

*Federal Court of Appeal*



*Cour d'appel fédérale*

**Date: 20130116**

**Dockets: A-53-12  
A-54-12  
A-58-12**

**Citation: 2013 FCA 11**

**CORAM: NOËL J.A.  
PELLETIER J.A.  
MAINVILLE J.A.**

**Docket: A-53-12**

**BETWEEN:**

**JOSÉ DIAZ**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**Docket: A-54-12**

**BETWEEN:**

**CESAREO LOPEZ**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**Docket: A-58-12**

**BETWEEN:**

**FRED WAGNER**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on January 16, 2013.

Judgment delivered from the bench at Montréal, Quebec, on January 16, 2013.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**

*Federal Court of Appeal*



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**and**

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**Docket: A-58-12**

**BETWEEN:**

**FRED WAGNER**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Montréal, Quebec, on January 16, 2013)**

**NOËL J.A.**

[1] These are three appeals from a decision by Justice Favreau of the Tax Court of Canada (the TCC judge). Justice Favreau confirmed the assessments issued against the three appellants on the ground that the proceeds received by the appellants from a disposition of shares amounted to \$13,750,000 rather than \$9,072,000 as indicated in the contract of sale. In doing so, the TCC judge chose not to accept the price agreed upon between the parties on the ground that, according to his finding of fact, the parties were not dealing at arm's length at the relevant time. He also refused to give effect to an adjustment of the sale price, citing mainly the absence of evidence as to the reason for the payment.

[2] The three appeals were consolidated by an order of Justice Mainville dated March 20, 2012. Pursuant to that order, the reasons that follow dispose of all three appeals. To that end, the

original will be filed in the lead file (A-53-12), and a copy thereof will be filed in the related files (A-54-12 and A-58-12) to serve as reasons therein.

[3] This is a case in which the two issues could have been elucidated through the testimony of the purchaser. In these circumstances, the TCC judge rightly drew a negative inference from the fact that the purchaser did not testify.

[4] Indeed, the circumstances surrounding the sale of the shares are such that there is reason to conclude that the purchaser's testimony would not have supported the appellants' position on either of the issues. In our opinion, the TCC judge was right in concluding as he did.

[5] The appeals are therefore dismissed with one set of costs in the lead case.

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“Marc Noël”

J.A.

Certified true translation  
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:**

A-53-12, A-54-12, A-58-12

**(APPEAL FROM JUDGMENTS OF JUSTICE FAVREAU OF THE TAX COURT OF CANADA DATED JANUARY 18, 2012, DOCKETS 2009-1107(IT)G, 2009-1109(IT)G, 2009-1110(IT)G)**

**STYLES OF CAUSE:**

José Diaz v. The Queen  
Cesareo Lopez v. The Queen  
Fred Wagner v. The Queen

**PLACE OF HEARING:**

Montréal, Quebec

**DATE OF HEARING:**

January 16, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:**

NOËL J.A.  
PELLETIER J.A.  
MAINVILLE J.A.

**DELIVERED FROM THE BENCH BY:**

NOËL J.A.

**APPEARANCES:**

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Vlad Zolia

FOR THE RESPONDENT

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