

Docket: 2020-825(GST)I

BETWEEN:

COLMVEST HOLDINGS CORPORATION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on March 23 and April 13, 2022, at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Agent for the Appellant: Roman Raskin

Counsel for the Respondent: Janice Liu

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**JUDGMENT**

The appeals of the reassessments of the Appellant's reporting periods from April 1, 2014 to June 30, 2015 are dismissed.

Signed at Ottawa, Canada, this 28th day of June 2022.

“David E. Graham”

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Graham J.

Citation: 2022 TCC 70  
Date: 20220628  
Docket: 2020-825(GST)I

BETWEEN:

COLMVEST HOLDINGS CORPORATION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Graham J.

[1] The Appellant is a holding company. During the Appellant's quarterly reporting periods from April 1, 2014 to June 30, 2015, the Appellant claimed various input tax credits. The Minister of National Revenue denied certain of those input tax credits. The Appellant appealed the denial of \$47,592 in input tax credits relating to legal fees incurred by the Appellant.

[2] The legal fees arose from arbitration between the Appellant and the other shareholder of a corporation called 443307 Ontario Inc. regarding the distribution of dividends from 443307.

[3] The Appellant did not incur the legal fees for consumption, use or supply in its own commercial activities, but rather in respect of 443307. Normally, this would prevent the Appellant from claiming input tax credits in respect of the legal fees. However, the Appellant argues that subsection 186(1) of the *Excise Tax Act* entitles it to claim those fees.

[4] In order to claim input tax credits under subsection 186(1), a registrant must meet a number of different requirements. For the purposes of these appeals, the key requirement is that the Appellant must have been related to 443307. The Appellant submits that it was related to 443307. I disagree.

## **A. Related**

[5] The word “related” is defined in subsection 126(2) of the *Excise Tax Act*. That subsection states that persons are related to each other if they are related to each other for the purposes of the *Income Tax Act* by reason of subsections 251(2) to (6) of that Act. Therefore, the key question that I must determine is whether the Appellant and 443307 were related to each other under subsections 251(2) to (6) of the *Income Tax Act*. I find that they were not.

## **B. De Jure Control**

### Control by a Corporation

[6] Under subparagraph 251(2)(b)(i), a corporation is related to the person who controls the corporation. For the purpose of subsections 251(2) to (6), control means *de jure* control. The Appellant owns 25% of 443307. A corporation named Quorum Facilitate Inc. owns the other 75%. Looking purely at these shareholdings, one would conclude that Quorum has *de jure* control of 443307.

### Unanimous Shareholder Agreement

[7] The Appellant points to what it says was a unanimous shareholder agreement of 443307. In *Duha Printers (Western) Ltd. v. The Queen*,<sup>1</sup> the Supreme Court of Canada held that a unanimous shareholder agreement should be considered when determining who has *de jure* control of a corporation.

[8] Subparagraph 251(5)(b)(i) of the *Income Tax Act* states that, where a person has a right under a contract, either immediately or in the future and either absolutely or contingently, to acquire shares of a corporation, the person shall be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time. The Appellant argues that section 3.2 of the unanimous shareholder agreement gave the Appellant a right of first refusal to purchase Quorum’s shares in the event that Quorum received a *bona fide* offer from a third party. The Appellant submits that this right is the type of right contemplated by subparagraph 251(5)(b)(i). Therefore, the Appellant says that, for the purposes of subsection 251(2), it must be considered to have owned all of the shares of 443307.

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<sup>1</sup> [1998] 1 SCR 795.

[9] The Respondent says that the unanimous shareholder agreement did not cover 443307. The agreement was drafted to cover a number of different corporations. It was unclear whether 443307 was one of those corporations. I do not have to decide whether it was or not.

[10] The evidence indicates that to the extent that the unanimous shareholder agreement was intended to cover 443307, the parties routinely acted as if it did not apply. It appears that none of the governance provisions requiring unanimous consent was ever followed. In fact, I heard no evidence that would convince me that any aspect of the agreement was ever complied with.

[11] There was no evidence to indicate that the right of first refusal provisions in section 3.2 ever became operative. Therefore, I have no way of knowing whether the parties to the unanimous shareholder agreement considered themselves bound by section 3.2 or whether they would simply have ignored it as they did the governance provisions.

[12] In the circumstances, I am not prepared to find that section 3.2 of the agreement gave the Appellant any rights. As a result of this finding, I do not have to decide whether a right of first refusal of the type found in section 3.2 is a right contemplated by subparagraph 251(5)(b)(i) and I decline to do so.

#### Control by a Group

[13] Under subparagraph 251(2)(c)(i), two corporations can also be related if they are controlled by the same group of persons. To determine whether this is the case, I need to look at the shareholdings of the Appellant and Quorum.

[14] The Appellant is wholly owned by William Meany. Therefore, Mr. Meany controls the Appellant. Quorum is wholly owned by an individual named John Regan. Therefore, Mr. Regan controls Quorum.

[15] Even if I assume that Mr. Regan and Mr. Meany are a group of persons that controls 443307, that same group did not control the Appellant so the Appellant and 443307 are not related by virtue of subparagraph 251(2)(c)(i).

#### Control by a Related Group

[16] Subparagraph 251(2)(c)(iii) makes two companies related if one is controlled by one person and that person is related to any member of a related group that controls the other corporation.

[17] The Appellant is controlled by one person, Mr. Meany. However, even if I assume that Mr. Regan and Mr. Meany are a group of persons that controls 443307, I cannot conclude that they are a related group.

[18] A related group is defined in subsection 251(4) as a group, each member of which is related to every other member of the group. Mr. Meany and Mr. Regan are not related by blood or marriage. Therefore, the Appellant and 443307 are not related by reason of subparagraph 251(2)(c)(iii).

### **C. De Facto Control**

[19] In the alternative, the Appellant argues that it had *de facto* control over 443307. I do not have to decide whether this is true or not. In the *Income Tax Act*, the words “controlled, directly or indirectly in any manner whatever” signal that I am to consider *de facto* control. These words are used in the associated corporation provisions in section 256 and are defined in subsection 256(5.1). Those words do not appear in subsections 251(2) to (6). Those subsections only deal with *de jure* control. *De facto* control does not apply to those subsections and thus does not apply for the purposes of subsection 126(2) of the *Excise Tax Act*.

### **D. Conclusion**

[20] In summary, I find that the Appellant was not related to 443307. Since this condition for the application of section 186 was not met, the Appellant cannot rely on that subsection to claim input tax credits in respect of the legal fees. I do not need to decide whether the Appellant met any of the other conditions in section 186.

[21] Accordingly, the appeals of the reassessments of the Appellant’s reporting periods from April 1, 2014 to June 30, 2015 are dismissed.

Signed at Ottawa, Canada, this 28th day of June 2022.

“David E. Graham”

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Graham J.



CITATION: 2022 TCC 70

COURT FILE NO.: 2020-825(GST)I

STYLE OF CAUSE: COLMVEST HOLDINGS  
CORPORATION v. HER MAJESTY THE  
QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 23 and April 13, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Graham

DATE OF JUDGMENT: June 28, 2022

APPEARANCES:

Agent for the Appellant: Roman Raskin  
Counsel for the Respondent: Janice Liu

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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