Docket: 2009-1110(IT)G

BETWEEN:

FRED WAGNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of *José Diaz* (2009-1107(IT)G) and *Cesario Lopez* (2009-1109(IT)G) on April 26, 27 and 28, 2011, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant:	Daniel Bourgeois
Counsel for the respondent:	Sophie-Lyne Lefebvre Vlad Zolia

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2003, 2004, 2005 and 2006 taxation years are dismissed with only one set of costs.

Signed at Ottawa, Canada, this 18th day of January 2012.

"Réal Favreau"

Favreau J.

Translation certified true
on this 24th day of July 2012.

François Brunet, Revisor

Docket: 2009-1109(IT)G

BETWEEN:

CESARIO LOPEZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of *José Diaz* (2009-1107(IT)G) and *Fred Wagner* (2009-1110(IT)G) on April 26, 27 and 28, 2011, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant:	Daniel Bourgeois
Counsel for the respondent:	Sophie-Lyne Lefebvre Vlad Zolia

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2003, 2004, 2005 and 2006 taxation years are dismissed with only one set of costs.

Signed at Ottawa, Canada, this 18th day of January 2012.

"Réal Favreau"

Favreau J.

Translation certified true
on this 24th day of July 2012.

François Brunet, Revisor

Docket: 2009-1107(IT)G

BETWEEN:

JOSÉ DIAZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of *Fred Wagner* (2009-1110(IT)G) and *Cesario Lopez* (2009-1109(IT)G) on April 26, 27 and 28, 2011, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant:	Daniel Bourgeois
Counsel for the respondent:	Sophie-Lyne Lefebvre Vlad Zolia

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2003, 2004, 2005 and 2006 taxation years are dismissed with only one set of costs.

Signed at Ottawa, Canada, this 18th day of January 2012.

"Réal Favreau"

Favreau J.

Translation certified true
on this 24th day of July 2012.

François Brunet, Revisor

Citation: 2012 TCC 8
Date: 20120118
Dockets: 2009-1110(IT)G
2009-1109(IT)G
2009-1107(IT)G

BETWEEN:

FRED WAGNER, CESARIO LOPEZ, JOSÉ DIAZ,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] These are appeals, heard on common evidence, from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) as amended (the Act), dated May 2007 in respect of each of the appellants' 2003, 2004, 2005 and 2006 taxation years and January 2009 in respect of each of the appellants' 2003 taxation year.

[2] In issue is the tax treatment of a sale of shares of Château Dollard Inc., owner of a senior's residence and the vacant land nearby. Specifically, first, it must be determined whether the amount of $1,050,000 paid by the appellants following the conversion of a sale of assets into a sale of shares must be taken into account in the computation of the proceeds of disposition of the shares and, second, whether the amount of $4,678,000 attributed to a non-competition clause must be added to the proceeds of disposition of the shares.

[3] The three appellants were co-owners in equal shares of Château Dollard Inc. (the shareholders), which operated a senior's residence, know as "Château Dollard."

[4] The shareholders originally intended to proceed with the sale of the assets of Château Dollard Inc. to 4178092 Canada Inc. (4178092 or the purchaser) for

$13,750,000 and, to that effect, entered into an agreement entitled [TRANSLATION] "Asset Purchase Agreement" (the Asset Purchase Agreement) in April 2003.

[5] The Asset Purchase Agreement contained a provision allowing Château Dollard Inc. and its shareholders, in their sole and absolute discretion, to convert the sale of the assets into a sale of shares of Château Dollard Inc. The shareholders then did avail themselves of that provision and, on August 26, 2003, entered into an agreement terminating the Asset Purchase Agreement and, on August 27, 2003, they entered into a Share Purchase Agreement (the Share Purchase Agreement) and they signed a letter of agreement providing for the conversion of the Asset Purchase Agreement into a Share Purchase Agreement (the Conversion Agreement Letter). On August 28, 2003, each shareholder entered into a non-competition agreement with 4178092 in consideration for the payment by 4178092 of the amount of $4,678,000, that is, $1,559,333.33 to each shareholder.

[6] The Share Purchase Agreement stipulates a sale price for the shares of $9,072,000 and an amount of $4,678,000 for the shareholders' non-competition covenants for a total of $13,750,000, that is, the same consideration as the consideration for the sale of assets. Adjustments in the amount $6,605,416 on the purchase price of the shares are also provided for in the contract.

[7] The Minister of National Revenue (the Minister) computed the proceeds of disposition of the shares and the taxable capital gain as follows:

	Total	**Part of each shareholder (33 1/3%)**
Sale price of the shares	$13,750,000	$4,583,333
LESS: adjustments	$6,605,416	$2,201,805
Proceeds of disposition	$7,144,584	$2,381,528
LESS: adjusted cost base and disboursements	$209,235	$69,745
Capital gain	$6,935,349	$2,311,783
Taxable capital gain (50%)	$3,467,674	$1,155,892

[8] The appellants submit that they paid to 4178092 the amount $1,050,000 to convert the sale of the assets of Château Dollard Inc. into a sale of the shares of that same company and filed their respective tax return for the 2003 taxation year reporting the following taxable capital gain:

Part of each

	shareholder (33 1/3%)
Proceeds of disposition	$472,194.90
LESS: adjusted cost base	$50,000,00
disbursements and disposition costs	$19,745.37
Capital gain	$402,449.53
Taxable capital gain	$201,224.76

[9] Each appellant claimed a capital gain exemption for the capital stock of a small business corporation in the amount of $201,225 which was applied against the taxable capital gain, thus reducing the capital gain to zero. The Minister granted the exemption of $201,225, but he applied it against a taxable capital gain of $1,155,892.

[10] Each appellant initially computed an alternative minimum tax in respect of the sale of the shares effected in 2003. Following the issuance of the reassessment for the 2003 taxation year, the Minister computed an alternative minimum tax for each of the appellants' 2004, 2005 and 2006 taxation years.

Conversion of the sale of assets into a sale of shares

[11] The possibility of converting the sale of assets into a sale of shares was provided for in article 10.8 of the Asset Purchase Agreement. This contractual clause essentially stipulated that should Château Dollard Inc. determine that income tax savings could be generated from the completion of the transaction by way of a sale of shares, the purchaser would be entitled to convert the Asset Purchase Agreement into a share purchase agreement for the same purchase price and subject to the same terms and conditions for all the capital stock of Château Dollard Inc. and to equally divide between the purchaser and the shareholders the projected income tax savings.

[12] The parties availed themselves of article 10.8 of the Asset Purchase Agreement and signed a conversion agreement letter whereby the parties undertook to enter into (a) a termination agreement terminating the Asset Purchase Agreement and (b) a Share Purchase Agreement for the same purchase price of $13,750,000 (subject to adjustments) in accordance with the terms of the Asset Purchase Agreement, by making the adaptations necessary to reflect a share purchase transaction. As consideration for the conversion, the shareholders agreed to pay the sum of $1,050,000 (conversion costs) to the purchaser at the closing of the transactions provided for in the Share Purchase Agreement.

[13] The shareholders' obligation to pay to the purchaser the sum of $1,050,000 was fulfilled by means of three cheques of $350,000, each of them drawn on the trust account of Fraser Milner Casgrain s.r.l., LLP, the law firm representing the purchaser, made payable to each of the shareholders and endorsed by the shareholders to Fraser Milner Casgrain in trust. The three cheques were immediately remitted to Fraser Milner Casgrain following the endorsements.

[14] The appellants submit that the sum of $1,050,000 should be subtracted from the purchase price of the shares and they filed their respective tax return for 2003 by deducting said amount from the original proceeds of disposition of $13,750,000. According to the statements made by the appellants in their respective Notice of Appeal, the sole purpose of the transaction was to allow the purchaser to enhance its ability to borrow money so that it could complete the Share Purchase Agreement.

[15] The testimony of Daniel Courteau, tax expert with De Granpré Chait, who was consulted regarding the tax treatment of the payments made in consideration for non-competition covenants, of Ronald Stein, of the firm De Grandpré Chait who represented the shareholders in the transaction, of Pasquale Buffone, the shareholders' accountant, and the testimony of each of the appellants did not shed any light on the mystery surrounding the computation of the sum of $1,050,000 paid to the purchaser by the appellants to carry out the conversion. Mr. Buffone, an accountant, acknowledged that he calculated the tax consequences for the shareholders resulting from a share sale compared to an asset sale and that he orally disclosed the information to Fred Wagner. Seeing as Mr. Buffone was not part of the negotiating team, he did not see the calculations made by the purchaser's accountants. Mr. Buffone acknowledged having consulted with Daniel Courteau to make sure that the payments made under a non-competition clause were not taxable. According to Mr. Stein, the conversion to a share sale was done at the purchaser's request and the amount of the conversion costs was computed by the purchaser's accountants. According to him, the purpose of the transaction was to leave the same amount of money in the shareholders' pockets. None of the purchaser's representatives testified at the hearing to corroborate the computation of the conversion costs and the reason for the transaction and the method of payment used.

[16] Various taxation issues were also mentioned by the witnesses, including the possibility for the shareholders to benefit from the capital gain exemption during the share sale and the possibility for Château Dollard Inc. to avoid the recapture of the depreciation claimed with respect to the assets sold. Conversely, it was mentioned that by acquiring the shares, the purchaser was acquiring depreciated assets, which

would result in the loss of a future tax benefit, that is, the deduction for depreciation on the full value of the acquired assets.

[17] The respondent submits that the sum of $1,050,000 was not paid to 4178092 by the appellants and that, even if that had been the case, the payment of said amount was not made by the appellants for the purpose of effecting a disposition of the shares and should therefore not be considered for the purposes of calculating the capital gain in accordance with paragraph 40(1)(*a*) of the Act.

Non-competition agreements

[18] One of the closing conditions under the Asset Purchase Agreement was that the purchaser had to have received, from Château Dollard Inc., a non-competition agreement under article 5.12 of said agreement, which stipulated for non-competition covenants from Château Dollard Inc. and its shareholders within a 100-mile-radius of the business for a period of five years from the closing date of the transaction.

[19] The Share Purchase Agreement also required, as a closing condition, that the shareholders sign the non-competition agreements meeting the requirements of article 5.10 of said agreement, which were similar if not identical to the requirements of article 5.12 of the Asset Purchase Agreement. However, what set the two articles apart was that, in article 5.10, it was stated that the non-competition covenants had been provided in consideration for payment by the purchaser to each shareholder of the amount of $1,559,333.33, for a total of $4,678,000 (payments for non-competition covenants).

[20] The non-competition agreements were in fact signed by each of the shareholders on August 28, 2003, and the shareholders each received a certified cheque for $1,559,333.33 dated August 29, 2003, in his name, drawn on the trust account of Fraser Milner Casgrain. Each of shareholders acknowledged receipt of the certified cheque for $1,559,333.33, representing all of the payments for the non-competition covenants provided for in the Share Purchase Agreement.

[21] The appellants submit that the amount of $4,678,000 is not taxable when related to the sale of the shares of a corporation owned by private individuals following *Fortino v. The Queen*, 2000 D.T.C. 6060 (F.C.A.), 1997 D.T.C. 55 (TCC) and *Manrell v. The Queen*, 2003 D.T.C. 5225 (F.C.A.), 2002 D.T.C. 1222 (TCC). Said amount cannot be part of the consideration for the disposition of the shares owing to the fact that it was discussed and agreed upon by the shareholders and the purchaser when the Asset Purchase Agreement was signed on or about April 30,

2003. The non-competition agreements were addressed by specific and distinct provisions in both the Asset Sale Agreement dated April 30, 2003, and the Share Sale Agreement dated August 27, 2003. The non-competition agreements are legal and enforceable and the value that was assigned to them was freely negotiated by parties dealing at arm's length.

[22] The respondent submits that no amount was received by the appellants that is attributable to non-competition agreements. The consideration received by the appellants for the sale of their shares is the total amount of $13,750,000 pursuant to subparagraph 40(1)(*a*)(i) of the Act. If the total amount of $13,750,000 is not entirely attributable to the disposition of the shares, the respondent submits that the Court will therefore have to consider the value attributable to the non-competition agreements, which, according to the respondent, is zero.

[23] At the time of the audit, Paul-Alain Drolet, auditor for the Canada Revenue Agency (the CRA), refused to subtract from the proceeds of disposition of the shares the various adjustments totalling $6,605,415.40, including mortgage fees, real estate commissions, municipal and school taxes, termination payments, and payments to the CSST, but agreed to subtract from the proceeds of disposition the amount of $4,678,000 attributable to the non-competition agreements. Following the Notices of Objection filed by the appellants, the appeals officer, Marissa Colaianni, allowed the deduction of the adjustments but added to the proceeds of disposition of the shares conversion costs of $1,050,000 and the amount of $4,678,000 attributable to the non-competition agreements.

[24] The testimony of Daniel Courteau, Ronald Stein, Pasquale Buffone and of each of the appellants did not reveal any information regarding either the attribution of a value of $4,678,000 to the non-competition agreements or the negotiation process in that respect.

[25] Éric Gaudreau, accredited appraiser with the CRA, prepared an estimate of the market value of the senior's residence, Château Dollard, located at 1055 Tecumseh, Dollard-des-Ormeaux, as of April 30, 2003. According to his appraisal report dated May 11, 2010, and filed as Exhibit I-3, the going-concern market value of all of the real rights attributable to the property under review as of April 30, 2003, was $13,400,000. That value was established through the income approach.

[26] Éric Gaudreau also appraised the market value of vacant land located on Thornhill Street, south of Boulevard De Salaberry, Dollard-des-Ormeaux, as of April 30, 2003. It is vacant land with municipal services and reasonably ready to be

developed. A senior's residence (Le Château Royal) was erected on the site in 2006. According to his appraisal report dated May 11, 2010, and filed as Exhibit I-4, the market value of all the real rights attributable to the property under review as of April 30, 2003, was $410,000. That value was established through the direct comparison approach.

[27] Steeve Sahakian, expert in business valuation with the CRA, was mandated to provide an estimate of the fair market value, as of August 28, 2003, of the 150,000 common shares of Château Dollard Inc. as part of a contract of sale involving the disposition of all the shares of the company and including a non-competition clause. In his report dated March 25, 2011, and filed as Exhibit I-5, the appraiser estimated that the fair market value of the common shares of Château Dollard Inc. was between $12,640,000 and $13,765,000 as of August 28, 2003, that is, the mid-point being $13,202,500. The appraiser specified that his report was an estimate of value and not an exhaustive appraisal report.

[28] According to Mr. Sahakian, the tax savings not available to the purchaser of the share capital because the purchaser cannot benefit from an increased capital cost allowance on the fair market value of the assets, rather than on the tax cost of the assets for the seller, is $1,170,000.

[29] Also according to Mr. Sahakian's report, the value of the non-competition clause is between $0 and $125,000. The existence of a five-year non-competition clause in a comparable sale of a senior's residence used by Appraiser Éric Gaudreau for the purposes of his report confirmed that such a non-competition clause had little value in the industry at the time.

[30] For the purposes of determining the proper value to be accorded to the non-competition clause, the appraiser considered the following factors on which he had information:

(a) state of the market and the state of the competition;
(b) barriers to entry in relation to the shareholders' options to compete;
(c) clients' mobility;
(d) labour mobility;
(e) shareholders' financial ability to compete;
(f) the shareholders' age (54, 56 and 68 years old in 2003); and
(g) the shareholders' experience.

Analysis

Conversion costs of $1,050,000

[31] The first issue regarding the conversion costs of $1,050,000 is whether payment of the sum of $1,050,000 by the purchaser is part of the sale price of the shares.

[32] The sale price of the assets of Château Dollard Inc. under the Asset Purchase Agreement was $13,750,000. The Share Purchase Agreement did not result in a change in the purchase price of $13,750,000 (subject to adjustments) and the termination agreement signed on the day following the date of the signing of the Share Purchase Agreement also referred to a purchase price of $13,750.000.

[33] Nowhere in the documentation adduced in evidence is there reference to the fact that the conversion costs of $1,050,000 are part of the adjustments of the sale price of the shares. The amount of $1,050,000 was indeed paid by the purchaser by means of three cheques of $350,000 to each of the shareholders that were immediately endorsed and remitted to Fraser Milner Casgrain.

[34] Article 1564 of the *Civil Code of Québec* provides as follows regarding the payment of a sum of money:

> Where the debt consists of a sum of money, the debtor is released by paying the nominal amount due in money which is legal tender at the time of payment.
>
> He is also released by remitting the amount due by money order, by cheque made to the order of the creditor and certified by a financial institution carrying on business in Québec, or by any other instrument of payment offering the same guarantees to the creditor, or, if the creditor is in a position to accept it, by means of a credit card or a transfer of funds to an account of the creditor in a financial institution.

[35] In *Piché v. Canada*, [1993] F.C.J. No. 510, Létourneau J.A. of the Federal Court of Appeal made the following comments at pages 3 and 4 of his judgment regarding a payment by cheque and the acceptance of a cheque by the payee:

> The applicant received the cheque on December 27, 1990, and undoubtedly accepted it as payment. The steps he undertook the same day to have it put into his bank account are evidence of this. The applicant seems to believe, wrongly, that there was no acceptance of the payment so long as the money had not been credited to his account. Unless there are special circumstances, payment by cheque constitutes

> payment, even though it is subject to a resolutory condition, and the payment is then presumed to be made at the point when the cheque is received by the payee. . . .
>
> . . .
>
> Acceptance of a cheque by its payee is, contrary to what the applicant believes, a different step from the banking operation by which monies are deposited to the credit of the bearer. In this case, the applicant could, for example, have endorsed the cheque he had received and accepted to the order of a third party, and the money would then never have been deposited to his credit. And yet there would be no doubt that he would then be presumed to have received payment of the monies that were owing to him and to have accepted that payment.

[36] The acceptance of the cheques by the shareholders and their endorsement to pay another obligation, namely, the sharing of tax benefits, show without a shadow of doubt that the shareholders received payment of the monies that were owing to them and that they accepted such payment.

[37] The second issue regarding the conversion costs of $1,050,000 is whether payment of sum of $1,050,000 by the shareholders is deductible in the computation of their income or for the purpose of computing the capital gain realized when the shares were sold.

[38] The endorsement of the cheques by the shareholders and the remittance of said cheques to Fraser Milner Casgrain were for the purpose of paying an obligation, namely, the sharing of tax benefits obtained by the shareholders as part of the sale of their shares. There was a genuine payment of a monetary obligation by the shareholders. The purchaser did not wish to lower the purchase price of the shares to take into account the sharing of tax benefits. There was no compensation on the sale price of the shares.

[39] Although the transaction by which the shareholders endorsed and remitted the cheques to the purchaser resulted from the share sale, it nevertheless constitutes a separate and distinct transaction from the actual share sale. The nature of the transaction resembles a form of compensation which the shareholders provided the purchaser with for the loss of future tax benefits.

[40] The evidence did not show how the amount of $1,050,000 was determined, nor how the amount of $1,050,000 was used by the purchaser as the purchaser did not testify at the hearing.

[41] Payment of the amount of $1,050,000 can neither be regarded as deductible in computing the shareholders' income as said amount was not expended for the purpose of gaining or producing income from a business or property, nor deducted for the purpose of computing the capital gain realized by each of the shareholders at the time of the sale of the shares of Château Dollard Inc.

Payments for non-competition covenants

[42] The non-competition agreements that were signed by the shareholders are not part of a subterfuge or a sham. However, there is no evidence that the parties engaged in earnest and meaningful negotiations with respect to the value of the non-competition covenants and the allocation of the purchase price.

[43] At the time they entered into the Asset Purchase Agreement, the parties were unrelated and were dealing with each other at arm's length. However, I highly doubt that, at the time of conversion of the Asset Purchase Agreement into a Share Purchase Agreement, the parties could have been deemed as dealing with each other at arm's length, considering the fact that the parties were working together and had a common interest, that is, that of minimizing as much as possible the tax consequences of the transaction and to divide among them the tax saving on the projected income. An unfavourable inference must be drawn from the purchaser's absence as it would have been able to provide the Court with important evidence such as the status of negotiations as to the value of the non-competition covenants and the allocation of the purchase price between the shares and the non-competition covenants. In my opinion, the rule to be applied in such circumstances is that a Court must presume that such evidence would adversely affect the appellants' case.

[44] In the Asset Purchase Agreement, the purchase price was $13,750,000, no value was attributed to the non-competition covenants and no adjustment was provided for in the purchase price with respect to the non-competition covenants.

[45] The value attributed to the non-competition covenants in the Share Purchase Agreement of $4,678,000 is suspicious as it represents approximately 30% of the total purchase price of the shares whereas the annual net income of the business whose value is preserved by said non-competition covenants was only $450,000, that is, approximately $2,500,000 over five years. The value attributed to the non-competition covenants appears to be clearly unreasonable in the circumstances.

[46] According to Mr. Sahakian's report, the value of the non-competition clause was between $0 and $125,000. That value is, furthermore, indirectly supported by the appraisal reports of Éric Gaudreau that the market value of the Château Dollard residence was $13,400,000 and that the market value of the vacant land was $410,000, that is, a total of $13,810,000 and by Mr. Sahakian's estimate of the fair market value of the common shares of Château Dollard Inc. which was $13,202,500.

[47] The estimates of the fair market value of the assets of Château Dollard, of the shares of Château Dollard Inc. and of the non-competition clause referred to in the preceding paragraph were not contested by the appellants and the appellants provided no reasonable evidence that the fair market value of the shares of Château Dollard Inc. was only $9,072,000.

[48] The estimate of the value of the non-competition clause shows that said value cannot be regarded as being additional consideration to the disposition of the shares of Château Dollard Inc. and must necessarily be part of the proceeds of disposition of the shares for sale under subparagraph 40(1)(*a*)(i) of the Act, which reads as follows:

> **General rules**
>
> **40.** (1) Except as otherwise expressly provided in this Part
>
> (*a*) a taxpayer's gain for a taxation year from the disposition of any property is the amount, if any, by which
>
> (i) if the property was disposed of in the year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

[49] As the Federal Court of Appeal stated in *Robert Glegg Investment Inc. v. Canada*, 2008 FCA 332, 2009 D.T.C. 5009, there is no need to turn to paragraph 68 (*a*) of the Act where the entire amount of consideration received or receivable by a taxpayer from a person can reasonably be regarded as consideration for the disposition of a particular property, namely the shares sold in this case.

[50] Paragraph 68(*a*) of the Act reads as follows:

> 68. Where an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer or as being in part consideration for the provision of particular services by a taxpayer,
>
> > (*a*) the part of the amount that can reasonably be regarded as being the consideration for the disposition shall be deemed to be proceeds of disposition of the particular property irrespective of the form or legal effect of the contract or agreement, and the person to whom the property was disposed of shall be deemed to have acquired it for an amount equal to that part; and

[51] It should be specified here that the legislative provisions adopted following the press release issued on October 7, 2003, by the Department of Finance Canada (release 2003-049), namely, section 56.4 and paragraph 68(*c*), which have the effect of rendering payments received in consideration for the non-competition covenants taxable, are not applicable in this case as the Share Purchase Agreement and the non-competition covenants were signed before October 7, 2003.

[52] For these reasons, the appeals are dismissed with only one set of costs.

Signed at Ottawa, Canada, this 18th day of January 2012.

"Réal Favreau"

Favreau J.

Translation certified true
on this 24th day of July 2012.

François Brunet, Revisor

CITATION:	2012 TCC 8
COURT FILE NOS.:	2009-1110(IT)G 2009-1109(IT)G 2009-1107(IT)G
STYLE OF CAUSE:	Fred Wagner, Cesario Lopez, José Diaz and Her Majesty the Queen
PLACE OF HEARING:	Montréal, Quebec
DATES OF HEARING:	April 26, 27 and 28, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATE OF JUDGMENT:	January 18, 2012

APPEARANCES:

Counsel for the appellant:	Daniel Bourgeois
Counsel for the respondent:	Sophie-Lyne Lefebvre Vlad Zolia

COUNSEL OF RECORD:

For the appellant:

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