals taken relevant to the Respondent's Assessment have concluded. It is not known when this will occur (Affidavit of A. Hamilton, para 61).

[88] There is cogent evidence before the Court of jeopardy in this case, as follows:

a) Sung's only known exigible assets available to satisfy the Debt are the sale proceeds relevant to the Subject Property and her shares in 1208922;

b) The Subject Property has sold in January, 2011 and its closing date was on or about February 28, 2011;

c) Sung has objected to her Assessment. As such, the Minister is subject to collection restrictions until a decision is made concerning her Objection, or longer if the Assessment is appealed by her. That date is unlikely to be any time soon;

d) Sung has been conducting her affairs in an unorthodox manner;

e) Sung's Assessment itself is unorthodox as are the assessments concerning Hugo, 214 Holdings and 835667, some of which were the subject of jeopardy orders;

f) The Park Family has offshore connections and is known to move significant funds offshore presumably for Doo's benefit;

g) Hugo and Sung appear to be used by Doo as nominees. Doo seemingly controls all financial transactions relevant to the family and all of the family's assets and financial affairs;

h) Accordingly, it seems more likely than not that Sung will provide the sale proceeds relevant to the Subject Property to Doo. These sale proceeds are in or about $1,232,295.90;

i) Relevant to the Rental Property, Sung provided none of the sales proceeds to the Minister despite being indebted to him then;

j) Doo and Sung appear to continue to intertwine their finances despite the Separation Agreement;

k) Doo is believed to reside in South Korea. Therefore, it is more reasonable than not to assume that the sale proceeds will be transferred outside of Canada to him there;

l) It is a likely possibility that Sung will deposit the sale proceeds into a Canadian bank account before effecting their transfer to Doo or Hugo;

m) It remains a possibility that the sale proceeds still remain with Sung's notary, Ms. Wanda Wong Wilson of Vancouver;

n) Traditionally, Doo has used Hugo as a nominee with respect to the family's assets. Accordingly, the proceeds from the sale of the Subject Property could be transferred from Sung to Hugo and eventually to Doo;

o) Hugo resides in New York, USA. Therefore, the sale proceeds would be transferred outside of Canada to the USA and then to Doo in South Korea;

p) It appears unlikely, therefore, that Sung will willingly provide any sale proceeds to the Minister in respect of the Subject Property in payment of her Debt now;

q) The sale proceeds relevant to the Subject Property may by their very nature, possibly be spirited away by Sung, placed outside of Canada, or be otherwise placed beyond the reach of the Minister; and

r) Sung's shares and income are possibly insufficient to satisfy the debt in any timely way. In any event, she can possibly sell or transfer her shares or any proceeds in respect of her shares away from the Minister.

(Affidavit of A. Hamilton, para 61)

[89] For these reasons, the Court agrees with the Minister that there are reasonable grounds to believe that the collection of all or any part of the $1,397,999 in income tax assessed in respect of the Respondent would be jeopardized by a delay in the collection of that amount.

**ORDER**

**THIS COURT ORDERS:**

1. That a Jeopardy Order be issued under section 225.2(2) of the *Income Tax Act* authorizing the Applicant to take forthwith the actions described in paragraphs 225.1(1)(a) to (g) with respect to the amounts assessed in respect of the Respondent; and

2. That the Applicant be authorized to effect service of the Jeopardy Order on the Respondent pursuant to Rule 128 of the *Federal Court Rules* and subsections 225.2(5) and (6) of the *Income Tax Act* by personally serving her, if possible; or by sending a copy of the Order to her by ordinary mail at: 2088 62nd Avenue W., Vancouver, British Columbia, V6P 2G6 (the Address), being her last known address; and by sending a copy of the Order to the care of her counsel, William A. Ruskin of Clark Wilson LLP.

**THIS COURT FURTHER ORDERS** that the Respondent:

> TAKE NOTICE that an *ex parte* application, filed under Court File No. T-349-11, for a jeopardy order was commenced against you pursuant to subsection 225.2 of the *Income Tax Act*. The Court Order authorizes the Minister of National Revenue to take forthwith any of the actions described in paragraphs 225.1(1)(a) through (g) of the *Income Tax Act* with respect to your assessed tax debt.
>
> Pursuant to subsection 225.2(8), you may, upon six (6) clear days' notice to the Deputy Attorney General of Canada, apply to a Judge of the Federal Court to review the Court Order.

Pursuant to subsection 225.2(9), your application must be brought within 30 days from the date that the Court Order was deemed to be served on your, or within such further time as a Judge may allow, provided that you can satisfy the Judge that your application was made as soon as practicable.

"Michel M.J. Shore"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-349-11 |
| **STYLE OF CAUSE:** | THE MINISTER OF NATIONAL REVENUE<br>v. SUNG YOUN PARK |
| **PLACE OF HEARING:** | Vancouver, BC |
| **DATE OF HEARING:** | March 3, 2011 |
| **REASONS FOR ORDER AND ORDER:** | SHORE J. |
| **DATED:** | March 4, 2011 |

**APPEARANCES:**

| | |
|---|---|
| Nicole S. Johnston | FOR THE APPLICANT |
| No appearance | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Myles J. Kirvan<br>Deputy Attorney General of Canada<br>Vancouver, BC | FOR THE APPLICANT |
| n/a | FOR THE RESPONDENT |