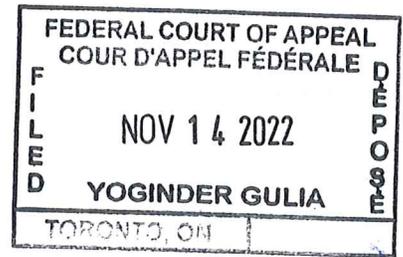


Court File No.: A-237-22

FEDERAL COURT OF APPEAL



BETWEEN:

HIS MAJESTY THE KING

Appellant

and

LIBERTY STREET MANAGEMENT INC.

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

November 14, 2022

**YOGINDER GULIA
REGISTRY OFFICER
AGENT DU GREFFE**

Issued by: _____
(Registry Officer)

Address of local office: 180 Queen Street West, Toronto, Ontario, M5V 3L6

TO: LIBERTY STREET MANAGEMENT INC.

c/o

Mark Tonkovich
Blake, Cassels & Graydon LLP
Commerce Court West
199 Bay Street, Suite 4000
Toronto, ON
M5L 1A9

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order of The Honourable Justice Dominique Lafleur of the Tax Court of Canada (the “**Motion Judge**”) dated November 1, 2022 (the “**Order**”) in the matter of *Liberty Street Management Inc. v H.M.K.*, 2022 TCC 127 (court file no: 2021-588(GST)G) by which the Motion Judge granted an interlocutory motion of striking two specific subparagraphs of the Crown’s reply to the notice of appeal.

THE APPELLANT ASKS that this Honourable Court allow this appeal with costs in this Court and that the Order be set aside, with this Court granting the order that should have been given at the Tax Court, that the respondent’s motion to strike be dismissed with costs to the appellant in the aggregate lump sum of \$6,000.00 for this matter and for the matters of *Adboss, Ltd. v H.M.K.*, 2022 TCC 125 (court file no: 2021-586(GST)G) and *Bluecove Management Ltd. v. H.M.K.*, 2022 TCC 126 (court file no: 2021-587(GST)G), payable forthwith and in any event the cause.

THE GROUNDS OF APPEAL are as follows:

1. the Motion Judge made a reviewable error by incorrectly identifying and applying the legal test for striking pleadings, and specifically:
 - a. the Motion Judge made an error of law in holding that the location of a company’s central management and control are matters of mixed fact and law and so could not be included as an assumption of fact made by the Minister pursuant to paragraph 49(1)(d) of the *Tax Court of Canada Rules*. Central management and control of a corporation is a question of fact and can be pleaded as such pursuant

to paragraph 49(1)(d) of the *Rules*; and

- b. alternatively, even if the question of central management and control is a matter of mixed fact and law, the Motion Judge made an error law in holding that the Minister's conclusion on the question of central management and control could not be pleaded pursuant to paragraph 49(1)(d) of the *Rules* where the constituent elements of the Minister's conclusion were also pleaded as assumptions of fact;
2. such further and other grounds as counsel may advise and this Honourable Court may allow.

November 14, 2022

**Cheung,
Tony**

Digitally signed by
Cheung, Tony
Date: 2022.11.14 07:32:
01-05'00'

ATTORNEY GENERAL OF CANADA

Department of Justice
Ontario Regional Office
National Litigation Sector
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Fax: 416-973-0180

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michael.ezri@justice.gc.ca

Counsel for the Appellant

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

HIS MAJESTY THE KING

Appellant

and

LIBERTY STREET MANAGEMENT INC.

Respondent

NOTICE OF APPEAL

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Counsel for the Respondent

I HEREBY CERTIFY that the above document is a true copy of the
original issued out of / filed in the Court on the _____
day of NOV 16 2022 A.D. 20_____
Dated this _____ day of NOV 16 2022 20_____
