F ederal Court of A ppeal Cour d'appel fédérale

Date: 20100929

Dockets: A-338-09
A-339-09
A-340-09

Citation: 2010 FCA 251

CORAM: **NADON J.A.**
SEXTON J.A.
SHARLOW J.A.

A-338-09

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

COLLINS & AIKMAN CANADA INC.

Respondent

A-339-09

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

COLLINS & AIKMAN HOLDINGS CANADA INC.

Respondent

A-340-09

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

COLLINS & AIKMAN PRODUCTS CO.

Respondent

Heard at Toronto, Ontario, on September 29, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on September 29, 2010.

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 29, 2010)

SHARLOW J.A.

[1] The Crown is appealing three judgments of Mr. Justice Boyle of the Tax Court of Canada allowing appeals from assessments under the general anti-avoidance rule ("GAAR") in section 245 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for the 1994 and 1995 taxation years. The issue in these appeals is whether Mr. Justice Boyle erred in concluding that the transactions in issue did not result in a misuse or abuse of the *Income Tax Act*. Having considered the Crown's written and oral submissions, we are not persuaded that Mr. Justice Boyle made any error warranting the intervention of this Court. On the contrary, we agree with his decision, substantially for the reasons he gave (2009 TCC 299).

[2] We have not been persuaded that we should reach a different conclusion based on the Crown's argument, raised for the first time in this appeal, relying on the specific anti-avoidance rule in section 212.1 of the *Income Tax Act* as part of the relevant statutory scheme for determining the

issue of abuse or misuse. We note that Mr. Justice Boyle, at paragraph 105 of his reasons, speculated on whether it could be said that the impugned series of transactions avoided section 212.1 and whether that avoidance was abusive. He concluded that it would not be reasonable to conclude on the facts of this case that the avoidance of section 212.1 was abusive because Collins & Aikman Holdings Ltd. (the corporation referred to as "CAHL") had ceased to be resident in Canada in 1961, long before the series of transactions that grounded the GAAR assessments under appeal, and long before the *Income Tax Act* contained section 212.1. We agree.

[3] Nor are we persuaded that, for the purposes of applying GAAR, the scheme of the *Income Tax Act* should be interpreted effectively to bar a foreign corporation – in this case Collins & Aikman Products Co. (the United States corporation referred to as "Products") – from dealing as it liked with shares of a corporation – CAHL – that was outside the reach of the *Income Tax Act* because, for reasons that have nothing to do with GAAR or the series of transactions upon which the Crown relied in applying GAAR, CAHL was not resident in Canada at the relevant time.

[4] The key provisions of the *Income Tax Act* upon which the Crown now relies to portray the relevant statutory scheme, namely sections 84.1 and section 212.1, were carefully drafted so as not to apply to any sale by Products of its CAHL shares to another corporation, even a related corporation that was resident in Canada. We see no reason to conclude that the limited scope of those provisions was anything other than a deliberate policy choice by Parliament. Therefore, Products having sold its CAHL shares for fair market value consideration, we see nothing abusive about requiring the legal consequences of that sale to be recognized for fiscal purposes and to

govern the Canadian income tax consequences, even though the consideration was not paid in cash and the intended result of the transaction was to put in place a Canadian subsidiary with stated capital and paid up capital equal to that consideration.

[5] For these reasons, these appeals will be dismissed with one set of costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-338-09/A-339-09/A-340-09
(APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE P. BOYLE OF THE TAX COURT, DATED JUNE 3, 2009, IN DOCKET NO. 2006-722 (IT) G)	
STYLE OF CAUSE:	HER MAJESTY THE QUEEN v. COLLINS & AIKMAN CANADA INC. (A-338-09), COLLINS & AIKMAN HOLDINGS CANADA INC. (A-339-09) AND COLLINS & AIKMAN PRODUCTS CO. (A-340-09)
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 29, 2010
REASONS FOR JUDGMENT OF THE COURT BY:	(NADON, SEXTON, SHARLOW JJ.A)
DELIVERED FROM THE BENCH BY:	SHARLOW J.A.

APPEARANCES:

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