Court of Appeal for Saskatchewan
Docket: CACV4195

Citation: *Friedrick v Kelturn Drywall Ltd.*, 2024 SKCA 54
Date: 2024-05-22

Between:

Steven Friedrick

Appellant
(Plaintiff/Applicant)

And

Kelturn Drywall Ltd.

Respondent
(Defendant/Respondent)

And

Dean Kelso, Carole Kelso and Gordon Lang

Non-parties
(Defendants/Respondents)

Before: Kalmakoff, McCreary and Drennan JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Madam Justice McCreary
In concurrence: The Honourable Mr. Justice Kalmakoff
The Honourable Madam Justice Drennan

On appeal from: QBG-RG-00837-2020 (Sask KB), Regina
Appeal heard: September 12, 2023

Counsel: Virgil Thomson for the Appellant
David Barth for the Respondent

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McCreary J.A.

I. INTRODUCTION

[1] This appeal turns on the interpretation of a retirement compensation plan.

[2] Steven Friedrick was an employee of Kelturn Drywall Ltd. [Kelturn]. In 2011, Kelturn established a retirement compensation arrangement for employees [RCA], within the meaning of s. 248(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp). Mr. Friedrick, along with five other employees, opted to participate in it.

[3] In 2012, 2013 and 2014, Mr. Friedrick directed that his annual bonus from Kelturn be contributed into the RCA. When Mr. Friedrick's employment with Kelturn was terminated in 2017, he sought to have the monies that had been contributed to the RCA paid out to him. At that time, he learned that Kelturn had made no contributions to the RCA on his behalf, other than the bonuses paid into the RCA between 2012 and 2014.

[4] Mr. Friedrick took the position that the terms of the RCA required Kelturn to make contributions into the RCA on his behalf over and above the payment of employee bonuses. He argued that Kelturn's failure to do this breached the terms of the RCA and, accordingly, he commenced an action against Kelturn. Mr. Friedrick then brought an application for summary judgment in the Court of Queen's Bench (now Court of King's Bench) seeking judgment for what he alleged are the lost RCA contributions.

[5] The Chambers judge denied Mr. Friedrick's application for summary judgment and dismissed his claim, finding that Kelturn did not have an obligation to contribute to the RCA over and above the payment of Mr. Friedrick's bonus when he requested it: *Friedrick v Kelturn Drywall Ltd.* (21 April 2023) Regina, QBG-RG-00837-2020 (Sask KB) [*Chambers Decision*].

[6] Mr. Friedrick now appeals from the *Chambers Decision*, arguing that the Chambers judge erred in various ways. For the reasons that follow, I would dismiss the appeal.

II. FACTS

[7] Mr. Friedrick began working as a drywaller with Kelturn in January of 2005. Effective November 1, 2011, Kelturn established the RCA. Section 248(1) of the *Income Tax Act* defines a retirement compensation arrangement as follows:

> **[R]etirement compensation arrangement** means a plan or arrangement under which contributions … are made by an employer … of a taxpayer … to another person … (… referred to as the "custodian") in connection with benefits that are to be or may be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by the taxpayer, the retirement of the taxpayer or the loss of … employment of the taxpayer ….

[8] The November 1, 2011 document laid out the purpose of the RCA, two separate sets of definitions for terms used, and key provisions of the RCA plan including, among other things: eligibility for enrolment; contributions; benefit options upon termination of employment; general plan benefits; benefits on death or disability; the right to cease contributions; and funding and administration [RCA Plan Text].

[9] Thereafter, a corresponding trust [RCA Trust] was established with Kelturn as settlor, with beneficiaries being "Participants" as defined in Schedule A to the RCA Trust Agreement, and with the following trustees: Dean Kelso, president of Kelturn; Carole Kelso, bookkeeper of Kelturn; and Gordon Lang, an actuary whose firm, GBL Inc., was engaged by Kelturn to establish the RCA.

[10] Sometime between late fall of 2011 and early 2012, Mr. Kelso offered Mr. Friedrick and five other employees of Kelturn the opportunity to participate in the RCA. Within the same period, Kelturn arranged for financial advisor, Greg Lipoth, to present a PowerPoint slide deck to explain the RCA to those employees. Mr. Kelso also attended and provided some commentary.

[11] On December 16, 2011, Mr. Kelso executed Schedule A to the RCA Trust Agreement, which named Mr. Friedrick and five other employees of Kelturn as Participants within the meaning of the RCA Plan Text. This had the effect of making Mr. Friedrick a named beneficiary of the RCA Trust.

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[12] Kelturn provided Mr. Friedrick with a participation agreement, which Mr. Friedrick executed on January 12, 2012 [Participation Agreement]. The Participation Agreement consisted of two short paragraphs, the relevant portion of which stated:

> I agree to become a participant of the [RCA], to be bound by the terms and conditions as set forth in the Trust Agreement and Plan Text and, if required under the terms and conditions of the Plan, to have my employer deduct my personal contributions at source from my income.

[13] None of the terms "Trust Agreement", "Plan Text", or "Plan" were defined in the Participation Agreement. Mr. Friedrick did not, at that time, review the RCA Trust Agreement or the RCA Plan Text.

[14] The RCA plan is composed of the terms of the Participation Agreement, the RCA Trust Agreement and the RCA Plan Text. When I refer to these three documents collectively in this decision, I have called them the RCA Contract. In their materials, the parties have referred to the RCA Plan Text as the "RCA", the "RCA Agreement" or the "RCA Plan", while the Chambers judge used the term "RCA Agreement". However, as I will discuss, it is important to distinguish between the three documents which make up the RCA Contract.

[15] After the RCA Contract became effective, each year at bonus time, Mr. Kelso verbally advised Mr. Friedrick of his bonus amount and asked whether Mr. Friedrick wanted to have his bonus paid directly to him or contributed to the RCA. For each of the three years from 2012 to 2014, Mr. Friedrick elected to divert his bonus to the RCA. The exact amount of each of these bonuses was not established by the evidence before the Chambers judge, but the parties agree it was approximately $35,000 in each of those years.

[16] Mr. Friedrick reviewed the RCA Trust Agreement and the RCA Plan Text for the first time on July 24, 2017.

[17] On November 3, 2017, Mr. Friedrick's employment with Kelturn was terminated without cause.

[18] On November 8, 2018, Mr. Friedrick received a distribution from the RCA of $53,677.96, from which income tax was deducted in the amount of $16,103.36. On January 21, 2020, Mr. Friedrick received a further distribution from the RCA of $37,173.41, from which $11,152.02

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was withheld for income tax. One ensuing point of dispute between the parties concerned whether Mr. Friedrick's distributions should have been subject to 70% vesting. That dispute was resolved by a settlement agreement and is not at issue in this appeal; Kelturn admitted in its factum that Mr. Friedrick's allocation should have been vested at 100%.

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[19] Mr. Friedrick has calculated that the total value of the RCA allocated to him, at the time it was distributed, was $129,787.67.

III. THE *CHAMBERS DECISION*

[20] The Chambers judge began his analysis by noting that the summary judgment application turned on an interpretation of the RCA Plan Text. He identified the following provisions as being critical to determining whether Kelturn was required to make additional contributions on behalf of its employees to the RCA, beyond the annual bonuses:

> **ARTICLE 3. CONTRIBUTIONS TO RCA PLAN**
>
> 3.1 **Participant Contributions**. Participants may be required to contribute to the RCA Plan by the Company in such amounts as are required under their Employment Contract, subject to a Certificate signed by an Actuary. Such contributions by a Participant shall vest immediately in such Participant. In order to be deductible by the Participant for income tax purposes pursuant to paragraph 8(1)(m.2) of the Income Tax Act (Canada), the total amount contributed for the year by a Participant to the RCA Plan cannot exceed the amount contributed in the year by the Company for such Participant.
>
> 3.2 **Company Contributions**. During each RCA Plan Year or following each Anniversary Date, the Company is required to allocate contributions on behalf of each Participant, in such amounts and at such times as determined by the Company, subject to a Certificate signed by an Actuary.
>
> …
>
> **ARTICLE 7. RIGHT TO CEASE CONTRIBUTIONS TO THE RCA PLAN**
>
> 7.1 The Company may permanently cease making contributions to the RCA Plan at any time. In that event, the Company Contributions made will not be returned to the Company, but rather will remain in the Trust Fund until such time as they are paid to the Participants, or designated Beneficiaries as retirement benefits.
>
> 7.2 In the event of the termination of the RCA Plan, the Company will make all contributions required by the terms of the RCA Plan up to the date of termination of the RCA Plan.
>
> 7.3 In the event of the termination of the RCA Plan, the Company will provide each affected Participant with a written statement of the benefits and options available to such Participant following the cessation of contributions by the Company to the RCA Plan.

ARTICLE 8. FUNDING AND ADMINISTRATION OF THE RCA PLAN

…

8.2 **Funding**. The RCA Plan is financed by Company Contributions, and, if required under Section 3.1, by Participant Contributions.

[21] In addition, the Chambers judge identified that the following provisions in the RCA Trust Agreement were important:

D. **AND WHEREAS** the RCA Plan requires the Company to pay contributions into trust to fund the plan benefits and the Company agrees to transfer to the Trustees the sum of $__________ as an initial contribution and to remit to the Receiver General the sum of $__________ as the applicable Refundable Tax (as defined in Section 1.1 of this Agreement) under the Income Tax Act (as defined in Section 1.1 of this Agreement) in respect of such initial contribution.

…

G. **AND WHEREAS** contributions are to be made by the Company in connection with benefits that are to be or may be received or enjoyed by the Participant on, after or in contemplation of a substantial change in the services rendered by the Participant …

…

1.1 **Definitions.** In this Agreement, including the recitals, the following terms mean:

…

"Contribution" means the amount or amounts, net of Refundable Tax, remitted by the Company from time to time to the Trustees for inclusion in the Trust Fund.

…

3.1 **Contributions to the Trust Fund**. The Company shall make Contributions to the Trustees from time to time as required under the provisions of the RCA Plan. With each Contribution, the Company shall certify to the Trustees that it has remitted to the Receiver General under the Income Tax Act the applicable Refundable Tax in respect of such Contribution. … For purposes of reporting under the Income Tax Act, each Contribution plus the Refundable Tax withheld therefrom and remitted to the Receiver General under the Income Tax Act shall constitute the Company's contribution under a retirement compensation arrangement.

[22] Relying on these provisions, the Chambers judge determined that the RCA Contract did not impose an obligation on Kelturn to contribute to the RCA beyond contributing an employee's annual bonus at their request. He concluded that the RCA was created as a tax deferral vehicle and that the terms of the RCA Contract, and specifically, the RCA Plan Text, did not oblige Kelturn to contribute to the RCA over and above the payment of an employee bonus into the RCA. He also relied on evidence from the PowerPoint presentation which described the RCA. The Chambers judge concluded in his decision as follows:

[29] If the intention of the RCA investment vehicle was to increase each employee's after tax income while reducing Kelturn's employment expense it is illogical to suggest

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> that the parties intended Kelturn would pay twice as much in bonuses to its employees, which would be the practical effect of the plaintiff's contention.
>
> [30] There is no question in my mind, particularly considering the PowerPoint presentation, that the RCA Investment was created as a means to defer income taxes on bonus payments to the plaintiff. The parties entered into the RCA Agreement with the intent that declaring a bonus in any year was in Kelturn's discretion and whether the bonus would be invested in the RCA investment, to take advantage of the tax deferral, was left up to each employee. Considering the circumstances surrounding the formation of the RCA Agreement and the terms of the RCA Agreement itself I conclude that Kelturn did not have an obligation to contribute to the RCA Investment over and above the payment into the RCA investment of employee bonuses as requested by the employees themselves.

[23] He therefore dismissed the summary judgment application and Mr. Friedrick's claim, concluding that, pursuant to the RCA Contract, Kelturn did not owe Mr. Friedrick any additional monies beyond what already had been distributed to him from the RCA.

IV. ISSUES

[24] Mr. Friedrick's appeal raises the following issues:

(a) Was the RCA Contract a standard form contract?

(b) Did the Chambers judge err in his interpretation of the RCA Contract?

[25] Kelturn has also argued that Mr. Friedrick's claim was barred by a limitation period. However, this question was not considered by the Chambers judge and, given the outcome of this appeal, there is no need to consider the issue further.

V. ANALYSIS

A. The RCA Contract and standard of review

[26] The dispute between the parties in this appeal turns on the Chambers judge's interpretation of the RCA Contract. The standard of review that this Court applies to his interpretation depends on whether the RCA Contract is a standard form contract. If the RCA Contract is a standard form contract, then the standard of review of the Chambers judge's interpretation of it is correctness; otherwise, absent an extricable question of law, the standard of review is palpable and overriding error. The parties disagree as to whether the RCA Contract is a standard form contract.

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[27] As I will explain, it is my view that the Chambers judge's interpretation of the RCA Contract was correct. As such, while Mr. Friedrick has raised the issue of whether the RCA is a standard form contract, it is not necessary to determine that question because – even if the correctness standard of review is applied – the Chambers judge did not err.

B. The Chambers judge did not err in his interpretation of the RCA Contract

[28] Mr. Friedrick argues the Chambers judge erred in his interpretation of the RCA Contract and specifically erred in law by failing to apply the foundational principles of contractual interpretation, including but not limited to placing undue emphasis on the extrinsic evidence of Mr. Lipoth's PowerPoint presentation.

[29] With respect, I do not agree.

[30] In my view, this appeal turns on the interpretation of the word "Contribution" in the RCA Plan Text. Kelturn remitted to the RCA amounts corresponding to a bonus to which Mr. Friedrick was entitled, based on Mr. Friedrick's own election, and that amount came to be held in trust for Mr. Friedrick. The question is whether this contribution was a "Participant Contribution" or a "Company Contribution" under Article 3 of the RCA Plan Text. As I will explain, the Chambers judge correctly considered it to be a "Company Contribution".

[31] As the parties have observed, the terms "Participant Contribution" and "Company Contribution" are not defined in the RCA Plan Text. The term "Contribution" is defined in the RCA Trust Agreement as "the amount or amounts, net of Refundable Tax, remitted by the Company from time to time to the Trustees for inclusion in the Trust Fund", but that definition does not assist in determining the question at hand because the RCA Plan Text does not adopt it. On the contrary, each of the RCA Plan Text and the RCA Trust Agreement sets out its own, separate definitions of terms, each in a section that specifies its application to only that document. For example, in the RCA Plan Text, Article 1.1 refers specifically to definitions "[i]n this RCA Plan text", while Article 1.1 of the RCA Trust Agreement also states that its definitions are specific to "this Agreement".

[32] Mr. Friedrick's proposed interpretation of "Contribution" is, in a sense, understandable. With some frequency, retirement savings plans such as employee group RRSPs or group pension plans contemplate that a participating employee may elect to make contributions, deducted from his or her income at source, with the employer required to match some specified portion of those contributions. Mr. Friedrick argues in his factum that the way his bonuses were diverted to the RCA "is no different than when there is an employee pension and there are deductions from the employee pay cheque to fund the employee's contributions". Moreover, Mr. Friedrick relies on the point that the contributions in question were his own funds.

[33] Words in an agreement are normally interpreted according to their "natural" or "ordinary" meaning, and courts regularly refer to standard dictionary definitions (John D. McCamus, *The Law of Contracts*, 3d ed (Toronto: Irwin Law, 2020) at 817). Although the Chambers judge did not refer to a dictionary definition, I observe that the *Oxford English Dictionary Online* (Oxford University Press, 2023) defines the noun "contribution" as, "Something given to a common stock or fund" and relatedly defines the verb "contribute" as, "To give or furnish along with others to a collective stock". From these definitions, the "contributor" may well be interpreted as the person with the clearest property right to the portion of the common fund which corresponds to the contributed sum at issue. The analysis would not change if the contribution was remitted by an agent on behalf of that person. At least as it relates to the word "contribution", viewed in isolation, this would appear to align with the interpretation Mr. Friedrick has put forward.

[34] However, I take a different view.

[35] In the RCA Plan Text, rather than taking the meaning of "contribution" from other forms of employee retirement arrangements, and rather than defining the word as it is commonly understood, it is my view that the parties have "created their own dictionary". As a consequence, the distinction between "Company Contributions" and "Participant Contributions" in the RCA Plan Text is based on which party remits the amount in question into the RCA Trust and consequently deducts that amount from its taxable income. This becomes clear when the RCA Contract is read as a whole, including the manner in which it interacts with the corresponding provisions of the *Income Tax Act*.

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[36] Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis, 2020) at §3.7.1 [Hall], notes that there are two ways in which parties may use a term differently than how it would be used ordinarily. The first is to expressly define the term in the contract (which did not occur here). The second manner has been referred to in the jurisprudence as the parties "creating their own dictionary" and is determined from a reading of the contract as a whole. Hall writes, "The result of giving effect of the parties creating their own dictionary is very similar to that which occurs when there are expressly defined terms" (at §3.7.3). To provide an example, Hall cites *I.T.T. Industries of Canada Ltd. v Toronto Electric Commissioners*, [1981] OJ No 53 (QL) (Ont CA) at para 12, where a dispute arose from a party's attempt to eliminate a summer discount provided for in a contract for service, and the Court read the contract as a whole as clearly creating a distinction between the words "basic rates" and "rates".

[37] Although the phrase "create their own dictionary" is not used frequently in the jurisprudence, the concept was endorsed by this Court in *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36, 12 CCLI (6th) 1 [*Mosten*]. In that case, the trial judge had cited Hall and acknowledged that parties may adopt their "own dictionary", but ultimately considered that the contractual term at issue, "premium", was better interpreted based on a dictionary definition (*Mosten Investment LP v Manufacturers Life Insurance Company (Manulife Financial)*, 2019 SKQB 76 at paras 147–148, 94 CCLI (5th) 206). This Court reversed that determination, stating, "we find that the standard dictionary definitions of premium does not capture the full meaning of that word as it is used in the context of [the universal life insurance policy at issue]" (*Mosten* at para 129). The Court based this on the text of the policy document itself, not on a factual matrix specific to the parties (see paras 131–132).

[38] Turning to the appeal at hand, the stated purpose of the RCA Plan Text is to provide "Benefits to Participant(s) which are intended to supplement their retirement income". As the Chambers judge said, the mechanism to accomplish this was meant to "get employee bonuses into employee hands on a tax deferred basis" (*Chambers Decision* at para 28).

[39] The benefit of the overall arrangement from Kelturn's perspective, without considering its tax consequences, is limited to employee retention achieved through the vesting schedule at Article 3.3 of the RCA Plan Text. The RCA Contract contemplates no material prospect that

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Kelturn itself would receive distributions out of the RCA. That can only occur if certain "Company Contributions" were made on behalf of a Participant whose employment terminated such that those amounts had not fully vested, and only if Kelturn was unable to reallocate those amounts to other Participants (RCA Plan Text, Article 3.4). Relatedly, the RCA Trust Agreement explicitly limits the use of the RCA Trust to the purposes of the RCA and to the benefit of employee Participants (RCA Trust Agreement, Articles 3.2 and 3.3).

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[40] In terms of the mechanics of the arrangement, whenever Kelturn remitted an amount under the RCA, those monies came within the control of the RCA's trustees, or "custodians", as defined by the *Income Tax Act*. The trustees are consequently required to pay a tax, typically 50% of the contributed amounts, which is eventually refunded by the Minister. In practice, and as affirmed in the affidavits of the RCA trustees, Mr. Kelso and Ms. Kelso, during the relevant period that refundable tax was remitted directly by Kelturn to the Minister rather than passing through the hands of the trustees (RCA Trust Agreement, Article 3.1). Pursuant to the *Income Tax Act*, a distribution out of the RCA Trust concomitantly triggers an eventual repayment of the associated refundable tax.

[41] The benefit to Mr. Friedrick, as a Participant, was that his bonuses were taxed on a deferred basis. In each of the three years from 2012 to 2014, Mr. Friedrick's annual bonus amount was not included in his taxable income from employment, and in 2018 and 2020 the distributions to Mr. Friedrick out of the RCA were taxable as income.

[42] Remembering that the RCA was established under the *Income Tax Act*, it is helpful to consider the applicable tax consequences in slightly more detail. For its part, upon the initial contributions, Kelturn remitted each bonus amount to the RCA while retaining the ability to deduct that entire amount from its taxable income as a business, pursuant to s. 20(1)(r) of the *Income Tax Act*, which reads as follows:

> **Deductions permitted in computing income from business or property**
>
> **20(1)** … in computing a taxpayer's income for a taxation year from a business … there may be deducted …
>
> …
>
> **Employer's contributions under retirement compensation arrangement**
>
> **(r)** amounts paid by the taxpayer in the year as contributions under a retirement compensation arrangement in respect of services rendered by an employee or former employee of the taxpayer[.]

[43] There is a separate *Income Tax Act* provision which permits a deduction from taxable employment income, and which applied to Mr. Friedrick at all material times. That provision reads as follows:

> **Deductions allowed**
>
> **8(1)** In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted …
>
> …
>
> **Employee RCA contributions**
>
> **(m.2)** an amount contributed by the taxpayer in the year to a pension plan in respect of services rendered by the taxpayer where …
>
> **(i)** the plan is a retirement compensation arrangement,
>
> **(ii)** the amount was paid to a custodian (within the meaning assigned by the definition **retirement compensation arrangement** in subsection 248(1)) of the arrangement who is resident in Canada, and
>
> **(iii)** …
>
> **(A)** the taxpayer was required, by the terms of the taxpayer's office or employment, to contribute the amount, and the total of the amounts contributed to the plan in the year by the taxpayer does not exceed the total of the amount contributed to the plan in the year by any other person in respect of the taxpayer[.]

[44] Against that backdrop, it is worth reproducing, again, Article 3.1 of the RCA Plan Text, which reads as follows:

> 3.1 **Participant Contributions**. Participants may be required to contribute to the RCA Plan by the Company in such amounts as are required under their Employment Contract, subject to a Certificate signed by an Actuary. Such contributions by a Participant shall vest immediately in such Participant. In order to be deductible by the Participant for income tax purposes pursuant to paragraph 8(1)(m.2) of the Income Tax Act (Canada), the total amount contributed for the year by a Participant to the RCA Plan cannot exceed the amount contributed in the year by the Company for such Participant.

[45] Properly understood, Article 3.1 accomplishes two tasks which clearly relate to the *Income Tax Act* restrictions imposed upon the deductibility of an employee's RCA contribution. First, that Article authorizes Kelturn to require an employee to make a contribution to the RCA. The Participation Agreement includes similar language. Kelturn would need to invoke that authority to satisfy the condition to deductibility in s. 8(1)(m.2)(iii)(A) of the *Income Tax Act*. Second, the latter part of Article 3.1 relates to the *Income Tax Act* restriction which imposes a maximum deductible amount in respect of an employee's RCA contributions. Pursuant to s. 8(1)(m.2)(iii)(A), that maximum is based on what has been contributed by "any other person" than the employee,

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and Article 3.1 repeats this while specifying that, in this particular RCA, Kelturn is the only "other person" that can contribute for the Participant.

[46] Accordingly, I read the RCA Plan Text as setting out a distinction between "Participant Contributions" and "Company Contributions" only to mirror the *Income Tax Act*'s distinction between employee RCA contributions in s. 8 and employer RCA contributions in s. 20, respectively.

[47] Leaving aside the RCA Contract for a moment, the parties are not in disagreement about how the bonus amounts in issue were treated for tax purposes. The Chambers judge found as a fact that "[i]n the years [Mr. Friedrick] elected to invest his bonus in the RCA he did not report the bonus on his tax return nor was it accounted for in his T4 slips for those years" (at para 12). Mr. Friedrick has not contested this. This finding accords with the conclusion that Mr. Friedrick never made an "employee contribution" as it is defined in the *Income Tax Act*. Indeed, it has not been suggested that Kelturn ever required Mr. Friedrick to make a contribution. Instead, the amounts which Kelturn contributed to the RCA in respect of Mr. Friedrick's bonuses from 2012 to 2014 were intended to meet the definition of "employer contributions" within the meaning of the *Income Tax Act*.

[48] The consequence of this is that the bonus amounts at issue are "Company Contributions" within the meaning of the RCA Plan Text, since I consider the definitions for the two types of "contribution" found in the *Income Tax Act* and the RCA Plan Text to be isomorphic. This accords with the affidavit evidence of Mr. Lang, as RCA trustee, that Mr. Friedrick never made a "Participant Contribution". It also reads harmoniously with Article 7 of the RCA Plan Text granting Kelturn discretion to cease contributions to the RCA. Further, as the amounts at issue were "Company Contributions", there is no contravention of s. 8 of the *Income Tax Act* concerning funding.

[49] In addition to all the foregoing, reading the RCA Contract as a whole reveals serious difficulties with the interpretation which Mr. Friedrick puts forward. For instance, Mr. Friedrick needs the words "required to *allocate* contributions" from Article 3.2 of the RCA Plan Text to instead state "required to *make* contributions" (emphasis added). Moreover, Mr. Friedrick relies on Article 3.1 to establish the minimum amount of the purported company match. As discussed

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above, Article 3.1 directly cites s. 8(1)(m.2) of the *Income Tax Act* and engages with the two deductibility restrictions set out therein. I see no cogent basis to read Article 3.1 of the RCA Plan Text as referring to the concept of a company match instead. Finally, it is telling that nothing else can be found in the whole of the RCA Contract to assist in establishing the quantum of what Mr. Friedrick alleges was Kelturn's obligation to make a matching "Company Contribution".

[50] Without any need to rely on the evidence of the PowerPoint presentation that preceded Mr. Friedrick's execution of the Participation Agreement, I arrive at the same conclusion as the Chambers judge. Given this determination, it is not necessary for me to consider whether the Chambers judge erred by placing weight on the PowerPoint presentation in coming to the same outcome that I have. If it was an error, it was of no consequence.

[51] In conclusion, the Chambers judge did not err in determining that, pursuant to the terms of the RCA Contract, Kelturn did not have an obligation to contribute to the RCA beyond the payment into the RCA of Mr. Friedrick's annual bonus, as requested by him.

VI. CONCLUSION

[52] In the result, I would dismiss the appeal, with costs to Kelturn in the usual manner.

"McCreary J.A."
McCreary J.A.

I concur.
"Kalmakoff J.A."
Kalmakoff J.A.

I concur.
"Drennan J.A."
Drennan J.A.

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