

Cour d'appel fédérale



Federal Court of Appeal

Date: 20121105

Docket: A-444-11

Citation: 2012 FCA 279

**CORAM: NADON J.A.
GAUTHIER J.A.
TRUDEL J.A.**

BETWEEN:

SA MAJESTÉ LA REINE

appelante

and

RICHARD LEWIN

intimé

Heard at Montréal, Quebec, on November 5, 2012.

Judgment delivered from the Bench at Montréal, Quebec, on November 5, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on November 5, 2012)

NADON J.A.

[1] We are all agreed, substantially for the reasons given by the Tax Court judge, that the J.J. Herbert family Trust No. 1 resolution of September 11, 2001 whereby the trustees declared that a dividend of \$2,200,003 “be paid” to Mr. J.J. Herbert and that Mr Herbert “shall have the right at any time to require payment of the amount of the dividend by the Trust to himself at any time” did not constitute a credit to Mr. Herbert’s account.

[2] In so concluding, we are not to be taken as endorsing the judge's reasons with respect to subsection 227(5) of the *Income Tax Act*.

[3] Consequently, this appeal cannot succeed and will therefore be dismissed with costs.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-444-11

**APPEAL FROM A JUDGMENT RENDERED BY THE TAX COURT OF CANADA ON
OCTOBER 25, 2011, DOCKET NO. 2009-1192(IT)G.**

STYLE OF CAUSE: Sa Majesté La Reine c.
Richard Lewing

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 5, 2012

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
GAUTHIER J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

Me Pascal Tétrault FOR THE APPELLANT

Me Benoît Bourgon FOR THE RESPONDENT

Me Yves St-Cyr

SOLICITORS OF RECORD:

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Montréal, Quebec

Heenan Blaikie FOR THE RESPONDENT
Montréal, Quebec