

Federal Court



Cour fédérale

Date: 20230906

Docket: T-464-23

Citation: 2023 FC 1202

Toronto, Ontario, September 6, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

HELCIM INC.

Respondent

ORDER AND REASONS

[1] By Motion, the Minister of National Revenue [Minister] seeks an Order, pursuant to subsection 231.2(3) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended [ITA] and subsection 289(3) of the *Excise Tax Act*, RSC 1985, c E-15 [ETA] to require Helcim Inc.

[Helcim] to provide information and documents relating to an ascertainable group of one or more unnamed persons.

[2] In support of the Motion, the Applicant relies upon the Affidavit of David Erwin affirmed March 9, 2023. Mr. Erwin is an Analyst with the Canada Revenue Agency [CRA] who works on projects to identify sectors at risk of non-compliance with the ITA and/or the ETA.

[3] The Respondent, Helcim, filed a Notice of Appearance and advised that they do not oppose the Application. They did not appear at the hearing held on September 6, 2023.

I. Background

[4] The Minister seeks information regarding the identities, banking information, and sales history of Helcim's Canadian merchants (the Merchants) to verify the Merchants' compliance with their duties and obligations under the ITA and ETA.

[5] Helcim is a Canadian company who offers mobile payment device options and processing products and services such as card readers.

[6] During the period from January 1, 2019 to present (referred to as the Period), Helcim provided mobile processing products and services to Canadian merchants who have registered accounts with Helcim. The Merchants' card readers and accounts are linked to Helcim in that the card readers (owned by the Merchants) work by extracting information from a customer's credit card or debit card and then transmitting it to the payment processor (owned by Helcim) and collecting information from the customer's bank in return. The Merchants' accounts house their profiles, which include their names, banking information, and sales history.

[7] The Minister seeks to verify whether the Merchants who use or have used Helcim's mobile and online payment processing products and services during the Period are compliant with their duties and obligations under the ITA and/or ETA.

[8] The Minister seeks the names of all Canadian merchants that have registered with and use Helcim's mobile payment and processing products and services for the period from January 1, 2019 to present. The Minister further seeks the Merchants' contact information, banking information, and total monthly aggregate of transactional information between the Merchant and their customers (Sales History).

[9] The Minister asks for an Order that would require Helcim to provide the following information and documents for each Merchant: (i) the Merchant's legal name, business or operating name, business address, and all telephone numbers on file; (ii) the Merchant's Business Number and Social Insurance Number, if known; (iii) the Merchant's bank account information (financial institution names, transit numbers, and account numbers); and (iv) the Merchant's aggregate of gross transaction amounts (as measured in Canadian dollars) processed by Helcim between the Merchant and the Merchant's customers.

[10] Helcim knows the names of its Merchants and maintains records that include their identities, contact information, banking information, and Sales History.

[11] According to the Minister, the Merchants are an ascertainable group.

II. Relevant Legislation

[12] Subsections 231.2(1), (2) and (3) of the ITA state:

Requirement to provide documents or information

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice sent or served in accordance with subsection (1.1), require that any person provide, within such reasonable time as is stipulated in the notice,

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

(b) any document.

[...]

Unnamed persons

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

Production de documents ou fourniture de renseignements

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l’application ou l’exécution de la présente loi (y compris la perception d’un montant payable par une personne en vertu de la présente loi), d’un accord international désigné ou d’un traité fiscal conclu avec un autre pays, par avis signifié ou envoyé conformément au paragraphe (1.1), exiger d’une personne, dans le délai raisonnable que précise l’avis :

a) qu’elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu’elle produise des documents.

[...]

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées

Minister first obtains the authorization of a judge under subsection 231.2(3).

nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Judicial authorization

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) if the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

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

Autorisation judiciaire

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu’il estime indiquées, autoriser le ministre à exiger d’un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée nommément ou plus d’une personne non désignée nommément — appelée « groupe » au présent article —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) cette personne ou ce groupe est identifiable;

b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

[13] Subsections 289(1), (2) and (3) of the ETA mirrors subsections 231.2(1), (2) and (3) of the

ITA:

Requirement to provide documents or information

289 (1) Despite any other provision of this Part, the Minister may, subject to subsection (2), for any

Présentation de documents ou de renseignements

289 (1) Malgré les autres dispositions de la présente partie, le ministre peut, sous réserve du paragraphe (2) et,

purpose related to the administration or enforcement of a listed international agreement or this Part, including the collection of any amount payable or remittable under this Part by any person, by a notice served or sent in accordance with subsection (1.1), require that any person provide the Minister, within any reasonable time that is stipulated in the notice, with

(a) any information or additional information, including a return under this Part; or

(b) any document.

[...]

Unnamed persons

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

Judicial authorization

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

pour l’application ou l’exécution d’un accord international désigné ou de la présente partie, notamment la perception d’un montant à payer ou à verser par une personne en vertu de la présente partie, par avis signifié ou envoyé conformément au paragraphe (1.1), exiger d’une personne, dans le délai raisonnable que précise l’avis :

a) qu’elle lui livre tout renseignement ou tout renseignement supplémentaire, y compris une déclaration selon la présente partie;

b) qu’elle lui livre des documents.

[...]

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la livraison de renseignements ou de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Autorisation judiciaire

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu’il estime indiquées, autoriser le ministre à exiger d’un tiers la livraison de renseignements ou de documents prévue au

<p>requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this subsection referred to as the “group”) if the judge is satisfied by information on oath that</p> <p>(a) the person or group is ascertainable; and</p> <p>(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Part.</p>	<p>paragraphe (1) concernant une personne non désignée nommément ou plus d’une personne non désignée nommément — appelée « groupe » au présent paragraphe —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :</p> <p>a) cette personne ou ce groupe est identifiable;</p> <p>b) la livraison est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente partie.</p>
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III. Issue

[14] The sole issue is if the Court should grant authorization to the Minister to impose an unnamed person requirement on Helcim pursuant to subsections 231.2(3) of the ITA and subsection 289(3) of ETA.

IV. Analysis

[15] In order to grant the Order sought by the Minister, this Court must be satisfied that: (i) the unnamed persons are ascertainable; and (ii) the requirement is made to verify compliance by the unnamed persons with any duties or obligations under the ITA and ETA (*Roofmart Ontario Inc v Canada (National Revenue)*, 2020 FCA 85 at para 2 [*Roofmart FCA*]; *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at paras 5 and 23).

A. *Persons are Ascertainable*

[16] In *Canada (National Revenue) v Roofmart Ontario Inc*, 2019 FC 506 at para 11 [Roofmart], this Court found that the target group of customers for which Roofmart Ontario Inc. maintained records and knew the identities of, was ascertainable (*Roofmart FCA* at para 38).

[17] Similarly, in *Canada (National Revenue) v Royal Bank of Canada*, 2021 FC 830 at para 16, this Court found that Royal Bank of Canada's (RBC) account holders for whom RBC maintained books and records with names and addresses of account holders, signing officers, and power of attorneys were an ascertainable group. In *Canada (National Revenue) v Paypal Canada Co*, 2017 CarswellNat 6671 at paras 5-6 [Paypal], this Court found that four years of aggregated transaction information of corporations and individuals holding a Paypal Canada Co. Business Account was an ascertainable group and not overbroad.

[18] In the present case, the unnamed persons that the Minister seeks in this case are the Canadian Merchants of Helcim.

[19] The Minister submits the Merchants are a targeted group that consists of persons who use or have used Helcim's products and payment platforms during the Period and have registered accounts with Helcim identifying a Canadian mailing and/or billing address. The Minister also submits Helcim maintains electronic records, which include names, banking information, and sales history of the Merchants.

[20] Additionally, the Minister submits that Helcim's records maintained under section 230 of the ITA and section 286 of the ETA should contain the Merchants' identities and sales histories.

[21] In the circumstances, I am satisfied that the Minister has met the first statutory condition. Helcim knows the identities of the Merchants and maintains relevant records sought by the Minister.

[22] Helcim's Merchants are an ascertainable group, as required by subsection 231.2(3)(a) of the ITA and subsection 289(3)(a) of the ETA.

B. *Requirement Made to Verify Compliance*

[23] On such requests, the applications judge must be satisfied that information or documents relating to the unnamed persons is required to verify compliance with the ITA and ETA (*MNR v Greater Montréal Real Estate Board*, 2007 FCA 346 at para 21 [*GMREB*]; *eBay Canada Ltd v. MNR*, 2008 FCA 348 at para 55 [*eBay*]; *Paypal* at para 7).

[24] In *Roofmart* at para 13, the Court found the following evidence sufficient to establish the information or documents were required to verify compliance with the ITA and ETA. First to use the requested data to verify whether the unnamed persons have filed all of their required income tax returns, payroll remittances and goods and services tax (GST)/ harmonized sales tax (HST) returns. Second to determine whether the unnamed persons have properly: (iii) reported all or any of the income earned on the sale or supply of roofing and building supplies/materials; (iv) claimed amounts as business expenses; (v) collected and remitted payroll tax; and, (vi) calculated and remitted GST/HST.

[25] Here the Minister submits they seek to verify if the Merchants complied with their duties and obligations under the ITA and ETA. Specifically, the Minister seeks to verify if the Merchants have properly: (i) filed returns as and when required under the ITA and ETA; (ii) reported all or any of the income earned from sales or services as required under the ITA; (iii) claimed amounts as business expenses under the ITA; (iv) collected and remitted payroll tax under the ITA; (v) remitted net tax under the ETA i.e. whether they have collected, reported, and remitted all of the GST and/or HST imposed on the sale or supply of their goods and/or services; and (vi) claimed input tax credits.

[26] The Minister submits that CRA will review the data provided to verify the Merchants' compliance. The CRA determines if the Merchants have complied with their duties and obligations under the ITA and/or ETA, the CRA may select the Merchants for audit and if appropriate, (re)assess them to tax under the ITA and/or ETA.

[27] In my view, the Minister has met the second statutory condition. The Minister is requesting information or documents to verify if Helcim's Canadian merchants complied with their duties and obligations under the ITA and ETA.

V. Conclusion

[28] In the circumstances, I am satisfied that the evidence meets the statutory conditions under subsection 231.2(3) of the ITA and subsection 289(3) of ETA, therefore the Order will be granted.

ORDER IN T-464-23

THIS COURT'S ORDER is that:

1. the Minister is authorized to impose on Helcim a requirement pursuant to subsections 231.2(1) of the ITA and 289(1) of the ETA relating to Helcim's Canadian merchants in the form Attached as Appendix A to the Ministers Motion Record; and
2. no costs are awarded.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-464-23

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v HELCIM INC.

PLACE OF HEARING: TORONTO, ON

DATE OF HEARING: SEPTEMBER 6, 2023

JUDGMENT AND REASONS: MCDONALD J.

DATED: SEPTEMBER 6, 2023

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