

IN THE MATTER OF THE *INCOME TAX ACT*,

-and-

IN THE MATTER OF AN ASSESSMENT OR ASSESSMENTS MADE BY THE  
MINISTER OF NATIONAL REVENUE PURSUANT TO ONE OR  
MORE OF THE FOLLOWING ACTS: THE *INCOME TAX ACT*,  
THE *CANADA PENSION PLAN* AND THE *UNEMPLOYMENT  
INSURANCE ACT*,

-and-

2203383 CANADA INC.,

Judgment debtor,

-and-

TALAL ABDALLAH,

Defaulting garnishee,

-and-

2854-8816 QUÉBEC INC.,

Garnishee.

ORDER

DENAULT J.:

The appeal from the order by Prothonotary Morneau dated September 25,  
1996 is dismissed.

OTTAWA, November 6, 1996

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J.F.C.C.

Certified true translation

J. Paterson

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### REASONS FOR ORDER

DENAULT J.:

Her Majesty the Queen, for the Minister of National Revenue (the applicant), is appealing from an order by Prothonotary Morneau, who dismissed her application for a garnishee order to show cause.

Having obtained judgment against the judgment debtor 2203383 Canada Inc., the applicant proceeded with a garnishment against the sole director of that company, Talal Abdallah. Since this garnishee did not make a declaration, he became a defaulting garnishee and was ordered in turn to pay the applicant the amount owed by the judgment debtor. The applicant then applied for a garnishee order to show cause against 2854-8816 Québec Inc., of which Talal Abdallah is the sole shareholder, in order to [TRANSLATION] "attach all amounts owing or accruing from the company 2854-8815 (*sic*) Québec Inc. to Talal Abdallah and, more specifically, all the shares held by Talal Abdallah in the said company".<sup>1</sup> In support of her application, the

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<sup>1</sup> Paragraph 8 of the affidavit by François Bacave in support of the application for a garnishee order to show cause and special method of service on the garnishee 2854-8816 Québec Inc.

applicant relied on both Rule 2300 of the *Federal Court Rules* and articles 618 and 625 of the *Code of Civil Procedure*.

Since in his view the applicant's affidavit did not establish a commencement of proof with respect to a specific debt, as required by Rule 2300(1)(a),<sup>2</sup> Prothonotary Morneau relied on the Federal Court of Appeal's decision in *Champlain Company Limited v. The Queen*, [1976] 2 F.C. 481, in refusing to issue the garnishee order to show cause.

The applicant is appealing from that decision. She argues that the prothonotary erred, in view of the factual evidence warranting the issuance of a writ of seizure by garnishment of the shares of a private company pursuant to articles 617<sup>3</sup> *et seq.* of the *Code of Civil Procedure of Quebec*, by failing to exercise the judicial discretion conferred on him by subsection 56(1) of the *Federal Court Act*.<sup>4</sup>

The applicant argues more specifically that [TRANSLATION] "the reason cited by the prothonotary, to the effect that Her Majesty the Queen did not adduce *prima facie* evidence of a debt owing or accruing from 2854-8816 Québec Inc. to Talal Abdallah, is irrelevant to the exercise of the judicial discretion provided for in subsection 56(1) of the *Federal Court Act*, because Her Majesty was not claiming that such a debt existed but was instead seeking to seize the shares by garnishment".<sup>5</sup>

Insofar as counsel for the applicant is relying on both the *Federal Court Rules* and the *Code of Civil Procedure of Quebec*, it is important to consider the two systems for the enforcement of judgments to which subsection 56(1) of the *Federal Court Act* provides access. The writs of execution provided for by the *Federal Court Rules* include, in particular, writs of *fieri facias* (Rules 2100 *et seq.*) and writs of garnishment (Rules 2300 *et seq.*). The Rules of this Court do not provide for the garnishment of company share certificates; under Rule 2401, it is possible only to impose a charge for securing payment of the amount due on "any interest to which the judgment debtor is beneficially entitled in such of the shares . . . as may be specified in the order. . . ."

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<sup>2</sup> 2300.(1): The Court, upon the *ex parte* application of a judgment creditor, on affidavit showing that the judgment is unsatisfied and

(a) that there is a debt owing or accruing from some person in Canada to the judgment debtor, or

(b) that there is a debt owing or accruing from some person not in Canada to the judgment debtor and that such debt is one for which such person might be sued in Canada by the judgment debtor,

may order that all debts owing or accruing from such third person (hereinafter called "the garnishee") to the judgment debtor shall be attached to answer the judgment debt and that the garnishee do at a time and place named show cause why he should not pay to the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment.

<sup>3</sup> For convenience, articles 555, 617, 618, 624 and 625 are appended.

<sup>4</sup> 56(1): In addition to any writs of execution or other process that are prescribed by the Rules for enforcement of its judgments or orders, the Court may issue process against the person or the property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which any judgment or order is to be executed, and where, by the law of that province, an order of a judge is required for the issue of any process, a judge of the Court may make a similar order with respect to like process to issue out of the Court.

<sup>5</sup> Paragraph 10 of the motion to appeal the prothonotary's decision.

In the *Code of Civil Procedure*, separate articles deal with seizure in execution of movable property (articles 581 to 616.1), seizure in execution of shares of companies (articles 617 to 624) and seizure by garnishment (articles 625 *et seq.*). With respect to shares of companies, the *Code of Civil Procedure* provides for two different enforcement methods, depending on whether the creditor seizes the certificates (article 617) or makes a seizure by garnishment in the hands of the company that issued them (article 618); in the latter case, article 624 makes a reference to the rules for seizure by garnishment in articles 625 *et seq.* of the Code.

In the case at bar, there is nothing to indicate that the applicant knows the location of the share certificates; she therefore does not intend to use the method provided for in article 617 of the *Code of Civil Procedure*. Instead, as she stated both in the affidavit supporting her application for a garnishee order to show cause and in the present motion, she wishes to attach any amount owing or accruing from 2854-8816 Québec Inc. to Talal Abdallah, and more specifically the shares he holds in that company. In short, as stated in the title of her application, she wishes to proceed by garnishment and thus prevent both the divestment of any amount owing from the company to its shareholder and the transfer of the shares.

The garnishment method differs depending on the system. Whereas pursuant to the *Code of Civil Procedure* the general enforcement rules provide that the writ is prepared by the seizing creditor and signed and issued by the clerk of the district where the judgment was rendered (article 555), Rule 2300 states that a judgment creditor must apply to the Court on affidavit showing, *inter alia*, "that there is a debt owing or accruing from some person in Canada to the judgment debtor".

Counsel for the applicant is relying on section 56 of the *Federal Court Act* to argue that in the case at bar, the prothonotary was required to apply the *Code of Civil Procedure* articles rather than the *Federal Court Rules*. I believe on the contrary that the wording of section 56 of the Act encourages respect for the process provided for by the Rules of this Court while authorizing the use, as required, of the process of the province in which the judgment is to be executed. It is undoubtedly helpful, as the Federal Court of Appeal pointed out in *Forest v. Hancor Inc.*, [1996] 1 F.C. 725, at p. 738, to promote the notion that "provincial law and federal law are complementary rather than inconsistent", but the *Code of Civil Procedure* cannot prevail over a clear provision of the *Federal Court Rules*. In the case at bar, Rule 2300 and articles 618 and 625 of the *Code of Civil Procedure* deal with the same enforcement mechanism, but the methods of obtaining a writ of garnishment differ in the two systems. The method provided by Rule 2300 must prevail.

For these reasons, it is the view of the Court that the prothonotary was right to apply Rule 2300 and to deem the applicant's affidavit unsatisfactory. Her appeal is dismissed.

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J.F.C.C.

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J. Paterson

## APPENDIX

**555.** The writ must mention the date of the judgment to be executed and the amount of the condemnation; it is prepared by the seizing creditor, and signed and issued by the clerk of the district where the judgment was rendered.

**617.** The seizure of shares of companies is effected by the seizure of the certificates which represent them, made in virtue of a seizure in execution or of a seizure by garnishment, and notified to the company which issued them or to its transfer agent in Québec.

Such notification is made by the seizing officer by serving a copy of the writ of seizure or of the judgment rendered in virtue of article 639, as the case may be, accompanied by an exact description of the certificates and a notice that all the shares represented thereby are seized.

**618.** The seizure of shares of the debtor in a company which has its head office in Québec, and whose shares are not listed or traded on a recognized stock exchange, may also be made by seizure by garnishment in the hands of the company that issued them. Such seizure by garnishment prohibits the company from making, completing or entering upon its books any transfer of the shares, and orders it to appear and declare. .  
..

**624.** Subject to the preceding articles, the seizure in execution of shares of companies is subject to the rules provided in Sections II and IV of this chapter, so far as they are applicable.

**625.** Seizure by garnishment is effected by the service on the garnishee and on the judgment debtor of a writ of seizure by garnishment. The writ orders the garnishee to appear on the day and at the hour fixed to declare under oath what sums of money he owes to the debtor or will have to pay him and what movable property he has in his possession belonging to him, and not to dispossess himself thereof until the court has pronounced upon the matter. The writ also summons the debtor to appear on the day fixed and show cause why the seizure should not be declared valid.

If the debtor has no known domicile, residence or place of business in the district where judgment was rendered, the writ is served upon him at the office of the court.

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF SOLICITORS OF RECORD

COURT NO.: ITA-7404-95

STYLE OF CAUSE: *The Income Tax Act, the Canada Pension Plan and the Unemployment Insurance Act v. 2203383 Canada Inc., Talal Abdallah and 2854-8816 Québec Inc.*

WRITTEN MOTION CONSIDERED WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY: The Honourable Mr. Justice Denault

DATED: November 6, 1996

WRITTEN REPRESENTATIONS BY:

Jacinthe Landry FOR THE APPLICANT

SOLICITORS OF RECORD:

Deputy Attorney General of Canada FOR THE APPLICANT  
Ottawa, Ontario