

Federal Court



Cour fédérale

Date: 20210809

Docket: T-892-21

Citation: 2021 FC 830

Toronto, Ontario, August 09, 2021

PRESENT: Justice A. D. Little

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

ROYAL BANK OF CANADA

Respondent

ORDER AND REASONS

[1] The applicant Minister of National Revenue has applied for an Order under subs. 231.2(2) and (3) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended (the “*ITA*”). The respondent is Royal Bank of Canada (“RBC”). The proposed Order is to authorize the Minister to send a letter requiring the respondent to provide the names and addresses of certain unnamed persons who are all account holders, signing officers and powers of attorney associated with a specified bank account (defined below) at an RBC branch in Calgary (the “Account Holder(s)”).

[2] Following an exchange of email communications containing certain commitments by the Minister as to the form of letter requiring RBC to provide the information, RBC representatives advised the Minister that RBC would not oppose this application. Accordingly, no one appeared at the hearing for the respondent.

[3] The Application Record included an affidavit of Kim Lambert affirmed on June 3, 2021. The affidavit set out the following material facts.

[4] In 1997, an individual taxpayer (the “Taxpayer”) provided Canada Revenue Agency (“CRA”) with an authorization to deposit any tax refunds and credits including Goods and Services Tax (“GST”) and Canada Child Benefit (“CCB”) credits to a bank account registered at RBC (the “Account”). Since 1997, CRA has been depositing all of the Taxpayer’s tax refunds, GST credits and CCB credits into the Account.

[5] In 2020, the Taxpayer advised CRA that her 2019 tax refund was outstanding (i.e., the Taxpayer had not received it). CRA advised the Taxpayer that it was deposited into the Account. The Taxpayer could not identify the Account and had no recollection of authorizing deposits into the Account. The Taxpayer contacted RBC about the Account. RBC advised the Taxpayer that the Account was active and not in the Taxpayer’s name, but could not release any other information for privacy reasons. CRA subsequently re-issued the Taxpayer’s 2019 tax refund and was able to recall the payment of that 2019 refund from the Account.

[6] The Taxpayer then contacted CRA about the GST and CCB credits paid from 1997 to 2019, which the Taxpayer advised, she had not received.

[7] After some additional communications, in early 2021 CRA issued a requirement for information to RBC under subs. 231.2(1) requesting that it provide information about the Taxpayer's accounts with RBC from 1997 onwards and to confirm whether the Account was ever associated with the Taxpayer (and if so, for what years). By letter dated March 2, 2021, RBC advised that the Account was not associated with the Taxpayer and that the Taxpayer did not hold any bank accounts with RBC from 1997 onwards.

[8] Ms Lambert's affidavit also advised that CRA's records show that a debt was created on the Taxpayer's CCB account in 2011 due to an update in the Taxpayer's marital status. CRA made an overpayment of CCB credits to the Taxpayer in 2011. That overpayment amount was deposited into the Account. Sometime in 2016 or later, the Taxpayer repaid the amount of that overpayment.

[9] Ms Lambert's affidavit confirmed that CRA does not know the identities of the Account Holder(s) associated with the Account from 1997 to the present. In this application, the Minister seeks authorization under the *ITA* to require RBC to disclose that the name(s) and address(es) of the Account Holder(s) from 1997 to the present.

[10] By letter dated April 23, 2021, CRA wrote to RBC to advise that the Minister intended to seek authorization to impose a requirement under subs. 231.2(1), by obtaining an Order under

subs. 231.2(2) and (3). That letter enclosed a draft letter with the proposed requirement (which I will call the “Requirement Letter”). CRA requested RBC’s position and/or consent to the Minister’s application.

[11] RBC responded by letter dated May 11, 2021, with proposed changes to the draft Requirement Letter. By letter the next day, CRA agreed to make the changes. On June 3, 2021, RBC confirmed that, subject to the proposed changes, it would take no position on this application.

[12] Section 231.2 of the *ITA* enables the Minister to require a person to provide information or documents, subject to obtaining judicial authorization for the requirement under subs.

231.2(3). Section 231.2 provides as follows:

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3).

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a

requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) if the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

[Emphasis added.]

[13] On this application under subs. 231.2(3) for authorization to impose a requirement on RBC in the form of the draft Requirement Letter, the *ITA* requires the applicant Minister to demonstrate two things: (a) that the unnamed person or group of unnamed persons who are the subject of the Minister’s information requirement is “ascertainable”; and (b) that the “requirement is made to verify compliance by the person or persons in the group with any duty or obligation under the [ITA]”: *Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50, at para 5. These statutory requirements must be met: *Roofmart Ontario Inc. v. Canada (National Revenue)*, 2020 FCA 85, at para 2.

[14] As the applicant emphasized, our tax system is a self-reporting and self-assessment system that depends on the honesty and integrity of each taxpayer in preparing their returns. The powers of the CRA to audit and to inspect information and documents are necessarily broad, to ensure compliance and to achieve the objectives of the *ITA*: *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627, at pp. 636-37 and 648; *Canada (National Revenue) v. Greater Montréal Real Estate Board*, 2007 FCA 346, [2008] 3 FCR 366, at paras 34 and 46-47; *Roofmart*, at para 55.

[15] In *Roofmart*, Rennie JA stated at paragraph 55:

Parliament has granted the Minister corresponding powers to verify and test compliance. These powers lie at the heart of the Minister's ability to enforce taxation legislation. The broader public interest in the enforcement of our system of taxation outweighs the appellant's private and commercial interests in not disclosing its clients' personal information (*eBay Canada Limited v. Canada (National Revenue)*, 2008 FCA 141 at para. 39 (*eBay II*)). This Court's response in *eBay I* to similar policy arguments regarding taxpayer privacy bears repeating here (*eBay I* at para. 67):

In a self-reporting system of taxation, "[t]axpayers have a very low expectation of privacy in their business records relevant to the determination of their tax liability" (*Redeemer Foundation v. Canada (Minister of National Revenue)*, 2008 SCC 46 at para. 25) and a requirement "provides the least intrusive means by which effective monitoring of compliance with the *Income Tax Act* can be effected" (*R. v. McKinlay Transport Ltd.*, *supra* at 649).

Justice Rennie's reference to *eBay I* is to *eBay Canada Limited v. Canada (National Revenue)*, 2008 FCA 348, [2010] 1 FCR 145.

[16] I am satisfied that the evidence on this application meets the requirement of *ITA* paragraph 231.2(3)(a). The Account Holder(s) are ascertainable. RBC maintains books and records with the names and addresses of the account holders, signing officers and powers of attorney associated with its accounts. RBC can identify and list them for the Account. On the evidence and the decisions of this Court and the Federal Court of Appeal in *Canada (National Revenue) v. Roofmart Ontario Inc.*, 2019 FC 506, at paras 10-11, *aff'd* 2020 FCA 85, at paras 38-42, the Minister has satisfied paragraph 231.2(3)(a).

[17] I turn to the requirement in paragraph 231.2(3)(b). In *Roofmart*, the Federal Court of Appeal held that in subs. 231.2(3), Parliament intended to permit a broad inquiry – characterized as a “type of fishing expedition” in *Greater Montréal Real Estate Board* – subject to the conditions in the statute being met: *Roofmart*, at para 45; *Greater Montréal Real Estate Board*, at paras 21 and 45. In the latter case, Trudel JA also stated that subs. 231.2(2) and (3) “permit, under judicial authorization, verification of the honesty of a tax return” (at para 44).

[18] On the facts in *Greater Montréal Real Estate Board*, the Minister applied for the Order to determine whether agents and brokers living in a specified area of Quebec had completed their income tax returns properly and reported the commissions they had earned (at para 3). CRA had received documents from the Board while auditing one real estate agent. Some months later, it applied for judicial authorization for a requirement that the Board disclose more information (at para 50). From the Federal Court’s decision, that information including a list of Board members, identification information about each member and a list of properties sold by each individual over a period of 3 calendar years: *Canada (National Revenue) v. The Greater Montréal Real Estate Board*, 2006 FC 1069, at paras 9-10. The supporting affidavit on the application expressly stated the objective was to determine whether the agents and brokers who earned commissions following the sale of immovable property had complied with all the duties and obligations of the *ITA*. The Federal Court of Appeal concluded that this evidence satisfied the requirements of s. 231.2 (FCA, at para 50; FC, at para 6).

[19] In *Roofmart*, the Federal Court of Appeal did not disturb the Federal Court’s determination that the applicant had satisfied paragraph 231.2(3)(b). Rennie JA noted that a

witness was unable to explain precisely how the information obtained by the authorization would actually be used for verification purposes. Referring to the cross-examination transcript of that witness, Justice Rennie stated that the witness gave a general sense of the purpose to which the information would be put and the Federal Court found that his testimony was sufficient to establish that the information sought would assist in determining whether the unnamed persons had filed their returns as required, made payroll, GST and HST remittances, reported all of the income earned on the sale or supply of roofing materials, or claimed the purchases as business expenses: 2020 FCA 85, at para 46, citing 2019 FC 506, at para 13. Rennie JA found that the evidence before the Federal Court “sufficiently tether[ed] the request to the purposes of verification of compliance”: at para 47.

[20] On the present application, in my view, the evidence meets paragraph 231.2(3)(b).

[21] Under the heading “Purpose of Application”, the affidavit of Ms Lambert stated, at paragraph 26, that the Minister seeks authorization for “purposes related to the administration and enforcement” of the *ITA*, specifically to determine whether the Account Holder(s) are associated with the Taxpayer; whether any debt is owing to the Taxpayer from 1997 to present; whether the Account Holder(s) “are in compliance with any duty or obligation under the [ITA]”; and whether any collection actions may be initiated against the Account Holder(s). The affidavit therefore tracked statutory language contained in subs. 231.2(1) and paragraph 231.2(3)(b), but did not connect the dots between any of the facts set out in the affidavit and the compliance purpose required to meet the requirements of paragraph 231.2(3)(b).

[22] With respect to the compliance purpose of the application, the Minister's written submissions also tracked language in the statute, and provided a little elaboration. The submissions stated that the information would allow the Minister to determine the Account Holder(s)' compliance with their duties and obligations under the *ITA*, including whether the Account Holder(s) are associated with the Taxpayer and obtained authorizations to receive the amounts deposited into the Account on the Taxpayer's behalf or whether collections actions should be initiated against the Account Holders(s) to retrieve the amounts paid into the Account for GST and CCB credits.

[23] The Minister's written submissions did not cite any provision in the *ITA* under which the Account Holder(s) may owe duties or obligations that are the subject of verification for compliance and referred to Ms Lambert's affidavit (at paragraph 26). In response to a question at the hearing, the Minister eventually identified *ITA* ss. 160 and 160.1 as relevant provisions in the *ITA*, but did not make any substantive submissions, or attempt to relate those provisions to any evidence in Ms Lambert's affidavit.

[24] I find that the evidence supports two different purposes for the proposed requirement to obtain the names and addresses of the Account Holder(s) from RBC. The first is related to compliance verification of the Account Holder(s) in paragraph 231.2(3)(b). This purpose arises because GST credits and CCB credits has been paid into the Account since 1997; the Taxpayer cannot recall authorizing deposits into the Account; RBC has advised that the Taxpayer has had no accounts at RBC since 1997 and the Account is not associated with the Taxpayer; owing to a change in the Taxpayer's marital status, CRA made a CCB overpayment into the Account in

2011; and the Taxpayer repaid the amount of the CCB overpayment sometime in or after 2016. Thus, although the Account is not the Taxpayer's nor is it associated with her, an overpayment into the Account caused the Taxpayer to repay that money to the CRA. Given the broad compliance objectives and powers described in the case law above emanating from *McKinlay*, and the scope of the requirement contemplated by the language in subs. 231.2(1), the evidence supports CRA having a purpose of verifying compliance by the unknown Account Holder(s) related to the proper preparation of tax returns in accordance with the duties and obligations in the *ITA*.

[25] The second potential purpose for the proposed requirement is in the letter from CRA to RBC dated April 23, 2021 and in the draft Requirements Letters. They stated that CRA required the information for purposes relating to the administration and enforcement of the *ITA*, including determining “whether there is a debt owing by the [CRA] to a particular taxpayer”. On this application, the Minister requested that the draft Requirement Letter be attached to the Court's Order and that the Court authorize the Minister to impose the requirement on RBC in that form. It states, in effect, that the names and addresses of the Account Holder(s) are “sought in the context of determining whether there is a debt owing by the Canada Revenue Agency to a particular taxpayer, and are required as part of the broad powers of the Minister of National Revenue under section 231.2” of the *ITA*.

[26] If a debt is currently owing by CRA to the Taxpayer (capital T), it could imply that the Account Holder(s) wrongly received the GST credits and CCB credits for some period starting in 1997 and should pay it back – which appears to fall within the language of a requirement for

information in subs. 231.2(1). However, neither the supporting affidavit nor the applicant's submissions explained how "determining whether there is a debt owing by CRA to a particular taxpayer" assists the Minister to meet the statutory requirement in paragraph 231.2(3)(b) of verifying compliance by the Account Holder(s) with any duty or obligation in the *ITA*.

[27] In my view, the evidence in relation to first purpose above addresses and meets the requirements of *ITA* paragraph 231.2(3)(b), and the evidence related to the second purpose is equivocal as to that paragraph.

[28] The Court's decision whether to issue the Order is discretionary: *Roofmart*, at paras 56-57; *RBC Life Insurance Company*, at para 23. In addition, the chapeau language in paragraph 231.2(3) provides that the Court may make the Order "subject to any conditions that the judge considers appropriate".

[29] I have considered the evidence and submissions on this application, as well as the broad information-gathering purpose of *ITA* s. 231.2 recognized by the Federal Court of Appeal in *Roofmart* and *Greater Montréal Real Estate Board*, the nature of the testimony that supported the conclusions that the Orders should issue in those cases, and the limited scope of the information sought by the Minister from RBC. In particular, while the affidavit evidence in this case does not explain the purposes of the information requirement in the same manner or in the same detail as the evidence in *Roofmart* and *Greater Montréal Real Estate Board*, the Minister in this application also does not seek the same kind or scope of information, i.e, transaction information over several years, or copies of the unnamed persons' personal or business

documents. Here, the Minister seeks the names and addresses of the unnamed person or persons who are the Account Holder(s).

[30] In the circumstances, I conclude that the evidence on this application meets the requirements for judicial authorization under *ITA* subs. 231.2(3) and I should exercise my discretion to grant the Order. I will add one condition to the Order: CRA is to revise the Requirement Letter to be sent to RBC to remove the statement that the information is being sought to determine “whether there is a debt owing by CRA to a particular taxpayer”.

[31] Lastly, as noted to counsel at the hearing, I do not believe that the Court’s Order should authorize a form of requirement letter that includes in it a reference to commencing proceedings in this Court if the recipient does not provide the information required. In the present case, the Order will not authorize or attach a specific form of requirement under s. 231.2 (other than the condition in paragraph 30).

ORDER in T-892-21

THIS COURT ORDERS that:

1. The application is allowed.
2. The Minister is authorized under s. 231.2 of the *Income Tax Act* to send a requirement to Royal Bank of Canada in respect of the Account, requesting the names and addresses of the Account Holder(s), subject to the condition set out paragraph 30 of the Reasons.
3. There is no order as to costs.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-892-21

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BANK OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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