

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 H lie 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

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