Federal Court  Cour fédérale

Date: 20171220

Docket: T-1869-17

Citation: 2017 FC 1173

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 20, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

GASTON GAUTHIER

Applicant

and

MINISTER OF NATIONAL REVENUE
AND
CANADA REVENUE AGENCY

Defendants

ORDER AND REASONS

[1] Citing the Court's authority under section 18.2 and the *Federal Courts Act*, RSC 1985, c. F-7, the applicant is seeking an emergency suspension and interlocutory injunction order to prevent the Minister of National Revenue [the Minister] from issuing a reassessment under subsection 152(4) or any other provision of the *Income Tax Act*, RSC 1985 c. 1 (5th Supp.) (ITA) for the 2004 taxation year or any other previous year.

[2] For the following reasons, I am not satisfied in this case that the applicant has discharged his burden of demonstrating to the Court that his notice of application for judicial review dated December 5, 2017, seeking a writ of prohibition and various declaratory conclusions, raises a serious question, i.e. that he would suffer irreparable harm if the motion for a suspension and interlocutory judgment is not allowed, and that the balance of probabilities is in his favour based on the public interest in this case (see *RJR-Macdonald Inc v. Canada (Attorney General)*, [1994] 1 SCR 311, 111 DLR (4th) 385).

[3] The Canada Revenue Agency (CRA) Voluntary Disclosures Program promotes compliance with Canada's tax laws by encouraging taxpayers to make voluntary disclosures to correct past omissions in their dealings with the CRA. Taxpayers who make valid voluntary disclosures must pay the taxes and interest, but without the penalties or prosecution that they would otherwise face. Unless an application was filed prior to the 10-year rule, which came into effect on January 1, 2005, applications filed for taxation years from 1985 to 1994 will not be accepted. See Information Circular IC00-1R6 regarding the Voluntary Disclosures Program [the Circular].

[4] In 1978, the applicant allegedly transferred $300,000 to a bank account in the Bahamas, a tax haven. That amount came from savings. Apparently wanting to put his affairs in order so as not to pass his tax problems on to his heirs, the applicant voluntarily disclosed the unreported income for the years from 2005 to 2014. The voluntary disclosure was apparently received by the CRA on January 7, 2015, and accepted on June 17, 2015, on behalf of the Minister under subsection 220(3.1) of the ITA and the Circular.

[5] In this case, the CRA accepted the applicant's disclosure, waived the penalties, and granted interest relief for the 2005 to 2014 taxation years.

[6] However, in August 2016, based on information provided by the applicant, the CRA began an audit of the applicant's income tax returns from 1980 to 2004. As explained in an affidavit by Michel Audet, a CRA auditor, given the applicant's inability to provide details or documents regarding the initial transfer of $300,000 or the management of his bank account beginning in 1978, he evaluated two assessment scenarios, choosing [TRANSLATION] to "include the total investment income ($173,460) in taxable income for 2004, distributed among dividends from Canadian sources and interest based on a percentage equal to the distribution of his portfolio for the 2005 to 2014 taxation years to allow him to claim a dividend tax credit [sic] and only assess the penalty for failing to file form T1135 and the penalties set out under subsections 162(10) and (10.1) of the *Income Tax Act*."

[7] In short, the applicant is now arguing that issuing any assessment in relation to the adjustment proposal, prepared by the CRA on November 7, 2017, would contravene the agreement entered into following the voluntary disclosure by the applicant, who argues that issuing a reassessment for any year prior to 2005 contravenes the CRA's common practice, when a taxpayer making a voluntary disclosure is not prepared to commit [TRANSLATION] "tax suicide."

[8] For their part, the respondents strongly oppose the applicant's interpretation of the letter dated June 17, 2015, and the Circular and the effects that he attributes to them. In fact, on reading the acceptance letter, the CRA was very clear: the voluntary disclosure was only valid

for the 2005 to 2014 taxation years, which the applicant is challenging, claiming that the letter dated June 17, 2015, and the Circular, must not be read literally.

[9] At first glance, the best that can be said is that the evidence is contradictory. I therefore agree with counsel for the respondents that the applicant has not, at this stage, submitted convincing evidence of the essential allegations behind his motion for suspension and an interlocutory injunction—particularly that the respondents in fact agreed to not raise reassessments for tax years prior to the tax years in question in the applicant's voluntary disclosure (2005 to 2014) and that they would contravene the proof of a clear and unambiguous promise, which results in the application of the doctrine of estoppel in public law (see *Immeubles Jacques Robitaille Inc v. Québec (City)*, 2014 SCC 34, at paragraphs 19, 20 and 24).

[10] On the other hand, as this is a question of the possible merits of a prohibition to prevent the exercise of discretion that is clearly assigned to the Minister by the ITA—that of issuing a reassessment—it must be noted that the applicant was unable to cite any specific jurisprudence in this regard, and even less so for a motion for an interlocutory injunction aimed at suspending, to the sole benefit of the applicant, the application of a law of general application such as the ITA, the constitutionality of which is not in question.

[11] In his affidavit, the applicant stated that he understands that [TRANSLATION] "the reasons raised in support of [his] application for judicial review are related to fairness," while he does not "challenge the merits of an assessment before this Honourable Court." That said, he generally alleges that "the hasty issuance of assessment would cause [him] serious and irreparable harm," without providing further clarification. As well, the fact that this application for judicial review

can become moot does not constitute irreparable harm according to jurisprudence (see *United States Steel Corporation v. Canada (Attorney General)*, 2010 FCA 200, at paragraph 17).

[12] Moreover, there is another appropriate and effective recourse for raising a substantive issue related to the admissibility of an assessment allegedly raised against the very contents of the agreement and the representations cited by the applicant—not yet proven at this stage of the proceedings—particularly as the Minister (following an objection) and the Tax Court of Canada (following an appeal) can set aside an assessment (see subsection 165(3) and section 171 of the ITA; section 18.5 of the *Federal Courts Act*; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, at paragraph 81).

[13] The balance of convenience clearly favours the respondents. The public interest—i.e. the orderly application of the ITA—takes precedence here over the financial and other inconveniences that the applicant may face by having, like all taxpayers, to comply with the normal challenge procedure set out in the ITA.

[14] For these reasons, this motion is dismissed. Given the results, the applicants are entitled to their costs.

ORDER

THE COURT ORDERS THAT the applicant's motion for suspension and interlocutory judgment be dismissed with costs.

"Luc Martineau"
Judge

Certified true translation
This 19th day of August, 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1869-17
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