

Date: 20081028

Docket: A-59-08

Citation: 2008 FCA 332

**CORAM: EVANS J.A.
SHARLOW J.A.
RYER J.A.**

BETWEEN:

ROBERT GLEGG INVESTMENT INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 28, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on October 28, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 28, 2008)

[1] Notwithstanding Counsel's able arguments, we are not persuaded that the Tax Court Judge made any error that warrants our intervention when he found that all of the consideration received by the appellant from General Electric Canada Inc. was for the shares that were sold by the appellant, that the appellant did not give a non-competition covenant to General Electric Canada Inc. and that Mr. Glegg did not request any compensation for the non-competition covenant that he provided. Accordingly, the decision of the Tax Court Judge must be upheld.

[2] The Tax Court Judge determined that it was necessary for him to consider whether paragraph 68(a) of the *Income Tax Act* (1985, c. 1 (5th Supp.)) was engaged in the circumstances, even though he had concluded that all of the consideration received by the appellant was for the shares that it sold. With respect, we do not agree with that analysis. In our view, paragraph 68(a) does not apply where the entire amount of consideration received or receivable by a taxpayer from a person can reasonably be regarded as consideration for the disposition of a particular property, as was the case in the instant circumstances.

[3] Accordingly, the appeal will be dismissed, with costs.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-59-08

**(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA (2008TCC20)
DATED JANUARY 9, 2008, DOCKET NO. 2005-3157(IT)G)**

STYLE OF CAUSE: Robert Glegg Investment Inc.
Appellant
v.
Her Majesty the Queen
Respondent

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 28, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (Evans, Sharlow & Ryer JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Richard G. Fitzsimmons
Joseph Lo Presti
Arnold H. Bornstein

FOR THE APPELLANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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

FOR THE APPELLANT

FOR THE RESPONDENT