Docket: 2013-162(IT)I

BETWEEN:

GORDON H. GRAHAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 16, 2013 at Toronto, Ontario

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Roxanne Wong

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* with respect to the Appellant's 2011 taxation year is dismissed, with costs in the amount of $375 payable to the Respondent, in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario this 20th day of September 2013.

"Patrick Boyle"

Boyle J.

Citation: 2013 TCC 294
Date: 20130920
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BETWEEN:

GORDON H. GRAHAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] The issue in this case is whether the pension adjustment ("PA") provisions applied to reduce the amount that Mr. Graham could contribute to his RRSP in 2011 by the amount of the PA computed by reference to his 2010 year in respect of registered pension plan ("RPP") contributions made in respect of his previous employment.

[2] Mr. Graham started working with AccertaClaim Servicorp Inc. ("Accerta") in June 2001 and he participated in a contributory RPP sponsored by Accerta's owner, the Ontario Dental Association. He was the President and CEO of Accerta.

[3] Mr. Graham's employment was terminated by Accerta in August 2009. The Termination Agreement arrived at between Mr. Graham and Accerta continued his base salary and all benefits except life insurance and long-term disability for a period of 12 months. This included the continuation of accrual of service in the pension plan.

[4] In 2011, Mr. Graham started employment with a new employer, the Auto Sector Retiree Health Care Trust ("asrTrust") under the terms of his employment contract with asrTrust, the trust made an RRSP contribution on his behalf equal to 10% of his base salary of $220,000. The RRSP limit for 2011 was $22,450; however

the PA in respect of the 2010 contributions to Accerta's RPP (if applicable) bring Mr. Graham's limit significantly below $22,000.

[5] The *Income Tax Act* (the "*Act*") provides that a taxpayer's RRSP limit is reduced by the amount of his PA. The amount of the PA is intended to reflect contributions made by an employer and an employee to an RPP in order to avoid any doubling up and exceeding of the RRSP limits. However, the PA is computed by reference to the prior year's RPP contributions. In this case, the PA (determined in accordance with the provisions of the *Act* without regard to Mr. Graham's principal argument below) gave rise to a pension adjustment that reduced Mr. Graham's 2011 RRSP limit below the $22,000 contributed on his behalf to his RRSP by asrTrust. This resulted in taxes being assessed and gave rise to unused RRSP contributions that would be deductible in the future if within future years' RRSP limits.

[6] None of these facts are in dispute.

[7] Mr. Graham advanced two arguments. Firstly, he states that the decisions of this Court in *Emmerson v. Canada*, [1998] 1 C.T.C. 2182 and in *Bussière v. Canada*, [2001] 2 C.T.C. 2005, 2000 DTC 1910 reduce the PA to nil. It is his position that these two cases were decided on the basis that nil is the proper amount of a PA in respect of a prior year if one has ceased to be an employee and member of that plan in the prior year.

[8] Mr. Graham's alternate argument is that his 2010 PA should not reduce his 2011 RRSP limit for to do so would be unfair as the prior year's PA serves as a form of proxy for the current year's expected RPP contributions, and these are not made after membership in the RPP and employment are terminated as in his case.

[9] Both Mr. Graham's arguments are without merit.

[10] The reasons of Justice Sarchuk in *Emmerson* and the reasons of Justice Lamarre Proulx in *Bussière* are very clear. While the facts are generally similar to Mr. Graham's, the important fact upon which both judges expressly relied was the fact that, in each of those two cases, the taxpayers had withdrawn the prior year's RPP contributions from their RPP. For this reason alone the cases conclude on their facts that the PA otherwise determined can not be said to be a benefit accrual which could reasonably be considered to be attributable to the taxpayer's employment in respect of the year since that taxpayer was no longer employed and no contributions existed in the pension plan on their behalf. See paragraphs 15 and 16 of *Bussière*

where after reproducing Judge Sarchuk's paragraphs 6 through 10 in *Emmerson*, Justice Lamarre Proulx writes:

> I come to the same conclusion as that in *Emmerson*: as the Appellant withdrew his contribution from his employer's pension plan in 1996 there was no pension adjustment in respect of a pension plan for that year. [Emphasis added.]

[11] It is abundantly clear to a bright, successful, literate, professional such as Mr. Graham that these two cases clearly and expressly, turned entirely upon the fact that the taxpayers in those two cases, unlike Mr. Graham, had withdrawn the prior year's RPP contributions. It would therefore have been equally clear to him that these cases did not stand for the proposition he sought to advance. He suggested those clear causally connected phrases were *obiter dicta*. It is difficult to imagine that a person who knew what the term *obiter dicta* meant and when and how to use it, could think a judge's stated reason for his or her conclusion was *obiter dicta* and that the *ratio decidendi* was really a different but unstated proposition. All the more so when the judges use words like "as" and "because".

[12] Mr. Graham's alternate argument also clearly fails. It fails first in law because this Court has to apply the provisions of the *Act* as they are written by Parliament and can not overlook applicable provisions based on fairness arguments. His position that the rough justice structure of the PA provisions, which have regard to the preceding year's RPP contributions as a proxy for the current year's, results in an unfairness to him in 2011 when in fact no RPP contributions were made. It is the retrospective nature of the PA in the architecture of the *Act* which he claims works an unfairness in his particular circumstances in 2011. The unfairness he claims is that his excess 2011 contribution will only be deducted in a year he stops making the maximum RRSP contributions which will not happen until after he retires from arsTrust as they make these contributions for him as part of his employment package. This represents, according to him, a lengthy deferral of an RRSP contribution made in 2011 before it becomes deductible.

[13] However, Mr. Graham appears to protest too much given his particular facts. He made a 2001 RRSP deduction in the year he started working at Accerta. Accerta also made RPP contributions on his behalf into its corporate pension plan in 2001, with the result that had the RPP contributions been factored in that same year instead of the following year, his RRSP limit would have been exceeded. However, the PA architecture of the *Act* only looked at 2001 in 2002. That is, it is clear that Mr. Graham made an RRSP contribution in 2001 and benefited from the PA rough justice architecture of using the preceding year's amount of contributions to an RPP as a

proxy for the current year's amount, if I may loosely describe it that way. So, the facts in Mr. Graham's case are quite the opposite when looked at from a fairness or equity point of view. Rather than having been unfairly treated by the PA regime in 2011, he in fact benefited from it, in an almost identical amount, ten years earlier in 2001. I do not doubt that he was well aware of that.

[14] For the above reasons, the appeal is dismissed.

[15] I am satisfied that by proceeding with this informal appeal to Court, however politely and respectfully, but certainly knowing that both of his arguments were vacuous and devoid of merit, constituted an entirely unnecessary proceeding thus delaying the prompt and effective resolution of his tax appeal by way of dismissal. I am awarding costs payable by Mr. Graham to the Respondent in these circumstances in accordance with Rule 10. Costs are fixed in the amount of $375 which is the amount set by Rule 11(*c*) for the conduct of hearing of a half-day or less in length.

Signed at Toronto, Ontario this 20th day of September 2013.

"Patrick Boyle"

Boyle J.

CITATION:	2013 TCC 294
COURT FILE NO.:	2013-162(IT)I
STYLE OF CAUSE:	GORDON H. GRAHAM AND H.M.Q.
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 16, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice Patrick Boyle
DATE OF JUDGMENT:	September 20, 2013

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Roxanne Wong

COUNSEL OF RECORD:

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Name:

Firm:

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