



NOTICE OF APPEAL

Court File No.: A-134-22

FEDERAL COURT OF APPEAL

BETWEEN

ASTRO CONSULTING INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL

(pursuant to subsection 27(1.2) of the Federal Courts Act)

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 Federal Court of Appeal 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 the Federal Court of Appeal in Edmonton, Alberta.

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 341A 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 judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B 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 613-996-6795) 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.

JUN 24 2022

ORIGINAL SIGNED BY
CHARLOTTE TORGERSON
A SIGNÉ L'ORIGINAL

Issued by: _____
(Registry Officer)

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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 JUN 24 2022 A.D. 20 _____

Dated this _____ day of JUN 24 2022 20 _____



CHARLOTTE TORGERSON
REGISTRY OFFICER
AGENT DU GREFFE

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of Justice S.K. D'Arcy of the Tax Court of Canada (the "**Tax Court**") dated May 27, 2022 dismissing the Appellant's appeal from the Respondent's reassessment of the Appellant's 2012, 2013, and 2014 taxation years. The judgment referenced is *Astro Consulting Inc. v. H.M.T.Q.*, 2022 TCC 51 and the docket number is 2018-1052(IT)G.

THE APPELLANT ASKS that:

1. The appeal be allowed and the judgment of the Tax Court of Canada be set aside on the forgoing basis with costs in this honourable Court and the Tax Court of Canada;
2. The reassessments of the Appellant's 2012, 2013, and 2014 taxation years be vacated, varied, or referred back to the Minister for reconsideration and redetermination on the basis that all or part of income from the Appellant's business is not income from personal services business;
3. This Court make such further and other order as it may consider just in the circumstances.

THE GROUNDS OF APPEAL are as follows:

INCOME EARNED BY THE APPELLANT FROM LANMARK

1. The Tax Court erred in that it failed to observe a principal of natural justice, procedural fairness, failed to follow the *Income Tax Act*, *Tax Court of Rules (General Procedure)* or otherwise erred in fact or law in finding that the income earned by the Appellant from Lanmark Petroleum Holdings Inc. ("**Lanmark**") was income from a personal services business as:
 - a. The reassessments issued by the Respondent to the Appellant were issued on the basis that the income earned from Lanmark Engineering Inc. ("**Engineering**") was income earned from a personal services business carried on by the Appellant. The Respondent did not reassess the Appellant on the basis that income earned from Lanmark was income earned from a personal services business carried on by the Appellant;
 - b. In her Reply, the Respondent assumed that the Appellant's specified shareholder, Aaron Glazier ("**Glazier**"), provided services to Engineering and its clients as an incorporated employee of Engineering and, as such, the Appellant carried on a personal services business with respect to those services provided to Engineering. In her Reply, the Respondent did not assume that Glazier provided services to Lanmark as an incorporated employee of the Appellant and, as such, did not assume that the Appellant carried on a personal services business with respect to any services provided to Lanmark;

- c. During the hearing of the appeal before the Tax Court, there was no evidence that Glazier provided services on behalf of the Appellant to Lanmark. Further, the Respondent assumed in her Reply that the Appellant “participated in profit sharing of Lanmark Engineering’s parent company, Lanmark Holdings” and made no assumptions regarding any services provided to Lanmark by Glazier. The Tax Court refused to accept the Agreed Statement of Facts filed jointly by the Appellant and Respondent which also stated that the income earned by the Appellant from Lanmark was “profit sharing”. As such, in finding that the income earned by the Appellant from Lanmark was paid in consideration for services provided by Glazier to Lanmark, the Tax Court made an erroneous finding of fact made in a perverse or capricious manner with regard for the material before it; and,
- d. During the hearing of the appeal before the Tax Court, the Minister did not assume, nor was there any material evidence put forward, that Glazier would reasonably be regarded as an officer or employee of Lanmark, but for the existence of the Appellant. As such, in finding that Glazier would be reasonably regarded as an officer or employee of Lanmark, the Tax Court made an erroneous finding of fact made in a perverse or capricious manner with regard for the material before it.

ASSOCIATION: DE FACTO

2. The Tax Court erred in law in its application of the “*de facto* control” standard provided for in subsection 256(1) of the ITA in concluding that the Appellant and Lanmark were not associated.
3. The Tax Court erred in mixed fact and law by failing to find that the agreements between (a) the shareholders’ of the Appellant (b), the Appellant, Lanmark, Engineering, and their shareholders, and (c) the financial influence of Lanmark and Engineering over the Appellant resulted in Lanmark, or its shareholders, did not result in Lanmark controlling the Appellant directly, indirectly, or in any manner whatsoever. As a result, the Tax Court erred by failing to find that those corporations are therefor excluded from assessment as a personal services business under paragraph (d) of its definition by virtue of their association.
4. The Tax Court also erred in law by failing to consider facts relevant to the *de facto* control standard and placing emphasis on matters irrelevant to this standard.

ASSOCIATION: DEEMED

5. The Tax Court erred in law in its interpretation of subsection 256(2.1) of the *Income Tax Act* in finding that the Appellant and Lanmark were not associated.
6. In particular, the Tax Court erred by applying a subjective standard (whether one of the main reasons for the existence of two corporations was to reduce taxes payable) in preference to the legislated objective standard (whether “it may reasonably be considered” that one of the main reasons for the existence of two separate corporations was to reduce taxes payable).

7. In addition, the Tax Court erred in law in its application of subsection 256(2.1) of the ITA in concluding that the lack of reliable subjective evidence from the Appellant's director was determinative of what could be considered to be the reasons for the separate existence of the Appellant and Lanmark.
8. The Tax Court erred in law by placing emphasis on matters irrelevant to the statutory test in subsection 256(2.1) of the ITA. In particular, the Tax Court erred in law in its application of subsection 256(2.1) of the ITA by placing undue emphasis on the fact that Lanmark existed prior to the incorporation of the Appellant.

ASSOCIATION: OTHER PRIVATE CORPORATIONS

9. Should this Court allow this appeal and vacate, vary, or refer the matter back to the Minister of National Revenue on the basis that the Appellant's business was not a personal services business, in whole or in part, the Appellant submits that subsection 125(2) of the ITA has no application as the Minister failed to assume or otherwise prove that Lanmark and Engineering were Canadian-controlled Private Corporations.

CONSTRAINING AND INTERRUPTING ARGUMENTS OF APPELLANT'S COUNSEL

10. The Tax Court failed to observe a principal of natural justice and denied the Appellant procedural fairness when, during the re-opening of argument on March 1, 2022, the Tax Court judge (a) frequently interrupted and interfered with Appellant's counsel while he was making submissions on material issues in dispute and (b) constrained or otherwise prevented or limited arguments being raised by counsel for the Appellant. The actions unfairly interfered with, or otherwise limited, the Appellant's right to contest the reassessments issued by the Minister.

FACTS AND ONUS

11. The Tax Court erred in that it failed to observe a principal of natural justice, procedural fairness, failed to follow the *Income Tax Act, Tax Court of Rules (General Procedure)* or otherwise erred in fact or law in that:
 - a. The Tax Court erred by refusing to follow the facts agreed by the parties;
 - b. The Tax Court erred in law by improperly placing the onus on the taxpayer to prove one or more facts that had been assumed by the Minister of National Revenue; and,
 - c. The Tax Court made findings of fact without basis in the evidence, and findings contrary to the evidence and facts agreed between the parties, which made in a perverse or capricious manner with regard for the material before it.

June 24, 2022

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

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