Docket: 2019-2413(IT)G

BETWEEN:

ELEGANT DEVELOPMENT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 4-5, 2022, at Vancouver, British Columbia

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

Counsel for the Appellant: Katherine Ducey
Counsel for the Respondent: Selena Sit
Zakiyya Karbani

JUDGMENT

WHEREAS the Court has published its reasons for judgment in this appeal on this date;

NOW THEREFORE THIS COURT ORDERS THAT:

1. The appeal with respect to notice of assessment #4564832 dated September 7, 2017 is allowed because the Appellant did not owe a debt to Paragon Developments Inc. on or after January 6, 2017; and,

2. Costs are awarded to the Appellant on a party and party basis in accordance with the relevant provisions of the Tariff, however, either party may make submissions otherwise for consideration by the Court within 30 days of this judgment.

Signed at Hamilton, Canada, this 31st day of August, 2022.

"R.S. Bocock"

Bocock J.

Citation: 2022TCC97
Date: 20220831
Docket: 2019-2413(IT)G

BETWEEN:

ELEGANT DEVELOPMENT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bocock J.

I. INTRODUCTION

[1] In Canada, Her Majesty the Queen (the "Crown") has many tools for collecting taxes owing. One of those tools, section 224 of the *Income Tax Act* RSC 1985, c.1, as amended (the "*Act*"), empowers the Crown to require a disinterested debtor to pay Her Majesty moneys otherwise owing by that debtor to its creditor. The creditor must be a "tax debtor". The disinterested debtor must be liable to pay the money to the tax debtor at the time the debtor receives a requirement to pay ("RTP") or will become indebted within one year. Further, if the debtor fails to pay, the Crown may assess the disinterested debtor for the lesser of the tax debtor's tax liability or the outstanding balance due from the disinterested debtor to its creditor. In short, if A (the tax debtor) owes C (the Crown) tax and B (the disinterested debtor) owes A a debt, then C can require B to pay A's tax debt. However, B must owe A the money at the time B receives the RTP.

[2] In this appeal, the disinterested debtor is the Appellant, Elegant Development Inc. ("Elegant"). Disinterested means uninvolved, indifferent and usually unknowing of the events or circumstances concerning the tax debtor's tax debt to the Crown. The tax debtor in this appeal is Paragon Developments Inc. ("Paragon"). The Crown alleges Elegant owed Paragon $700,000.00 when the Crown issued the RTP to Elegant.

[3] Generally, debtors contest unfulfilled RTP assessments on various bases: there were no moneys to be repaid, the debt for the moneys was extinguished by various means or circumstances, the moneys were not yet due to be re(paid) or the Crown erred in its original assessment of the tax debtor.

[4] In the present appeal, Elegant simply asserts that it was not liable to pay the moneys to Paragon at the time it received the RTP on January 6, 2017 ("the RTP Date"). Elegant believes there are two primary reasons for this. First, Elegant had by the RTP date cumulatively and constructively repaid the tax debtor, Paragon, any amounts owing. Second, a settlement agreement, executed October 31, 2016, four months before the RTP Date, reflected and confirmed the extinguishment of any residual liability of Elegant to Paragon. In short, Elegant's debt to Paragon did not exist as an obligation on the RTP Date or within one year thereafter.

II. FACTS

[5] The following is a summary of the facts discerned by the Court from a partial agreed statement of facts, an agreed book of documents and findings of fact from testimony.

a joint venture is born

[6] Elegant develops, manages and promotes real estate in the lower mainland region of British Columbia. Its principal, Jatinder Singh Minhas ("Mr. Minhas"), became involved with Terry K. K. Lai ("Mr. Lai") and Paragon ("Paragon") in early 2007 concerning development of lands in New Westminister (the "lands"). The plan acknowledged that Paragon owned the lands initially and would contribute them to a joint venture charged with the development of the lands (the "Project"). Legal title to the lands was owned by a BC numbered company ("074"). 074 became a "bare" trustee of the lands. Another company, Queensgate Development Inc. ("Queensgate") was declared beneficial owner, but it, in turn, was trustee for Elegant and Paragon. All this occurred in 2007.

two trustees for the price of one

[7] Elegant and Paragon memorialized their interests in the Project through a joint venture agreement, project management agreement and trust agreements describing the roles of the "bare" and "effective" trustees. The joint venture agreement ("JV Agreement"), dated June 29, 2007, reflected equal, one-half pro rata shares and

responsibilities of Elegant and Paragon to profits, losses, capital requirements and cash flow calls, as the case may be.

Paragon contributes the lands… for a price

[8] At the outset, Paragon contributed the lands it ostensibly owned to the Project. To do so, it needed to be properly paid, credited or otherwise compensated for the contribution of the lands to the Project.

[9] Under the JV Agreement, the lands were valued at 5 million dollars. To pay Paragon (and Mr. Lai) for these lands there were several advances reflected between the relevant parties. As described below, this process necessitated the recording of a $700,000 loan by Paragon to Elegant. This sum became the reflected loan which is subject of the Crown's RTP and consequential assessment (the "Paragon Debt").

Elegant "pays" Paragon for the Condo…overtime…perhaps

[10] The contributions of Elegant to compensate Paragon for the land value occur as follows. The is generally agreed by the parties, unless indicated subsequently in these reasons.

1. July 2007	Cash contribution of Elegant of Paragon	$1,275,000.00 to
2. May 2008	Mortgage advance procured and distributed (Coast Advance: see below)	$1,562,000.00
3. September 2011	Mortgage advance to Mr. Lai (Addendum Advance)	$466,000.00

total paid to Paragon/Mr. Lai to the exclusion of Elegant

[11] Under the advance of May 2008, a surplus of $700,000.00 was paid to Elegant because of an unexplained anomaly concerning the advance of funds. To equalize the contribution which ought to have been equal, a notation was made stating that Elegant has borrowed this sum from Paragon. This computational short hand implicity reflects the fact that the $700,000 ought to have been paid by the mortgagee to Paragon. Instead, it went to Elegant and the still outstanding contribution for the unpaid balance of this "in kind" contribution of the lands by Paragon needed to be recorded.

Mr. Lai had lied

[12] All was not well with the Project. The redevelopment of the lands was snagged in zoning freezes and the Project dragged on and was out of cash. Its mortgagee was unpaid. But this was not the worst of it. Mr. Lai was deceitful. He was not the sole shareholder, director and officer of Paragon as he had told Elegant. There was another participant: Ms. Chan. She had been unceremoniously (and unknowingly) removed as a registered shareholder and officer of 074 by Mr. Lai. True to form in this appeal, Ms. Chan was a trustee "of sorts" for her own sister who, as beneficiary, supplied the critical ingredient to buy the lands initially: cash. Elegant and Mr. Minhas also had no idea of Mr. Lai's deceit.

… then the writs did issue

[13] Upon discovering the lands were now part of a Project and of her ejection from her entitlements to the benefit thereof, Ms. Chan commenced a lawsuit (the "Chan Claim"). Others piled on, as is usually the case. Queensgate and Elegant were in the middle.

[14] On December 2, 2014, Queensgate filed a response to the Chan Claim.

[15] On February 14, 2013, the mortgagee of the Project commenced foreclosure proceedings against the lands.

[16] On June 23, 2014, the Crown registered a judgment against the lands in the amount of $1,000,000 as a result of a tax debt owed by Mr. Lai. This was filed against 078 BC's interest in the lands pursuant to s.160 of the *Act*. As seen below this litigation is still outstanding.

[17] On August 29, 2014, Ms. Chan registered a certificate of pending litigation against the lands, effectively deep freezing the already cold Project.

[18] On July 20, 2015, the lands were sold under foreclosure proceedings commenced by the mortgagee. The net proceeds of sale, $2,506,130.88, were paid into B.C. Supreme Court by the mortgagee, after it took the money owed to it.

the sale of the land was bumpy

[19] Between July 20, 2015, and May 30, 2016, there were legal proceedings in the Supreme Court of British Columbia relating to the foreclosed sale of the lands. These proceedings were resolved by judgment dated May 30, 2016, and the sale was confirmed. It was revealed at trial, through affidavits filed in the BC Supreme Court, that Ms. Chan had opposed the foreclosure sale, while the balance of the parties supported it.

time to be friends ... and divide the cash

[20] On October 31, 2016, Elegant, Queensgate, Paragon, Mr. Minhas, Mr. Lai and Ms. Chan entered into a settlement agreement (the “Settlement Agreement”). At trial, much focus was trained on this document. The critical excerpts follow:

> A. On about July 2015, $2,506,130.88 was paid into court by Addenda Capital Inc. from the proceeds of sale of four properties registered in the name of 0781995 B.C. Ltd. (the "properties") in Vancouver Registry Action No. 1-1130173.
>
> B. The Crown in Right of Canada registered a judgment against the interest of 0781995 BC Ltd. in the properties with respect to a tax debt owed by Lai.
>
> C. Chan commenced an action and filed a CPL against the properties with respect to her claim for a beneficial interest in the properties.
>
> D. Queensgate claims that it was the beneficial owner of the properties prior to the sale of the properties.
>
> E. Queensgate claims that it held the beneficial interest in the properties in trust for Elegant and Paragon in proportion to their contributions to Queensgate.
>
> F. Chan and Lai own the shares of Paragon.
>
> G. Lai has received from Paragon monies in excess of his investment into Paragon, and Chan is owed money from Paragon in excess of $1.1m.
>
> […]
>
> 1. Queensgate will apply to court for a declaration that it was the beneficial owner of the properties from July 2007 until July 20, 2015, when the properties were sold, subject to any claim that Julie Chan has against the properties.
>
> […]

> 3. Chan will agree to support Queensgate's application [to pay the balance of the funds], by taking no position at Queensgate's application as set out in paragraph 1 above.
>
> 4. If Queensgate is successful in having the full amount of the funds paid out from court to Queensgate, they will be paid into the trust account of Campbell Froh May & Rice LLP ("CFMR") on the following terms:
>
> a) Julie Chan will be paid $1,100,ooo in full and final settlement of her claims against Lai, Paragon, Queensgate and the properties;
>
> b) Queensgate shall use the balance of the funds to pay and/or settle the outstanding debts and obligations of Queensgate;
>
> c) Any remaining funds will be paid to Elegant towards repayment of its shareholders loans.
>
> 5. If the Crown is successful in proving a claim to any portion of the funds held in court, such claim will be satisfied first from the funds payable to Elegant, such amount not to exceed $450,000.
>
> 6. Should the Crown's claim be greater than $450,000.00, the balance of such claim will be paid from the shares payable to Chan and Queensgate based upon a pro-rata distribution between Chan and Queensgate calculated upon a 110:95 ratio with Chan as 110 and Queensgate as 95.
>
> 7. Upon receipt of the funds in court, all parties to this agreement will release each other from any and all claims against each other.
>
> 8. This settlement agreement will remain confidential as between Queensgate, Elegant, Minhas, Lai, Chan and Paragon and their respective legal and accounting advisors.
>
> […]

[21] On December 22, 2016, Queensgate, Elegant and Mr. Minhas made application to the Supreme Court of British Columbia in Action No. H130173 for an order, *inter alia*, that the funds paid into court be paid to counsel for Queensgate. The Crown opposed the application to release the funds throughout. No Crown witness appeared nor did counsel offer an explanation why at trial of these appeals. The parties to the Settlement Agreement knew only of the Crown's claim against 078 BC. That section 160 claim relates to 078 BC's receipt of the lands from Mr. Lai for insufficient consideration. 078 BC's defence is that it received the property in trust and not for its own benefit. According to both counsel, the BC Supreme Court will decide that issue of Crown entitlement after this appeal is complete.

there's more arrows in the Crown's quiver

[22] On January 6, 2017, the Minister of National Revenue (the "Minister") served on Elegant a requirement to pay the sum of $1,037,573.66 to the Receiver General.

[23] Elegant takes the position that it was no longer indebted to Paragon as at the date of the Requirement.

certain moneys are paid with the Crown's interest protected

[24] On January 23, 2017, the BC Supreme Court ordered that all but $1,200,000 of the funds in court be paid to counsel for Queensgate. At present, $1,200,000 of the sale proceeds remains in court as security for the Crown's claim.

[25] On September 7, 2017, the Minister assessed Elegant for $700,000, pursuant to subsection 224(4) of the Act in respect of Elegant's alleged failure to comply with the RTP (the "Assessment").

[26] As such, this appeal is now before this Court.

III. LAW

a) Statute Law

[27] the following provisions relevant from the *Act* applicable to this appeal are as follows:

> RTPs – Section 224, subsections (1) and (4). Section 227, subsection (10)
>
> **224 (1)** Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections 224(1.1) and 224(3) referred to as the "tax debtor"), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.
>
> **224(4)** Every person who fails to comply with a requirement under subsection 224(1), 224(1.2) or 224(3) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection 224(1), 224(1.2) or 224(3), as the case may be, to pay to the Receiver General.

227(10) The Minister may at any time assess any amount payable under

> **(a)** subsection 227(8), 227(8.1), 227(8.2), 227(8.3) or 227(8.4) or 224(4) or 224(4.1) or section 227.1 or 235 by a person,
>
> **(b)** subsection 237.1(7.4) or (7.5) or 237.3(8) by a person or partnership,
>
> **(c)** subsection 227(10.2) by a person as a consequence of a failure of a non-resident person to deduct or withhold any amount, or
>
> **(d)** Part XIII by a person resident in Canada,

and, where the Minister sends a notice of assessment to that person or partnership, Divisions I and J of Part I apply with any modifications that the circumstances require.

b) The controlling authorities

[28] Generally, the parties commonly identified or ultimately agreed on the following as an accurate summary of the case law applicable in this appeal. In fact, the closing summary of Respondent's counsel nicely identified the law, generally.

[29] Parliament gave the Crown power to issue RTPs on certain conditions:

a) There is knowledge or a suspicion of a moneys owing;

b) The tax debtor's debtor (the "debtor") is or will be within one year liable to make a payment[1]; and,

c) The amount must be payable immediately or in the future.

[30] If so satisfied, the Minister may issue the RTP on the debtor to pay the Crown directly the tax debtor's liability under the *Act*. The payment is to be forthwith, if the moneys are payable immediately, or in any other case, as and when the moneys otherwise become payable to the tax debtor within the following one year period after the date of the RTP. [2]

[31] If a taxpayer ignores the RTP, subsection 224(4) of the *Act* creates a personal liability on the debtor as a taxpayer for the amount that was required to be paid. In turn and subject to compliance with Section 224, the debtor upon being assessed

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[1] *National Trust Co v R*, 1998 CarswellNat 1081(FCA) ("National Trust") at paragraph 34.

[2] Ibid, at paragraphs 34-35.

becomes liable to the Crown, *qua* taxpayer for the amount the debtor is liable to pay to the ultimate balance of the tax debt.

[32] A request under subsection 224(1) creates a personal obligation on the debtor. The obligation arises the moment the Minister issues the RTP for moneys then due, or otherwise for, the moneys become due to the tax debtor.[3]

[33] Clearly, events between the debtor and tax debtor after to the date of service of the RTP, no matter how they purport to extinguish the debtor's obligation to the tax debtor[4], have no bearing on a debtor's liability under subsection 224(1).

[34] The parties further agree that the critical time to determine Elegant's obligations to Paragon in the present appeal must be measured on or before the RTP Date, January 6, 2017, not after.

[35] The parties agree that if there were no indebtedness owing by Elegant to Paragon on the RTP Date, the Minister could not issue an effective RTP under subsection 224(1) and the appeal shall succeed. The Supreme Court of Canada ("Supreme Court") stated that the person served by the Minister with an RTP must have a responsibility at law to make a payment to the tax debtor. In short, the party must legally be liable as a debtor. The Supreme Court also pursued the obverse entitlement of the creditor. It stated, that "the scope of the operation of Section 224(1) is not narrowly confined, but exists wherever the tax debtor is in a position at law to enforce payment from the party (debtor) served with the RTP. In this appeal, the question is: could Paragon enforce payment against Elegant on the RTP Date? To adopt a more restrictive view of its content undermines the proper functioning of the power the provision grants the Minister".[5]

[36] The Federal Court of Appeal noted that "the ordinary meaning of the word "liable" in a legal context is to denote the fact that a person is responsible at law".[6]

IV. ANALYSIS

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[3] *3087-8847 Québec Inc. v R*, 2007 TCC 302 at paragraph 47.

[4] *De Vries v The Queen*, 2018 TCC 166, at paragraph 65, in *obiter*: a forgiveness that occurred after the RTP was issued had no impact on the debtor's obligation concerning the RTP if there was a liability to pay any amount to the tax debtor. See also *Imperial Pacific Greenhouses Ltd*. v R, 2010 TCC 431 ["*Imperial*"] at paragraph 21, (affirmed on appeal, 2011 FCA 79) where the Court found that when the debt was forgiven by the tax debtor, the debtor was then obliged to pay to the Received General, thus the purported forgiveness cannot subsequently nullify RTP.

[5] *Canada Trustco Mortgage Co. v. R*, 2011 SCC 36 at paragraph 65.

[6] *Imperial*, *supra*, at paragraph 9.

[37] The sole issue remains: was Elegant liable to Paragon for the identified $700,000, or any lesser sum on the RTP Date?

a) The Section 224 Assessment

[38] When the Minister assessed Elegant on September 11, 2017, she did so for $700,000. The parties agree that while the original RTP reflected the entire tax debt of $1,037,573.66, by the RTP Date, the Minister reduced the amount. Deductively, this was so done because the $700,000 Paragon Debt was the only amount Elegant could have been liable to pay to Paragon as of May 7, 2008 (the "Loan Date"). Both parties agree that on the Loan Date the Paragon Debt was owing; Elegant was liable to pay and Paragon could maintain successful a collection action for the Paragon Debt on the Loan Debt. The Project was the sole business relationship between Elegant and Paragon. The parties simply take a different view as to the consequences of the interceding events between the Loan Date and the RTP Date. The refined question is: did those events extinguish the Paragon Debt and symmetrically Elegant's liability to make and Paragon's entitlement to enforce payment of the $700,000.00.

[39] The different conclusions concern two separately identifiable and yet interconnected circumstances:

a) The state, amount and share of the joint venture contributions, cash injections and assumed liabilities for each of Elegant and Paragon (the "JV Accounts");

b) The execution of the Settlement Agreement in October, 2016.

b) Who's on first ... what happened second etc ... someone needs to know

[40] How can such an interpretive disparity arise where only differences in emphasis and consequential effect exist? There was no definitive evidence placed before the Court.

[41] Essential to mapping the contours of such factual landscapes is assessing the credibility and reliability of the documentary evidence and oral testimony concerning the JV Accounts. Also, to the extent of unclear language in the Settlement Agreement, the Court may also assess the surrounding circumstances to glean objective evidence of the facts at the time of contract formation.[7] In this particular appeal, there is no issue of the correctness of the underlying assessment,

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[7] *Creston Moly Corp v. Sattva Capital Corp*, 2014 SCC 53 ["Sattva"] at paragraph 49.

which is derivative, but whether the Paragon Debt, which is a statutory pre-condition to a correct assessment, existed at the RTP Date.[8]

[42] The evaluative framework for analysis of such evidence has been established over the years before this Court within a line of authorities[9]. Generally summarized, where factual issues are in dispute, the testimony of a witness, particularly of a party proffering a version of facts, is subject to a credibility assessment based upon revealed indicia of comparative weaknesses, disparities or gaps. These may be summarized as follows:

(i) inconsistencies arising from different stages or sources;

a) during the witness' own vive voce evidence ("internal");

b) compared with the witness' previous statements ("previous"); or,

c) compared with other conclusive, probable or undisputed findings of fact ("external").

(ii) the demeanour, attitude and/or comportment of the witness ("demeanour");

(iii) the existence of a motive to fabricate or massage evidence ("motive"); and,

(iv) from a practical perspective, the overall tenor of the evidence as improbable ("rational improbability").

(i) The JV Accounts; some factual findings

[43] The determination of the state of the JV Accounts is directly elemental to the creation of the Paragon Debt, in the first instance, and whether it was extinguished through repayment, set-off or otherwise, in the second. The more advanced challenge is evaluating whether the evidence available will afford that determination. Although the documentary evidence before the Court concerning the JV Accounts was not in the usual format of financial statements, cash flow charts and profit/loss statements, information nonetheless existed. And because of the ongoing and past litigation, a great deal was in the form of sworn statements from other public proceedings. On the basis of the oral testimony of Mr. Minhas and Ms. Chan and their affirmed affidavits on the record for almost a decade in those other

[8] This is nuanced but essential difference of fact from *Anand v HMQ*, 2019 TCC 119 ["Anand"] which concerned the determination of whether the taxpayer was in an agency relationship with another party.
[9] *Nichols v HMQ,* 2009 TCC334 at paragraph 22 and 23; cited, *inter alia*, with approval and endorsement in *Gosselin v HMQ*, 2016 TCC 158 at paragraph 25; *Ngai v HMQ*, 2018 TCC 26 at paragraph 108.

collateral BC Supreme Court proceedings, the Court extracts, on balance, that the following likely represent the state of accounts, more or less, for the Project.

[44] The draft balance sheet for the JV Company Queensgate reveals the following changes to liabilities owing to and from to secured, unsecured and joint venturers for years relevant.

	2015	2014	2012	2011	2008	2007
Current: Customer deposits received	-	500,000	-	-	-	
Accounts payable	866,902	812,365	812,467	6,548	-	11,335
Loans payable	150,000 1,016,902	150,000 1,462,365	- 812,467	- 6,548	-	- 11,335
Mortgage	-	3,700,000	3,700,000	3,700,000	3,000,000	-
Due to Terry Lai	159,500	159,500	159,500	159,500	30,000	-
Due to shareholders-Elegant	1,963,621	1,960,727	1,820,827	1,405,227	920,205	1,275,000
Due to shareholders-Paragon	1,021,418 3,144,539	1,024,312 6,844,539	1,021,418 8,701,745	995,418 6,280,145	1,462,337 5,412,542	3,725,000 5,000,000
Retained earnings	(1,517,741)	-	-	-	-	-
	$2,643,700	$8,306,904	$7,514,212	$6,266,693	$5,412,542	$5,011,335

[45] As to the contributions on account of expenses, Mr. Minhas swore previously and confirmed at trial that Elegant had contributed $1,400,000 in cash to cover the Project's expenses such as property taxes, interests and other development costs. By contrast, Mr. Minhas stated that only $175,000 had been contributed by the other Joint Venturer, Paragon or by its ostensible principal, Mr. Lai on Paragon's behalf.

[46] As to advances of mortgages distributed to the joint venturers or their principals, Mr. Minhas, either through his testimony or previously filed affidavits, recounted the following:

1.	May 2008	Capital Mortgage (concurrent with recording of Loan to Elegant by Paragon	1,562,662.59
2.	July 2011	Addenda Capital	466,299.90

[47] As well, Paragon received the cash contribution directly from Elegant in July of 2007 of $1,275,000.

(ii) The Settlement Agreement

[48] The Settlement Agreement is an executed, lawyer drafted document. Beyond that, it is spartan and arises from strained business relationships among business people locked in adverse litigation.

[49] Both Mr. Minhas and Ms. Chan were clear that at the time of the execution of the Settlement Agreement, Paragon and Mr. Lai were owed nothing from anyone. Further, both believed Paragon and Mr. Lai were entitled to nothing because of the moneys Mr. Lai and Paragon received from both of them over the years. This was achieved largely by the non-disclosure and deception of Mr. Lai concerning Ms. Chan's role to Mr. Minhas, and vice versa.

c) The critical facts and sorting out the burden

[50] The ultimate decision of the Elegant's liability to Paragon at the RTP Date is one, which both counsel agree must be settled by viewing the situation in totality. It seems the Minister's agents at the CRA never did so.

[51] The Notice of Confirmation (and there were several other communications to Elegant) simply stated:

> The basis of your objection is that no money is owing to Paragon Development Inc. ("Paragon")
>
> A review of the facts in the documents submitted indicates that:
>
> - A Requirement to Pay was issued to Elegant Development Inc. ("Elegant") dated January 6, 2017, in respect of amounts owing to CRA by Paragon.
> - As per a sworn Affidavit and testimony of the sole shareholder of Elegant, Jatinder Minhas, Paragon issued a loan to Elegant in the amount of $700,000.
> - As per the General Ledger of Queensgate Development Inc. a loan was issued from Paragon to Elegant on May 7, 2008.
>
> You contend that no amounts are owing to Paragon; however, no information has been submitted to support your contentions.

[52] While the confirmation references the affidavit of Mr. Minhas, no reference is made to the Settlement Agreement or the asserted disproportionate cash injections paid by Elegant into the Project, the sole business venture between Elegant and Paragon. Similarly, the Reply does not reference the Settlement Agreement or JV Accounts even though these grounds and facts were raised in the Notice of Appeal.

[53] The Minister in tax litigation gets the benefit of her assumptions until met with a responsive answer which directly assaults the Minister's facts.[10] Quite apart from the analysis needed below to assess the quality and reliability of that evidence, the marshalling of the JV Accounts and the Settlement Agreement by Elegant combined with the averted "eyes" of the Minister, re-balance the scales of this Court's determination to one of what on balance more likely than not occurred.[11] This evidence established a *prima facie* case for Elegant. The Court highlighted this for counsel during submissions.

d) Final analysis and decision

[54] For the following reasons connected to the evidence presented at the trial, the appeal is allowed.

1. The trial and previous evidence of the only witnesses was reliable and consistent

[55] Factually, the evidence of Ms. Chan and Mr. Minhas was consistent, frank and balanced. Ms. Chan was refreshingly disinterested in the outcome, she was adamant that if Paragon or Mr. Lai were owed money, the Settlement Agreement laid that to rest. Similarly, Mr. Minhas, while obviously interested in the outcome of this appeal, convincingly laid out the amounts advanced by Elegant to or for the benefit of Paragon.

2. The Settlement Agreement mentions no Paragon Debt or debt of anyone to Paragon but does of others

[56] The Settlement Agreement exists, was executed and performed by the parties. It is far from a perfect document. It is notably dated before the RTP or hint of the alleged subsisting debt by the Minister of Elegant to Paragon. This gives it a patina of authenticity concerning the view of all parties, including Paragon, of who likely

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[10] *Hickman Motors v. HMQ*, [1997] 2 SCR 356.
[11] *Vine Estate v. HMQ*, 2015 FCA 125 at paragraph 25.

owed what to whom. There is no reference to the Paragon Debt or any debt for the matter owed to Paragon or its principal, Mr. Lai.

[57] There are references to entities being owed or at least claiming sums: Ms. Chan and Queensgate. In fact, what is clear is that Mr. Lai, the principal of Paragon had been overpaid and, at that, most likely by Elegant. Similarly, Mr. Lai and Paragon agree that the priority of repayments upon release of moneys from Court would go to everyone but them: Ms. Chan, Queensgate and then, Elegant. And for what? The repayment of Elegant's (not Paragon's) loans. Logically and implicitly, on October 31, 2016, if the Paragon Debt had subsisted, then more likely than not Elegant's entitlement would have been redirected, reduced or paid on a *pari passu* basis.

3. The JV Account and the Joint Venture cannot be ignored

[58] The JV Accounts and Joint Venture created the Paragon Debt. The Respondent asserts this because of the uneven payment to Elegant rather the Paragon and the parties' attempt to reconcile, as reflected in the JV Accounts. However, when faced with the preponderance of uneven contributions and cash calls by Elegant subsequent to 2008, the Respondent will not accept the reliability of those same accounts and the operative language of the JV Agreement. That agreement clearly requires a pro rata 50/50 sharing of liabilities and contributions, as well as profits. This mechanism extinguished the Paragon Debt.

4. The adverse parties acted without knowledge of the RTP

[59] When the Settlement Agreement was signed, the parties faced the Crown's claim for Mr. Lai's debt in the lands, or more precisely, the proceeds from their sale. The RTP of January 6, 2017 was not yet known. But no matter, the amount paid into Court was larger. And the parties still provided for no payment to Paragon or Mr. Lai. Ms. Chan was to get her money. Queensgate was to get its money to repay its debts. Then, to the exclusion of Paragon (the theoretical creditor to the extent of the Paragon Debt), Elegant was to get the ultimate balance of any moneys. The settlement of all debts in this fashion on this date by written agreement cannot be reconciled with the undocumented assertion that the Paragon Debt still existed. The Court cannot abide that a debt, if still subsisting, would be so easily forgotten or foreborn.

5. The effect of the evidence in total

[60] The Respondent suggests that the Settlement Agreement is executory or precatory in nature; it was an agreement to release claims at a future date or a conditional covenant with a right of recession if no payment occurred. The Court does not agree, or at least, believes this is not relevant to the non-subsistence of the Paragon Debt at October 31, 2016, and thereafter. Moreover, such a position ignores the Supreme Court's refined question: could Paragon collect the Paragon Debt after October 31, 2016? On balance, this is highly unlikely. The Settlement Agreement reflects the entire group's view of who was owed what by whom: Paragon, Elegant and Mr. Lai figure prominently in this question.

[61] The more likely finding of a court if Paragon had sought to collect the Paragon Debt and Elegant resisted, would be that the debt had been extinguished. Perhaps, by agreement. Perhaps, by repayment. But nonetheless, the collection action likely would have been dismissed.

V. CONCLUSION AND COSTS

[62] The appeal is allowed and the result is fair. The Paragon Debt did not exist on January 6, 2017. The Respondent still maintains its action against 078 BC for which judgment, if in her favour, she is fully secured. Now, that litigation may proceed to determine how 078 BC held those moneys.

[63] Costs are awarded to the Appellant on a party and party basis in accordance with the relevant provisions of the Tariff, however, either party may make submissions otherwise for consideration by the Court within 30 days of this judgment.

Signed at Hamilton, Canada, this 31st day of August, 2022.

"R.S. Bocock"

Bocock J.

CITATION:	2022TCC97
COURT FILE NO.:	2019-2413(IT)G
STYLE OF CAUSE:	ELEGANT DEVELOPMENT INC. AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	July 4-5, 2022
REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Randall S. Bocock
DATE OF JUDGMENT:	August 31, 2022

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