

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200608

Docket: A-95-19

Citation: 2020 FCA 104

**CORAM: BOIVIN J.A.
GLEASON J.A.
RIVOALEN J.A.**

BETWEEN:

**THE ESTATE OF THE LATE
LAURENCE LEWIN**

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online video conference hosted by the Registry on May 26, 2020.

Judgment delivered at Ottawa, Ontario, on June 8, 2020.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

**BOIVIN J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] The appellant appeals from the January 30, 2019 judgment of the Tax Court of Canada (*per Favreau, J.*), reported at 2019 TCC 21, in which the Tax Court dismissed the appellant's appeal from a reassessment in respect of the terminal tax return of the late Laurence Lewin. In its judgment, the Tax Court determined that there were grounds to reassess beyond the normal

reassessment period pursuant to subparagraph 152(4)(a)(i) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and that the appellant had failed to establish that the Minister's determination of the fair market value (FMV) of the shares in Laurence Lewin Holdings Inc. (Holdings) was incorrect.

[2] In this appeal, the appellant challenges only the second determination and submits that the Tax Court made a palpable and overriding error in failing to accept that the FMV of the shares in Holdings should have been reduced by \$850,428.00 on account of amounts owing under a retirement compensation arrangement (RCA). The appellant premises this assertion in large part on an admission he claims the Crown's witness made during cross-examination, when the appellant contends the witness confirmed that the FMV of the shares in Holdings should have been reduced by \$850,428.00.

[3] Despite the able submissions of counsel for the appellant, I cannot agree for several reasons.

[4] First, when read in context, it is far from clear that the Crown's witness made the clear-cut admission that the appellant claims he made. Second, the testimony of the witness, in any event, would not bind the Tax Court, which was required to determine whether the appellant had discharged his burden of showing that the Minister's FMV calculation was incorrect. Third, there was ample other evidence before the Tax Court to support the conclusion that the appellant's proposed reduction was not appropriate. This included several documents and the evidence given by the appellant's accountant on discovery, all of which indicated that the RCA had been

excluded from the starting point for the FMV valuation and, thus, the amount payable in respect of the RCA did not need to be deducted a second time.

[5] Therefore, the Tax Court did not make a palpable and overriding error in declining to agree with the appellant's proposed FMV reduction, especially bearing in mind that the palpable and overriding error standard is highly deferential and that a palpable error must be an obvious one. (See, for example, *Benhaim v. St- Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352 at paras. 38-39; *South Yukon Forest Corp. v. Canada*, 2012 FCA 165, 431 N.R. 286 (leave to appeal to SCC refused, [2012] S.C.C.A. No. 349, 445 N.R. 400 (note) at para. 46 and *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2017] F.C.J. No. 726 (QL) (leave to appeal to SCC refused, 2018 CarswellNat 2296) at paras. 61-65).

[6] I would accordingly dismiss this appeal, with costs.

“Mary J.L. Gleason”

J.A.

“I agree.
Richard Boivin J.A.”

“I agree.
Marianne Rivoalen J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-95-19

STYLE OF CAUSE: THE ESTATE OF THE LATE
LAURENCE LEWIN v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: BY ONLINE VIDEO
CONFERENCE

DATE OF HEARING: MAY 26, 2020

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: BOIVIN J.A.
RIVOALEN J.A.

DATED: JUNE 8, 2020

APPEARANCES:

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FOR THE APPELLANT

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FOR THE APPELLANT

FOR THE RESPONDENT