Date: 20061211

Docket: T-601-01

Citation: 2006 FC 1481

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 11, 2006

PRESENT: The Honourable Madam Justice Gauthier

BETWEEN:

In the matter of the *Excise Tax Act*,
- and -
In the matter of one or several assessments raised
by the Quebec Deputy Minister of Finance
under the *Excise Tax Act*

Plaintiff

and

ALAIN DÉZIEL,
FIDUCIE AVILLA, REPRESENTED BY
TRUSTEES ALAIN DÉZIEL AND CHANTAL GARCEAU,
REGISTRAR FOR THE
CHAMPLAIN REGISTRATION DIVISION
AND REGISTRAR FOR THE
TROIS-RIVIÈRES REGISTRATION DIVISION

Defendants

REASONS FOR JUDGMENT AND JUDGMENT

[1] Her Majesty the Queen is asking the Court to find that the donation of twelve residential buildings by its debtor, Alain Déziel, to Fiducie Avilla in January 2000 is unenforceable under article 1631 *et seq*. of the Civil Code of Québec (C.C.Q.).[1]

---

[1] All relevant provisions are reproduced in Appendix A.

Background

[2] What stood out from the submitted evidence is that the most relevant events are as follows.

[3] On July 16, 1999, a notice of assessment (GST) for the period from April 1, 1994 to June 30, 1996 was issued for Alain Déziel in the amount of $226,900.

[4] On August 17, 1999, another notice of assessment, this time regarding the Québec sales tax and for the same period, was issued in the amount of $207,784.77.

[5] In late August 1999, Alain Déziel consulted Mr. Jean-Guy Diamond, notary and financial planner, regarding those assessments. The mandate that he gave Mr. Diamond is in a document dated September 10, 1999. Among other things, Mr. Diamond must coordinate the objections to those assessments. He has authority to negotiate all agreements and make all representations to the Ministère du Revenu du Québec (the Ministère) regarding those assessments. He must also set up a protective trust for Alain Déziel's rental buildings and obtain consent from Mr. Déziel's creditors. Lastly, he can also retain the services of experts who are necessary to carry out his mandate.

[6] On August 25, 1999, Mr. Diamond communicated with Mr. Bouchard, the collections officer with the Minstère du Revenu du Québec who is tasked with Mr. Déziel's file regarding his two assessments.[2] He indicated that he must prepare a budget in order to present a proposal.

[2] By agreement, the Ministère du Revenu Québec manages the goods and services tax for Her Majesty the Queen in Quebec.

Mr. Bouchard testified that he gave Mr. Diamond until September 17 to present him with such a proposal on behalf of Mr. Déziel.

[7] In late August or early September, Mr. Bouchard went to Trois-Rivières to verify whether the various buildings about which he had spoken with the auditor in this file were properly registered in the debtor's name. At the City Hall, he compiled a list of those buildings with their respective municipal assessments.[3] Mr. Bouchard said that he had prepared two different lists. The first included the buildings that are free of any guarantee, such as the residence on Maheux Street, the large vacant plot of land located on Marion Street (2 lots) and the plots of land in Ste-Marthe-du-Cap. The second listed twelve residential buildings that have many hypothecs. He testified that at that stage, given the objections that are underway, he had no intentions of getting guarantees for the buildings with many hypothecs. During cross-examination, he confirmed that at first glance, those twelve residential buildings had some equity (around $50,000 each) when comparing the amount of the mortgage and the amount of the municipal assessment.

[8] According to Mr. Bouchard, on September 16, 1999, Mr. Diamond told him that Mr. Déziel had nothing to give to the Ministère du Revenu du Québec because he received only $12,000 in net rental income per year and he proposed to pay $50 per month, which was refused. Mr. Diamond testified that he did not recall that conversation or the amounts discussed with Mr. Bouchard.

[9] In the notes from Mr. Bouchard used during his cross-examination, it appears that it was also on September 16 that he decided to register a legal hypothec on the large vacant plot of land on

---

[3] At that time, Mr. Déziel's residence had not yet been assessed since it had just been built.

Marion Street that is assessed at $122,000 and on the residence of Mr. Déziel, which is assessed at $200,000.[4]

[10] According to Mr. Diamond, in September 1999, Mr. Bouchard allegedly told him instead that he assessed the residence of Mr. Déziel at $250,000 and the large plot of land on Marion Street at $550,000. As for Mr. Bouchard, he indicated during his main testimony that after his visit to Trois-Rivières, he had assessed the residence at around $150,000.

[11] Lastly, it appears that Mr. Bouchard notified Mr. Diamond on September 16, 1999 that he intended to register a legal hypothec on those buildings.

[12] According to the journal entries used during the cross-examination of Mr. Bouchard, it appears that on September 22, 1999, Mr. Diamond communicated with Mr. Bouchard to notify him that Mr. Déziel would like to free up [TRANSLATION] "the vacant land to construct a building". Mr. Bouchard allegedly refused because according to him, it was the only guarantee. The parties did not clarify which land this was. However, we can deduce that this was probably the land on Marion Street.

[13] Also on September 22, 1999, Mr. Bouchard received a medical certificate on October 26, 1998 from Mr. Diamond showing that Mr. Déziel, who was the victim of a serious accident in 1994, suffers from serious post-traumatic symptoms.

---

[4] Those amounts and even the content of the conversations with Mr. Diamond are reflected in the notes written by Mr. Bouchard in his journal of actions.

[14] On September 21, 1999, a certificate dated September 16 and bearing the GST number 3538-99 was registered with the Federal Court under section 316 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, (the Act)[5] in the amount of $231,085.08. That certificate indicated that a penalty of 6% per year and interest at a rate prescribed by the Act, capitalized daily, are payable on this amount starting on September 17, 1999, until it is fully paid. It appears that Mr. Bouchard had difficulty in having Mr. Déziel sign that document.

[15] On September 23 and 29, 1999, two legal hypothecs were registered with Revenu Québec only and to guarantee payment of the QST on the following buildings:

i. Residence located on 3365 Maheux Street in Trois-Rivières (Lot #1208304)
ii. Large vacant plot of land on Marion Street in Trois-Rivières (Lots #1206290 and #1206291)
iii. Vacant land in Ste-Marthe-du-Cap (Lots # 2304591 and #2304575)

[16] On October 19, 1999, Mr. Diamond indicated to Mr. Bouchard that Mr. Déziel wanted to develop the lands in Ste-Marthe-du-Cap. Mr. Bouchard replied that he would need to file a letter of indemnity with him for an amount that is equal to the value of those buildings and that he will thus need to have an assessment done. It also appears that Mr. Déziel wanted to develop the large vacant land on Marion Street in Trois-Rivières in order to sell a portion of it to a developer and keep the mortgage on the rest.

[17] Aside from the testimony from Mr. Diamond, who said that Mr. Bouchard told him during a conversation that the value of Mr. Déziel’s residence and the large land on Marion Street was

[5] See Appendix A.

around $750,000, there is no evidence before the Court that these two parties had other discussions before the transfer of residential buildings to Fiducie Avilla.

[18] On January 26, 2000, Fiducie Avilla was constituted by Alain Déziel as the settlor, with Mr. Déziel and his common-law spouse, Chantal Garceau, as trustees and Alain Déziel as the sole beneficiary.

[19] That same day, Alain Déziel gave Fiducie Avilla, represented by trustees Alain Déziel and Chantal Garceau, the twelve buildings consisting of one hundred and eight (108) residences. Donation contracts specify that this is done for free. However, although Mr. Déziel was not personally released and remains personally responsible for the affected financial institutions, the donor agrees to assume the repayment of existing loans on each of the buildings.

[20] Lastly, the donation was also accompanied by a condition such that the given property and all amounts resulting from their sale and their resulting incomes, along with the property acquired by the use and re-use of those amounts, will be unseizable by the donor for a period of one hundred years.

[21] Mr. Diamond testified that he obtained written consent from all mortgage creditors holding guarantees registered for the buildings given to Fiducie Avilla before proceeding with the transaction. However, he confirmed that he did not ask for the consent of[6] the Ministère du Revenu du Québec or Her Majesty the Queen, stating that those consents were not necessary and that those

[6] However, Mr. Déziel testified that he was aware of Mr. Diamond's efforts to obtain consent from the Ministère du Revenu du Québec.

creditors may invoke their right set forth under article 1631 *et seq*. of the C.C.Q. in the year following the transaction. Mr. Diamond said that he did a summary analysis of the buildings' value to ensure that there was no prejudice against "creditors". He did not indicate his assessment of the property. According to him, Mr. Bouchard told him that he was very secure and that he had no problems, since the debts owing to Her Majesty the Queen and the Ministère du Revenu du Québec were sufficiently guaranteed by the residence and the large land on Marion Street ($750,000).

[22] On January 31, 2000,[7] legal hypothecs guaranteeing the amount owing in GST to Her Majesty the Queen were registered on buildings that were already burdened by a legal hypothec in favour of the Ministère du Revenu du Québec since September 2000.

[23] On February 9, 2000, Mr. Diamond called Mr. Bouchard to tell him that Mr. Déziel would still like to develop the two plots of land in Ste-Marthe-du-Cap, as well as the one on Marion Street in Trois-Rivières. That same day, Mr. Bouchard sent an assessment request to Mr. Gilles Vézina for the land in Ste-Marthe-du-Cap. It appears that a note indicating a value of $10,500 for each was written in March 2000.

[24] Mr. Bouchard said that in July 2000, he received confirmation from the person responsible for the objection file that his review was practically complete and that the assessments would be maintained almost in their entirety. He then decided to register additional legal hypothecs, this time, on Mr. Déziel's twelve residential buildings. He also asked the affected land registers to send him an uncertified copy of the inputs regarding those buildings. He testified that those documents were received on or around August 10, 2000 and that it was only at that time that he learned of the

transaction on January 26, 2000. He stated that he immediately requested a copy of the registered deeds and verified the impact of those transactions on the rights of Her Majesty and the Ministère.

[25] On October 24, 2000, he gave instructions to his counsel to institute a Paulian action. This action was filed on April 5, 2001. A similar action was filed with the Superior Court of Québec in the district of Trois-Rivières on March 30, 2001, to assert the rights of the deputy minister of Quebec regarding the sales tax that remained unpaid.

[26] Meanwhile, on September 27, 2000, the minister decided to formally object by issuing a notice of reassessment (GST) in the amount of $226,346.57. Mr. Déziel appealed that assessment at the Tax Court of Canada (TCC), which dismissed his appeal with costs on December 6, 2002. On March 18, 2004, the Federal Court of Appeal partially allowed Mr. Déziel's appeal and only to acknowledge the admission by Her Majesty such that $22,718.98 had to be granted as input credits. Thus, the Court of Appeal essentially affirmed the TCC's decision. Her Majesty the Queen received costs in both instances.

[27] It is appropriate to note that for the purposes of this action, the parties agreed that the Court could if necessary use the market value assessments of the twelve residential buildings as established by Tardif J. of the TCC in his decision.

[28] Mr. Déziel's appeal of the assessment regarding the QST was also dismissed. On August 22, 2001, Mr. Bouchard obtained an administrative seizure of one of Alain Déziel's accounts at a Caisse populaire for QST payment. On May 13, 2005, he proceeded with a garnishing of the

---

[7] It appears that the registration request for that purpose was filed on December 13, 1999.

Desjardins trust and received $36,465.38 from the liquidation of an RRSP filed under Mr. Déziel's name. This amount was also entirely used to repay the QST owed to the Ministère du Revenu du Québec.

[29] On May 24, 2005, the special clerk of the Superior Court of Québec made an *ex parte* judgment that set the conditions of sale for the buildings that were burdened by a legal hypothec in favour of the Deputy Minister of Finance. Mr. Déziel then tried to obtain a retraction of that judgment, but it was refused. The Quebec Court of Appeal also dismissed his appeal in that matter. In his judgment, the special clerk authorized a sale by private agreement of the buildings for an amount equal to 70% of their market value in January 2000, such as those that had been established by Mr. Vézina, an assessment expert at the Ministère, in 2003.

[30] On September 29, 2005, Mr. Bouchard obtained a letter of indemnity for $200,000 in order to delete the legal hypothec on Mr. Déziel's former residence.[8] He exercised his rights under that letter of credit on February 16, 2006.

[31] Mr. Paré, the acting officer during the sale of the other buildings burdened by a legal hypothec, said that he sold the two plots of land in Ste-Marthe-du-Cap by private agreement to the owner of an adjacent property for $18,500 and the large plot of land on Marion Street to the owner of a neighbouring lot for $185,000. He indicated that he was satisfied that the offers received from those persons were well above the minimum price indicated in the special clerk's judgment. He therefore did not engage in any publicity or attempt to find better offers.

[32] It also appears that the owner of the neighbouring land who bought the large plot of land on Marion Street had already tried to buy it from Mr. Déziel. This buyer had also contacted Mr. Bouchard in 2002 to show his interest and he had even sent him an offer for $100,000.

[33] Given the state of the order of priority of creditors approved by the Superior Court of Québec following the sale under legal process of the buildings burdened with legal hypothecs, on June 12, 2006, Alain Déziel still owed Her Majesty $214,678.16 for the GST.

[34] In this case, the Court had suspended the action at the request of the parties until a final decision on the GST assessment was made.

[35] At the hearing, Mr. Déziel represented himself.[9] However, Mr. Dury, whom the Court had refused permission to withdraw from the case before the start of the hearing, continued to represent Fiducie Avilla.[10]

[36] The plaintiff had two ordinary witnesses: Mr. Bouchard and Mr. Paré. It also had Mr. Vézina testify as an expert in real estate appraisal in order to establish the value of the buildings charged with legal hypothecs in January 2000.

[37] The defendants had Mr. Déziel and Mr. Jean-Guy Diamond testify, as well as Mr. Louis George Baril, another expert in assessment. Mr. Baril filed a report on the market value of the buildings charged with legal hypothecs in July 2003. He also filed a "letter of opinion" on the value of the large plot of land on Marion Street in June 2006.

---

[8] In March 2001, Alain Déziel gave that building to Chantal Garceau.
[9] Since 2000, several counsels have represented Mr. Déziel in his various cases.

[38] Although each party challenged the merits of the assessments that were presented by the expert from the opposing party, they accepted that Mr. Vézina and Mr. Baril were qualified to give an opinion on the market value of the buildings in question.

[39] The defendants argued that Mr. Vézina, who essentially works for the Ministère du Revenu du Québec, was not an independent witness and because of that, the Court should not give any weight to his testimony.

[40] Lastly, at the start of the hearing, Mr. Déziel presented a very lengthy motion to strike the statement. After the filing of written submissions, the plaintiff moved to re-open the investigation. Both of those motions were dismissed.

---

[10] After the hearing, Mr. Dury notified the Court that he would not sign the written representation from the defendants prepared by Mr. Déziel because he could not subscribe to it.

Issues

[41] In his written submission, the defendant Alain Déziel raised several questions that are not relevant to the action that is presently before the Court. Among others, he asked the Court:

i. to reject all affidavits signed by Mr. Bouchard;

ii. to order the payment of penalties totalling $552,500 in order to remedy the injuries that he has suffered over the years in this case;

iii. to bar the defendant from any further legal action against Mr. Déziel in order to spare him from any new stress and confusion;

iv. to order exemplary damages totalling $3,000,000 in favour of the defendant to compensate for the psychological problems and moral damages that he has suffered;

v. to issue a favourable opinion regarding the errors by Tardif and Richard JJ. in their judgment that diminished Mr. Déziel with respect to the credibility of his illness.

[42] The Court does not have the authority to examine the questions described in subparagraphs ii) to v). Mr. Déziel did not file a counterclaim against the defendant. Additionally, in any case, the Court does not have jurisdiction, for example, to issue an opinion on the judgment of the TCC and the Superior Court. Those decisions were affirmed and cannot be attacked indirectly by Mr. Déziel. As for the affidavits filed by Mr. Bouchard at other steps in the action and mentioned in subparagraph 42i), they are not before the Court at the trial stage. However, the Court is considering Mr. Déziel's arguments in that matter in its assessment of Mr. Bouchard's credibility. Lastly, the Court notes that it cannot consider the facts mentioned in the parties' written submission that were not submitted as evidence before it.

[43] For the defence, Alain Déziel and Fiducie Avilla only raised the following questions:

i. the Crown debt had not received a final decision prior to the filing of defence;

ii. Her Majesty had not suffered any prejudice because the transactions on January 26 did not render Mr. Déziel insolvent and the plaintiff herself acknowledged through Mr. Bouchard that the buildings charged with legal hypothecs had sufficient value in itself to guarantee her claimed debt;

iii. the trust was created in good faith and with no intention of defrauding the rights of the plaintiff;

iv. the action is statute barred.

[44] The Court must therefore rule on the following questions:

i. Is the action statute barred?

ii. Did the plaintiff establish the conditions that are essential to her remedy:

   i. a certain and exigible claim;

   ii. prejudice;

   iii. a donation in fraud of her rights?

[45] Lastly, some evidence was heard subject to an objection from the plaintiff as to their relevance. During the review of the questions listed above, I will deal with it if it proves necessary.

<u>Analysis</u>

[46] As the Federal Court of Appeal indicated in *Canada (MNR) v. Gadbois*, [2002] F.C.J. no 836, (F.C.A.)(QL), there is no doubt that the Court has the power to ensure that its judgments are enforced, and in that context, it may be required to dispose incidentally of issues under provincial law that are raised against that enforcement. The certificate registered with the Court in September 1999 is deemed to be a judgment rendered by the Court (subsection 316(2) of the Act). I am therefore satisfied that the Court has jurisdiction to declare the donation made by Alain Déziel to Fiducie Avilla invalid if Her Majesty succeeds in establishing that she has fulfilled the criteria that are applicable to such an action and that her action is not statute barred.

Limitation period

[47] Under article 1635 of the C.C.Q., the Paulian action is forfeited unless it is brought within one year from the day on which the creditor learned of the prejudice resulting from the act which is attacked. The defendants did not submit evidence indicating that Mr. Bouchard had in fact learned of the donation on January 26, 2000 before August of that year. However, they argue that the Court should presume that Mr. Bouchard learned of that transaction, considering that it was duly registered in the public register in January 2000.

[48] In *Realstar Hotel Services Corp. c. 3099-1103 Québec Inc.*, 2005 QCCA 555, [2005] J.Q. no. 6838 (QL), the Quebec Court of Appeal rejected that same argument, which was presented by a debtor as part of a Paulian action. In that case, the issue was knowing whether the only publication of a bill of sale in the land register caused an almost irrefutable presumption against a creditor who had instituted that action.

[49] In paragraph 15 of the decision, André Rochon J. found that that proposal has no legal basis and that the registration of a bill of sale at the Registry Office does not have the scope regarding third parties or any person acquiring or publishing a right in the same property and is identified by article 2943 of the C.C.Q., which creates a simple presumption of knowledge.

[50] As I have said, Mr. Bouchard testified that he only learned of the donation in August 2000. His testimony as to the timeline of events is partially corroborated by the letters that he sent on July 11, 2000 to the registry offices of Trois-Rivières and of Champlain, as well as by the invoices received by those offices dated July 18 and approved for payment on August 10, 2000.

[51] As mentioned, the Court considered the various arguments raised by Mr. Déziel to attack the credibility of this witness. The Court can only find that Mr. Bouchard was not a credible witness whose testimony must be completely rejected. On that particular point, the Court is satisfied that the plaintiff established that the action was instituted before the deadline specified in article 1635 of the C.C.Q.

Certain and exigible claim

[52] Article 1634 of the C.C.Q. specifies that the claim must be certain at the time the action is instituted, and must be liquid and exigible at the time the judgment is rendered.

[53] There is no doubt that the Crown debt precedes the donation and that given the registration of GST certificate 3538-99 in September 1999, which is equivalent to a judgment by this Court,[11]

[11] Subsections 316(2), 317(9) and section 299 of the Act.

the claim was certain at the time the action is instituted, even though the notice of assessment was being objected. There is now no doubt that this claim is liquid and exigible.

Prejudice

[54] For a Paulian action to succeed, the creditor must establish that he suffered a prejudice and Mr. Déziel denies that Her Majesty suffered any prejudice whatsoever in this case. He submits that he was completely solvent at the time of the transactions and after. In addition, he argues that Her Majesty has held sufficient sureties to protect her debt since September 1999. Lastly, he says that through Mr. Bouchard, the plaintiff had him and his legal counsel believe that she was also satisfied that the value of the buildings outside of the trust ($750,000) was sufficient to cover that debt ($750,000).

[55] Mr. Déziel submits that the Court cannot consider the amounts that were obtained during the sale of his assets in 2005 because those properties were sold for well below their genuine market value in 2005. According to him, it was only to let her establish a prejudice that the plaintiff failed to have the market value of those properties assessed at the time of the sale by private agreement. Lastly, he said that if he was missing assets in his personal patrimony, it is because Mr. Bouchard failed to take legal hypothecs on twelve residential buildings when he could have in September 1999. According to the defendants, Mr. Bouchard had the duty to take sufficient sureties to ensure the payment of that debt. He did not submit any expert opinions in that regard.

[56] In her written representations, Her Majesty argues that the Count can find that by donating his residential buildings in January 26, 2000, Mr. Déziel not only diminished and weakened his patrimony, but he was placed in a situation of insolvency. In fact, according to the plaintiff, he no

longer had the means to deal with his debts, particularly when we consider that the amounts due increased with no end in sight due to applicable penalties and interest.

[57] According to the plaintiff, the buildings outside of the trust were only worth $284,000.[12] At the time, the debtors also had an RRSP of around $40,000, which was unseizable.[13]

[58] Mr. Déziel received indemnities from the SAAQ, which were also unseizable under section 83.28 of the *Automobile Insurance Act*, R.S.Q., c. A-25.

[59] Lastly, the net rental income of $12,000, which Mr. Déziel received before the transaction, was transferred to the Fiducie and was unseizable by the donee.

[60] Even if the amount of $284,000 may have been relevant in August 2000 when Mr. Bouchard learned of the transfer of the residential buildings, the Court cannot limit itself to that approximation in order to determine whether in the facts, Mr. Déziel was or became insolvent when he transferred his residential buildings to the patrimony of the Fiducie.

[61] In fact, the Court cannot ignore the fact that Her Majesty submitted into evidence three assessment reports from Mr. Vézina, which indicated that on January 26, 2000, the buildings outside of the trust were worth $455,700.[14]

---

[12] The plaintiff used the following values: residence located at 3365 Maheux Street - $150,000 (assessment by Mr. Bouchard following his visit to Trois-Rivières), a plot of land located in Ste-Marthe-du-Cap - $12,000 (unknown source) and the two plots of land located along Marion Street ($122,000 real estate appraisal); (see page 4 of written representations and paragraph 12 of the response).

[13] It was only after the decision by the Supreme Court of Canada in *Bank of Nova Scotia v. Thibeault,* [2004] 1 S.C.R. 58, that this asset became seizable and was in fact seized by the Ministère du Revenu du Québec.

[62] As for Mr. Déziel, although he disputes Mr. Vézina's assessments, he did not present assessments from Mr. Baril establishing the value of those buildings on January 26, 2000.

[63] However, it appears that this expert agreed with the assessment for the residence on Maheux Street prepared by Mr. Vézina, since Mr. Vézina used his 2003 assessment as a starting point. Afterwards, in 2003, both experts agreed on an appreciation rate of 9% between 2000 and 2003 for that particular sector.

[64] Although Mr. Déziel, owing to his expertise in construction, testified that he assessed the value of his residence in 2000 at $250,000, the Court prefers the assessment on which both experts agree in the matter: $208,300.

[65] Mr. Déziel also stated that the vacant plot of land on Marion Street had [TRANSLATION] "a very high value". However, he never assessed that value.

[66] During his re-examination, Mr. Baril indicated that the appreciation rate of 9% may in theory be applied to the plot of land on Marion Street. However, the Court understands from his testimony that the plot of land on Marion Street was in a fast-developing area and that in fact, it is a much higher percentage of appreciation that he would have had to apply if he had to prepare an assessment in January 2000. Since Mr. Déziel did not file or call attention to any expert reports in that matter, Mr. Dury did not have permission to elaborate further on the topic in re-examination.

---

[14] Value of the residence on Maheux Street: $208,300; value of the large vacant plot of land on Marion Street (lots #1206290 and #1206291): $225,000; the vacant plots of land in Ste-Marthe-du-Cap (lots #2304591 and #2304575) $22,400.

[67] Moreover, Mr. Baril testified that the value of the plots of land in Ste-Marthe-du-Cap was stable and that there had not been any real appreciation in that area between 2000 and 2003. The Court understands that the value established by Mr. Baril for his lands in 2003, which was $45,000 (more than double Mr. Vézina's assessment), would have been the same in 2000.

[68] In light of the foregoing, the Court finds that the market value of the buildings outside of the trust was between $455,700 and $478,360. Mr. Déziel may also liquidate his [UCEI] if he would like in order to pay his debts.

[69] Mr. Déziel's known debts (aside from the mortgage loans[15]) then reached a bit over $430,000 ($440,722 if we use the amounts indicated in the legal hypothecs).

[70] As indicated by Jean-Louis Baudoin in *Les obligations,* 4th edition, Les Éditions Yvon Blais Inc., at no. 677, page 372:

> [TRANSLATION]
>
> The existence of insolvency is a question of fact left to the supreme discretion of the courts. They have always refused to let themselves be hemmed in by a definition that is too rigorous and adopt something in which the technical definitions of that status, given by the *Bankruptcy Act* or the *Winding-up Act*. For some authors, insolvency is simply the status for a person whose patrimonial liabilities exceeds the assets. Case law, as a general rule, tends towards a broad conceptualization and recognizes 'insolvent' as persons who have stopped honouring their obligations regarding their

[15] Nothing indicates that the rental income was insufficient to pay for those loans. It was therefore improbable that Mr. Déziel would be called upon to pay those debts.

> deadlines and who are unable to fulfill their commitments or pay what they owe…

[71] Mr. Déziel described his situation in September 1999 as being rather precarious, since he feared being driven into bankruptcy [TRANSLATION] "if something happened" and his mortgage lenders panicked. However, the Court is not satisfied that he was insolvent at the time of the transaction or that the transfer made him insolvent. The plaintiff simply did not meet her burden for proving this question of fact within a balance of probabilities.

[72] However, insolvency is not a condition for carrying out a Paulian action and that finding does not mean that the donation did not cause prejudice to the plaintiff within the meaning of article 1631 of the C.C.Q. It will only have an impact on the application of the presumptions under articles 1633 and 1634 of the C.C.Q.

[73] In recent decisions, the Quebec Court of Appeal clearly decreed that courts must take a broad view of prejudice so as not to unduly limit the scope of remedy under article 1631 of the C.C.Q.

[74] In *Duchesne v. Demers*, [2004] R.J.Q. 2909, [2004] J.Q. no. 11666 (QL) at paragraph 33, it states that:

> [TRANSLATION]
>
> It is a reduction of patrimony when the debtor, through the attacked juridical act, becomes insolvent or aggravates his insolvency, but also when, whether insolvent or not, he disposes of a property for free or next to nothing or enters into a juridical act without valid or sufficient compensation[7]… (Emphasis added)

[75] The Court of Appeal also indicates that it is a prejudice when the debtor acts in a way that deprives his creditors of the inherent guarantee that they have over his property or when he makes the collection of their debts more difficult by reducing his patrimony.

[76] Naturally, the Quebec Court of Appeal noted that caution remained appropriate so as not to unduly trigger the immobilization or the freezing of debtors' patrimony. However, it also says that the concept of prejudice must remain broad enough in order to cover the variety of factual situations caused by the ingenuousness of some debtors and so that it can even cover situations in which the debtor disposed of a property at a fair price. (*Duchesne,* above, at paragraph 38.)

[77] Apart from another decision involving Mr. Déziel,[16] this is the first time that a court has examined this question as part of a transfer of property to a trust that was specifically created to protect a debtor's assets.

[78] The Court does not have to decide whether the plaintiff sought to artificially create a prejudice by selling the assets below their value in 2005. In fact, the Court does not intend to consider the amounts obtained during the sale by legal process in order to determine whether the transaction in January 2000 caused a prejudice to the plaintiff.[17]

[79] That being said, the Court is nevertheless satisfied that the transfer of the residential buildings from Alain Déziel's patrimony to the separate patrimony of the Fiducie caused a prejudice

---

[16] Exhibit R-18 - That decision was based on evidence that is very different than what was submitted before me.
[17] However, that does not mean to say that the Court is not bound by the decisions made by the Superior Court. In fact, for example, it cannot challenge the amount that remains owing to Her Majesty following the sale by legal process and the distribution of the proceeds of the sale according to the state of the order of priority of creditors approved by the Superior Court.

to the plaintiff because, without a shadow of a doubt, that reduced a debtor's patrimony of assets for which there was sufficient equity to justify the registering of additional mortgages in August 2000.

[80] By carrying out this transfer, Mr. Déziel effectively ended the right of Her Majesty to register guarantees against those buildings without any valid compensation returning to her patrimony. Even if the Court accepts that the value of the buildings outside of the trust was slightly higher than the amounts owing in January 2000, the Court finds that Mr. Déziel reduced and jeopardized his patrimony, the common pledge for both of his creditors at that time, Her Majesty in particular, who is the plaintiff in this action.

[81] Despite that finding, can the Court refuse to grant Her Majesty the remedy that she is seeking if she, through Mr. Bouchard, in fact acquiesced to that transfer or expressly acknowledged that it would not cause her prejudice?

[82] It must first of all be said that Her Majesty had not yet registered any mortgage whatsoever at the time of transfer. In that regard, it is important not to confuse the two debts of Mr. Déziel. Mr. Bouchard was therefore not able to make any representations on behalf of Her Majesty as to the sufficiency of the legal hypothecs in place.

[83] Thus, vis-à-vis Her Majesty, Mr. Déziel's argument is summarized in saying that Mr. Bouchard allegedly admitted that the residence and vacant land on Marion Street was worth less than $750,000 and that there was sufficient equity in both properties to satisfy the debts owing to the Ministère and Her Majesty.

[84] As I have mentioned, the testimonies from Mr. Bouchard and Mr. Diamond in that regard are totally contradictory. Mr. Bouchard denies making any representations whatsoever to Mr. Diamond as to the value of those buildings and the sufficiency of the guarantees held by the Ministère (QST). He says that he never assessed the value of those two assets at $750,000.

[85] In order to answer that question, the Court considered all of the evidence in order to determine whose version appears to be the most plausible.

[86] The Court finds that Mr. Diamond's testimony for that particular question is neither plausible nor credible. That does not mean to say that this witness is lying. It is possible that his imperfect memory of the case led him to testify as he did. In that regard, it is important to mention that Mr. Diamond said that he had not reviewed his file before coming to testify and that he did not even know that he was testifying as part of a Paulian action. That behaviour is rather surprising for a legal expert.

[87] That being said, as was indicated by notary Marie-Claire Riendeau in an article published by the Association de planification fiscale et financière in June 1996, [TRANSLATION] "the creation of a personal trust in Quebec civil law by means of transferring a property to be protected to a trust is another way of reducing the property of a person from the common pledge of possible creditors."[18] [TRANSLATION] "The use of a protective trust should always be addressed in a planning situation and not to remedy a situation in which a client is already dealing with serious financial difficulties, threatened with bankruptcy or wants to take away from a current creditor."[19]

---

[18] Fiducies de protection d'actifs (Protective trusts), Stratège, June 1996, Vol. I, no. 2, page 20
[19] Note 15, à la page 23

[88] Here, it is quite clear that in September 1999, Mr. Déziel was afraid of bankruptcy and of losing everything if his mortgage creditors panicked. Mr. Diamond himself said that he feared that the registration of legal hypothecs may jeopardize Mr. Déziel's credit. The goal of the Fiducie was to create a barrier, apparently for the sole purpose of securing the mortgage creditors from defendant Alain Déziel.[20]

[89] In addition, as Mr. Diamond clearly noted, he knew that if the donation of the buildings created a prejudice to Mr. Déziel's past creditors, they would have had a year to challenge it.

[90] In this context, if Mr. Bouchard has voluntarily reassured Mr. Diamond that the value of the residence and land on Marion Street was clearly sufficient to cover the amounts due to Her Majesty and the Ministère, we would expect him to provide solid evidence in that regard. He would have easily been able to ask for written confirmation from Mr. Bouchard or write him to confirm that conversation. At the very least, that important information would have to have been noted in his file.

[91] If, as Mr. Diamond said, that conversation took place in September 1999, why was it that on September 16, Mr. Bouchard wrote in his journal that a mortgage needed to be registered for the plot of land on Marion Street assessed at $122,000 and the residence assessed at around $200,000 since there was a risk of loss?

[92] The Court did not retain the testimony of Mr. Bouchard such that he had assessed the residence at 150,000 during his visit to Trois-Rivières. It prefers the assessment that he himself had

entered on September 16 in his journal. In the same manner, the Court must consider that reference when it assesses the plausibility of Mr. Diamond's testimony.

[93] Strangely, Mr. Déziel himself is the only witness who maintained that in 2000, his residence was worth $250,000. In that regard, he submitted that it was his [TRANSLATION] "assessment as a developer"[21] of the market value. Just before that, he also said:

> [TRANSLATION]
>
> Well then, what I may add is that when the notary had done the – he had done the assessments, that was a lot for what I had. When he did that, that was worth, at minimum, my house was worth two hundred and fifty thousand (250,000) …
>
> (Emphasis added)

[94] As for the plot of land on Marion Street, Mr. Déziel did not doubt the fact that Mr. Bouchard had no experience in real estate appraisal. According to Mr. Bouchard's testimony that was accepted by the Court, it also appears that in that regard, the rule at the Ministère was to use the municipal assessments as a starting point. How, therefore, did it reach a value of $500,000, which is three times greater than the municipal assessment for that land? No one doubted the fact that Mr. Bouchard did not have that land assessed by an expert at that time. In fact, he even notified Mr. Diamond in October 1999 and again in February 2000 that he should obtain a genuine assessment before he could accept a letter of guarantee in order to write off the legal hypothecs.

---

[20] Even though nothing indicates that they were even aware of Mr. Déziel's assessments.
[21] Page 208, line 10 of the transcript.

[95] As mentioned earlier, the Court found that in January 2000, this land was worth $225,000, the value established by Mr. Vézina. And no witnesses said that this land was worth $500,000 in January 2000.

[96] According to Mr. Déziel, in September 1999, the filling of this land, which was swamp-like when he purchased it, was not complete. Essentially, the zoning was residential. There was no indication for a layman like Mr. Bouchard that this land had such a value.

[97] It is also edifying to find that the amount of $500,000 perfectly matches the amount that was offered by the mayor of Trois-Rivières to Mr. Déziel in 2003.

[98] Once again, the Court carefully considered the arguments raised by Mr. Déziel in his written representations, particularly those regarding the credibility of Mr. Bouchard,[22] but one fact remains. In September 1999, Mr. Bouchard had only been on that file for about a month and he had no reason to mislead either Mr. Déziel or Mr. Diamond.

[99] Therefore, the Court prefers and accepts Mr. Bouchard's version. Mr. Déziel also did not establish that the plaintiff acquiesced in any way to the transaction on January 26, 2000 or that she submitted to Mr. Diamond that the residence and the land on Marion Street was worth $750,000.

Was the donation in fraud of the rights of Her Majesty?

[22] Paragraphs 2 to 2.21 of his written representations.

[100] As I have indicated, the plaintiff cannot benefit from the presumptions under articles 1633 and 1634 of the C.C.Q. She submits that the Court nevertheless has sufficient evidence to find that she has established that the donation had defrauded her rights.

[101] According to her, doctrine and case law[23] affirm her position, in which she does not have to directly show a malicious intention on the part of Mr. Déziel, but simply that he was aware and aware at the time of the donation of the negative repercussions that this transfer would have had on his patrimony and the prejudice that it would cause Her Majesty.

[102] She also highlighted the following two passages:

Caisse populaire Desjardins Terrebonne v. Bibeau, [1995] J.Q. no. 3074, in which Clément Trudel J. indicated at paragraph 35:

> [TRANSLATION]
>
> In matters of fraud related to Paulian actions, a very broad interpretation should be given. It is not necessary for a debtor to have acted with malice in mind. Paulian fraud is defined as being the simple knowledge of prejudice that can be caused to those creditors.

Petro-Canada v. Les Pétroles Astro Inc., [2003] J.Q. no 15384, in which Danielle Blondin J. says at paragraph 15:

> [TRANSLATION]
>
> Article 1631 of the Civil Code of Québec also requires that the creditor has established the fraudulent aspect of the contract. More specifically, evidence of the intention to defraud the creditor is required or at the very least, knowledge of the negative repercussions of the act on the patrimony of the creditor and the effective participation of the transactor.

[23] Baudoin, *Les obligations*, cited at paragraph 70 above, page 375, no. 681. See also François Tôth and Nathalie Vézina, *La bonne foi des parties au contrat à titre onéreux dans l'action en inopposabilité : réforme ou statu quo?* (1992), 23 R.D.U.S. 215, at page 219-220.

(Emphasis added)

[103] In addition, for Her Majesty, the Court can easily find that there was fraud and intention to cause prejudice, given the context. Specifically, she highlights the simultaneity between the raising of her assessment in August 1999 and Mr. Déziel's decision to go ahead with the creation of the Fiducie in September 1999. Furthermore, she notes the particular conditions of the Fiducie: Mr. Déziel was the settlor, the sole beneficiary and one of the trustees, and the donation was unseizable.

[104] She submits that the Court must consider Mr. Déziel's general attitude in this file. He never voluntarily paid anything whatsoever to the plaintiff, even after a final judgment was made by the Federal Court of Appeal. The plaintiff cited various passages from judgments made in other cases involving Mr. Déziel, which, according to her, show the debtor's intention.

[105] Lastly, the plaintiff is asking the Court to consider the testimony of Chantal Garceau in another action between Claire Paquin and Mr. Déziel, in which Ms. Garceau said that the Fiducie had been created [TRANSLATION] "to shelter Mr. Déziel's buildings from being seized by his creditors due to a GST and QST problem." On the basis of that testimony, Michel Richard J. of the Superior Court of Québec said in paragraph 86 of his decision from April 26, 2006, (exhibit R-18) [TRANSLATION] "… she clearly highlighted that the trust had been created by Mr. Déziel in cooperation with her for the purpose of keeping Mr. Déziel from paying his creditors, particularly including the GST and the QST".

[106] According to the plaintiff, that was a judicial admission that binds Mr. Déziel and particularly the Fiducie because Ms. Garceau was one of the two trustees who represented the Fiducie during the donation. Her Majesty highlights that Ms. Garceau indicated in the matter with Claire Paquin that she still takes care of the Fiducie's buildings (see para. 50 of the judgment).

[107] As I said, Mr. Déziel argues that it was in good faith that he created the Fiducie and transferred his residential buildings to it. He says that he acted on the recommendation of his legal advisor and only after obtaining the consent of his creditors, including the Ministère du Revenu du Québec.

[108] He also submits that during the relevant period, he was extremely depressed and was not in possession of all of his faculties. He was not able to make the required decisions alone. He adds that he could not have had the intention of defrauding Her Majesty because he did not even believe that he owed the amounts for which he was assessed. It was also for that reason that he filed objections.

[109] For the reasons that were already expressed, the Court does not believe that Mr. Diamond obtained Mr. Bouchard's consent or that he told him that the value of the buildings was $750,000 and that it was sufficient to cover both debts.

[110] The Court also does not believe that Mr. Déziel was, as he said, aware of Mr. Diamond's efforts to obtain the Ministère's consent. Mr. Diamond was very clear on that topic. He did not believe that such consent was necessary and he did not try to obtain it.

[111] The Court did not hear testimony from any physician regarding Mr. Déziel's psychological condition. Mr. Déziel contented himself with filing a copy of the decision by the Tribunal administratif du Québec allowing his application for adjusting the benefits to be paid to him in compliance with Quebec's *Automobile Insurance Act*. In that matter, the tribunal found that Mr. Déziel had in fact suffered psychological after-effects from his accident and was not completely fit to work, given his current psychiatric conditions and recent hospitalizations in a psychiatric clinic.

[112] Although the decision indicates that Mr. Déziel was hospitalized in March 1999 after a suicide attempt and was again hospitalized sometime early in 2000 for about three weeks, the Court has no details on this matter. No other evidence was submitted to the trial.

[113] Indeed, the Court has sympathy for Mr. Déziel's condition, but the evidence presented by the defendant is not sufficient to establish that he had no knowledge of the repercussions of the transfer of his Fiducie and particularly that Her Majesty would no longer be able to seize his residential buildings or register legal hypothecs on the assets of the Fiducie.

[114] The Court understand the explanations given by Mr. Déziel that he generally functions normally, but in stressful situations, he becomes extremely anxious and depressive, and loses his faculties.

[115] In the case before us, Mr. Déziel had several months to consider the situation. He was able to discuss it with his legal advisor and decided in September 1999 that he wanted to go ahead with that transaction.

[116] Mr. Déziel's decision to act as a trustee implies that he felt that he was capable of fully performing his duties and of making all of the required decisions for managing the patrimony of the Fiducie. We are not dealing with a case in which, given his psychological condition, a debtor created a trust that is managed by other people who are more fit than him to make decisions and for which he is the only beneficiary.

[117] In the facts, the only thing that really changed after the transfer on January 26, 2000 is that Her Majesty and the Ministère du Revenu du Québec no longer had direct access to the residential buildings. They could no longer seize them or register legal hypothecs.

[118] Mr. Déziel is an intelligent man and despite his difficulties since his accident, the Court is satisfied that he understood exactly what the effect of that transfer would be on his patrimony and the rights of Her Majesty. The Court is satisfied that he had the intention of preserving his equity on his buildings to the detriment of Her Majesty.

[119] In that regard, the Court cannot ignore the general context. Mr. Déziel never tried to pay that debt, even after a final judgment was made by the Federal Court of Appeal in 2004.

[120] Even as part of this action, it was difficult to set a trial date because Mr. Déziel did not want to discuss settlement, as is required to be done in the *Federal Courts Rules*, SOR/98-106 (see rule 257 and the order from Prothonotary Morneau on February 24, 2005).

[121] It is also appropriate to refer to paragraph 82 of the TCC decision, which depicts the bad faith shown by Mr. Déziel and his representatives during numerous requests to obtain relevant documents.

[122] In paragraph 99 of that decision, Tardif J. also notes the presentation of altered invoices and that the evidence submitted by Mr. Déziel clearly showed systematic bad faith, unjustified obstinacy and recourse to all kinds of schemes to avoid his obligations.

[123] As mentioned, the Court does not have the authority to challenge the TCC's findings, which cannot be indirectly attacked. They are part of the general context.

[124] However, the Court did not at all consider the testimony of Chantal Garceau reported in the decision by Richard J. To me, it is clear that the testimony of this woman is not an admission that personally binds Mr. Déziel. Although certain facts that were noted in the decision by Richard J. suggest that Ms. Garceau was still involved in the management of the buildings, there is no evidence before the Court that confirms that she was still a trustee for Fiducie Avilla on the date of her testimony. Mr. Dury raised that problem at the hearing and the plaintiff would have easily been able to confirm Ms. Garceau's position during Mr. Déziel's cross-examination, but she did not do so. She would have been able and had to call Ms. Garceau to testify if she wanted the Court to consider Ms. Garceau's version.

[125] That being said, even without that testimony, I am satisfied by all of the evidence before me that this donation was made in fraud of the plaintiff's rights.

[126] In this case, the Court does not have to examine the intention of Fiducie Avilla because the Fiducie has no distinct juridical personality. It can only act through its trustees.

[127] Article 1292 of the C.C.Q. also states the principle in which the trustee, the settlor and the beneficiary are solidarily liable for acts in which they participate that are performed in fraud of the rights of the creditors of the settlor or of the trust patrimony. Evidence of Mr. Déziel’s knowledge and intention as a trustee, settlor and beneficiary for Fiducie Avilla is therefore sufficient.

[128] The Court finds that the Paulian action must be allowed. The donation from January 2000 is declared unenforceable against the plaintiff regarding any amounts that remain due under GST certificate 3538-99, as well as costs awarded in this matter (subsection 316(3) of the Act).

[129] The plaintiff is entitled to costs and they will be assessed according to Tariff B, Column III.

JUDGMENT

THE COURT ORDERS that:

a. The Paulian action is allowed with costs (Tariff B, Column III).

b. Alain Déziel's donation to Fiducie Avilla on January 26, 2000 and registered under registration number 391799 is declared unenforceable against the plaintiff for the balance of the amounts due to her under GST Certificate 3738-99, including the abovementioned costs.

"Johanne Gauthier"

Judge

APPENDIX A

Code of Civil Procedure, R.S.Q. c. C-25

1292. The trustee, the settlor and the beneficiary are solidarily liable for acts in which they participate that are performed in fraud of the rights of the creditors of the settlor or of the trust patrimony.

1631. A creditor who suffers prejudice through a juridical act made by his debtor in fraud of his rights, in particular an act by which he renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor may obtain a declaration that the act may not be set up against him.

1632. An onerous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent if the contracting party or the creditor knew the debtor to be insolvent or knew that the debtor, by the juridical act, was rendering himself or was seeking to render himself insolvent.

1633. A gratuitous contract or a payment made for the performance of such a contract is deemed to be made with fraudulent intent, even if the contracting party or the creditor was unaware of the facts, where the debtor is or becomes insolvent at the time the contract is formed or the payment is made.

1634. The creditor may bring a claim only if it is certain at the time the action is instituted, and if it is liquid and exigible at the time the judgment is rendered.

He may bring the claim only if it existed prior to the juridical act which is attacked, unless that act was made for the purpose of defrauding a later ranking creditor.

1635. The action is forfeited unless it is brought within one year from the day on which the creditor learned of the injury resulting from the

Code civil de la province du Québec, L.R.Q. c. C-25

1292. Le fiduciaire, le constituant et le bénéficiaire sont, s'ils y participent, solidairement responsables des actes exécutés en fraude des droits des créanciers du constituant ou du patrimoine fiduciaire.

1631. Le créancier, s'il en subit un préjudice, peut faire déclarer inopposable à son égard l'acte juridique que fait son débiteur en fraude de ses droits, notamment l'acte par lequel il se rend ou cherche à se rendre insolvable ou accorde, alors qu'il est insolvable, une préférence à un autre créancier.

1632. Un contrat à titre onéreux ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder si le cocontractant ou le créancier connaissait l'insolvabilité du débiteur ou le fait que celui-ci, par cet acte, se rendait ou cherchait à se rendre insolvable.

1633. Un contrat à titre gratuit ou un paiement fait en exécution d'un tel contrat est réputé fait avec l'intention de frauder, même si le cocontractant ou le créancier ignorait ces faits, dès lors que le débiteur est insolvable ou le devient au moment où le contrat est conclu ou le paiement effectué.

1634. La créance doit être certaine au moment où l'action est intentée; elle doit aussi être liquide et exigible au moment du jugement sur l'action.

La créance doit être antérieure à l'acte juridique attaqué, sauf si cet acte avait pour but de frauder un créancier postérieur.

1635. L'action doit, à peine de déchéance, être intentée avant l'expiration d'un délai d'un an à compter du jour où le créancier a eu

act which is attacked, or, where the action is brought by a trustee in bankruptcy on behalf of all the creditors, from the date of appointment of the trustee.

connaissance du préjudice résultant de l'acte attaqué ou, si l'action est intentée par un syndic de faillite pour le compte des créanciers collectivement, à compter du jour de la nomination du syndic.

***

2943. A right that is registered in a register in respect of property is presumed known to any person acquiring or publishing a right in the same property.

A person who does not consult the appropriate register or, in the case of a right registered in the land register, the application to which the registration refers, and the accompanying document if the application is in the form of a summary, may not invoke good faith to rebut the presumption.

***

2943. Un droit inscrit sur les registres à l'égard d'un bien est présumé connu de celui qui acquiert ou publie un droit sur le même bien.

La personne qui s'abstient de consulter le registre approprié et, dans le cas d'un droit inscrit sur le registre foncier, la réquisition à laquelle il est fait référence dans l'inscription, ainsi que le document qui l'accompagne lorsque cette réquisition prend la forme d'un sommaire, ne peut repousser cette présomption en invoquant sa bonne foi.

Excise Tax Act, R.S., 1985, c. E-15

Minister not bound
299. (1) The Minister is not bound by any return, application or information provided by or on behalf of any person and may make an assessment, notwithstanding any return, application or information so provided or that no return, application or information has been provided.

Liability not affected
2) Liability under this Part to pay or remit any tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Assessment valid and binding
(3) An assessment, subject to being vacated on an objection or appeal under this Part and subject to a reassessment, shall be deemed to be valid and binding.

Loi sur la taxe d'accise, L.R. 1985, ch. E-15

Ministre non lié
299. (1) Le ministre n'est pas lié par quelque déclaration, demande ou renseignement livré par une personne ou en son nom; il peut établir une cotisation indépendamment du fait que quelque déclaration, demande ou renseignement ait été livré ou non.

Obligation inchangée
(2) L'inexactitude, l'insuffisance ou l'absence d'une cotisation ne change rien aux taxes, pénalités, intérêts ou autres montants dont une personne est redevable aux termes de la présente partie.

Cotisation valide et exécutoire
(3) Sous réserve d'une nouvelle cotisation et d'une annulation prononcée par suite d'une opposition ou d'un appel fait selon la présente partie, une cotisation est réputée valide et exécutoire.

Binding effect where unincorporated body

(3.1) Where a person (referred to in this subsection as the “body”) that is not an individual or a corporation is assessed in respect of any matter,

(*a*) the assessment is not invalid only because one or more other persons (each of which is referred to in this subsection as a “representative”) who are liable for obligations of the body did not receive a notice of the assessment;

(*b*) the assessment is binding on each representative of the body, subject to a reassessment of the body and the rights of the body to object to or appeal from the assessment under this Part; and

(*c*) an assessment of a representative in respect of the same matter is binding on the representative subject only to a reassessment of the representative and the rights of the representative to object to or appeal from the assessment of the representative under this Part on the grounds that the representative is not a person who is liable to pay or remit an amount to which the assessment of the body relates, the body has been reassessed in respect of that matter or the assessment of the body in respect of that matter has been vacated.

Cotisation exécutoire visant une entité

(3.1) Dans le cas où une cotisation est établie à l’égard d’une personne (appelée « entité » au présent paragraphe) qui n’est ni un particulier ni une personne morale, les règles suivantes s’appliquent :

a) la cotisation n’est pas invalide du seul fait qu’une ou plusieurs autres personnes (chacune étant appelée « représentant » au présent paragraphe) qui sont responsables des obligations de l’entité n’ont pas reçu d’avis de cotisation;

b) la cotisation lie chaque représentant de l’entité, sous réserve d’une nouvelle cotisation établie à l’égard de celle-ci et de son droit de faire opposition à la cotisation, ou d’interjeter appel, en vertu de la présente partie;

c) une cotisation établie à l’égard d’un représentant et portant sur la même question que la cotisation établie à l’égard de l’entité lie le représentant, sous réserve seulement d’une nouvelle cotisation établie à son égard et de son droit de faire opposition à la cotisation, ou d’interjeter appel, en vertu de la présente partie, pour le motif qu’il n’est pas une personne tenue de payer ou de verser un montant visé par la cotisation établie à l’égard de l’entité, qu’une nouvelle cotisation portant sur cette question a été établie à l’égard de l’entité ou que la cotisation initiale établie à l’égard de l’entité a été annulée.

Assessment deemed valid

(4) An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto.

Présomption de validité

(4) Sous réserve d’une nouvelle cotisation et d’une annulation prononcée lors d’une opposition ou d’un appel fait selon la présente partie, une cotisation est réputée valide et exécutoire malgré les erreurs, vices de forme ou omissions dans la cotisation ou dans une procédure y afférent en vertu de la présente partie.

Irregularities
(5) An appeal from an assessment shall not be allowed by reasons only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Part.

Irrégularités
(5) L’appel d’une cotisation ne peut être accueilli pour cause seulement d’irrégularité, de vice de forme, d’omission ou d’erreur de la part d’une personne dans le respect d’une disposition directrice de la présente partie.

***

***

316. (1) Any tax, net tax, penalty, interest or other amount payable or remittable by a person (in this section referred to as the “debtor”) under this Part, or any part of any such amount, that has not been paid or remitted as and when required under this Part may be certified by the Minister as an amount payable by the debtor.

316. (1) Tout ou partie des taxes, taxes nettes, pénalités, intérêts ou autres montants à payer ou à verser par une personne — appelée « débiteur » au présent article — aux termes de la présente partie qui ne l’ont pas été selon les modalités de temps ou autres prévues par cette partie peuvent, par certificat du ministre, être déclarés payables par le débiteur.

Registration in court
(2) On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest and penalty thereon as provided under this Part to the day of payment and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.

Enregistrement à la cour
(2) Sur production à la Cour fédérale, le certificat fait à l’égard d’un débiteur y est enregistré. Il a alors le même effet que s’il s’agissait d’un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts et pénalités courus comme le prévoit la présente partie jusqu’au jour du paiement, et toutes les procédures peuvent être engagées à la faveur du certificat comme s’il s’agissait d’un tel jugement. Aux fins de ces procédures, le certificat est réputé être un jugement exécutoire de la Cour contre le débiteur pour une créance de Sa Majesté.

Costs
(3) All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate made under subsection (1) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

Frais et dépens
(3) Les frais et dépens raisonnables engagés ou payés pour l’enregistrement à la Cour fédérale d’un certificat ou de l’exécution des procédures de perception du montant qui y est attesté sont recouvrables de la même manière que s’ils avaient été inclus dans ce montant au moment de l’enregistrement du certificat.

Details in certificates and memorials
(11) Notwithstanding any law of Canada or of a province, in any certificate made under subsection (1) in respect of a debtor, in any

Contenu des certificats et extraits
(11) Nonobstant les lois fédérales et provinciales, dans le certificat fait à l’égard du débiteur en application du paragraphe (1), dans

memorial evidencing the certificate or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

l'extrait faisant preuve du contenu d'un tel certificat ou encore dans le bref ou document délivré en vue de la perception d'un montant attesté dans un tel certificat, il suffit, à toutes fins utiles :

(a) to set out, as the amount payable by the debtor, the aggregate of amounts payable by the debtor without setting out the separate amounts making up that aggregate; and

a) d'une part, d'indiquer, comme montant payable par le débiteur, le total des montants payables par celui-ci et non les montants distincts qui forment ce total;

(b) to refer to the rate of interest or penalty to be charged on the separate amounts making up the amount payable in general terms as

b) d'autre part, d'indiquer de façon générale le taux d'intérêt ou de pénalité applicable aux montants distincts qui forment le montant payable comme étant :

(i) in the case of interest, interest at the prescribed rate under this Part applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest or penalty to be charged on each of the separate amounts or to be charged for any particular period of time, or

(i) dans le cas d'intérêts, des intérêts calculés au taux réglementaire en application de la présente partie sur les montants payables au receveur général, sans détailler les taux d'intérêt ou de pénalité applicables à chaque montant distinct ou pour une période donnée,

(ii) in the case of a penalty, a penalty of 6% per year on amounts payable to the Receiver General.

(ii) dans le cas d'une pénalité, une pénalité de 6 % par année sur les montants payables au receveur général.

***

***

<u>Assessment</u>
317. (9) The Minister may assess any person for any amount payable under this section by the person to the Receiver General and, where the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.

<u>Cotisation</u>
317. (9) Le ministre peut établir une cotisation pour un montant qu'une personne doit payer au receveur général en vertu du présent article. Dès l'envoi de l'avis de cotisation, les articles 296 à 311 s'appliquent, compte tenu des adaptations de circonstance.

Federal Courts Rules, SOR/98-106
257. Within 60 days after the close of pleadings, the solicitors for the parties shall discuss the possibility of settling any or all of the issues in the action and of bringing a motion to refer any

Règles des Cours fédérales, DORS/98-106
257. Dans les 60 jours suivant la clôture des actes de procédure, les avocats des parties discutent de la possibilité de régler tout ou partie des questions en litige dans l'action et de

unsettled issues to a dispute resolution conference.

présenter une requête demandant que les questions non réglées fassent l'objet d'une conférence de règlement des litiges.

Automobile Insurance Act, R.S.Q. c. A-25
83.28. Income replacement indemnities are deemed to be the salary of the person receiving them and are seizable as a debt for support in accordance with the last paragraph of article 553 of the Code of Civil Procedure (chapter C-25), adapted as required. Such indemnities are unseizable in respect of any other debt.

Loi sur l'assurance automobile, L.R.Q. c. A-25
83.28. Les indemnités de remplacement du revenu sont réputées être le salaire du bénéficiaire et sont saisissables à titre de dette alimentaire conformément au deuxième alinéa de l'article 553 du Code de procédure civile (chapitre C-25), compte tenu des adaptations nécessaires. À l'égard de toute autre dette, ces indemnités sont insaisissables.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-601-01

STYLE OF CAUSE: **In the matter of the *Excise Tax Act*,**
-and-
In the matter of one or several assessments raised by the Quebec Deputy Minister of Finance under the *Excise Tax Act*

Plaintiff

and

ALAIN DÉZIEL,
FIDUCIE AVILLA, REPRESENTED BY TRUSTEES ALAIN DÉZIEL AND CHANTAL GARCEAU,
REGISTRAR FOR THE CHAMPLAIN REGISTRATION DIVISION
AND REGISTRAR FOR THE TROIS-RIVIÈRES REGISTRATION DIVISION

Defendants

PLACE OF HEARING: QUÉBEC CITY

DATE OF HEARING: JUNE 12 TO 15, 2006
Written arguments completed on July 17, 2006

REASONS FOR JUDGMENT: GAUTHIER J.

DATED: DECEMBER 11, 2006

APPEARANCES:

Michel Morel Ghislaine Thériault	FOR THE PLAINTIFF
Jean Dury Alain Déziel	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Veillette, Larivière Ste-Foy, Quebec	FOR THE PLAINTIFF
Jean Dury Montréal, Quebec	FOR THE DEFENDANTS
Alain Déziel Trois-Rivières, Quebec	