

Federal Court



Cour fédérale

Date: 20260317

Docket: ITA-8104-25

ETA-5494-25

St. John's, Newfoundland and Labrador, March 17, 2026

PRESENT: Associate Judge Trent Horne

IN THE MATTER OF the *Income Tax Act*,

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, the Income Tax Act*,

AND

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*:

BETWEEN

MINISTER OF NATIONAL REVENUE

Applicant /
Judgment Creditor

and

AZHER HYDER
3306 FOX RUN CIRCLE
OAKVILLE, ON, L6L 6W5

Respondent /
Judgment Debtor

ABSOLUTE CHARGING ORDER

UPON the interim charging order issued by this Court on November 26, 2025:

- (a) imposing an interim charge securing the payment of unpaid taxes, interest and costs in the amounts of:
- i. \$525,477.68, plus interest compounded daily at the prescribed rate, pursuant to the *Income Tax Act*, RSC 1985, c 1 (5th supp.), and the certificate issued under Court file number ITA-8104-25;
 - ii. \$76,861.86, plus interest compounded daily at the prescribed rate, pursuant to the *Excise Tax Act*, RSC, 1985, c E-15, and the certificate issued under Court file number ETA-5494-25; and
 - iii. together with the costs, owed by Azher Hyder, against his interest in the residential property located at 3306 Fox Run Circle, Oakville, ON, L6L 6W5;
- (b) requiring the respondent/judgment debtor to attend Court at Toronto, Ontario on Tuesday, December 16, 2025, at 9:30 a.m., or as soon thereafter this motion can be heard, to show cause why the interim charge should not be made absolute;

AND UPON the interim charging order having been served on the respondent/judgment debtor on December 10, 2025;

AND UPON reading the materials filed by the parties;

AND UPON hearing the submissions of counsel at the hearing on March 17, 2026;

AND UPON considering:

[1] On November 7, 2025, the Minister of National Revenue [Minister] obtained a jeopardy order authorizing that collection actions be taken forthwith as it relates to the personal income tax debt of Azher Hyder.

[2] Mr Hyder owes an amount of \$525,477.68, plus interest compounded daily, pursuant to certificate number ITA-8104-25, registered in this Court on November 12, 2025 under section 223 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) [ITA] following the jeopardy order [ITA Certificate].

[3] Mr Hyder owes a further amount of \$76,861.86, plus interest compounded daily, pursuant to certificate number ETA-5494-25, registered in this Court on November 12, 2025 under section 316 of the *Excise Tax Act*, RSC 1985, c E-15 [ETA] following the jeopardy order [ETA Certificate].

[4] Mr Hyder resides at 3306 Fox Run Circle in Oakville, Ontario [the Property]. Mr Hyder is not registered as an owner of the Property; the registered owner is his wife, Bibi Hyder. At the time the materials for the jeopardy order were filed, the Property was listed for sale.

[5] On November 19, 2025, the Attorney General of Canada filed an *ex parte* motion for an interim charging order. The Minister's evidence on that motion was that, within an hour of the jeopardy order being released, the listing for the Property was terminated. A new listing for the Property appeared on November 10, 2025. A sale of the Property is expected to close on March 24, 2026.

[6] An interim charging order was issued on November 20, 2025, and a corrected interim charging order was issued on November 26, 2025 [ICO]. In issuing the ICO, Justice Furlanetto was satisfied that Mr Hyder had a beneficial ownership interest in the Property. The ICO also set a hearing date of December 16, 2025 for a show cause hearing.

[7] The matter came before me on the general sittings on December 16, 2025. On consent, an order was made adjourning the show cause hearing to January 13, 2026. It appears that there was an error within the Registry, and the matter was not placed on the general sittings list for that day. Associate Judge Milczynski issued a direction on January 13, 2026 adjourning the hearing date. The hearing date was further adjourned to March 17, 2026 at the request of Mr Hyder's newly appointed counsel.

[8] The ICO was issued pursuant to Rule 458 of the *Federal Courts Rules*, SOR/98-106 [Rules]. Rule 459 states that, at a show cause hearing, the Court shall make the interim charge absolute or discharge it. The parties agree that my choice in this respect is binary – the ICO must either be made absolute or discharged in whole. I do not have the ability, for example, to make an order that the charge relating to the ETA Certificate be made absolute and discharge the ICO as it relates to the ITA Certificate.

[9] The Minister asserts that the ICO should be made absolute. Mr Hyder submits that it should be discharged. The principal submission advanced on behalf of Mr Hyder is that, while he has an interest in the Property, the amount of his interest is less than the amounts owing.

[10] While the focus of the hearing was on the extent of Mr Hyder's interest in the Property, I will address two points advanced on behalf of Mr Hyder that can be dealt with briefly.

Mr Hyder submits that the Minister could have assessed Mrs Hyder as a transferee. There is no positive duty on the Minister to undertake collection against a transferee in priority to the debtor. It is also unclear what practical effect this would have. Had the Minister taken steps to collect as against Mrs Hyder, it appears that the asset that would be the subject of collection proceedings would be the same family home.

[11] Second, Mr Hyder has filed notices of objection and submits that he will make appropriate payment of taxes owing upon the conclusion of these objections. These notices were filed on January 27, 2026. I was not taken to any authority to suggest that filing a notice of objection has the effect of suspending collection efforts. The objection process could be lengthy. I do not see how it would be in the interests of justice to permit a taxpayer to derail collection proceedings indefinitely by filing a notice of objection months after the collection proceedings were commenced.

[12] It was made clear at the hearing that Mr Hyder is not challenging the jeopardy order itself. This is reasonable. The jeopardy order was issued on November 7, 2025. The time to appeal it has long expired. The jeopardy order is therefore final. A motion for an absolute charging order cannot be used as a collateral attack on an earlier, final, order.

[13] Returning to the central issue, it was conceded that Mr Hyder has an interest in the Property. Rule 458 is broadly worded; it refers to “an interest in the real property, including a beneficial interest.” “Interest,” as that term is used in Rule 458, has an expansive definition (*Canada (National Revenue) v McDonald*, 2010 FC 340 at paras 10-15).

[14] Extensive submissions were made as to the application of Ontario's *Family Law Act*, RSO 1990 c F.3 [*FLA*]. Mr and Mrs Hyder are married. They live together in the Property and have done so for years. On the face of it, the Property is a "matrimonial home" as that term is used in Part II of the *FLA*, specifically section 18 – the Property is "ordinarily occupied by [Mr Hyder] and his or her spouse as their family residence." A registration against the property (no HR2020089 dated March 7, 2024) states: "Azher Hyder, who is the spouse of Bibi Hyder designates under Section 20(1) of the Family Law Act, Ontario this property, 3306 Fox Run Circle, Oakville, ON, L5L 6W5, as the matrimonial home."

[15] Section 21 of the *FLA* provides that Mrs Hyder cannot dispose of or encumber an interest in a matrimonial home without the consent of Mr Hyder. As the matrimonial home, it is apparent that Mr Hyder has an "interest in real property." I need not determine precisely whether this is an equitable interest, a constructive trust, or something else. It is an "interest in real property."

[16] Counsel for Mr Hyder submitted that the extent of Mr Hyder's interest in the matrimonial home varies, depending on whether the couple remain married or are in the process of separation, which engages an obligation to calculate their net family property. It was submitted that, while spouses remain together, the value to a spouse who is not registered on title is negligible. That value would increase in the event the couple separates and the calculation of net family property is undertaken. I have no authority to support this submission, and do not accept it.

[17] In any event, I need not resolve this. It is admitted that Mr Hyder has an interest in the Property. Whether that interest arises by virtue of the *FLA*, subsections 222(1) and (3) of the *ETA*

(another point raised in argument that I need not resolve), or something else is secondary. There is an interest in real property, which is what Rule 458 requires.

[18] So what is the extent of that interest, and should the ICO be discharged because the amount of the interest is less than the debt owing? While this argument has a measure of common-sense appeal, no authority was presented to support it.

[19] As a starting point, the evidence on the motion for the jeopardy order was that the Property was listed for \$2,149,000.00. The mortgage, line of credit, and notice of security interest registered on title were, in total, \$754,424,41. If the Property is sold at the listing price, the equity in it would be almost \$1.4 million. Between the two certificates, Mr Hyder's tax debt totals \$602,339.54 before interest. The judgment creditor has shown that Mr Hyder's debt is less than half of the equity in the Property, and there is no indication that anyone other than Mr and Mrs Hyder have any interest in that equity.

[20] I cannot accept that Mr Hyder has no interest in the value of the Property, or that his monetary interest should be valued at \$0. At the time the Property was purchased in 2005, the mortgage registered on title exceeded the purchase price of the home. It was not purchased with Mrs Hyder's money. It is not disputed that Mr Hyder transferred money to Mrs Hyder to make the mortgage payments, and to pay for repairs and utilities over the years. Mrs Hyder's income was insufficient to pay these expenses. Whether Mr and Mrs Hyder intended to create a trust arrangement as between them is secondary, if not immaterial. Mr Hyder admits that he has an interest in the Property either through the *ETA*, the *FLA*, or both.

[21] Ordinary principles of litigation put the burden of proof on the party making the assertion (*WIC Radio Ltd v Simpson*, 2008 SCC 40 at para 30). The burden is always on the party asserting a proposition or fact that is not self-evident (*Voltage Holdings, LLC v Doe #1*, 2023 FCA 194 at para 40). While Mr Hyder asserts that the value of his interest in the Property is less than his tax debt, no amount has been proposed. It is not self-evident that Mr Hyder has a less than one-half interest in the Property. Even *if* it is appropriate to consider, on a show cause motion, whether the value of the interest in the property is less than the debt owing, Mr Hyder has not demonstrated that in his particular circumstances.

[22] Having regard to all the above, I am satisfied that Mr Hyder has an interest in the Property, and that the ICO should be made absolute.

[23] At the conclusion of the hearing, the parties agreed that costs should be fixed at \$2,500.00, payable to the successful party.

THIS COURT ORDERS that:

1. The respondent/judgment debtor's interest in "the Property," which is described in schedule 1 to this order, shall stand charged absolutely with the payment of:
 - a. \$525,477.68, plus interest compounded daily at the prescribed rate, pursuant to the *ITA* and the certificate issued under Court file number ITA-8104-25;
 - b. \$76,861.86, plus interest compounded daily at the prescribed rate, pursuant to the *ETA* and the certificate issued under court file number ETA-5494-25; and
 - c. costs of \$2,500.00.

2. If the respondent/judgment debtor's tax debts, interest, and costs are paid in full after the issuance of this absolute charging order, upon written confirmation by the Minister, the respondent/judgment debtor's interest in the Property no longer stands charged.

"Trent Horne"

Associate Judge

SCHEDULE 1

Legal Description: LOT 61, PLAN 20M911, OAKVILLE. S/T RIGHT HR318588 UNTIL LATER OF 5 YRS FROM 04 09 07 OR ASSUMED BY TOWN OF OAKVILLE

PIN: 24752-1341 (LT)

Estate / Qualifier: Fee simple, LT Absolute

Address: 3306 Fox Run Circle, Oakville, ON, L6L 6W5