Ghislain Poulin And Herman Turgeon V. Her Majesty The Queen, 2016 DTC 1129

January 01, 2016

Facts: L'Amiante's corporate structure was reorganized to facilitate the departure of the taxpayer Mr. Poulin, and to integrate Mr. Hélie into the company. Mr. Poulin, Mr. Turgeon, and Mr. Hélie each incorporated a corporation (Gestion Poulin Gestion Turgeon, and Gestion Hélie respectively). Mr. Poulin sold his 450,004 Class F Preferred shares of l'Amiante to Gesstion Turgeon, and Mr. Turgeon sold his 388,861 Class D Preferred shares of l'Amiante to Gestion Hélie. In denying the capital gains deductions claimed by Mr. Poulin and Mr. Turgeon for 2007 in respect to the sales of their shares in l'Amiante (the "Sales"), the minister is of the opinion that these Sales were not at arm's length and that the proceeds of the Sales realized by each of them constituted deemed dividends pursuant to section 84.1 of the ITA. Mr. Poulin and Mr. Turgeon appealed to the Tax Court of Canada.

Held: Mr. Poulin's appeal was allowed while Mr. Turgeon's appeal was dismissed.

In *R.* v. *McClarty*, 2008 SCC 26, the Supreme Court of Canada set out the following criteria that have been recognized by the courts in establishing a non-arm's length relationship:

1. a single guiding mind directs the negotiations between the two parties to a transaction;
2. the parties to that transaction are acting in concert without separate interests; and
3. there is an effective control in fact being exercised by one party over the other.

Applying these criteria to Mr. Poulin's and Mr. Turgeon's sales of their shares of l'Amiante, the conclusions were that in the sale of Mr. Poulin's 450,004 Class F Preferred shares of l'Amiante, the implicated parties acted independently in their own best interests and not in concert, so that an arm's length relationship existed amongst the parties, and Mr. Poulin was therefore not deemed to have received any dividend under section 84.1.

However, in the sale of Mr. Turgeon's 388,861 Class D Preferred shares of l'Amiante, the parties acted in concert, and were not at arm's length, so that Mr. Turgeon was deemed to have received a dividend under section 84.1, as the minister had contended.

In fact, the reorganization and share transaction was structured in a way to ensure that Mr. Turgeon could eventually claim the capital gain deduction. The Court further affirmed that Gestion Hélie had no benefits in purchasing the shares, which values had been frozen – the only logical explanation would be that there was a fact of control by Mr. Turgeon.

The minister's reassessment of Mr. Poulin was vacated accordingly.

By

Joseph (Hovsep) Takhmizdjian

Expertise

Tax, Business Tax, Tax Disputes & Litigation

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3
T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9
T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2
T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4
T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3
T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.