

Federal Court



Cour fédérale

**Date: 20170313**

**Docket: ITA-8243-94**

**Citation: 2017 FC 272**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, March 13, 2017**

**PRESENT: The Honourable Madam Justice Roussel**

**IN THE MATTER OF THE *INCOME TAX ACT*,**

**and**

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

**Judgment Creditor / Respondent**

**AGAINST:**

**BRIGITTE RUH**

**Defendant / Moving Party**

**And**

**SUN LIFE OF CANADA**

**Garnishee / Third Party**

**ORDER AND REASONS**

[1] Brigitte Ruh has brought a motion under Rule 359 of the *Federal Court Rules*, SOR/98-106, asking the Court to declare out of time the rights arising from a final garnishment order dated February 21, 1995, from an interim garnishment order dated December 19, 1994, and from a certificate filed by the Department of National Revenue, Taxation [MNR] in this Court's Registry on September 27, 1994. She is also seeking a release from the garnishment ordered on February 21, 1995, on three (3) life insurance contracts that she owns, of which Sun Life of Canada [Sun Life] is the garnishee.

[2] Considering that more than twenty (20) years have passed since the last pleading in this case, a brief overview of the facts that led to this motion is in order.

[3] Ms. Ruh is indebted to Her Majesty the Queen in right of Canada [Her Majesty the Queen] for tax arrears assessed in 1993. On March 31, 1994, the MNR issued Sun Life a requirement to pay, so that Sun Life would pay to the MNR any sums that Sun Life could be called upon to pay to Ms. Ruh, or to a third party on her behalf, in the ninety (90) days following the date of the requirement to pay. The maximum amount payable indicated is \$216,661.74.

[4] On September 27, 1994, the MNR filed with the Court a certificate pursuant to subsection 223(3) of the *Income Tax Act*, RSC 1995, c 1 (5th Supp) (ITA), which attests that Ms. Ruh is liable for \$223,094.36, plus interest compounded daily on that amount from September 3, 1994, until the date of payment.

[5] On December 19, 1994, the Honourable Mr. Justice Dubé of this Court issued an interim garnishment order in respect of Sun Life and required Sun Life to appear and state under oath [TRANSLATION] “any amount due or accruing by the garnishee to the judgment debtor and in particular any amounts due or accruing by the garnishee to the judgment debtor under the three Sun Life of Canada insurance contracts ...”

[6] On January 13, 1995, Sun Life filed an affirmative declaration to the effect that Ms. Ruh held the three (3) insurance policies referred to in the interim garnishment order. Sun Life specified, however, that although these contracts had surrender value, Sun Life did not owe any amount to Ms. Ruh. Sun Life stated that the surrender value was only payable at the request of the judgment debtor and on surrender of the contracts to the insurer.

[7] On February 21, 1995, the Honourable Mr. Justice McGillis of this Court issued a final garnishment order as follows:

[TRANSLATION] WHEREAS it is appropriate to declare this garnishment order effective until the judgment debtor surrenders the three Sun Life of Canada insurance contracts ... in accordance with article 639 of the Quebec Code of Civil Procedure;

ACCORDINGLY, IT IS ORDERED that any amounts due or accruing by the garnishee to the judgment debtor ... and in particular any amounts due or accruing by the garnishee to the judgment debtor under the Sun Life of Canada insurance contracts ... be absolutely garnished, surrendered and transferred to Her Majesty the Queen in right of Canada ...

IT IS THEREFORE ORDERED that the garnishee, SUN LIFE OF CANADA, pay to Her Majesty the Queen in right of Canada any amounts due or accruing to the judgment debtor in regard to the insurance contracts ... , to satisfy the certificate filed in these proceedings on September 27, 1994, by Her Majesty the Queen in right of Canada against the judgment debtor, namely the amount of \$223,094.36, plus interest compounded daily at the rate

prescribed by the application of the *Income Tax Act* on the amount of \$223,094.36 from September 3, 1994 until the date of payment

...

[8] In 1999, Ms. Ruh left Canada and became a resident of Spain.

[9] On April 11, 2011, Ms. Ruh asked Sun Life to [TRANSLATION] “pay her any money available” for the three (3) insurance policies. On June 1, 2011, Sun Life interpreted her request as a request to terminate the contracts and informed her that it could not process her request because of the garnishment on the insurance contracts. Sun Life then invited Ms. Ruh to contact the Canada Revenue Agency [CRA] to obtain a release from the garnishment, in order to release her contracts.

[10] On May 12, 2015, Sun Life wrote to Ms. Ruh’s counsel to inform her counsel, *inter alia*, that if Ms. Ruh decided to terminate her contracts, she had to complete and file the forms “Request to cancel your insurance policy” and “Letter of authorization – Non-residents”, so that Sun Life could pay the appropriate amount of tax to the federal and provincial tax bodies on Ms. Ruh’s behalf.

[11] On May 25, 2015, Ms. Ruh filed this motion, seeking to have all the rights arising from the certificate and the judgments rendered in this case declared out of time, and to obtain a release from the final garnishment dated February 21, 1995.

[12] On May 28 and June 17, 2015, the CRA sent Sun Life requirements to pay in order to obtain payment for the contracts’ surrender value.

[13] On October 28, 2015, the CRA communicated with Sun Life and asked it to confirm whether, as of April 11, 2011, there had been funds available at Ms. Ruh's request, other than the insurance policies' surrender value. The CRA also asked Sun Life whether any funds had been paid to Ms. Ruh since January 1, 1994, and, if so, to provide explanations.

[14] On November 5, 2015, Sun Life responded to the CRA that [TRANSLATION] "as of April 11, 2011, no amount [other than the surrender value] was available at Ms. Ruh's request" and that [TRANSLATION] "no amount had been paid to Ms. Ruh since January 1994 under the insurance policies that she held".

[15] In her motion, Ms. Ruh raises several issues: (1) whether or not the right to the surrender value provided in the insurance contracts was exercised; (2) the time limits for the certificate dated September 27, 1994, the interim garnishment order dated December 19, 1994, the final garnishment order dated February 21, 1995, and the MNR's notice of assessment issued in 1993; (3) the limitation period that applies to Federal Court judgments; (4) whether the time limits were suspended; and (5) the autonomy of the Federal Court's judgment, i.e. whether the time limitation of the certificate and the time limitation of the underlying tax debt were two (2) distinct limitation periods.

[16] However, for the purposes of this motion, the Court is of the opinion that the only issue to decide is whether the rights conferred to Her Majesty the Queen by the final garnishment order dated February 21, 1995, are out of time.

[17] Ms. Ruh does not dispute that the certificate dated September 27, 1994, was valid when it was filed at the Court or that the Court had the jurisdiction to render the final garnishment order. She submits, rather, that the garnishment order is the equivalent of a judgment of this Court, which is prescribed by ten (10) years under article 2924 of the *Civil Code of Québec*, CQLR, c-1991, or by six (6) years, in accordance with the general limitation period of six (6) years provided under subsection 39(2) of the *Federal Courts Act*, RSC 1985, c F-7. In the two (2) scenarios, the rights arising from the garnishment order are out of time.

[18] The Court does not share this opinion for the reasons that follow.

[19] The final garnishment dated February 21, 1995, was ordered as an enforcement action of the certificate dated September 27, 1994, which, according to subsection 223(3) of the ITA, has the same effect as if it were an enforceable judgment of this Court. It was issued in accordance with Rule 2300 of the *Federal Court Rules*, CRC, c 663 and article 625 of the *Code of Civil Procedure*, CQLR, c C-25 (CCP). Rule 2300(5) provided as follows:

Where the garnishee has not made a payment into Court as authorized by paragraph (4), if he does not dispute the debt claimed to be due from him to the judgment debtor, or, if he does not appear pursuant to the show cause order, the Court may make an order for payment to the judgment creditor or payment into Court of the debt. (Forms 65 and 66). If the debt is not payable at the time of the garnishment, an order may be made for payment thereof when it becomes payable.

[20] By declaring the garnishment effective until Ms. Ruh surrenders the three (3) insurance policies, the Court also relies on article 639 of the CCP, which read as follows in 1995:

If the debt of the garnishee is payable at a future time, the clerk orders him to pay at maturity in accordance with the provisions of

article 637 or article 638, as the case may be. If it is subject to a condition or to the performance by the debtor of an obligation, the clerk may, upon motion of the seizing creditor, declare the seizure binding until such condition is fulfilled or such obligation is executed.

[21] In this case, Sun Life (garnishee) has the obligation to reimburse to Ms. Ruh the amounts payable to her when she surrenders her insurance policies. Ms. Ruh is the creditor of Sun Life. This obligation to repay is a condition precedent since it depends on a future and uncertain event, namely that Ms. Ruh surrender her insurance policies. Although the amounts are not immediately due, the garnishment has the effect of assigning Ms. Ruh's receivable from Sun Life in favour of Her Majesty the Queen.

[22] Numerous judgments have dealt with the application of article 639 of the CCP. From the case law, it is apparent that the objective of this provision is to protect the interests of the judgment creditor by ensuring that when amounts become payable to the judgment debtor by the garnishee when the condition is triggered, these amounts are then payable to the judgment creditor (*London Life Insurance Company v. Canada*, 2014 FCA 106 at para 53; *Droit de la famille-2176*, [1995] RJQ 1056 (CAQ) at paras 16, 21-23 [*Droit de la famille-2176*]; *Waldteufel v. Fiducie Desjardins*, [1995] FCJ No. 307 at paras 11, 18; *Gestion Segi Ltée v. Samson*, JE 97-1611 (CS Qc) at paras 20-23 [*Gestion Segi Ltée v. Samson*]; *Sous-ministre du Revenu du Québec v 2541-5605 Québec Inc*, JE 2003-1364 (CQ) at para 17).

[23] In other words, as long as Ms. Ruh has not surrendered her insurance policies, Her Majesty the Queen has no right to the surrender value.

[24] Ms. Ruh argues that article 639 of the CCP does not confer to the Federal Court [TRANSLATION] “the authority to derogate from the requirements of the law with respect to limitation periods for judgments”. She submits that she would have had to exercise her right to surrender the life insurance policies before 2001 or, at the latest, 2005 (depending on the six (6) or ten (10) year prescription period), for Her Majesty the Queen to claim a right in the arising amounts, which she did not do.

[25] The Court is not persuaded by these arguments. First, article 639 of the CCP does not set any time limit for the expiry of the term or fulfilment of the condition. If Parliament had wanted to set a maximum time period (a period of either six (6) or ten (10) years under the corresponding federal or provincial limitation period) for the fulfilment of the condition, Parliament would have done so. In fact, the courts have used article 639 of the CCP to give effect to the garnishment of a registered retirement savings plan when the amount of money payable could not be garnished before the expiry of the term (e.g. the end of the calendar year of the 71st birthday of the judgment debtor) or before the fulfilment of the condition (e.g. the right to surrender) (*Droit de la famille-2176* at para 13; *Gestion Segi Ltée v. Samson* at para 21; *Edward v. Reinblatt*, [1996] JQ 4416 (CQ) at paras 8, 12).

[26] Second, the judgment creditor’s right cannot depend on the judgment debtor’s will. If we accept Ms. Ruh’s argument, she would simply have to exercise her right to surrender at the expiry of the time limitation, and so deprive her creditor of the amounts payable under the insurance policy. The interpretation proposed by Ms. Ruh leads to a result that is unjust and contrary to the spirit of article 639 of the CCP.



[27] The Court is therefore of the opinion that the fulfilment of the condition set out in the order dated February 21, 1995, is not subject to any time limitation. As long as Ms. Ruh does not surrender the insurance contracts, the enforcement of the final garnishment remains suspended and Her Majesty the Queen cannot require Sun Life to pay the surrender value.

[28] The parties disagree about whether or not Ms. Ruh exercised the right to surrender set out in the insurance contracts. Ms. Ruh submits that she made a request for advances but not a request for surrender. Since the surrender value was never payable, it cannot be paid to Her Majesty the Queen. Her Majesty the Queen alleges, rather, that Ms. Ruh's request of April 11, 2011, was a request for surrender because it was for all the amounts available under the policies. Her Majesty the Queen also argues that even if it was a request for an advance, the final garnishment order dated February 21, 1995, is sufficiently broad to allow the payment of the advances in Her Majesty the Queen's favour. In the two (2) cases, the condition was fulfilled, and the time limitation has run since April 11, 2011. Her Majesty the Queen therefore asks this Court, in Her Majesty's response to the motion, to order Sun Life to pay the surrender value of the policies on the grounds that Ms. Ruh made a request to terminate the contracts in April 2011.

[29] The Court notes that in Sun Life's letter dated November 5, 2015, Sun Life informed the CRA [TRANSLATION] "that as of April 11, 2011, no amount [other than the surrender value] was available at Ms. Ruh's request" and that [TRANSLATION] "no amount had been paid to Ms. Ruh since January 1994 under insurance policies that she held".

[30] However, the Court does not intend to decide whether or not Ms. Ruh exercised her right to surrender for two (2) reasons. First, without a motion to that effect, the Court cannot allow the finding sought by Her Majesty the Queen in Her Majesty's reply (*W.R. Meadows, Inc. et al. v. U.S.E. Hickson Products Ltd.*, [1999] FCJ No 1440, 2 CPR (4th) 413).

[31] Second, the relationship between Ms. Ruh and her insurer is a matter of private law. Although Her Majesty the Queen is in Ms. Ruh's shoes as a result of the seizure, this relationship is still a contractual relationship, subject to private law. The Court is therefore of the opinion that whether or not Ms. Ruh exercised her right to surrender is a matter of insurance law and the contractual relationship between Ms. Ruh and Sun Life. The Court finds it inappropriate to rule on this issue when the parties have not made submissions about its jurisdiction to do so.

[32] Finally, Ms. Ruh's motion also seeks a declaration to the effect that the rights arising from the certificate filed in 1994 and the interim garnishment ordered on December 19, 1994, are out of time. In her reply, Ms. Ruh also requests that the Court declare out of time all the rights arising from the notice of assessment issued in 1993. The Court considers that it is not necessary or appropriate to decide this issue given its finding regarding the final garnishment order and given the lack of a real dispute between the parties with regard to these documents.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that:**

1. Ms. Ruh's motion to have declared out of time all the rights arising from a final garnishment order dated February 21, 1995, from an interim garnishment order dated December 19, 1994, and from a certificate filed by the Minister of National Revenue in the Registry of this Court on September 27, 1994, and to release her from the garnishment ordered on February 21, 1995, is dismissed.
2. Costs in the amount of \$2,500 are awarded to the judgment creditor / respondent, Her Majesty the Queen in right of Canada.

“Sylvie E. Roussel”

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Judge

Certified true translation  
This 25th day of October 2019

Lionbridge

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

**DOCKET:** ITA-8243-94

**STYLE OF CAUSE:** IN THE MATTER OF THE INCOME TAX ACT  
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v  
BRIGITTE RUH ET AL

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 6, 2016

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** MARCH 13, 2017

**APPEARANCES:**

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