

Federal Court



Cour fédérale

Date: 20150514

Docket: T-1062-13

Citation: 2015 FC 35

[REVISED ENGLISH TRANSLATION]

Ottawa, Ontario, May 14, 2015

Present: The Honourable Mr. Justice Annis

BETWEEN:

CANADA REVENUE AGENCY

Applicant

and

DANIEL BÉLANGER

Respondent

AMENDED ORDER AND REASONS

I. Introduction

[1] This is an application for an order in which the Court finds the respondent in contempt of court under paragraph 466(b) of the *Federal Courts Rules*, SOR/98-106 (Rules).

[2] After considering the parties' oral and written submissions, the Court would allow the applicant's application for the reasons expressed below.

II. The facts

[3] The facts in this case were supported in the order of February 4, 2014, by Justice Boivin of this Court. Therefore, the Court considers that it is not necessary to repeat them, but it is enough to give a brief overview of them.

[4] On March 3, 2013, the applicant served on the respondent seven requests to provide information or to produce documents within 30 days, so as to verify the compliance with tax laws as authorized by paragraph 231.1(1)(a) of the *Income Tax Act*, RSC 1985, c 1 (5th supp). Following the respondent's failure to produce all the documents requested, the applicant obtained an order against the respondent from Justice de Montigny of this Court, dated July 12, 2013, requiring the respondent to produce the documents requested by the applicant.

[5] Since the respondent failed to comply with the order of Justice de Montigny, on February 4, 2014, Justice Boivin issued an order finding the respondent in contempt of court, ordering him to comply with the order issued by Justice de Montigny, to pay a fine of \$1,500 and costs in the amount of \$2,500.

[6] July 8, 2014, following the filing of an *ex parte* application by the applicant in accordance with section 467 of the Rules, Prothonotary Morneau ordered the respondent to

appear before this Court dated December 11, 2014, and ordered that he be ready to present a defense for failing to comply with the order of Justice Boivin, in the sense that:

1. The respondent did not provide all the information and documents required in the order of February 4, 2014, within the deadlines stipulated, or at any time afterward;
2. The respondent neglected to disclose the existence of some banking information;
3. The respondent neglected to pay the fine and the costs that he was sentenced to pay by the order of February 4, 2014;
4. On the date of this hearing, the respondent was still failing to comply with the order of Justice de Montigny and that of Justice Boivin.

III. Conduct of the hearing

[7] During the hearing, the respondent requested an adjournment from the Court so as to allow him to retain the services of a lawyer. The Court refused to grant such an adjournment to the respondent by weighing the interests of the applicant, those of the respondent and that of the Court. The Court noted that the applicant had filed before the Court strong evidence showing that the respondent had committed contempt of court and, furthermore, that this is his second contempt of court. The Court also noted that the respondent did not show diligence in making the decision not to retain the services of a lawyer and in subsequently requesting of the Court, during the hearing, an adjournment so as to remedy this defect. Therefore, the Court considered it appropriate to dismiss the respondent's application for adjournment in the interest of the proper administration of justice.

[8] Similarly, the Court proposed to the parties during the hearing to suspend the passing of judgment to allow them to enter into settlement discussions. On December 29, 2014, the applicant informed the Court that these discussions did not help the parties to come to an agreement. As a result of these unsuccessful discussions, the Court makes this judgment.

IV. Analysis

[9] The applicant argued that it proved beyond a reasonable doubt that the respondent is in contempt of court and that the facts in this case meet the criteria for declaring the respondent in contempt of court (*Lougheed v Canada*, 2013 FCA 138 at para 18; *Prescott-Russell Services for Children and Adults v G (N)* (2006), 82 OR (3d) 686 at para 27):

1. The violated order clearly states without ambiguity what must be and must not be accomplished;
2. Failure to comply with this order is willful and deliberate;
3. The demonstration of these criteria is established beyond a reasonable doubt.

[10] The Court agrees with the applicant's position in that the respondent disobeyed the order of Justice Boivin of February 4, 2014.

[11] The Court is satisfied that the evidence clearly shows that the respondent failed to pay the fine of \$1,500 that Justice Boivin sentenced him to pay. Further, the Court noted that the respondent's decision not to pay the fine is willful and deliberate in that the respondent received an amount of \$4,000 as a tax refund and decided to use this amount to pay his municipal taxes,

without being ordered to pay them, instead of using this amount to comply with the order of Justice Boivin.

[12] Further, the respondent failed to produce the following documents within the established deadlines, in accordance with Justice Boivin's order:

1. His statements from Visa Desjardins;
2. The bank account held by the charity "Je me prends en main" and the bank statements associated with TD Bank;
3. An invoice of December 29, 2009, from Services Conseils Daniel Bélanger, CA Inc., carrying number 1;
4. An invoice of November 28, 2010, from Services Conseils Daniel Bélanger, CA Inc. carrying number 3.

[13] In this case, the respondent has not provided any valid justification before this Court for not complying with Justice Boivin's order.

[14] In application of section 466(b) of the Rules, the Court is persuaded beyond a reasonable doubt that the respondent is in contempt of court in accordance with the criteria established by case law. In fact, the respondent willfully and deliberately failed to pay the fine that Justice Boivin imposed on him and provide the applicant with the accounts, statements and invoices required by the order.

[15] The Court must now determine the appropriate sentence by considering the relevant factors as set out in *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788 at para 16 (*Marshall*):

- i. The primary purpose of imposing sanctions is to ensure compliance with orders of the court. Specific and general deterrence are important to ensure continued public confidence in the administration of justice;
- ii. Proportionality of sentencing requires striking a balance between enforcing the law and what the Court has called "temperance of justice";
- iii. Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court;
- iv. Mitigating factors might include good faith attempts to comply (even after the breach), apologize or accept responsibility, or whether the breach is a first offence.

[16] The applicant argued that the circumstances in this case allow for the respondent's imprisonment, i.e. a sentence with the objective of deterring the respondent from re-offending and failing to pay the fines and fees due.

[17] Following the analysis of the factors in *Marshall*, supra, the Court found that it is justified in this case to impose a sentence that reflects the importance of respecting the orders of the Court so as to maintain the proper administration of justice. Indeed, in this case, it is the second situation where the respondent is found in contempt of court, the respondent willfully and deliberately failed to comply with the orders of the Court and continued to hide information and documents even after two orders requiring the production of these documents were issued, at no

time did the respondent show regret for his actions and the circumstances of this case do not involve any mitigating factors.

V. Conclusion

[18] For the reasons stated above, the Court would sentence the respondent to pay a fine of \$2,000 and costs of \$3,000 in addition to the amounts already required by Justice Boivin's order of February 4, 2014.

ORDER

THE COURT:

1. **FINDS** the respondent in contempt of Justice Boivin's order dated February 4, 2014;
2. **ORDERS** the respondent to comply with Justice Boivin's order of February 4, 2014, by paying to the Court the fine of \$1,500 and to the applicant the costs of \$2,500 to which he has already been sentenced;
3. **SENTENCES** the respondent to pay to the Court a fine of \$2,000 and to applicant costs of \$3,000;
4. The amounts due by the respondent to the applicant should be paid to the Receiver General of Canada. The fines payable by the respondent to the Court for an amount of \$3,500 are payable within 6 months of the date of service of this order. The respondent's failure to pay this amount will result in his imprisonment. If the respondent fails to comply with this order, the Court will issue a warrant of committal against the respondent so that he will be imprisoned for a period of 15 days or until he pays his fines totalling \$3,500.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1062-13

STYLE OF CAUSE: THE MINISTER OF NATIONAL REVENUE v
DANIEL BÉLANGER

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: DECEMBER 11, 2014

ORDER AND REASONS: ANNIS J.

DATE OF REASONS: JANUARY 9, 2015

DATE OF AMENDED REASONS: MAY 14, 2015

APPEARANCES:

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FOR THE APPLICANT

Daniel Bélanger

FOR THE RESPONDENT
(SELF-REPRESENTED)

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