

Federal Court



Cour fédérale

Date: 20090123

Docket: T-1179-07

Citation: 2009 FC 72

OTTAWA, ONTARIO, JANUARY 23, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

CORY STANCHFIELD

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application by the Minister of National Revenue, (the “Minister”) pursuant to Rules 466 and 467 of the *Federal Courts Rules*, S.O.R./98-106, that Mr. Cory Stanchfield be found in contempt of an Order of Mr. Justice Gibson, dated September 26th, 2007. On the basis of the evidence filed by the applicant, I have found that Mr. Stanchfield is in contempt of that Court Order.

History of the Proceeding

[2] On April 23, 2007, the Canada Revenue Agency (“CRA”) on behalf of the Minister served a Requirement for Information on the respondent, Mr. Stanchfield, pursuant to section 289(1) of the *Excise Tax Act* (the “Act”), to provide certain information and documents to the Minister. The respondent failed to comply with the Requirement for Information and the Minister sought an order to enforce compliance.

[3] In the result, the Minister brought an application for an order under subsection 289.1(1) of the Act. This subsection allows a Judge to order a person to provide any information sought by the Minister under section 289 if, among other things, the Judge is satisfied that the person was required under section 289 of the Act to provide the information but failed to do so. The hearing of that application took place on September 24, 2007. The respondent was self-represented at the hearing.

[4] On September 26, 2007, an order was made that the respondent must provide the information and documents set out in the Requirement for Information within 30 days of being served with the Order. The information and documents requested are described as follows:

- a. A list of all bank accounts, credit union accounts or similar financial institution accounts that you have signing authority over, including accounts held in countries other than Canada, for the period January 1st 2005 to April 1st 2007;
- b. A complete list and listing of transactions for all trading accounts, investment portfolio accounts and all other accounts pertaining to the purchase and sale of stocks, securities, bonds and commodities held

directly, indirectly or beneficially for Cory Stanchfield for the period January 1st 2005 to April 1st 2007

c. A complete list of money, shares, securities, interest, dividends and any other asset held directly, indirectly or beneficially for Cory Stanchfield for the period January 1st 2005 to April 1st 2007

d. A complete list of all nominees, including complete names and addresses, who operated trading and/or investment accounts on behalf of Cory Stanchfield for the period January 1st 2005 to April 1st 2007

e. A list including names and addresses of all companies, including companies in countries other than Canada, that you are or were a director, shareholder, officer, agent or nominee of, for the period January 1st 2005 to April 1st 2007.

[5] The respondent filed an appeal of that Order on October 22, 2007 and obtained a stay of execution of the Order. He later withdrew his appeal and the stay was removed. Following the discontinuance on June 11, 2008, the applicant agreed to give the respondent 30 days to provide the documents required under the Compliance Order before seeking a contempt order.

[6] Subsequent to that, various correspondence has gone back and forth between the respondent and the applicant's counsel on the issue of whether Mr. Stanchfield is a "person" obliged to answer the Requirement for Information.

[7] On July 11, 2008, the respondent sent a letter to the applicant indicating that there is no information or documents to be provided. To this date, no documents or information complying with the Order of September 26, 2007, has been received by the CRA.

[8] On August 11, 2008, on the ex parte motion of the Minister, Prothonotary Lafrenière ordered that Mr. Stanchfield attend before a Judge of this Court in order to hear proof of specified acts and omissions alleged to constitute contempt of court, and to be prepared to present any defence to the alleged contempt. The respondent appeared before me on October 6, 2008; he was self-represented.

Pre-hearing Motions

[9] A few days before the hearing, the respondent filed four motions with permission of the Court, which he addressed at the outset of the hearing. These motions are:

- For an Order to change the style of cause to all documentation previously filed regarding court File No. T-1179-07, both at the Federal Court level and the Federal Court of Appeal level;
- To dismiss the Order to Show Cause due to the violation of the equity principle of unclean hands;
- To dismiss the Order to Show Cause due to improper and/or defective pleadings on the motion application for a Show Cause Order
- To strike all or part of the appellant pleading including but not limited to the affidavit, exhibits, written representations.

[10] After having heard the arguments of Mr. Stanchfield and of counsel for the applicant, I indicated at the hearing that these motions were dismissed, essentially for the reasons put forward by the applicant. I will now briefly summarize these reasons.

[11] The first motion is very much related to the central argument advanced by the respondent throughout these proceedings, according to which a distinction should be drawn between Mr. Stanchfield in his capacity as the legal representative of the taxpayer and Mr. Stanchfield as a “natural person” for his own benefit. In his view, a “natural person” does not fall within the scope of the *Excise Tax Act*. According to the applicant, a careful reading of Mr. Justice Gibson’s Order reveals that it is not directed to him as a natural person but as a legal representative of the taxpayer; had it been otherwise, he would have been given the protection of the Canadian Bill of Rights. On that basis, he sought an Order directing that any reference to him as a natural person be taken out of all documents filed by the applicant, including in the affidavit submitted in support of the motion for a contempt order.

[12] Throughout his exchanges with the applicant’s counsel and with the CRA, the applicant has always maintained that distinction, and he made that same argument in defence against the motion for an Order pursuant to section 289.1(1) of the Act. In his Order of September 26, 2007, Mr. Justice Gibson addressed this argument in the following terms:

-and finally, the Respondent is clearly a “person” within the scope of the definitions “person” and “individual” in section 123 of the *Excise Tax Act*, which definitions are provided for the purpose of Part IX of that Act dealing with the Goods and Services Tax to which this matter relates.

[13] Mr. Justice Gibson went on to dismiss the respondent’s argument that the order sought on behalf of the Minister was designed to deprive him of his security of the person and enjoyment of property contrary to paragraph 1(a) of the *Canadian Bill of Rights*, S.C. 1960, c. 44, and of his right

to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations contrary to paragraph 2(e) of the same statute. His reason for dismissing the respondent's argument had nothing to do with the fact that he was not involved as a natural person, but was based rather on the decision of the Supreme Court of Canada in *Authorson v. Canada (A.G.)*, 2003 SCC 39, according to which the Bill of Rights "guarantees notice and some opportunity to contest a governmental deprivation of property rights only in the context of an adjudication of that person's rights and obligations before a court or tribunal" (at para. 42). I take Justice Gibson to be saying two things by referring to this passage: first, that what was at stake were not the property rights of the applicant but rather the requirement to provide information; second, that the Act provides the respondent with the procedural safeguards required by the Bill of Rights in allowing him to come to the Court and to be heard with respect to the application for a Compliance Order.

[14] Mr. Justice Gibson's rejection of the applicant's distinction between his various capacities in the context of a taxation statute is perfectly consistent with the case law on this issue. Faced with a similar argument, Mr. Justice Lemieux wrote, in *Canada (Minister of National Revenue) v. Camplin*, 2007 FC 183:

[25] Section 231.2(1) of the *ITA* [*Income Tax Act*] authorizes the Minister, for the purpose of collecting an outstanding tax debt by any person, to issue an RFI requiring "any person provide, within such reasonable time, as stipulated in the notice" information or documents.

[26] Furthermore, section 231.7(1) of the *ITA* authorizes a judge of this Court "to order a person" to provide the information and documents contained in

an RFI with section 231.7(4) stipulating that “if a person fails to comply with such order a judge may find the person in contempt”.

[27] “Person” is defined in the *Interpretation Act of Canada* as a physical or legal person.

[28] I agree entirely with Justice von Finckenstein the *ITA* does not carve out a distinction, for the purposes of an RFI or a Compliance Order, between a natural person and the legal representative of the taxpayer. It is a distinction which is meaningless and without a difference.

See also: *Kennedy v. C.C.R.A.*, [2000] O.J. No. 3313.

[15] Be that as it may, I must now take Mr. Justice Gibson’s Order as it stands. Mr. Stanchfield’s argument amounts to nothing more than a collateral attack of that Order, and as such it cannot be entertained at this stage. Mr. Stanchfield had the option to challenge Mr. Justice Gibson’s Order on appeal, but he chose to discontinue it. As a result, his first motion must be dismissed.

[16] The argument raised by the respondent in his second motion has also been addressed by Mr. Justice Gibson and must similarly be dismissed. In a nutshell, Mr. Stanchfield submits that the Minister does not come to the Court with clean hands and is not entitled to an equitable remedy since the Minister issued a GST number to him unilaterally and without parliamentary authority to do so. In his Compliance Order, Mr. Justice Gibson ruled that the registration for a GST business number was irrelevant for the purposes of an application for such an order. If Mr. Stanchfield objects to being found a GST taxpayer, or being registered, it may affect the validity of the GST assessment against him, but that is a separate issue for the Tax Court of Canada to decide.

[17] There is a further reason why this argument is irrelevant for the purpose of determining whether or not Mr. Stanchfield has in fact complied with Mr. Justice Gibson's Order. The remedy sought by the applicant is not an equitable relief, but a statutory remedy governed by the provisions of the Act and the *Federal Courts Rules*. Accordingly, the clean hands argument does not find application. For all of the foregoing reasons, the respondent's second motion must be dismissed.

[18] The third motion has to do with the fact that the applicant's pleadings are defective in that they refer to subsection 231.2(1) of the *Income Tax Act*, as opposed to subsection 289(1) of the Act. I understand from the affidavit submitted in support to the applicant's motion that the respondent has also been served with a Requirement for Information pursuant to section 231.2(1) of the *Income Tax Act*, which may explain the confusion in the applicant's material. However, this is certainly not sufficient to dismiss the application for a contempt order. The application for a show cause order was brought under the Rules of the Court, it specifies that it is pursuant to Rule 466 of the *Federal Courts Rules*, and it is very clear which Order of the Court is in fact being alleged to have been flouted. There is no confusion created by the errors in the applicant's submissions, and Mr. Stanchfield cannot have been misled: there can be no doubt that the contempt order being requested is in relation to his non compliance with Mr. Justice Gibson's Order made on September 26, 2007.

[19] Finally, I am prepared to grant part of the respondent's fourth motion. I agree with Mr. Stanchfield that paragraph 10 of the affidavit is argumentative and akin to a legal argument, and should therefore be struck. I also find that paragraphs 15 and 16 of the affidavit, as well as the attached exhibits, should be struck to the extent that they relate to the Requirement for Information

pursuant to s. 231.2 of the *Income Tax Act*. I must add, however, that nothing much turns on these paragraphs; they are certainly not pivotal to the evidence submitted by the applicant.

The law of contempt

[20] Rule 466(b) of the *Federal Courts Rules* provides that a person who “disobeys a process or order of the Court” is guilty of contempt of court. The applicable legal principles are well known, and I can do no better than quoting from the decision of my colleague Justice Eleanor Dawson in *Canada (Minister of National Revenue – M.N.R.) v. Wigemyr*, 2004 FC 930, at para.9:

(1) The party alleging contempt has the burden of proving such contempt, and the alleged contemnor need not present evidence to the Court.

(2) The constituent elements of contempt must be proved beyond a reasonable doubt.

(3) In the case of disobedience of an order of the Court, the elements which must be established are the existence of the court order, knowledge of the order by the alleged contemnor and knowing disobedience of the order.

(4) Mens rea and the presence of good faith are relevant only as mitigating factors relative to the penalties that are to be imposed

The evidence

[21] There can be no doubt as to the existence of Mr. Justice Gibson’s Order dated September 26, 2007. A certified copy of that Order was attached to the affidavit of Ms. Tove Mills in support of the applicant’s motion.

[22] As for the respondent’s knowledge of the existence of that Order, it is clearly established by the fact that the respondent filed an appeal of that Order.

[23] On the issue as to whether the respondent complied with the Order of Mr. Justice Gibson, the Court heard the evidence of Ms. Tove Mills, a Collection Officer with the CRA who had the conduct of the CRA's collection files relating to the respondent since January 2007. She testified that Mr. Stanchfield failed to provide the information required by the Compliance Order. Appended to her affidavit is the letter sent by Mr. Stanchfield to the CRA, which purports to be his response to the Requirement for Information. It reads as follows:

- a) There are no bank accounts, credit union accounts or similar financial institution accounts that Cory Stanchfield has signing authority over, including accounts held in countries other than Canada for the period January 1, 2005 to April 1, 2007
- b) There are no trading accounts, investment portfolio, or any other accounts pertaining to the sale of stock, securities, bonds and commodities held directly, indirectly or beneficially for Cory Stanchfield, and therefore there are not list(s) or listing of transactions for the period January 1, 2005 to April 1, 2007
- c) There is no money shares, securities, interest, dividends, or any other asset held directly, indirectly or beneficially for Cory Stanchfield, and therefore there are no list(s) for the period January 1, 2005 to April 1, 2007
- d) There is no nominees who operated trading and/or investment accounts on behalf of Cory Stanchfield and therefore there are no list(s) for the period January 1, 2005 to April 1, 2007
- e) There are no names and address of companies, including companies in countries other than Canada that Cory Stanchfield was a director, shareholder,

officer, agent, or nominee and therefore there are no list(s) for the period January 1, 2005 to April 1, 2007.

[24] Ms. Tove indicated that this information is not correct or complete. Based on her research, she found that the respondent is president of two limited liability companies registered in the state of Nevada, and that he has signing authority on bank accounts for these two companies. She also found that these bank accounts appear to be used to direct funds to Mr. Stanchfield. It appears further that the respondent had an asset during the relevant time frame, namely a lease of a 2006 car. Finally, copies of corporate searches from the Nevada Secretary of State website show that the respondent is named as a director or officer, during the relevant time period, of six companies; most of them are listed as having annual sales and capital, with no shareholders noted and Mr. Stanchfield as President.

[25] None of this information was contradicted by Mr. Stanchfield, who testified first in his capacity as a “natural person, for his own benefit” and as a witness for the respondent, and then as the respondent himself. In his capacity as a “natural person”, he confirmed that he has done the various acts, signed the various documents, incorporated the various companies, held the various accounts, etc. as stated by Ms. Tove Mills. His only disagreement with the applicant stems from the differentiation he attempts to make between his various capacities.

[26] For the reasons already stated previously, this is a distinction that finds no basis in the Act nor in Mr. Justice Gibson’s Order. The distinction drawn by Mr. Stanchfield between his capacity as a natural person and his capacity to act in some other way is entirely of his own doing, and is

devoid of any support in the case law. He has conceded that his various identities occupy the same physical body, have the same birth date and sign the same way. In fact, he would be unilaterally choosing in what capacity he acts; this is obviously an untenable proposition, and one that runs afoul of any tenable interpretation of the Act.

[27] Section 123 of that Act provides that an “individual” means a natural person, and that a “person” means an individual, a partnership, a corporation, the estate of a deceased individual, a trust, or a body that is a society, union, club, association, commission or other organization of any kind. Nowhere in these definitions do we find a distinction between a natural person and the legal representative of the taxpayer. Moreover, it is beyond dispute that Mr. Stanchfield, in whichever capacity he may choose to act, was clearly contemplated as coming within the Order of Mr. Justice Gibson.

[28] On the basis of the evidence submitted to the Court, I am therefore of the view that the applicant has established the required prerequisites for a finding of contempt. It does not matter whether Mr. Stanchfield had the intent to contravene the Order of Mr. Justice Gibson, as *mens rea* is not a required element; it is only relevant as a mitigating factor relative to the penalties to be imposed.

[29] Rule 472 deals with the penalty which may be ordered on a finding of contempt. This Court has developed a number of principles with respect to the assessment of a penalty for contempt. However, the Court of Appeal in *Winnicki v. Canada (Human Rights Commission)*, 2007 FCA 52,

held that an individual should be provided an opportunity to make submissions as to the appropriate sentence before the Court disposes of that question. I shall therefore rule on that issue after the parties have had a chance to file further submissions and to be heard on sentencing.

ORDER

THIS COURT ORDERS that:

1. The respondent is guilty of contempt of court as he failed to comply with the Order of Mr. Justice Gibson dated September 26, 2007;
2. The respondent shall serve and file written submissions on sentencing on or before February 9, 2009;
3. The applicant shall serve and file further written submissions, on or before February 16, 2009, wherein the following factors are to be addressed:
 - a) Any non-compliance or past violations by the respondent of provisions of the *Excise Tax Act*, and/or the *Income Tax Act*;
 - b) Any further information about the respondent which may assist the Court on sentencing.
4. The applicant shall serve the respondent personally with a true copy of the within Order and Reasons for Order no later than January 26, 2009, and file proof of service with the Registry of the Court.
5. The Judicial Administrator will schedule a teleconference hearing of this matter as expeditiously as possible.
6. Costs will be dealt with after the sentencing hearing.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1179-07

STYLE OF CAUSE: **MINISTER OF NATIONAL REVENUE V. CORY STANCHFIELD**

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 6, 2008

REASONS FOR ORDER AND ORDER: de Montigny, J.

DATED: January 23, 2009

APPEARANCES:

Ms. Amanda Lord

FOR THE APPLICANT
MINISTER OF NATIONAL REVENUE

Mr. Cory Stanchfield

FOR THE RESPONDENT
SELF-REPRESENTED

SOLICITORS OF RECORD:

Department of Justice
900-840 Howe Street
Vancouver, British Columbia
V6Z 2S9
Fax: (604) 666-1462

FOR THE APPLICANT
MINISTER OF NATIONAL REVENUE

Cory Stanchfield
c/o Unit 584
185-911 Yates Street
Victoria, British Columbia
V8V 4Y9
Fax: (708) 842-9362

FOR THE RESPONDENT
SELF-REPRESENTED