

CANADA / JUDGMENT

Piccott (Re)

2002 FCT 1116

COURT

Federal Court

DECIDED

25 October 2002

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Piccott (Re) Court (s) Database Federal Court Decisions Date 2002-10-25 Neutral citation 2002 FCT 1116 File numbers GST-5104-01 Notes Digest Decision Content Date: 20021025 Docket: GST-5104-01 ITA-12574-01 Neutral citation: 2002 FCT 1116 IN THE MATTER OF THE EXCISE TAX ACT, R.S.C., 1985, c. E-15

- and - IN THE MATTER OF AN ASSESSMENT OR ASSESSMENTS BY THE MINISTER OF NATIONAL REVENUE UNDER THE EXCISE TAX ACT, AGAINST: JAMES ANDREW PICCOTT (sometime carrying on business as PICCOTT AUTO SALES) 33 Imogene Crescent, Paradise, Newfoundland A1L 1H4 AND: IN THE MATTER OF THE INCOME TAX ACT, R.S.C. 1985 (5th Supp.), c. 1
 - 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, AGAINST: JAMES ANDREW PICCOTT 33 Imogene Crescent, Paradise, Newfoundland A1L 1H4 REASONS FOR ORDER HENEGHAN J.
- [1] Mr. Piccott, a resident of Paradise in the Province of Newfoundland and Labrador, carries on business selling and trading second hand cars. He is a taxpayer in Canada and subject to the provisions of the Income Tax Act, R.S.C. 1985 (5th Supp.), c.1, as amended. For the purposes of his business, he is subject to the provisions of the Excise Tax Act, R.S.C. 1985, c. E-15, as amended, and responsible for the collection and remittance of the goods and services tax to the Government of Canada.
- [2] On November 26, 2001, the Minister of National Revenue (the "Minister") executed certificates pursuant to the Income Tax Act and the Excise Tax Act. These certificates certified amounts due under the Income Tax Act and the Excise Tax Act, in the amounts of \$4,447.95 and \$35,291.38, respectively.

- [3] According to the affidavits filed, Mr. Piccott did not become aware of the certificates until May 2002 when the Sheriff of Newfoundland and Labrador (the "Sheriff") seized a number of cars from his business premises. The Sheriff purportedly acted upon instructions received from the Canada Customs and Revenue Agency ("CCRA") pursuant to the provisions of the Judgment Enforcement Act, S.N. 1996, c. J-11, as amended. The Sheriff seized the motor vehicles with the intention of selling them to satisfy the debt claimed by the CCRA.
- [4] On May 3, 2002, Mr. Piccott applied to the Supreme Court of Newfoundland and Labrador for an order staying the pending sale by the Sheriff. The matter eventually came on for hearing and on August 20, 2002, Mr. Justice Wells of the Supreme Court of Newfoundland and Labrador issued an order to restrain the Sheriff from proceeding with the sale of the seized vehicles until a resolution of the dispute between Mr. Piccott and the CCRA, on the merits, or pending a further order of the Supreme Court of Newfoundland and Labrador or of another court.
- [5] Subsequently, the taxpayer filed his motions in this Court seeking relief, primarily an order quashing the certificates. Alternatively, he seeks a stay of enforcement of the certificates and an order varying the amounts sought to be collected. His notices of motion were supported by affidavits, including copies of the affidavits filed in the proceedings before the Supreme Court of Newfoundland and Labrador as exhibits to the affidavit of Mr. Piccott. Mr. Piccott also filed an affidavit from his accountant, Mr. Power and the affidavit of Mr. Mark Hatfield, an accountant with CCRA, together with the transcript of the cross-examination of Mr. Hatfield conducted on October 4, 2002.
- [6] Mr. Piccott relies on the evidence of Mr. Power and Mr. Hatfield to argue that at the time the certificate was filed under the Excise Tax Act, the agents and employees of the CCRA were aware that no monies were due and owing under that statute and accordingly, the Minister lacked jurisdiction to execute the certificate. Further, he argues that the Minister failed to follow proper procedure in attempting to enforce that certificate.
- [7] Pursuant to section 316(2) of the Excise Tax Act, a certificate is deemed to be a judgment of the Federal Court and is enforceable as such. The Minister instructed the Sheriff to seize goods belonging to Mr. Piccott, without first obtaining a writ from the Federal Court of Canada. Mr. Piccott argues that if the Minister had obtained a writ and the writ was served in the usual way, he would have had notice of the steps taken relative to the alleged outstanding taxes. Instead, he had no notice of the actions of the Minister until the Sheriff arrived and seized his goods. The seizure of his goods has had a severe negative impact upon his business which is the sale of second hand cars.
- [8] Mr. Piccott advances a similar argument relative to the certificate executed under the Income Tax Act. He says that he received no notice of assessment in connection with alleged outstanding income tax. Further, he alleges that he received no notice of the certificate or of pending enforcement action and he argues that the actions of the Minister were unjustified and contrary to the scheme of the Income Tax Act.

- [9] The Minister takes issue with some of the facts as alleged by Mr. Piccott, in particular the assertion that the agents and employees of the CCRA acknowledged that a mistake had been made in the assessment of the goods and services tax payable because an amount had been double charged and undertook to reverse that error. According to counsel for the Minister, it was not possible to reverse an error in the conduct of an audit; the correction of any errors would have to wait until a further audit was conducted.
- [10] The Minister argues that this Court lacks jurisdiction to entertain a challenge to the manner in which the certificates were issued. It further submits that this Court lacks jurisdiction to stay or quash the certificates and that any challenge to the process leading to issuance of the certificates lies solely within the jurisdiction of the Tax Court of Canada.
- [11] As well, the Minister characterizes Mr. Piccott's complaint as relating to the quantification of the amount claimed rather than with the fact that he owes money on account of both income tax and the goods and services tax.
- [12] The Minister argues that proper procedure was followed for enforcement purposes. The relevant sections of both the Income Tax Act and the Excise Tax Act provide that a certificate executed under these statutes is deemed to be a judgment of the Federal Court of Canada and enforceable as such. Both the Income Tax Act and the Excise Tax Act authorize the filing of a memorial, as defined in the legislation, for the purpose of creating a charge or binding interest in property in a province. The respective legislation also provides a process for the enforcement and collection of the debt as recorded in the memorial.
- [13] The Minister argues that the certificate is such a memorial and that it was not necessary to obtain a writ from the Federal Court of Canada in order to authorize and instruct the Sheriff to seize and sell the property of Mr. Piccott.
- [14] Further, the Minister argues that the Province of Newfoundland and Labrador no longer relies on a writ for the enforcement of a judgment. The applicable provincial legislation is the Judgment Enforcement Act and the Minister relies on the definition of "judgment" contained in section 2(1)(bb) of that legislation.
- [15] Otherwise, the Minister takes the position that monies were owing from Mr. Piccott, the certificates were properly executed and proper steps were taken to enforce collection of the outstanding taxes.
- [16] The certificates in question were issued under the Income Tax Act and the Excise Tax Act. Section 223(3) of the Income Tax Act provides as follows:
- (3) On production to the Federal Court, a certificate made under subsection 223(2) 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 thereon to the day of payment as provided by the statute or statutes referred to in subsection 223(1) under which the amount is payable and, for the purpose 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, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

- (3) Sur production à la Cour fédérale, un certificat fait en application du paragraphe (2) à l'égard d'un débiteur est enregistré à cette cour. 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 courus jusqu'à la date du paiement comme le prévoit les lois visées au paragraphe (1) en application desquelles le montant est payable, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Dans le cadre de ces procédures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit ces lois.

[17] Section 316(2) of the Excise Tax Act provides as follows:

- (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.
- (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.

[18] In each case, the legislation provides that a certificate produced by the Minister to the Federal Court can be registered in that Court and following registration, it has the same effect as a judgment. However, the certificate when registered is not a judgment and does not become a judgment of the Federal Court. In this regard, I refer to *Marcel Grand Cirque Inc. v. Quebec* (1995), 107 F.T.R. 18, *Olympia Interiors Limited v. Canada* (1998), 98 D.T.C. 6306 (F.C.T.D.) and *Glenn Alexander Ross v. Her Majesty the Queen in Right of Canada* (2002 D.T.C. 6884), affirmed by the Federal Court of Appeal at [2002] FCA 359. In *Marcel Grand Cirque Inc. v. Quebec*, supra, the Court said at paragraph 6: This Court does not have jurisdiction to determine this issue. The Excise Tax Act, like the Income Tax Act, R.S.C. 1985 (5th Supp.), c. 2, contains in effect a complete code for the collection of taxes pursuant to which a taxpayer, after receiving a notice of assessment, may file a notice of opposition and

possibly appeal to the Tax Court of Canada. Thus this Court does not have jurisdiction to determine the amount of the assessment and the expenses to which a taxpayer may claim to be entitled.

- [19] As well, the Court spoke of its jurisdiction to entertain a challenge to a seizure effected under the certificate, at paragraph 12 as follows: I think, therefore, that inasmuch as the certificate produced to the Federal Court is equivalent to but not a judgment of this Court, the motion in revocation of judgment is not receivable. In this case the Court issued a writ of fieri facias on April 19, 1995 at the request of the Deputy Minister. The record discloses that a seizure was effected on April 21, 1995 on the movable property of the applicant. However, discharge from this seizure was given on September 15, 1995. In my opinion, only this seizure could be the subject of a challenge or application to stay, in the first place under the Rules of this Court (Rule 2000 et seq.), failing which the provisions of the Code of Civil Procedure may be followed.
- [20] The certificate is evidence of a debt and pursuant to the statutory language, it may be enforced as a judgment of the Federal Court following registration. It appears that a challenge to the process leading up to the filing of a certificate is to be brought in the Tax Court of Canada and in this regard, I refer to the Tax Court of Canada Act, R.S.C. 1985, c. T-2, as amended, section 12.
- [21] I am satisfied that it is beyond the jurisdiction of this Court to go behind the execution of the certificates. However, the issue of enforcement of those certificates is within the jurisdiction of this Court in light of the clear statutory language that once registered, a certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.
- [22] In both the Income Tax Act and the Excise Tax Act, "court" is defined in terms of the Federal Court of Canada for the purposes of recording and enforcing certificates executed under these statutes. This means, in my opinion, that enforcement proceedings relative to the certificates must be conducted pursuant to the applicable provisions of the Federal Court Act, R.S.C. 1985, c.F-7, as amended, and the Federal Court Rules, 1998, SOR/98-106.
- [23] Section 56 of the Federal Court Act, *supra*, is relevant and provides as follows:
56. (1) In addition to any writs of execution or other process that are prescribed by the Rules for enforcement of its judgments or orders, the Court may issue process against the person or the property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which any judgment or order is to be executed, and where, by the law of that province, an order of a judge is required for the issue of any process, a judge of the Court may make a similar order with respect to like process to issue out of the Court.
- (2) No person shall be taken into custody under process of execution for debt issued out of the Court.

- (3) All writs of execution or other process against property, whether prescribed by the Rules or authorized by subsection (1), shall, unless otherwise provided by the Rules, be executed, with respect to the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs or process, issued out of the superior courts of the province in which the property to be seized is situated, are, by the law of that province, required to be executed, and the writs or other process issued by the Court shall bind property in the same manner as similar writs or process issued by the provincial superior courts, and the rights of purchasers thereunder are the same as those of purchasers under those similar writs or process.
- (4) Every claim made by any person to property seized under a writ of execution or other process issued out of the Court, or to the proceeds of the sale of that property, shall, unless otherwise provided by the Rules, be heard and disposed of as nearly as may be according to the procedure applicable to like claims to property seized under similar writs or process issued out of the courts of the province.
56. (1) Outre les brefs de saisie-exécution ou autres moyens de contrainte prescrits par les règles pour l'exécution des jugements ou ordonnances de la Cour, celle-ci peut délivrer des moyens de contrainte visant la personne ou les biens d'une partie et ayant la même teneur et le même effet que ceux émanant d'une cour supérieure de la province dans laquelle le jugement ou l'ordonnance doivent être exécutés. Si, selon le droit de la province, le moyen de contrainte que doit délivrer la Cour nécessite l'ordonnance d'un juge, un juge de la Cour peut rendre une telle ordonnance.
- (2) La délivrance, par la Cour, d'un bref de saisie-exécution pour dette ne peut donner lieu à incarcération.
- (3) Sauf disposition contraire des règles, les brefs de saisie-exécution ou autres moyens de contrainte visant des biens - qu'ils soient prescrits par les règles ou autorisés aux termes du paragraphe (1) - sont, quant aux catégories de biens saisissables et au mode de saisie et de vente, exécutés autant que possible de la manière fixée, pour des moyens de contrainte semblables émanant d'une cour supérieure provinciale, par le droit de la province où sont situés les biens à saisir. Ils ont les mêmes effets que ces derniers, quant aux biens en question et aux droits des adjudicataires.
- (4) Sauf disposition contraire des règles, l'instruction et le jugement de toute contestation en matière de saisie effectuée en vertu d'un moyen de contrainte de la Cour, ou de toute prétention sur le produit des biens saisis, suivent autant que possible la procédure applicable aux revendications semblables concernant des biens saisis en vertu de moyens de contrainte similaires émanant des tribunaux provinciaux.
- [24] Part 12 of the Federal Court Rules deals with the enforcement of judgements and orders. Rule 423 provides as follows:
423. All matters relating to the enforcement of orders shall be brought before the Trial Division.

423. Toute question concernant l'exécution forcée d'une ordonnance relève de la Section de première instance.

[25] Section 316(4) of the Excise Tax Act spells out a process by which a charge can be created in the property of a debtor. This provision also refers to three manifestations of a "memorial". Section 316(4) provides as follows:

- (4) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (2), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing
 - (a) a judgment of the superior court of the province against a person for a debt owing by the person, or
 - (b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the provincemay be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.
- (4) Un document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur en application du paragraphe (2), un bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (ce document ou bref ou cette notification étant appelé « _extrait_ » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge un bien du débiteur situé dans une province, ou un droit sur un tel bien, de la même manière que peut l'être, au titre ou en application de la loi provinciale, un document faisant preuve_:
 - a) soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;
 - b) soit d'un montant payable ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

[26] A similar provision is found in section 223(5) of the Income Tax Act.

[27] The Minister takes the position that once the certificate is produced to the Federal Court of Canada and registered there, it becomes a memorial and that it is sufficient, for enforcement purposes, to forward a copy of the certificate to the Sheriff, without the necessity of obtaining a writ from the Federal Court.

- [28] I disagree with this interpretation of section 316(4). For the purposes of this section, a "memorial" can be either a document issued by the Federal Court of Canada, a writ issued by the Federal Court of Canada or a document evidencing either issuance of a document from the Federal Court or a writ from the Federal Court.
- [29] Rule 2 of the Federal Court Rules, 1998 defines "issued" as follows:
2. The following definitions apply in these Rules. ... "issued" means
 - (a) in respect of an originating document, dated, signed, sealed with the seal of the Court and assigned a Court file number by the Administrator; and
 - (b) in respect of any other document, dated, signed and sealed with the seal of the Court by the Administrator.
 2. Les définitions qui suivent s'appliquent aux présentes règles. ... « _délivré_ »
 - a) Dans le cas d'un acte introductif d'instance, se dit de celui qui est daté, signé et scellé du sceau de la Cour par l'administrateur et qui porte le numéro du dossier de la Cour que celui-ci lui a attribué;
 - b) dans le cas de tout autre document, se dit de celui qui est daté, signé et scellé du sceau de la Cour par l'administrateur.
- [30] There is nothing in the record before me, including the court files, to show that any documents were issued by the Federal Court of Canada. The recorded entries show merely that certificates were filed. No writs were issued, and this is admitted by the Minister. The Minister takes the position that a writ is not necessary, having regard to the manner in which judgments are enforced in the Province of Newfoundland and Labrador.
- [31] As noted above, section 56 of the Federal Court Act provides that provincial processes will be engaged for the purposes of enforcing judgments or orders of the Federal Court. While it is clear that a certificate executed under the Income Tax Act or the Excise Tax Act is not a judgment of the Federal Court of Canada, it is equally clear that for the purposes of enforcement, such certificate is deemed to be a judgment. In my view, this deeming provision means that the enforcement processes provided under the Federal Court Act and the Federal Court Rules, 1998 are engaged.
- [32] The proper procedure in the present case would have been for the Minister to obtain a writ from the Federal Court of Canada and to forward that writ to the Sheriff. The Sheriff would then be obliged to handle the writ subject to section 56 of the Federal Court Act and the applicable provincial legislation.
- [33] The Minister did not obtain writs to enforce payment of the money allegedly due from Mr. Piccott. He should have done so. It follows that the seizure of Mr. Piccott's goods was improperly made and those goods should be immediately returned to Mr. Piccott.

[34] Mr. Piccott shall have his costs on these motions.

[35] These reasons shall be placed on the files for causes GST-5104-01 and ITA-12574-01 and shall have effect accordingly. "E. Heneghan" J.F.C.C. OTTAWA, ONTARIO October 25, 2002
FEDERAL COURT OF CANADA TRIAL DIVISION NAMES OF SOLICITORS AND SOLICITORS
ON THE RECORD COURT FILE NO.: GST-5104-01 ITA-12574-01 STYLE OF CAUSE: IN THE
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Crescent, Paradise, Newfoundland A1L 1H4 PLACE OF HEARING: St. John's, Newfoundland
and Labrador DATE OF HEARING: October 16, 2002 REASONS FOR JUDGMENT OF THE
HONOURABLE MADAM JUSTICE HENEGHAN DATED: October 25, 2002 APPEARANCES: Mr.
Gregory A. MacIntosh FOF APPLICANT Mrs. Deanne Penney Mr. Barrie Heywood FOR
RESPONDENT Mrs. Olga R. McWilliam SOLICITORS OF RECORD: Mr. Morris Rosenberg FOR
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