

Court File No.:

**FEDERAL COURT OF APPEAL**

BETWEEN:

**KEYSTONE RV COMPANY,**

Appellant,

and

**HIS MAJESTY THE KING,**

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 Ottawa, 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.

Date: January 12, 2024

Issued by:

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(Registry Officer)

Address of local office:

Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> Floor  
Ottawa, ON K1A 0H9

TO: HIS MAJESTY THE KING  
Department of Justice (Canada)  
300, 10423 – 101 Street NW  
Edmonton, AB T5H 0E7

Shalene Curtis-Micallef  
Deputy Attorney General of Canada

Attention: Mary Softley / Tigra Bailey  
Counsel for the Respondent

**APPEAL**

THE APPELLANT APPEALS to the Federal Court of Appeal from an interlocutory order of The Honourable Justice Ronald MacPhee (the “**Tax Court Judge**”) of the Tax Court of Canada (the “**Tax Court**”) dated December 22, 2023 by which the Appellant’s motion for judgment under section 170.1 of the *Tax Court of Canada Rules (General Procedure)*, SOR/988a (the “**Rules**”) in the Tax Court of Canada Appeal *Keystone RV Company v His Majesty the King* (Tax Court of Canada Docket No. 2019-2692(GST)G), was dismissed with costs, and the Respondent’s motion to amend his Reply under section 54 of the Rules was granted, with costs in the cause. The Appellant hereby appeals the Tax Court’s decision and order.

THE APPELLANT ASKS this Honourable Court to:

1. give the decision that should have been given by the Tax Court which should have been to:
  - a. grant the Appellant’s motion pursuant to section 170.1 of the Rules, allow the Appellant’s appeal before the Tax Court, and vacate the assessments in dispute;
  - b. dismiss the Respondent’s motion under section 54 of the Rules to amend his Reply;
  - c. order the Respondent to pay the Appellant’s costs before the Tax Court both with respect to the Appellant’s section 170.1 motion and the Respondent’s section 54 motion; and
  - d. in any event, order the Respondent to pay the Appellant its costs incurred and thrown away in respect of its Appeal to the Tax Court;
2. order that the Respondent pay the Appellant its costs of this appeal; and
3. make such further and other orders as this Honourable Court concludes are just in the circumstance.

THE GROUNDS OF APPEAL are as follows.

1. The assessments in dispute were raised based on false assumptions – assumptions that the Minister knew were dishonest and incorrect at the time of making the assessments, and assumptions which the Respondent now admits four years later were false. The Tax Court erred by failing to properly review and consider all of the evidence before it, and in particular, failing to review and consider the Affidavit of Kerry Peel or the transcript of the cross-examination of Jamie Verville, and as a consequence failed or refused to make relevant findings of fact.
2. In dismissing the Appellant's motion for judgment under section 170.1 of the Rules, the Tax Court erred in applying the proper legal test to the facts, and erred in concluding that:
  - a. Section 170.1 was not the proper rule for determining whether assessments raised on patently and admitted false assumptions at the time of assessment were valid;
  - b. There was no clear admission by the Respondent eliminating the controversy; and
  - c. There was still significant controversy in the issues under appeal.
3. In allowing the Respondent's motion to amend his pleadings under section 54 of the Rules, the Tax Court erred in concluding that:
  - a. The Respondent's proposed amendments did not constitute the Minister appealing his own reassessment; and
  - b. The Respondent was entitled make the amendments sought to his Reply pursuant to subsection 298(6.1) of the *Excise Tax Act*, RSC 1985, c E-15.
4. Even if the Tax Court did not err in permitting the Respondent to amend his Reply, the Tax Court erred in awarding costs in the cause and in failing to

award costs to the Appellant for the Appellant's actual out-of-pocket costs incurred to date and thrown away as a consequence of the Respondent raising assessments based on knowingly false assumptions in February 2018 and only admitting they were false in November 2022 while concurrently seeking to amend his Reply to raise seven completely new assessments, each with six completely new issues.

The Appellant requests the Tax Court of Canada to send a certified copy of the following material that is not in the possession of the Appellant but is in the possession of the Tax Court of Canada to the Appellant and to the Registry:

- A. The Order of The Honourable Justice Ronald MacPhee dated 22 December 2023; and
- B. Transcripts of the hearing of the interlocutory motions before the Tax Court held on December 15, 2023, including for certainty, the oral reasons for judgment of The Honourable Justice Ronald MacPhee.

The Appellant proposes that the hearing of this appeal take place in any of the following centres (in order of preference):

1. Ottawa, Ontario
2. Calgary, Alberta
3. Toronto, Ontario

DATED in the City of Calgary, in the Province of Alberta, this 11<sup>th</sup> day of January, 2024.

*evelyntang*

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Counsel for the Appellant

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