

Docket: 2018-104(IT)I

BETWEEN:

MIREILLE LUNOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 11, 2018, at Vancouver, British Columbia
Before: The Honourable Justice B. Russell

Appearances:

Counsel for the Appellant: Todd Brayer

Counsel for the Respondent: Anna Walsh

AMENDED JUDGMENT

The Appeal from the assessments raised October 22, 2015 and December 3, 2015, under the federal *Income Tax Act* (Canada) for the Appellant's 2012 and 2013 taxation years respectively is allowed, without costs. The 2012 assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the contested **\$32,516.40** dividend in that year (**per the issued T5**) is to be reduced in amount by \$7,000, to instead be **\$25,516.40**. The 2013 taxation year assessment for a **\$14,999.88** dividend (**per the issued T5**) is valid as is.

This Amended Judgment is issued in substitution for the Judgment dated November 30, 2018 to correctly express the dividend amount for each of the 2012 and 2013 taxation years.

Signed at Ottawa, Canada, this 8th day of April 2019.

“B. Russell”

Russell J.

Citation: 2018TCC241

Date: **20190408**

Docket: 2018-104(IT)I

BETWEEN:

MIREILLE LUNOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

FURTHER AMENDED REASONS FOR JUDGMENT

Russell J.

Introduction:

[1] In this Appeal the Appellant Ms. Lunot challenges initial assessments of her 2012 and 2013 taxation years respectively, raised by the Minister of National Revenue (Minister) under the federal *Income Tax Act* (Act). In particular she appeals the inclusion in those consecutive years of dividends in the amounts of **\$32,516.40** and **\$14,999.88** respectively. Ms. Lunot had reported these two dividend amounts in filing her 2013 and 2014 returns, and each of the two appealed assessments was made on an “as filed” basis. Each of the two reported dividend amounts was supported by a T5 statement issued by a British Columbia company, LeGear Pelling Insurance Services Ltd. (LeGear Pelling). Ms. Lunot had been an almost 30% shareholder of LeGear Pelling during the subject taxation years. It was only in 2016 that Ms. Lunot initiated communication with the Minister objecting to these two dividend amounts.

[2] At the hearing two persons testified - Ms. Lunot and Mr. A. Tablotney. The latter, I understood, was another shareholder of LeGear Pelling. Both witnesses had been employees of LeGear Pelling during the subject taxation years. Ms. Lunot was employed as an insurance broker as was, I believe, Mr. Tablotney who also was the manager of LeGear Pelling. As well, Mr. Tablotney’s spouse was the in-house bookkeeper for LeGear Pelling. Unhappy differences developed between these two shareholders resulting in Ms. Lunot leaving LeGear Pelling as both

shareholder and employee in or about 2016. The issue as to the two dividend amounts arose as an aspect of the vigorous dispute between these two persons. This dispute was said by Mr. Tablotney to have arisen because of an unwarranted desire by Ms. Lunot for enhanced income from LeGear Pelling, which apparently Mr. Tablotney strenuously opposed. The dispute led to a series of civil actions brought in B.C. Small Claims Court between Ms. Lunot and LeGear Pelling. They were settled in or about 2016 by a comprehensive agreement which I understand included Ms. Lunot selling her LeGear Pelling shares for an agreed sum, and ceasing her employment at LeGear Pelling.

[3] At the commencement of the hearing Ms. Lunot's counsel moved to amend the Notice of Appeal to add a claim respecting T4'd income for one or both of the subject taxation years. Respondent's counsel opposed the Motion. After an adjournment for Respondent's counsel to obtain instructions as to whether the Respondent could be prepared (this being an informal procedure proceeding) to proceed on the basis of the proposed Amended Notice of Appeal, Respondent's counsel maintained opposition to the Appellant's motion, on the basis lack of time to prepare. Consequently, I denied the motion.

2012 dividend amount:

[4] Turning first to the dividend amount of **\$32,516.40**, T5'd for the 2012 taxation year, the evidence was that a particular \$7,000 payment by cheque dated March 12, 2012 that LeGear Pelling issued to Ms. Lunot had been included by LeGear Pelling both in her 2012 T4 income and as part of the said dividend amount. That is, the one \$7,000 payment had been treated by LeGear Pelling, seemingly unintentionally through deficient bookkeeping, as two payments to Ms. Lunot, each taxable in her hands - a salary payment and a dividend payment. Mr. Tablotney, subpoenaed by each party, conceded this in examination-in-chief (as a hostile witness per agreement of the partner) by Appellant's counsel, upon review of various LeGear Pelling payroll documentation. Thus this \$7,000 may be subtracted from the **\$33,516.40** dividend amount.

[5] The sum of \$5,709.75 also was a portion of this disputed 2012 dividend amount. This is an amount for legal fees billed to Ms. Lunot that LeGear Pelling paid, on her behalf. Ms. Lunot argued that Mr. Tablotney had agreed on behalf of LeGear Pelling to pay the amount for her outright. Mr. Tablotney testified he had only agreed that LeGear Pelling would pay the amount as a personal expense of Ms. Lunot. That is, the amount would be (and was) added to Ms. Lunot's

shareholder loan account, similar to other personal expenses of shareholders, including Mr. Tablotney himself, that LeGear Pelling would pay.

[6] Mr. Tablotney testified that this payment included an interest amount of \$900 or so, because of Ms. Lunot's delay in having the invoice paid, and so why would LeGear Pelling ever agree to pay that interest amount when the invoice had just been brought to the company's attention, other than by charging the paid invoice amount to her shareholder loan account, for reimbursement to the company through declaration of a dividend to Ms. Lunot of that some amount that would be applied against this shareholder loan account amount.

[7] On this evidence I am unable to find for Ms. Lunot, in the absence of any corroborating evidence that LeGear Pelling accepted outright responsibility for the legal fees invoice as opposed to the usual practice of paying a shareholder's personal expense as a convenience while charging the amount paid to the shareholder's loan account to be subsequently cleared by declaration of a dividend.

[8] The disputed **\$32,516.40** dividend further was comprised of three amounts - \$7,000, \$10,000 and \$500. They were shown in LeGear Pelling's payroll records for its fiscal period ending June 30, 2012 as draws made in December 2011 upon Ms. Lunot's shareholder account. Ms. Lunot identified the \$7,000 as 2011 salary, the \$10,000 as a bonus and the \$500 as reimbursement for client gifts.

[9] Mr. Tablotney testified that Ms. Lunot had been given the choice of taking these amounts as salary and bonus income for 2011 (he did not accept the \$500 was for reimbursement for client gifts) and therefore taxable for that taxation year, or alternatively as draws that if not repaid needed to be covered by dividends declared before the end of the following taxation year of 2012. He said she elected the latter, to defer taxation. I question whether the \$500 was a reimbursement for purchase of client gifts, noting the "roundness" of that amount. The evidence of Mr. Tablotney was adduced through questioning of him in chief as a hostile witness by Ms. Lunot's counsel and in cross by Respondent's counsel, after Ms. Lunot already had testified in chief, cross and re-direct. Ms. Lunot's counsel did not thereafter recall her to the stand before closing his case, to test with her Mr. Tablotney's testimony. Given these circumstances, I have essentially no evidentiary basis to find that any of the said three amounts was wrongly included in the subject dividend amount for Ms. Lunot's 2012 taxation year.

[10] Also Ms. Lunot claimed as part of the subject **\$32,516.40** 2012 dividend the amount of \$1,345.48 which she stated was in reality reimbursement of business

expenses. Mr. Tablotney testified that these were personal expenses. But although having been served a subpoena *duces tecum* by the Appellant ordering his presence and that he bring with him all company documentation related to the subject dividends, Mr. Tablotney brought to court no documentation confirming that these were personal and not business expenses. Ms. Lunot provided no corroborating evidence to confirm they were business expenses to be reimbursed. As the basic burden of proof is on the Appellant, I am unable to say that Ms. Lunot discharged that burden, notwithstanding the absence of any documentation on behalf of the Respondent, whether or not through Mr. Tablotney, subpoenaed by both parties.

[11] Also at issue re the subject **\$32,516.40** dividend for 2012 was an amount of \$904.96. Ms. Lunot testified it was a business expense from a trade show. Mr. Toblatney identified it as a personal expense that Ms. Lunot had falsely claimed was a business expense. In support, he testified that at the time, he had made a phone call to confirm whether Ms. Lunot had attended the trade show and was told she had not. So he treated the amount as a personal expense and included the amount in the dividend so that the company would be reimbursed. Again I do not have sufficient evidence from Ms. Lunot to allow me to find this was what she says - a business expense from a trade show.

[12] A closing balance of \$56.21 is left. There was no specific testimony as to it tendered at the hearing. Accordingly, I have no basis to disturb the appealed assessment re same.

2013 dividend amount:

[13] The 2013 taxation year dividend at issue is in the amount of **\$14,999.88**. Ms. Lunot testified that she never received this money. There was no specific evidence adduced by either party concerning this amount. Therefore I find that the appealed assessment should not be disturbed.

Conclusion:

[14] In conclusion the Appeal of the 2012 and 2013 taxation year assessments is allowed, without costs. The 2012 taxation year assessment will be referred back to the Minister for reconsideration and reassessment on the basis that the contested **\$32,516.40** dividend in that year is to be reduced in amount by \$7,000, to instead

be \$26,555.23. The 2012 taxation year assessment for a **\$14,999.88** dividend remains valid as is.

This Further Amended Reasons for Judgment is issued in substitution for the Amended Reasons for Judgment dated December 11th, 2018 to correctly express the dividend amount for each of the 2012 and 2013 taxation years.

Signed at Ottawa, Canada, this 8th day of April, 2019.

“B. Russell”

Russell J.

CITATION: 2018TCC241
COURT FILE NO.: 2018-104(IT)I
STYLE OF CAUSE: MIREILLE LUNOT AND HER MAJESTY
THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: October 11, 2018
REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell
DATE OF JUDGMENT: November 30, 2018
DATE OF AMENDED REASONS FOR JUDGMENT: December 11, 2018

**DATE OF AMENDED JUDGMENT
AND FURTHER AMENDED REASONS
FOR JUDGMENT: April 8, 2019**

APPEARANCES:

Counsel for the Appellant: Todd Brayer
Counsel for the Respondent: Anna Walsh

COUNSEL OF RECORD:
For the Appellant:

Name: Todd Brayer

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada