

Date: 20090403

Docket: T-1084-08

Citation: 2009 FC 346

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 3, 2009

PRESENT: The Honourable Mr. Justice Beaudry

IN THE MATTER OF the *Income Tax Act*

AND IN THE MATTER OF assessments by the Minister of National Revenue under one of more of the following statutes: the *Income Tax Act*, the *Canada Pension Plan* and the *Employment Insurance Act*

AGAINST:

FIDUCIE DAUPHIN
3884 De l'Empereur Ave.
Laval, Quebec H7E 5M5

9125-9622 QUÉBEC INC.
1010 De la Gauchetière West, Suite 2250
Montréal, Quebec H3B 2N2

CHANTAL FRÉGAULT
STÉPHANE DESCOTEAUX
3884, De l'Empereur Ave.
Laval, Quebec H7E 5M5

SOPHIE LEBEL
1535 Kirouac St.
Laval, Quebec H7G 4T4

NORMAND DESCOTEAUX
STN Anjou P.O. Box 153
Anjou, Quebec H1K 4G6

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The respondents, Fiducie Dauphin, 9125-9622 Québec Inc., Chantal Frégault, Stéphane Descoteaux, Sophie Lebel and Normand Descoteaux are asking the Court to set aside the *ex parte* order made on July 16, 2008, (the impugned order) by Martineau J., which authorized the Minister of National Revenue (the Minister) to immediately take each and every collection measure referred to in paragraphs (a) to (g) of subsection 225.1 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 (the Act), or any of them, to collect and/or guarantee payment of assessments and reassessments made by the Minister against the respondents.

[2] Alternatively, the respondents are bringing a motion before the Court seeking a reduction of the scope of the impugned order and are requesting the partial release be granted in respect of the seizure of the bank accounts of respondents Chantal Frégault, Sophie Lebel, Stéphane Descoteaux and the Fiducie.

[3] Subsection 225.1(1) of the Act states the following:

225.1(1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

225.1(1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes :

(a) commence legal proceedings in a court,	a) entamer une poursuite devant un tribunal;
(b) certify the amount under section 223,	b) attester le montant, conformément à l'article 223;
(c) require a person to make a payment under subsection 224(1),	c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);
(d) require an institution or a person to make a payment under subsection 224(1.1),	d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;
(e) [Repealed, 2006, c. 4, s. 166]	e) [Abrogé, 2006, ch. 4, art. 166]
(f) require a person to turn over moneys under subsection 224.3(1), or	f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);
(g) give a notice, issue a certificate or make a direction under subsection 225(1).	g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

[4] In principle, the Minister must wait 90 days after the mailing of the notice of assessment before collecting amounts owing by a taxpayer to Her Majesty in Right of Canada (the Crown). However, under subsections 225.2(2) and (3), a judge may authorize the Minister to act immediately if satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount:

225.2(2) Notwithstanding section 225.1, where, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) with respect to the amount.

225.2(3) An authorization under subsection 225.2(2) in respect of an amount assessed in respect of a taxpayer may be granted by a judge notwithstanding that a notice of assessment in respect of that amount has not been sent to the taxpayer at or before the time the application is made where the judge is satisfied that the receipt of the notice of assessment by the taxpayer would likely further jeopardize the collection of the amount, and for the purposes of sections 222, 223, 224, 224.1, 224.3 and 225, the amount in respect of which an authorization is so granted shall be deemed to be an amount payable under this Act.

225.2(2) Malgré l'article 225.1, sur requête ex parte du ministre, le juge saisi autorise le ministre à prendre immédiatement des mesures visées aux alinéas 225.1(1)a) à g) à l'égard du montant d'une cotisation établie relativement à un contribuable, aux conditions qu'il estime raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à ce contribuable d'un délai pour payer le montant compromettrait le recouvrement de tout ou partie de ce montant.

225.2(3) Le juge saisi peut accorder l'autorisation visée au paragraphe (2), même si un avis de cotisation pour le montant de la cotisation établie à l'égard du contribuable n'a pas été envoyé à ce dernier au plus tard à la date de la présentation de la requête, s'il est convaincu que la réception de cet avis par ce dernier compromettrait davantage, selon toute vraisemblance, le recouvrement du montant. Pour l'application des articles 222, 223, 224, 224.1, 224.3 et 225, le montant visé par l'autorisation est réputé être un montant payable en vertu de la présente loi.

[5] Martineau J. issued the impugned order on the basis of the affidavits of Yvon Tablot (dated July 8, 2008) and Claudine Vinette (dated July 11, 2008) of the Canada Revenue Agency (the Agency).

Factual Background

[6] On February 17, 2006, the Fiducie, an *inter vivos* trust, was created for tax purposes and to resume the activities that were previously carried out by 9125-9622 Québec Inc., which no longer operates as such, except for a building in St-Léonard. The Fiducie operates in the real estate business (selling and purchasing real estate), and its main activity is administering accumulated capital until winding-up. The trustees of the Fiducie are François Bergeron (Sophie Lebel's son) and Chantal Frégault.

[7] According to the Minister, as of June 6, 2008, the Fiducie owed the Agency \$2,048,434.61 following a notice of assessment dated May 29, 2008, and notices of reassessment dated June 3, 2008, and June 6, 2008, for the 2007 taxation year and the notice of reassessment dated May 28, 2008, for the 2006 taxation year.

[8] After additional information was received from the respondents, the Agency acknowledged that as of the date of the hearing on February 17 and 18, 2008, the amount owed by the Fiducie was now \$1,607,765.44 after a cheque for \$1,168,389.92 and payment of \$15,000 to the Agency were discovered (see Exhibit C-1 submitted at the hearing).

[9] Numbered company 9125-9622 Québec Inc., which also conducts business in the financial services sector under the corporate name of Services Financiers Dauphin, was formed on February 10, 2003. As of May 29, 2008, the respondent 9125-9622 Québec Inc. owed \$577,090.81 to the Agency as a result of three notices of assessment dated May 29, 2008, for the 2004 to 2006 taxation years and an initial notice of assessment for the 2007 taxation year.

[10] Chantal Frégault, a 32-year-old businesswoman, is the sole shareholder of the two following companies: 9108-0903 Québec Inc. and 9184-8796 Québec Inc., and she is the trustee of the Fiducie. As of May 28, 2008, Chantal Frégault, Stéphane Descoteaux's spouse, owed the Agency \$448,109.46 resulting from six notices of reassessment dated May 28, 2008, for the 2002 to 2007 taxation years. Chantal Frégault is currently the owner of the building located at 3884 De l'Empereur St. In Laval, Quebec.

[11] Stéphane Descoteaux, a 34-year-old businessman, owes the Agency \$171,731.98 resulting from five notices of reassessment dated May 28, 2008, for the 2002 to 2004, 2006 and 2007 taxation years.

[12] Sophie Lebel, a 44-year-old businesswoman, is the settlor of the Fiducie. As of May 28, 2007, she owed the Agency \$80,782.32 resulting from three notices of reassessment dated May 28, 2008, for the 2005 to 2007 taxation years. Sophie Lebel currently owns the building located at 1535 Kirouac St. in Laval, Quebec.

[13] Normand Descoteaux, a 60-year-old businessman, is a shareholder of 9008-2173 Québec Inc., which operated under the name Groupe Dauphin Publication and was struck off by the Inspecteur général des institutions financières on May 8, 1999. As of May 28, 2008, Normand Descoteaux owed the Agency \$15,656.24 resulting from two notices of reassessment for the 2004 and 2006 taxation years dated May 28, 2008, and a notice of original assessment for the 2007 taxation year as well as \$11,033.14 for the 2002 and 2004 taxation years.

[14] Subsection 225.2(8) of the Act allows taxpayers to apply to the Court, by motion, to review an *ex parte* authorization obtained under subsection 225.2(2):

225.2(8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

225.2(8) Dans le cas où le juge saisi accorde l'autorisation visée au présent article à l'égard d'un contribuable, celui-ci peut, après avis de six jours francs au sous-procureur général du Canada, demander à un juge de la cour de réviser l'autorisation.

[15] The principles applicable in this case are well established. According to the case law, the respondents have the initial onus of establishing that there are reasonable grounds to doubt that the test required under subsection 225.2(2) has been met. If they succeed, the Court must review the evidence presented before the judge who granted the order and any other evidence to assess whether, on a balance of probabilities, the collection would be jeopardized by the delay (*Canada (Minister of National Revenue – M.N.R.) v. Services M.L. Marengère Inc.* (1999), 176 F.T.R. 1 at paragraph 63(5), 2000 D.T.C. 6032; *Canada v. Satellite Earth Station Technology Inc.* (1989), 30

F.T.R. 94 at paragraph 16, 89 D.T.C. 5506; and *Danielson v. Canada (Deputy Attorney General)*, [1987] 1 F.C. 335.

[16] At paragraph 63 of *Marengère*, Lemieux J. summarized the following principles from the case law:

(1) The perspective of the jeopardy collection provision goes to the matter of collection jeopardy by reason of delay normally attributable to the appeal process. The wording of the provision indicates that it is necessary to show that because of the passage of time involved in an appeal, the taxpayer would become less able to pay the amount assessed. In other words, the issue is not whether the collection *per se* is in jeopardy but rather whether the actual jeopardy arises from the likely delay in the collection.

(2) In terms of burden, an applicant under subsection 225.2(8) has the initial burden to show that there are reasonable grounds to doubt that the test required by subsection 225.2(2) has been met, that is, the collection of all or any part of the amounts assessed would be jeopardized by the delay in the collection. However, the ultimate burden is on the Crown to justify the jeopardy collection order granted on an *ex parte* basis.

(3) The evidence must show, on a balance of probability, that it is more likely than not that collection would be jeopardized by delay. The test is not whether the evidence shows beyond all reasonable doubt that the time allowed to the taxpayer would jeopardize the Minister's debt.

(4) The Minister may certainly act not only in cases of fraud or situations amounting to fraud, but also in cases where the taxpayer may waste, liquidate or otherwise transfer his property to escape the tax authorities: in short, to meet any situation in which the taxpayer's assets may vanish in thin air because of the passage of time. However, the mere suspicion or concern that delay may jeopardize collection is not sufficient *per se*. As Rouleau J. put it in *1853-9049 Quebec Inc.*, *supra*, the question is whether the Minister had reasonable grounds for believing that the taxpayer would waste, liquidate or otherwise transfer its assets, so jeopardizing the Minister's debt. What the Minister has to show is whether the

taxpayer's assets can be liquidated in the meantime or be seized by other creditors and so not available to him.

(5) An *ex parte* collection order is an extraordinary remedy. Revenue Canada must exercise utmost good faith and insure full and frank disclosure. On this point, Joyal J. in *Peter Laframboise v. The Queen*, [1986] 3 F.C. 521 at 528 said this:

The taxpayer's counsel might have an arguable point were the evidence before me limited exclusively to that particular affidavit. As Counsel for the Crown reminded me, however, I am entitled to look at all the evidence contained in the other affidavits. These affidavits might also be submitted to theological dissection by anyone who is dialectically inclined but I find on the whole that those essential elements in these affidavits and in the evidence which they contain pass the well-known tests and are sufficiently demonstrated to justify the Minister's action.

In *Duncan, supra*, Jerome A.C.J., after quoting Joyal J. in *Laframboise, supra*, viewed the level of disclosure required by the Minister as one of adequate (reasonable) disclosure.

The Crown's arguments

[17] The case law has supported certain criteria to warrant an *ex parte* order under subsection 222.5(2) of the Act, such as when there are reasonable grounds to believe that a taxpayer has acted fraudulently; when a taxpayer has proceeded to liquidate or transfer his or her assets; when the taxpayer is evading his or her tax liabilities, or when the taxpayer has assets that could potentially lessen in value over time, deteriorate or perish.

[18] The Crown submits that the Court must examine the entire context of the respondents' actions and not be distracted by the few honest mistakes by audit officer Yvon Talbot in his

investigation into the respondents' financial activities in determining that the authorization was warranted.

[19] The fact that a taxpayer conducts his or her affairs in what might be called unorthodox fashion or engages in unorthodox business practices may constitute sufficient grounds to warrant an authorization under subsection 225.2(2) of the Act (*Canada v Laframboise*, [1986] 3 F.C. 521, at paragraph 19; *Canada v Paryniuk*, 2003 FC 1505, 244 F.T.R. 312; *Canada (Minister of National Revenue – M.N.R.) v. Rouleau* (1995), 101 F.T.R. 57, [1995] 2 C.T.C. 442 (T.D.)).

[20] The very nature of the assessment, as well as the manner in which the taxpayer holds his or her assets, are factors that could contribute to raising reasonable grounds to believe that a delay would jeopardize the collection of the amounts assessed (*Laframboise*, above; *Rouleau*, above; *Canada (Minister of National Revenue – M.N.R.) v. Thériault-Sabourin*, 2003 FCTD 124, 227 F.T.R. 254).

[21] The grounds alleged by the Crown to warrant the impugned order are the following:

- a. Normand Descoteaux was one of the leaders of an balloon mortgage financing fraud network;
- b. It is highly likely that the Caisse Populaire d'Anjou will recall the Fiducie's line of credit (in fact, the Caisse recalled the line of credit in the fall of 2008);

- c. Respondent Normand Descoteaux's criminal past, the criminal charges and his conviction for the offence of collecting interest at a criminal rate, as well as his unorthodox behaviour demonstrating that he is not untrustworthy and lacks respect for the law;
- d. Respond Stéphane Descoteaux's criminal past, the criminal charges and his conviction for the offence of collecting interest at a criminal rate, as well as his unorthodox behaviour demonstrating that he is untrustworthy and lacks respect for the law;
- e. The fact that police from the Proceeds of Crime Unit seized \$1,700,000 in two safes during the arrest of Stéphane et Normand Descoteaux and, following their arrest, an additional \$5,500,000 was discovered;
- f. Stéphane Descoteaux gave conflicting versions of his income for the 2004 taxation year when he reported his income to the Agency and to the Caisse Populaire des Mille-Îles for the same year. Similarly, the employment income that he reported to the Agency for the 2006 taxation year does not match the employment income slip that the Agency received from his employers Jus d'Or and 9145-5287 Québec Inc.;
- g. The Fiducie and 9125-9622 Québec Inc. used a similar scheme to the one that Normand Descoteaux used in 1991 and 1992, which essentially involved defrauding banking institutions by obtaining mortgage financing using artificially inflated valuations (*overmortgage*) (see Catherine Pennors's affidavit on this point);
- h. Between October 10, 2003, and April 4, 2008, 9125-9622 Québec Inc., Stéphane Descoteaux, Normand Descoteaux and the Fiducie sold approximately ten properties;
- i. The numbered company 9108-0903 Québec Inc. belonging to Chantal Frégault included in its end-of-year balance sheet on October 31, 2002, and March 31, 2003, a fictitious debt of

- \$474,900 that mainly related to the building located at 1535 Kirouac, in Laval, now owned by Sophie Lebel;
- j. The numbered company 9108-0903 Québec Inc. granted a “fictitious” mortgage to an unrelated company to secure a loan to Stéphane Descoteaux;
 - k. 9125-9622 Québec Inc. and Marie-Ange Giasson, Sophie Lebel’s mother, received, according to an apparent deed (of hypothec), in which Normand Descoteaux acted as Marie-Ange Giasson’s agent, a loan that could not possibly have reflected reality, particularly with respect to Marie-Ange Giasson’s income and to the amounts received by 9125-9622 Québec Inc. from the numbered company 3095-7252 Québec Inc., i.e., Howard Greenspoon’s numbered company (Yvon Talbot’s affidavit dated July 8, 2008 at paragraph 173 and Exhibits BF and BL);
 - l. The remainder of 9125-9622 Québec Inc. and Marie-Ange Giasson’s debt of \$2,700,000 now standing at \$1,700,000 is either fictitious or will never be repaid since Marie-Ange Giasson lacks the financial means to repay such a loan. 9125-9622 Québec Inc.’s bank account has been closed since November 22, 2006, and this company did not file a tax return for the fiscal year ending February 28, 2007;
 - m. 9125-9622 Québec Inc., Chantal Frégault and Marie-Ange Giasson, Sophie Lebel’s mother, allegedly received a fictitious loan from Jo-Pac Manufacturing Inc.;
 - n. 9125-9622 Québec Inc., Sophie Lebel and Chantal Frégault allegedly received a fictitious loan from 9108-0903 Québec Inc.;
 - o. 9108-0903 Québec Inc. also made “fictitious” loan to 9125-9622 Québec Inc. since 9108-0903 Québec Inc. did not have sufficient assets to pay such an amount and, moreover,

- as of November 22, 2006, 9125-9622 Québec Inc. no longer had a bank account to collect such an amount;
- p. The numbered company 9184-8796 Québec Inc., whose sole shareholder is Chantal Frégault, issued a mortgage on a building owned by the Fiducie, a building owned by Chantal Frégault and a building owned by Sophie Lebel following assignment of a fictitious debt by 9108-0903 Québec Inc. to 9184-8796 Québec Inc.;
 - q. A fictitious line of credit of \$2,000,000 was granted by Centre de Recherches Financiers Interprovinciales Inc. (C.R.F.) to the numbered company 9125-9622 Québec Inc.;
 - r. On March 2 or 3, 1998, after notices of reassessment were issued for the 1991 and 1992 taxation years, Normand Descoteaux made an initial assignment of his property to a trustee;
 - s. On April 23 or 24, 2003, Sophie Lebel made an assignment of her property to Syndic Pierre Roy & Associés Inc. in Repentigny. The bankruptcy primarily involved tax debts, and Sophie Lebel's two main creditors were the Agency and the Ministère du Revenu du Québec (MRQ) for tax debts totalling \$130,348 on \$132,473 of provable claims;
 - t. On April 30, 2003, or May 1, 2003, Normand Descoteaux made a second assignment of his property to the same trustee, Pierre Roy & Associés Inc. in Repentigny, for which he has still not been discharged;
 - u. Normand Descoteaux, Stéphane Descoteaux and Chantal Frégault use the same post office box 153, STN Anjou, Anjou, Quebec, H1K 4G6;
 - v. Normand Descoteaux has changed his address many times over the last several years;
 - w. Stéphane Descoteaux has changed his address many times over the last several years;

- x. On September 4, 2007, Normand Descoteaux purchased and sold a building, realizing a profit of approximately \$50,000;
- y. On March 8, 2007, Stéphane Descoteaux purchased and sold a building, realizing a profit of approximately \$50,000;
- z. Normand Descoteaux provided conflicting versions of his income to the Agency and the trustee for 2003;
- aa. The Fiducie wilfully evaded payment of its taxes in failing to report all of its income for the 2006 and 2007 taxation years by not reporting a large portion of its income of \$1,682,583 and \$3,564,747, respectively;
- bb. Respondent 9125-9622 Québec Inc. wilfully evaded payment of its taxes in failing to report all of its income for the 2004 to 2007 taxation years by not reporting a large portion of its income of \$165,692, \$24,774, \$349,900 and \$510,900, respectively;
- cc. Chantal Frégault wilfully evaded payment of her taxes in failing to report all her income for the 2002 to 2007 taxation years by not reporting a large portion of her income of \$26,641, \$289,310, \$13,796, \$36,564, \$525,594 and \$210,513, respectively;
- dd. Stéphane Descoteaux wilfully evaded payment of his taxes by not reporting all his income for the 2002 to 2004, 2006 and 2007 taxation years, including an amount of \$278,474 for the 2004 taxation year;
- ee. Sophie Lebel wilfully evaded payment of her taxes by not reporting all her income for the 2005 to 2007 taxation years by failing to report a large portion of her income, including an amount of \$208,532 for her 2006 taxation year;

ff. Normand Descoteaux wilfully evaded payment of his taxes by not reporting all his income for the 2004, 2006 and 2007 taxation years by failing to report a large portion of his income, including an amount of \$56,818 for the 2007 taxation year.

[22] The Crown submits that the Fiducie conducts its business activities in a questionable manner. The Fiducie issues a cheque to a notary to finance the purchase of a building. This financing is not secured by a mortgage but simply by a document under private writing (demand loan). The same day or the next day, the building is resold at a price higher than the Fiducie's financing, often for \$50,000 higher. The second purchaser gets 90% to 100% financing from a financial institution for the amount of the second transaction. The Fiducie then receives the amount of the loan that it granted, plus a small amount of interest. The Fiducie also finances the deposit required for the second transaction, thus enabling the purchaser not to pay any amount of money to buy the building. Once again, the Fiducie is not secured by hypothec but has its loan repaid along with modest interest by the mortgage advance provided by the financial institution.

[23] Subsequently, and often, the second purchaser stops the mortgage payments or fails to pay municipal and school taxes, and the property is then repossessed by the financial institution.

[24] The Crown submits that it is strange that in the context of real estate financing where a notary issues a statement of disbursements that he or she does not record the interest to be paid to the Fiducie or 9125-9622 Québec Inc. It is also curious that the Fiducie does not feel the need to secure a loan involving such large sums of money by hypothec. In some cases, the deed of sale for

the second transaction and the deed of hypothec of this transaction are issued even before the deed of purchase for the first transaction is issued (see Yvon Talbot's supplementary affidavit dated September 22, 2008, at paragraph 17).

[25] Here is an example of such a transaction: Normand Descoteaux, who has not yet been discharged from his second bankruptcy, purchased a building located at 8946-8948 Pierre St. in Rawdon on September 4, 2007, for \$83,000, and that same day he sold the building to Wilner Cadelis for \$139,000. The Crown submits that the Fiducie lends not only \$83,000 to Normand Descoteaux for the purchase as part of the first transaction but also \$14,170.22 for the required deposit (undertaking #5 of Marco Boulanger's cross-examination, January 7, 2009), so that Mr. Cadelis becomes the owner following the second transaction. The Fiducie is then reimbursed \$97,170.22 by the mortgage (\$124,829.78) granted to Mr. Cadelis by CIBC (see notary Jérôme St-Gelais' statement of disbursements).

[26] During his cross-examination on January 16, 2009, Marco Boulanger, the Fiducie's accountant, claimed that the Fiducie was only involved in the first transaction, whereas in actual fact it also financed the deposit required for the second transaction. It receives no consideration in return in terms of interest. Gestion immobilière Norstar, a name of the numbered company 9179-0543 Québec Inc., which seems to be connected, according to Ms. Vinette (Claudine Vinette's supplementary affidavit dated January 5, 2009, at paragraph 36 and cross-examination on Claudine Vinette's affidavit on dated January 5, 2009, from pages 98 to 105) to Normand Descoteaux through André Charbonneau, receives the net balance of the transaction owing to the seller,

Normand Descoteaux. Marco Boulanger was evasive and unable to answer the Crown's questions regarding the specific details of this sale. Mr. Cadelis brought an action against André Charbonneau, 9179-0543 Québec Inc. and Normand Descoteaux. Thus, to summarize, Normand Descoteaux is financed by the Fiducie for the purchase of a building that it resells at a profit to Mr. Cadelis, who himself is financed by the Fiducie for the deposit required for the second transaction. The profit that should have been received by Mr. Descoteaux (\$41,249.78) is distributed to a third party (Gestion immobilière Norstar).

[27] According to Yvon Talbot, the Fiducie financed at least 26 transactions using this approach (Yvon Talbot's affidavit dated July 8, 2008, paragraph 137 and Exhibits K and P). Finally, Gestion Malgraf (a company whose primary activity is cashing cheques) cashed several cheques representing the net proceeds of the second real estate transaction (Yvon Talbot's supplementary affidavit dated September 22, 2008, paragraphs 22 and 23 and Chantal Frégault's affidavit in Exhibit 7).

[28] The Crown also mentioned the many links between the companies and the individuals who do business with the Fiducie and who are involved in the same transactions. First, the numbered company 9179-0543 Québec Inc., whose president and shareholder was André Charbonneau (Frank Leonard Jr. is currently the director, president and majority shareholder), is also known under twelve different names. Michel Leclerc's numbered company 9172-6836 Québec Inc., which operates under ten different names, is a party to real estate purchases and sales involving the Fiducie.

[29] Gestion Malgraf, owned by Gaétan and Gérard Thibault, endorses and cashes cheques from various transactions carried out by the Fiducie. Gestion Malgraf is also identified as the employer of Danielle Cléroux, Normand and Stéphane Descoteaux, Chantal Frégault, François Bergeron and the numbered company 9125-9622 Québec Inc. (paragraph 25 and Exhibit 2 of Yvon Talbot's supplementary affidavit dated September 22, 2008). Danielle Cléroux is the sister of Martine Cléroux, who is former spouse of Normand Descoteaux, who represents André Charbonneau's company and endorses cheques on behalf of 9179-0543 Québec Inc. (paragraph 26 Yvon Talbot's supplementary affidavit dated September 22, 2008). Martine Cléroux also represented 9125-9622 Québec Inc. in several transactions (Exhibit BL of Yvon Talbot's affidavit dated July 8, 2008).

[30] Marco Boulanger's credibility was questioned by the Crown during his cross-examination on January 16, 2009. He was unable to answer questions and was contradicted by documents showing that the Fiducie was involved not only in the first but also the second sale in transactions involving the same building carried out on the same day or the next day. For example, the property located at 66-68A Victoria St. in Sorel-Tracy was purchased by Gestion Lajeunesse, a name of the numbered company 9172-6836 Québec Inc. owned by Michel Leclerc. On March 18, 2007, the Fiducie financed the initial purchase of \$62,000 and earned \$47.56 in interest. The next day, the building was sold to Severio Maggiore for \$135,000. The Fiducie loaned \$13,718.70 at an interest rate of 14% for two days, receiving \$9.76 in interest on the loan from this second transaction. This loan represents the deposit required for the second transaction, which is primarily funded by CIBC. Furthermore, in the list of disbursements for this property, Gestion Malgraf received an "advance"

reimbursement of \$10,000, while 9125-9622 Québec Inc. received a reimbursement of \$75,718.70 for the first mortgage (Exhibit C-4 filed during the hearing on February 17 and 18, 2009, and Exhibits 3 and 4 from Marco Boulanger's affidavit dated January 16, 2009).

[31] The Crown also refutes the respondents' argument regarding six cheques for \$50,000 and a cheque for \$41,000 issued on behalf of the company Énergie Confort. These amounts are either characterized as "management" in one document, while in others they are characterized as "commission," and Yvon Talbot could not consider these cheques as expenses when determining the adjusted cost base for the two buildings owned by the Fiducie. Yvon Talbot could not find any documentation indicating what could be considered renovations, repairs or improvements to either of the two buildings (Yvon Talbot's supplementary affidavit dated February 6, 2009, at paragraphs 13 and 22).

[32] The Crown notes that 9125-9622 Québec Inc. has not had any commercial activities since February 28, 2006 (Richard Millaire's affidavit, paragraph 36), and this company's bank account has been closed since November 2006. However, between March 6, 2008, and April 3, 2008, 9125-9622 Québec Inc. purchased and sold the next day three buildings in Montréal, realizing a total profit of \$374,700 (Claudine Vinette's supplementary affidavit dated December 24, 2008, paragraphs 16 to 21). On September 16, 2008, Richard Millaire replaced the Fiducie as majority shareholder of 9125-9622 Québec.

[33] Despite the fact that 9125-9622 Québec Inc. was allegedly inoperative since February 28, 2006, it received nine cheques for \$50,000 in April 2007, a cheque for \$50,000 in September 2007 and three additional cheques for \$50,000 in December 2007, for a total of \$650,000 issued by the Fiducie (Marco Boulanger's cross-examination, Undertaking #4, cheques 93 to 101, 192, 204 to 206 and Richard Millaire's affidavit, paragraph 36).

[34] Since the cheques are subsequent, by at least several months, to the transfer of assets from 9125-9622 Québec Inc. (carried out by November 15, 2006, assignment of claim in Exhibit B in Yvon Talbot's affidavit dated February 6, 2009, paragraph 12), and subsequent by at least two months to the assignment of the claim itself, Mr. Talbot was unable to consider the amount of these cheques possibly constituting an amount to be taken into account in the Fiducie's acquisition cost for either of the buildings for the purposes of calculating the profit realized after they were resold.

[35] According to the Crown, through the actions of each of the respondents, they can easily hide the equity of their properties from creditors using nominees. According to the facts in the record, the six taxpayers named as respondents in this case evaded the payment of tax. The Crown also submits that even if Caisse Populaire had decided in the fall of 2008 not to renew the loan to the Fiducie, it is reasonable to believe that the Fiducie would have found financing elsewhere and that these new mortgages would have taken precedence over Crown debts.

[36] Normand and Stéphane Descoteaux were previously convicted of collecting interest at a criminal rate as part of a scheme that was similar to Fiducie's transactions. Normand Descoteaux

currently acts as advisor for the Fiducie (Stéphane Descoteaux's supplementary affidavit dated September 12, 2008, paragraph 24), while Stéphane Descoteaux is a loan consultant for the Fiducie (Chantal Frégault's supplementary affidavit dated September 11, 2008, paragraph 114). Catherine Pennors' affidavit on the audit report regarding Normand and Stéphane Descoteaux was not challenged by the respondents. The Crown argues that the criminal record of respondents Stéphane Descoteaux and Normand Descoteaux, their involvement in illegal activities and the unorthodox management of their assets and their delinquent tax behaviour establish that they disregard the law and are untrustworthy.

[37] The Fiducie has owned the property located at 303-20 Maurice Aveline St. in Ste-Adèle since March 13, 2007. The respondents acknowledge that there is a lease with Michel Leclerc, but the Fiducie allegedly did not report income of \$20,700 for the period from April 1, 2007, to December 31, 2007. Counsel for the respondents stated at the hearing that Michel Leclerc did not pay any rent, but there is no evidence to that effect.

[38] Chantal Frégault served a prior notice of the exercise of a hypothecary right in the event of a transfer of property owned by 9125-9622 Québec Inc. to 9108-0903 Québec Inc. for the sole purpose of avoiding transfer taxes relating to the transfer of that property.

[39] Sophie Lebel declared bankruptcy and was discharged on January 25, 2004. Her mother, Marie-Ange Giasson, had bought the house previously owned by her daughter on October 21, 2004, from 9125-9622 Québec Inc. for \$200,000. On August 24, 2006, Sophie Lebel bought back her

house from her mother for \$1, while today it is worth approximately \$400,000 according to the property assessment in the record.

[40] The Crown explained that Mr. Talbot's mistakes were not made in bad faith. He was unable to rely on the notaries because he feared that it would alert the taxpayers to the assessments against them. At paragraph 16 of *Canada (Minister of National Revenue – M.N.R.) v. Lauzon*, 2006 CF 15, 2006 D.T.C. 6043, Prothonotary Morneau issued an order suspending all communication with the notary until there was a final judgment in the court record. The Agency explains that it respects the spirit of that decision in the context of its audits against the respondents and that it does not request more information from notaries and other parties out of concern that the respondents will squander their assets.

[41] During his cross-examination, Mr. Talbot provided a reasonable explanation for the use of the term “fictitious loan” in his affidavit dated July 2008 to obtain the impugned order. In any event, the Crown believes that Martineau J. would still have made the order despite discovering various mistakes made in good faith by Mr. Talbot (*Canada (Minister of National Revenue – M.N.R.) v. Papa*, 2009 FC 49, [2009] F.C.J. No 86 (QL) at paragraphs 21–23, which applied *Canada (Minister of National Revenue) v. Reddy*, 2008 FC 208, 329 F.T.R 13).

[42] On July 13, 2007, Yvon Talbot asked the Caisse Populaire for a copy of the debit note for \$1,200,000 but forgot to follow up on the request. He therefore calculated the profit realized by

Fiducie taking into account only the proceeds of disposition of \$1,800,000 for the building nicknamed “Drugstore” and \$2,400,000 for the building nicknamed “Club Sandwich.”

[43] However, when Yvon Talbot became aware of a cheque for \$1,168,389.92 to Jo-Pac Manufacturing Inc. from 9125-9622 Québec Inc. by way of acquittance of the loan paid by the Caisse Populaire line of credit (Exhibit I-3 from Yvon Talbot’s cross-examination on February 10, 2009), the Agency reduced the assessment to \$1,622,765.44, the amount indicated in Exhibit C-1 filed at the hearing on February 17 and 18, 2009. Furthermore, after it received \$15,000 on Friday, February 13, 2009, the Agency re-amended the amount of the assessment to \$1,607,765.44. In the Crown’s view, this establishes transparency and integrity.

[44] The assessment provides various details on the respondent’s lifestyles and notes that the Fiducie is currently leasing three cars, including a BMW, a Lexus and Bentley. In *Canada (Minister of National Revenue – M.N.R.) v. Calb* (1997), 135 F.T.R. 195, 73 A.C.W.S. (3d) 172 at paragraph 10, the Court noted the following:

The Court on July 10, 1997, and still in the present circumstances finds that Ms. Calb’s reckless behaviour in seeking to continue high living on behalf of both, causes jeopardy to the tax collection. A modest house would not so much create apprehension of jeopardy, because some of Ms. Calb’s equity could go to the reduction of the outstanding taxes. To permit Ms. Calb’s financial transactions and disposition other one and only major asset (whether or not manipulated by Mr. Calb) to go unchecked would jeopardize the collection of tax.

[45] The Crown argues that the Fiducie allegedly breached Harrington J.’s order dated August 14, 2008. They had pledged not to liquidate their assets, but here as collateral they gave the Bentley

to 9184-8796 Inc., of which Chantal Frégault is a shareholder. The Crown cited *Canada (Minister of National Revenue – M.N.R.) v. 144945 Canada Inc.*, 2003 FCT 730, in which Blanchard J. noted the following at paragraph 18:

The above evidence respecting the applicant's assets, notwithstanding its sparsity, is sufficient, in my view, to reasonably establish that the applicant's asset base may not be sufficient to satisfy its obligations. I am also of the view that this evidence coupled with the evidence reviewed above and considered by Martineau J. in the ex parte hearing, is sufficient to establish on a balance of probabilities that the collection was jeopardized by the delay. I give particular weight to the evidence of the history of non-compliance by current and/or former directors of the applicant with respect to information requests and duties imposed by the Act.

[46] The Crown submits that it has met its burden of proof for obtaining the impugned order.

[47] This case is extremely complex, and the ramifications and the connections between each actor are very difficult to establish given the many real estate transactions.

The Respondents' arguments

[48] The respondents submit that it is wrong to claim that a granting a delay to pay the amount assessed would jeopardize collection of all or any part of the claim for the following reasons:

[49] They believe that they have grounds to believe that the Minister did not meet the test to obtain such authorization because he did not comply with subsection 225.2(2) of the Act. At the hearing, counsel for the respondents focused most of his efforts on attempting to establish that the Fiducie should not be subject to a jeopardy collection order. Furthermore, the notices of assessment

served to the respondents were vigorously contested, and notices of objection were filed in December 2008.

[50] The jurisprudence indicates that the Minister also has a burden when making a motion under subsection 225.2(8) of the Act, namely the burden of justifying the jeopardy collection order granted on an *ex parte* basis (see *Marengère*, above, at paragraph 63(2)). The Minister's statements must have merit and not be supported by mere suspicion or concern that the delay may jeopardize the collections. Furthermore, the amount of money in issue is irrelevant when a judge must consider whether to grant a jeopardy collection order (*1853-9049 Québec Inc. v. Canada*, (1986) 9 F.T.R. 63, 3 A.C.W.S. (3d) 169).

[51] The respondents submit that Yvon Talbot's reasons are based on mere suspicion and unsubstantiated concerns since there are outstanding selling balances owed to the Fiducie over a period of 8 to 10 years. At the hearing on January 12, 2009, the respondents argued that the amount of the outstanding selling balances was \$2,958,802.92 and that the Fiducie was therefore able to pay its tax debt. The respondents have no intention of squandering, liquidating or transferring their assets to avoid paying the tax authorities, nor have they acted fraudulently. Furthermore, neither Chantal Frégault nor François Bergeron, the trustees of the Fiducie, has transferred assets.

[52] The selling price balances come from three sources. First, when the Fiducie was created, 9125-9622 Québec Inc. transferred to its shareholder, the Fiducie, ownership of its properties located 1364-1366 St. Catherine St. East (Drugstore) and 1560-1572 St. Catherine St. East (Club

Sandwich). However, these properties, as well as the one located at 2207 Panet St., were taken back following a giving in payment by 9125-9622 Québec Inc., owned by Normand Chamberland. 9125-9622 Québec Inc. therefore became the owner of the buildings by realizing its securities, although it had to pay the priority-ranking hypothecary creditors.

[53] On April 11, 2005, a deed of hypothec was granted by 9125-9622 Québec Inc. and Marie-Ange Giasson in favour of 3095-7252 Québec Inc., represented by Howard Greenspoon, in the amount of \$2,700,000 encumbering the Drugstore, Club Sandwich, as well as the property located at 8980 Jean-Marie Lefebvre St. in Montréal, the one located at 1535 Kirouac St., the property located at 3884 De l'Empereur, as well as a vacant lot on St. Catherine St. All the amounts borrowed were used to reimburse the previous creditors of 9125-9622 Québec Inc. This loan was discharged on July 20, 2006 (Exhibit 2 of Richard Millaire's affidavit).

[54] The numbered company 9125-9622 Québec Inc. reimbursed \$1,000,000, and the balance of \$1,700,000 was reimbursed from a loan obtained from Jo-Pac Manufacturing Inc. (Yvon Talbot's affidavit dated July 8, 2008, at paragraph) because on July 20, 2006, a deed of hypothec was granted by 9125-9622 Québec Inc., Chantal Frégault and Marie-Ange Giasson in favour of Jo-Pac Manufacturing Inc. in the amount of \$2,500,000, encumbering all the aforementioned properties, with the exception of the vacant lot. The respondents claim that the loan was repaid after the Fiducie sold the properties that it owned. It was discharged on May 30, 2008 (Exhibits 3 and 4 of Richard Millaire's affidavit or Exhibit 8 of Chantal Frégault's affidavit).

[55] On July 13, 2007 the Anjou Caisse Populaire Desjardins gave the Fiducie a revolving line of credit of \$1,200,000. The line of credit was secured by both properties belonging to Sophie Lebel (1535 Kirouac St.) and Chantal Frégault (3884 De l'Empereur), as well as a property located at 8980 Jean-Marie Lefebvre, which was sold on April 4, 2008. The respondents claim that this line of credit was used to replace the loan granted by Jo-Pac Manufacturing Inc. because, according to them, 9125-9622 Québec Inc. still owed \$1,168,000 to Jo-Pac Manufacturing Inc. (Yvon Talbot's affidavit dated July 8, 2008, at paragraph 203 and Yvon Talbot's cross-examination on February 10, 2009, p. 63). The Fiducie therefore repaid 9125-9622 Québec Inc.'s debt.

[56] On December 11, 2008, a prior notice of the exercise of sale by judicial authority was issued by Caisse Populaire against the Fiducie because a balance of \$696,254.85 was still owed on the rotating line of credit.

[57] On November 21, 2006, 9125-9622 Québec Inc. and the Fiducie sold Drugstore to the numbered company 9173-9698 Québec Inc. (represented by Nicolas Tétrault) for \$1,800,000 with a balance on the selling price for this same amount. Jo-Pac Manufacturing Inc. then reduced the amount of its mortgage on the Drugstore to \$1,000,000 by a mortgage amendment deed. On February 5, 2007, through a mortgage debt assignment, 9125-9622 Québec Inc. transferred the balance of the selling price of \$1,800,000 to Fiducie.

[58] On March 13, 2007, 9125-9622 Québec Inc. and the Fiducie sold Club Sandwich to the numbered company 9177-4158 Québec Inc. (represented by Daniel Ouaknine) for \$2,400,000. The

amount of \$600,000 was paid to the seller at the time of the sale, and \$1,000,000 was paid 60 days after the sale. The \$800,000 balance of the selling price was payable before April 15, 2017.

[59] On January 13, 2006, a lease was entered into between 9116-4798 Québec Inc. (represented by Mohammed Khan) and 9125-9622 Québec Inc. involving the Club Sandwich property (Exhibit I-1 of Yvon Talbot's cross-examination on February 10, 2009). Clause 14 of the lease provides for compensation to the landlord if there is any [TRANSLATION] "deficiency" with the rent. The balance of Club Sandwich's \$800,000 selling price is therefore subject to compensation arising from this clause.

[60] The third selling price balance arises from a loan that was granted to Mohammed Khan on the property located at 7550 De Lugano Brossard in Quebec (hereinafter the Khan Loan). This is an \$800,000 selling price balance with monthly payments of principal and interest (Marco Boulanger's cross-examination on January 7, 2009, at page 24).

[61] The amount of \$536,644 is payable to the Fiducie subject to a dispute involving 9116-4798 Québec Inc. and the Fiducie (Claudine Vinette's affidavit dated January 5, 2009, at paragraph 8 and in Exhibit 3). The respondents submit that 9116-4798 Québec Inc. is acting as a plaintiff by counterclaim.

[62] There are two dockets involving garnishment orders before this Court involving numbered companies doing business with the Fiducie. ITA-8090-08 involves a garnishment order against two

numbered companies owned by Chantal Frégault, specifically 9108-0903 Québec Inc. and 9184-8796 Québec Inc. (Paola Tiranardi's affidavit dated September 22, 2008, Exhibit 3).

[63] Docket ITA-8092-08 relates to numbered companies 9173-9698 Québec Inc. and 9177-4158 Québec Inc. (the purchases of Drugstore and Club Sandwich, respectively). The garnishee 9173-9698 Québec Inc. owes the Fiducie \$1,575,000 resulting from a selling price balance of \$1,800,000 by a deed of sale dated November 15, 2006. A final garnishment order concerning the numbered company 9173-9698 Québec Inc. was made by Prothonotary Richard Morneau on February 5, 2009 (Exhibit C-2 filed at the hearing on February 17 and 18, 2009, or Exhibit J from Yvon Talbot's supplementary affidavit dated February 6, 2009).

[64] The garnishee 9177-4158 Québec Inc. is indebted to the Fiducie as the result of a selling price balance for \$800,000 at a rate of 6%, and the date of the capital payment is scheduled for April 10, 2017. The debt of \$800,000 is subject to the rights of the garnishee to seek compensation using the selling balance on a monthly basis under clause 14 of the seller's statements in the published deed of sale.

[65] Finally, the Fiducie's assets are not based solely on the aforementioned selling price balances but also on several loans granted totalling \$630,000 (Chantal Frégault's supplementary affidavit dated September 11, 2008, paragraphs 100 to 104). The respondents are therefore not in a position where they are attempting to squander or liquidate their assets, nor are they in a precarious financial situation. Collection of the claim would therefore not be jeopardized by delay.

[66] The respondents submit that although there are family connections between them, this reality cannot lead the Minister to believe that said transactions are irregular or create doubt of such magnitude that it would warrant reasonable apprehension that the respondents would squander their assets. The respondents did not commit any fraud or engage in any conduct akin to fraud. Normand and Stéphane Descoteaux have served their prison sentences and are law-abiding citizens. The transactions referred to by the affidavits that were filed in support of the *ex parte* motion followed regular and legal procedures and cannot be characterized as unorthodox. Furthermore, Normand and Stéphane Descoteaux's criminal past has nothing to do with the Fiducie. There is no scheme justifying the motion for a jeopardy collection order.

[67] In particular, the respondents attack Yvon Talbot's affidavits and cross-examinations. The respondents claim that Mr. Talbot is in bad faith and that he signed an affidavit on July 8, 2008, containing false information that misled Martineau J. when he made the jeopardy collection order.

[68] Yvon Talbot also contradicted himself on several occasions. For example, when he was questioned about the \$1,200,000 line of credit, he initially claimed that nothing would have changed had he known about it, but later he said that it could have changed the Agency's notice (Mr. Talbot's cross-examination from September 30 at p. 88 and Mr. Talbot's cross-examination from February 10, 2009, at pages 23-24 and 63). The respondents argue that Exhibit C-1 tendered to the Court during the hearing on February 17 and 18, 2009, which was the basis of the variation of the

assessment from \$2,132,000 \$ to \$1,622,765.44, proves that Yvon Talbot filed false affidavits and that he was dishonest with the Court.

[69] With respect to Claudine Vinette, the respondents submit that she signed an affidavit on September 11, 2008, and that she failed to consider the \$800,000 of equity (as a result of the litigation against 9116-4798 Québec Inc. and the Fiducie), which would have increased the Fiducie's assets. Furthermore, Ms. Vinette improperly assessed the equity in the properties owned by Chantal Frégault (3884 De l'Empereur) and Sophie Lebel (1535 Kirouac St.). The bad faith attitude, coupled with the fact that Claudine Vinette refused or neglected to make any inquiry whatsoever into the signatory of the statement in the dispute (Daniel Ouaknine) clearly establishes that Court's intention not to make a full and frank disclosure.

[70] Consequently, the Minister has not met the test that his claims would be in jeopardy were a delay granted to the respondents.

[71] The Minister's must allow the Court to find that there was not a full and frank disclosure as explained in the recent case *Canada (Minister of National Revenue – M.N.R.) v. Laquerre*, 2008 FC 458 at paragraph 31, 2008 D.T.C. 6324:

Thus, a motion to strike an order must be granted where it is apparent that the Minister's failure to make full and frank disclosure of the facts has misled the judge.

[72] The Crown's affidavits are supported by limited and intentionally dishonest audits. None of the experts with whom the respondents conduct business was approached for proper data on transactions.

[73] The affidavits contain insufficient but, above all, inaccurate allegations, since the Minister was negligent in conducting the investigations given that no actions was taken after July 7, 2008, in respect of 3095-7252 Québec Inc. (i.e., Howard Greenspoon) to verify the reimbursements made on the first loan by the Fiducie. A simple audit would have shown that a full and final acquittance had been sent following payment of the remaining debt.

[74] Yvon Talbot also neglected to check with Saul Mendelson whether the \$1,700,000 debt owed to Jo-Pac Manufacturing Inc. had been repaid, which was indeed the case. Had this audit been conducted, the auditor could not have found that the trust had failed to report the amounts therein. Given that the Agency based the notices of assessments issued to the respondents following Yvon Talbot's incomplete audits, these notices are not accurate. Furthermore, Yvon Talbot did not account for the \$1,168,398.92 from notary St-Gelais' account repaying the loan to Jo-Pac Manufacturing Inc. (Exhibit I-3 of Yvon Talbot's cross-examination on February 10, 2009).

[75] Yvon Talbot's credibility is seriously compromised because he confuses loans and mortgages. He does not recognize notarial deeds because they do not match the bank statements that he obtained. Furthermore, Mr. Talbot's audit is incomplete because it was based solely on bank

statements. He lacked rigour by failing to consider the notarial and financial costs when he evaluated the profits that he allocated to the Fiducie.

[76] For example, the respondents claim that the cheques totalling \$341,000 (six cheques for \$50,000 and one cheque for \$41,000) dated April 5, 2007, made out to Énergie Confort constituted renovation expenses because it is a refrigeration business. The respondents submit that these costs should have been added because they were supposedly incurred before the buildings were sold and that Yvon Talbot was wrong to look at the date of the invoice during his audit (Yvon Talbot's cross-examination on February 10, 2009, pages 33 to 43).

[77] Mr. Talbot used the term "fictitious loan" when it was actually a revolving loan. According to the respondents, this designation is therefore false and misled the judge. The 26 transactions (Exhibit C-3 filed at the hearing on February 17 and 18, 2009) are not fictitious loans as claimed by Mr. Talbot, but bridge loans, which help facilitate real estate transactions. Mr. Talbot therefore falsely allocated the profits of these 26 transactions to the Fiducie. The respondents argue that the document submitted to the Court establishes that they are bridge loans and that the Fiducie is not linked to the parties involved in the transactions.

[78] According to the respondents, Claudine Vinette is attempting to mislead the Court since she indicates that because one of the transactions involved a property owned by Normand Descoteaux, which was sold to Mr. Cadelis, and because Normand Descoteaux and André Charbonneau may have ties, means, in her view, that the Fiducie indirectly becomes the owner of this property

(Claudine Vinette's supplementary affidavit, dated January 5, 2009, at paragraphs 36 and 37).

However, she fails to note that Yvon Talbot, during his cross-examination on September 30, 2008, acknowledged that Normand Descoteaux was in no way linked to or involved with the Fiducie.

[79] The respondents also note that a recent decision shows that the absence of evidence with respect to fraudulent actions by taxpayers combined with their intentions not to dispose of their assets in any way justifies the quashing of the jeopardy collection order (see *Abergel v. Canada*, 2008 FC 589, 2008 D.T.C. 6403 at paragraph 13 and 21).

[80] Alternatively, the respondents submit that they are justified in seeking a reduction in the scope of the impugned order because they are unable to sustain themselves and, as a result, their assets may be in jeopardy. The scope of the Crown's seizure on the respondents' assets is significantly greater than the deemed debt in the notices of assessment. To date, the entirety of the respondents' assets have been frozen by the Crown (the Crown's garnishments in dockets ITA-8092-08 and ITA-8090-08).

[81] In addition, it is urgent for the respondents to have the scope reduced because on December 11, 2008, a prior notice of sale by judicial authority was issued by the Caisse Populaire in respect of the \$1,200,000 line of credit.

[82] The respondents note that the seizures against them have the effect of paralyzing their activities and, as a result, the debts are more likely to be jeopardized by the paralysis arising from

the order than by the lapse of a delay in paying the amounts claimed under the notices of assessment. Furthermore, as a result of the seizure against the Fiducie, its employees, Chantal Frégault (trustee), Sophie Lebel (settlor) and Stéphane Descoteaux (loan consultant) are not earning a salary. Prior to the seizures, the Fiducie paid all the expenses relating to maintaining the buildings. The seizures therefore caused the respondents to become insolvent.

[83] The Crown's affiants, by failing to disclose relevant facts and information or neglecting to do so, misled the judge. They did not comply with the duty of full and frank disclosure, or of utmost good faith, by intentionally limiting their investigation to the desired facts in order to obtain the impugned order. This bad faith attitude and deficient investigative technique justify the setting aside of the order made on July 16, 2008, by the Honourable Justice Martineau.

Analysis

[84] The Court believes that it must examine the case as a whole. This is a complex case that involves several transactions with actors who are connected or represented by numbered companies with multiple names.

[85] The Court also notes that errors were made by one of the Crown's affiants. The respondents are correct in raising inaccuracies in the calculations included in the affidavits submitted to Martineau J. However, are these errors and inaccuracies sufficient to set aside or reduce the order? The Court does not believe so.

[86] The Court considered the following factors to reach this conclusion:

- The relationship between Normand and Stéphane Descoteaux and the Fiducie;
- The non-payment of taxes by 9125-9622 Québec Inc.;
- The transfer of assets from this company to the Fiducie;
- The Fiducie's unreported income;
- The numerous transactions involving the Fiducie, in which it loans significant unsecured amount of money for the acquisition of real estate and is then involved in the resale by funding the deposit, all in exchange for a minimal monetary result;
- The profits realized in these transactions, which are given to individuals or companies other than the seller.

[87] In the Court's view, all these factors justified the Crown's concern that granting a delay could jeopardize the payment of its claims.

[88] Likewise, the Court is of the opinion that it is not necessary to reduce the scope of Martineau J.'s order.

[89] The Crown filed Exhibit C-3 (Comparative table, Yvon Talbot's Exhibit K and the exhibits in Marco Boulanger's Undertaking #4) prepared by Ms. Vinette indicating 26 transactions identified by the Agency involving the Fiducie. With this exhibit, the Crown argued *Canada v. Anchor Pointe Energy Ltd*, 2007 FCA 188, at paragraph 40:

[...] Either at the initial or at the objection stage, the Minister is attempting to determine the tax liability, and quantum, of the taxpayer. He is entitled throughout this period, until his final determination, to rely upon facts newly discovered or revealed by the taxpayer, and assume them. Nothing in the meaning of assessment requires or permits that some facts be assumed by the Minister, others not, and that, as a result, two categories of assumptions of fact can be created with a different onus for each one [...]

[90] The Agency was correct in continuing its audits on the respondents' financial activities, and the Court may rightly refer to the 28 new transactions contained in Exhibit C-4 (Analysis of real estate transactions, Undertaking #4 of Marco Boulanger) filed at the hearing on February 17 and 18, 2009.

[91] This Exhibit C-4 indicates that for loans totalling over \$3,000,000, the Fiducie received only \$4,656 in interest, a return of only 0.0015%. Exhibit C-3 shows that for the loans totalling \$513,870, the trust earned interest income of \$2,972, or only 0.0058%. The Court has great difficulty understanding why a trust would provide such large unsecured loans and be satisfied with such a small return.

[92] Having analyzed the evidence submitted by the parties and considered submissions by counsel, the Court finds that the respondents did not discharge the initial burden of proving that there were reasonable grounds to believe that the test required by subsection 225.2(2) of the Act was not met.

[93] The Court is also satisfied that even if Martineau J. had been made aware of the mistakes made by Mr. Talbot, as well as the inaccuracies in the calculations in the affidavits, he still would have made the impugned order.

[94] It is relevant to cite Lemieux J. in *Marengère*, above, at paragraphs 67 and 72(4):

[67] [...] This case does not turn on intent or on tax planning; it calls to be determined looking at the matter objectively and realistically on the ground so to speak. In other words, it is the effect or result of the taxpayer's action in dealing with its assets that is important and relevant in the assessment of the appropriateness of a collection jeopardy order. [...]

[72] (4) [...] the Minister does not have to prove fraud or deceit or bad motive. [...]

[95] The unorthodox manner in which the respondents conducted their business is a determinative element that the Court may consider (*Mann v. Canada (Minister of National Revenue)*, 2006 FC 1358 at paragraph 50, 2007 D.T.C. 5024; *Canada v. Paryniuk*, above and *Laframboise*, above, at paragraph 19). In this case, the respondents' business practices may be described as unorthodox.

[96] Finally, the Court recognizes that the Crown has met its duty to disclose despite the inaccuracies and errors. The Court therefore dismisses the respondents' motions.

ORDER

THIS COURT ORDERS that the respondents' motions to quash dated July 16, 2008, and to reduce the jeopardy collection order be dismissed with costs. The respondents must pay a lump sum of \$2,500 as costs.

"Michel Beaudry"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1084-08

STYLE OF CAUSE: **IN THE MATTER OF the *Income Tax Act***

AND IN THE MATTER OF assessments by the Minister of National Revenue under one of more of the following statutes: the *Income Tax Act*, the *Canada Pension Plan* and the *Employment Insurance Act*

AGAINST:

FIDUCIE DAUPHIN
3884, De l'Empereur Avenue
Laval, Quebec H7E 5M5

9125-9622 QUÉBEC INC.
1010 De la Gauchetière West, Suite 2250
Montréal, Quebec H3B 2N2

CHANTAL FRÉGAULT
STÉPHANE DESCOTEAUX
3884 De l'Empereur Avenue
Laval, Quebec H7E 5M5

SOPHIE LEBEL
1535 Kirouac St.
Laval, Quebec H7G 4T4

NORMAND DESCOTEAUX
STN Anjou P.O. Box 153
Anjou, Quebec H1K 4G6

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 17 and 18, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:**

Beaudry J.

DATED:

April 3, 2009

APPEARANCES:

Martin Lamoureux

FOR THE EXECUTION CREDITOR

Sébastien Sénéchal

FOR THE RESPONDENTS-DEBTORS/
OBJECTORS

SOLICITORS OF RECORD:

John H. Sims, Q.C.
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FOR THE EXECUTION CREDITOR

Sébastien Sénéchal
Montréal, Quebec

FOR THE RESPONDENTS-DEBTORS/
OBJECTORS