

Federal Court



Cour fédérale

Date: 20140918

Docket: ITA-9052-11

Citation: 2014 FC 904

Calgary, Alberta, September 18, 2014

PRESENT: The Honourable Mr. Justice Locke

IN THE MATTER OF the *Income Tax Act*

and

**IN THE MATTER OF an assessment or assessments by
the Minister of National Revenue under one or more of the
*Income Tax Act, Canada Pension Plan, Employment Insurance Act
and Alberta Income Tax Act***

against:

**GREENSLADES NORTHERN WELDING LTD.
405-3RD AVENUE EAST, BOX 640
HANNA, ALBERTA
T0J 1P0**

and

**IN THE MATTER OF the *Civil Enforcement Act*, R.S.A. 2000, C.
C-15;**

and

IN THE MATTER OF seizures made on February 21, 2013;

**AND IN THE MATTER OF an Order of this Court granted by
Madam Justice Gagné on June 2, 2014 and entered on June 3,
2014;**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA AS REPRESENTED BY
THE MINISTER OF NATIONAL REVENUE**

Applicant

and

GREENSLADES NORTHERN WELDING LTD.

Respondent

REASONS FOR ORDER AND ORDER

[1] This decision concerns a hearing, following a show cause Order by Prothonotary Lafrenière dated August 15, 2014, to consider an accusation that the Respondent, Greenslades Northern Welding Ltd., acted in contempt of an earlier Order of Justice Gagné dated June 3, 2014. Justice Gagné's June 3 Order concerned certain seized assets held by the Respondent under a bailee's undertaking and identified in a demand notice dated January 2, 2014.

[2] The demanded assets are:

- (i) 2005 Dodge Ram truck with deck and welding equipment (S/N 3D7MS48CX5G772936);
- (ii) 1997 GMC Sierra truck with deck and welding equipment (S/N 1GDJK34R5VF015389);
- (iii) 1999 Chevrolet GMT-400 truck trailer (S/N 1GCGK29R6XF022775);
- (iv) 2005 Dodge Ram truck trailer with deck and welding equipment (S/N (v)3D7MS48C75G773025);
- (vi) 2006 Case 430 (S/N JAF416808).

[3] Curiously, the Respondent's principal, William Steven Greenslade, stated at the hearing, apparently for the first time, that he has no knowledge of the 1999 Chevrolet GMT-400 truck

trailer (point (iii)) and that he is aware of only one 2005 Dodge Ram truck, not two per points (i) and (iv). It is surprising that these assertions should come to light at this late date, and then only in response to a question from the Court. However, for the purposes of this decision, it is not necessary to address these assertions.

[4] The June 3 Order required that the Respondent deliver up the demanded assets to Graham Auctions by June 30, 2014.

[5] There is no dispute that none of the demanded assets was delivered up as ordered, either by June 30, 2014 or subsequently. There is also no dispute that the Respondent and Mr. Greenslade were aware of the June 3 Order.

[6] Rule 466(b) of the *Federal Courts Rules* (SOR/98-106) provides that, subject to the issuance of a show cause order (which was issued by Prothonotary Lafrenière on August 15, 2014), a person who disobeys an order of the Court is guilty of contempt of Court. Pursuant to Rule 469, a finding of contempt must be based on proof beyond a reasonable doubt. Contempt of Court requires a finding that the failure to comply with the Order in question was deliberate or with serious indifference.

[7] The Applicant presented evidence from two witnesses: (i) Robert Morris, who is a collections officer with the Canadian Revenue Agency (CRA) and is working on an outstanding tax debt owed by the Respondent; and (ii) Michael Orechow, who works at Graham Auctions. Mr. Greenslade was the only witness on behalf of the Respondent.

[8] Having heard the evidence, there is no doubt that the Respondent knew of the June 3 Order and took no steps to comply with it. In fact, rather than deliver up the demanded assets, Mr. Greenslade, on behalf of the Respondent, acted in contravention of the Order by arranging the sale of at least one of the demanded assets, the 2006 Case 430 (point (v) above), to a third party. In my opinion, the Respondent's failure to comply with the June 3 Order was either deliberate or with serious indifference.

[9] The Respondent asserts a number of excuses for failing to comply with the June 3 Order. None of them is satisfactory.

[10] The Respondent argues that it acted reasonably in selling certain assets itself and giving the proceeds to the CRA, rather than delivering them up as ordered for sale at auction, because other assets that had previously been seized and sold at auction on behalf of the CRA had realized only a fraction of their true market value. It should be noted that the evidence on true market value comes entirely from the mouth of Mr. Greenslade.

[11] Even if I were satisfied that the Respondent's action in this regard was reasonable to maintain the value of the demanded assets, it concerns only one of the demanded assets and could not excuse the failure to deliver up the other demanded assets. Moreover, it is not a defence to take a reasonable alternative to an order from the Court: *Stone v. Stone* [1989] NBJ No. 820 at paragraphs 5 to 7.

[12] I note also that the Respondent acted unilaterally in this regard and in clear contravention of the June 3 Order. Further, the Respondent has failed to give details of the sale (including bill of sale and identification of the assets sold) despite being requested to do so by the Applicant.

[13] The Respondent also argues that it was, and remains, unable to comply with the June 3 Order because the equipment it could use to deliver up the demanded assets was previously seized from the Respondent and sold. The Respondent further submits that, customarily, creditors are responsible for picking up seized assets themselves.

[14] As I understand it, this excuse of difficulty in delivering the assets was raised only on August 28, 2014 in a letter to the Court. No attempt was made prior to that date to advise the Applicant of any difficulty in delivering the assets, or to make alternate arrangements for delivery. It should be noted that, with the exception of the 2006 Case 430 (point (v)), all of the demanded assets are automotive vehicles and thus easily movable even without special equipment. Even if the Respondent and/or Mr. Greenslade were unable to deliver the demanded assets themselves, I heard no evidence or argument that the Respondent could not have arranged for another party to do so. The Respondent was obliged to take steps to comply with the June 3 Order, and engaging a third party would have been a reasonable step.

[15] As regards what is customary, the wording of the June 3 Order clearly overrode any custom that may exist.

[16] The Respondent also points to a separate proceeding by the Royal Bank of Canada before the Alberta Court of Queen's Bench to foreclose on a property the Respondent owns. The

Respondent argues that the CRA's concern that it must seize the demanded assets in order to secure the tax debt owed by the Respondent is misplaced because the CRA will realize more than enough money to pay off the debt in just a few months as the second secured creditor on the property. But as the Applicant correctly points out, this is beside the point. Firstly, the anticipated realization through the foreclosure sale is not without doubt. It might not happen. Secondly, and more importantly, this issue is unrelated to the real issue of whether the Respondent knowingly breached the June 3 Order.

[17] For the foregoing reasons, I find the Respondent guilty of contempt of Court.

[18] Though I heard some submissions on penalty at the hearing, I will defer ruling on the penalty for now. At the hearing the parties appeared to be in agreement that the appropriate penalty would depend on future events, such as whether the Respondent commences promptly making efforts to comply with the June 3 Order and whether the CRA obtains proceeds from the foreclosure sale discussed during the hearing.

[19] I will likewise defer ruling on costs associated with the hearing and with the motion for the show cause order.

ORDER

THIS COURT ORDERS that:

1. The Respondent is found guilty of contempt of Court.
2. The Applicant shall, within 60 days following the date of this Order, advise the Court by letter of the status of its collection efforts against the Respondent and the Respondent's delivery up of the demanded assets, and propose next steps as regards determination of penalty and costs.
3. The Respondent shall be entitled, within 10 days following the letter referred to in paragraph 2 of this Order, to provide its comments thereon.

"George R. Locke"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: ITA-9052-11

STYLE OF CAUSE: HER MAJESTY THE QUEEN IN RIGHT OF
CANADA AS REPRESENTED BY THE
MINISTER OF NATIONAL REVENUE v
GREENSLADES NORTHERN WELDING LTD.

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: SEPTEMBER 15, 2014

**REASONS FOR ORDER AND
ORDER:** LOCKE J.

DATED: SEPTEMBER 16, 2014

APPEARANCES:

Emero Nguyen FOR THE APPLICANT

Douglas B. Todd FOR THE RESPONDENT

SOLICITORS OF RECORD:

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