

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251027

Docket: A-300-24

Citation: 2025 FCA 193

**CORAM: DE MONTIGNY C.J.
WEBB J.A.
PAMEL J.A.**

BETWEEN:

0808414 B.C. LTD.

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on October 27, 2025.
Judgment delivered from the Bench at Toronto, Ontario, on October 27, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 27, 2025).

WEBB J.A.

[1] This is an appeal from the judgment of the Tax Court of Canada (2024 TCC 99) dismissing the appellant's appeal from the reassessment issued by the Minister of National Revenue for the appellant's taxation year ending September 30, 2012.

[2] The appellant sold its contract manufacturing business (including land, building, machinery and equipment, inventory, pre-paid expenses and accounts receivable) to a corporation with which it was not dealing at arm's length. Both the vendor and the purchaser were indirect wholly-owned subsidiaries of Ralcorp Holdings, Inc.

[3] The reassessment of the appellant related to the determination of the proceeds of disposition under paragraph 69(1)(b) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "Act") for the machinery and equipment (the "Equipment"). The Equipment is depreciable property included in Class 29 for the purposes of the Act.

[4] The relevant parts of section 69 are:

69 (1) Except as expressly otherwise provided in this Act,
...

(b) where a taxpayer has disposed of anything

(i) to a person with whom the taxpayer was not dealing at arm's length for no proceeds or for proceeds less than the fair market value thereof at the time the taxpayer so disposed of it,
...

the taxpayer shall be deemed to have received proceeds of disposition therefor equal to that fair market value;

69 (1) Sauf disposition contraire expresse de la présente loi :
...

b) le contribuable qui a disposé d'un bien en faveur :

(i) soit d'une personne avec laquelle il avait un lien de dépendance sans contrepartie ou moyennant une contrepartie inférieure à la juste valeur marchande de ce bien au moment de la disposition,
...

est réputé avoir reçu par suite de la disposition une contrepartie égale à cette juste valeur marchande;

[5] The parties agree that the fair market value of the Equipment (if it would have been sold on its own) was \$56,490,221. This was the amount that the Minister used as the proceeds of disposition for the Equipment.

[6] The appellant's argument is that the fair market value of the Equipment should be reduced by the estimated amount of the pension and post-retirement obligations (the "pension obligations") assumed by the purchaser (\$8,166,584) since the business was sold as a going concern.

[7] The appellant refers to the decision of the Supreme Court of Canada in *Daishowa-Marubeni International Ltd. v. Her Majesty the Queen*, [2013] 2 S.C.R. 336, in which the Supreme Court found that the vendor of certain forest tenures (that allowed the holder of such tenure to harvest trees on Crown land) did not have to include, in determining the proceeds of disposition of such tenures, the amounts related to the reforestation obligations that were imbedded in the tenures.

[8] The Supreme Court described the reforestation obligation and its impact on the value of the tenures, in contrast to a mortgage, in paragraphs 31 and 32:

[31] The effect of Alberta's scheme is to embed the reforestation obligations into the forest tenure, such that the obligations cannot be severed from the property itself. As such, the reforestation obligations are simply a future cost tied to the tenure that depresses the value of the tenure. A prospective purchaser of the tenure would take into account the income-earning potential of the tenure as well as the expected future costs associated with ownership of the tenure. The existence of reforestation obligations, a future cost that cannot be severed from the tenure, would decrease the amount such a prospective purchaser would be willing to pay; see J. Frankovic, "Supreme Court to Hear Daishowa Appeal — Back to Basics on Basis and Proceeds" (July 12, 2012), CCH *Tax Topics* No.

1205, at pp. 2-3. Here, for instance, the record establishes that Tolko valued the High Level Division's forest tenure at \$31 million less the \$11 million estimated cost of future reforestation obligations. The forest tenure thus had a value of \$20 million. To include the full \$31 million in DMI's proceeds of disposition would disregard the fact that DMI did not have \$31 million of value to sell. Under no circumstances could DMI have received \$31 million for the forest tenure.

[32] This distinguishes the reforestation obligations tied to a forest tenure from a mortgage, which does not affect the value of the property it encumbers. For instance, a property worth \$31 million that is encumbered by a mortgage of \$11 million, despite the mortgage, still has a value of \$31 million....

[9] In the present appeal, the pension obligations were not imbedded in the Equipment, they arose because the vendor had pension obligations to its employees. The vendor also had Equipment that it could sell for \$56,490,221. The principle as set out by the Supreme Court for not including an obligation that is imbedded in an asset in determining the proceeds of disposition for that asset (or in determining its fair market value) is not applicable in this appeal.

[10] The appellant also refers to the comments of the Supreme Court in paragraph 36:

While I need not decide that question on the record before me, I would certainly not foreclose the possibility that obligations associated with a property right could be embedded in that property right without there being a statute, regulation or government policy that expressly restricts a vendor from selling the property right without assigning those obligations to the purchaser.

[11] This comment does not assist the appellant. While the appellant argued that the pension obligations were imbedded in the "business" that was sold, in applying section 69 of the Act, the proceeds of disposition are not determined for the business *per se*, but rather separately for each particular asset comprising the business (the land, building, machinery and equipment, inventory, pre-paid expenses and accounts receivable) that was sold. The pension obligations and any other liabilities or obligations assumed by the purchaser would be part of the consideration paid for the

various assets. Such obligations and liabilities would not reduce the fair market value of the Equipment.

[12] As a result, the appeal will be dismissed with costs.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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