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PRACTICE

JUDGMENTS AND ORDERS

Enforcement

See also: Income Tax

Charging orders — Motion seeking order to discharge interim charge against condominium unit in Toronto (property) obtained by Department of Justice on behalf of Her Majesty the Queen in Right of Canada, Canada Revenue Agency (respondents) by order of Court pursuant to *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 223 — CRA registered with Court certificate against moving party claiming tax debt — Respondents filed *ex parte* motion to obtain interim charge to secure payment of tax debt against moving party's interest in property — Court issued interim order granting respondents' motion, requiring moving party to show cause why interim charge should not be made absolute — Moving party financial advisor, wealth manager — Providing assistance in creating, implementing Canadian trusts to hold investment properties — Evidence established that moving party having legal interest in property by virtue of his position as trustee of Richie Rich Holdings Trust (RRH Trust) — Title documents to property identifying moving party, co-trustees as trustees for property — Moving party arguing that as trustee of RRH Trust, not judgment debtor with interest in property as contemplated in *Federal Courts Rules*, SOR/98-106, r. 458 because: respondents' interpretation of term "judgment debtor" ignoring fact that he incurred tax debt in his personal capacity, not in his capacity as trustee of RRH Trust; trustee holding trust property not "hold[ing] an interest" in that trust property within meaning of r. 458 — Main issue whether interim charge should be discharged — Respondents' interpretation of term "judgment debtor" in r. 458 ignoring trustee's distinct roles — Trustee acting as fiduciary for benefit of trust beneficiaries — Required to maintain distinction between personal affairs, affairs and properties of trust, to safeguard interests of trust beneficiaries — In this case, tax debt not debt of RRH Trust, trust property not available to CRA to satisfy moving party's debt — Common law recognizing distinction between legal, beneficial ownership — Moving party judgment debtor for purposes of tax debt and r. 458 in his personal capacity only — Moving party's interest in property as trustee not interest in property within meaning of r. 458(1)(a)(i) — No impropriety in respondents' reliance on r. 458(1) to bring their *ex parte* motion on narrow ground of moving party's legal interest as trustee in RRH Trust — However, having secured interim order, respondents not now able to abandon their legal theory, engage in

comprehensive cross-examination of moving party because moving party has responded, shown cause why interim charge must be discharged — R. 458(1) *ex parte* motion should not be used as gateway proceeding — Moving party's arguments rebutted basis on which interim charge imposed — Motion granted.

CANADA (NATIONAL REVENUE) V. SHAKER (ITA-143-22, 2022 FC 407, Walker J., reasons for order dated March 24, 2022, 23 pp.)