

Date: 20080604

**Dockets: A-178-07
A-179-07**

Citation: 2008 FCA 203

**CORAM: LÉTOURNEAU J.A.
NOËL J.A.
TRUDEL J.A.**

A-178-07

BETWEEN:

LARRY ST-PIERRE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

BETWEEN:

A-179-07

YVAN LAFONTAINE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held at Montréal, Quebec, on June 4, 2008.

Judgment delivered from the bench at Montréal, Quebec, on June 4, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec, on June 4, 2008)

NOËL J.A.

[1] These are two appeals against two decisions by Justice Tardif of the Tax Court of Canada, who confirmed the assessments issued by the Minister of National Revenue, who under subsection 74.2(1) of the *Income Tax Act* (the Act) reattributed to the appellants the gains realized by their spouses from the sale of some shares.

[2] The judgments were rendered on the basis of a common record, such that the present reasons will dispose of both appeals. The relevant facts are identical in each case and are set out in detail in the decisions under appeal (2007 TCC 89 and 2007 TCC 90).

[3] According to the appellants, Justice Tardif did not consider the fact that the initial transfer of the appellants' shares to their management companies, which shares were later transferred to their respective spouses, took place in the context of a reorganization which was intended to account for their different financial needs.

[4] The appellants essentially argue that with regard to both subsections 74.2(1) and 74.5(6) of the Act, the notion of a "series of transactions", as defined by subsection 248(10) of the Act, should be taken into consideration. This notion presumes the existence of pre-ordained transactions, and according to the appellants, the required intention was not demonstrated before Justice Tardif, as the initial transfer of shares was made for a purpose other than splitting an eventual gain.

[5] As we pointed out at the hearing, the notion of a “series of transactions” does not appear anywhere, neither in subsection 74.2(1) nor in subsection 74.5(6). A reading of these provisions reveals that what is important is the fact that the shares that belonged to the appellant were ultimately transferred to their spouses.

[6] But even if we recognized that intention might be relevant in some circumstances, the burden in that respect was still upon the appellants, and one cannot, on the basis of the record as it stands, exclude the possibility—if not the probability—that, from the outset, the appellants saw an opportunity to split the capital gain inherent in their shares.

[7] The appeals will be dismissed with one set of costs to be shared equally by the appellants.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKETS:

A-178-07, A-179-07

APPEAL FROM TWO JUDGMENTS OF JUSTICE TARDIF OF THE TAX COURT OF CANADA, DATED FEBRUARY 28, 2007, DOCKET NOS. 2004-2219(IT)G AND 2004-2211(IT)G.

STYLE OF CAUSE:

A-178-07

Larry St-Pierre v. Her Majesty the Queen

A-179-07

Yvan Lafontaine v. Her Majesty the Queen

PLACE OF HEARING:

Montréal, Quebec

DATE OF HEARING:

June 4, 2008

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.
NOËL J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY:

NOËL J.A.

DATED:

June 4, 2008

APPEARANCES:

Pierre Bordeleau

FOR THE APPELLANTS

Anne Poirier

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lambert Therrien Bordeleau Soucy
Shawinigan, Quebec

FOR THE APPELLANTS

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT