

Court File No.: A-30-24**FEDERAL COURT OF APPEAL**

BETWEEN:

MADISON PACIFIC PROPERTIES INC.

Appellant

e-document

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE		D É P O S É
F I L E D	26-JAN-2024	
Alastair Ling		
VAN	1	

- 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 below.

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 Vancouver, British Columbia.

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, if the Appellant is self-represented, on the Appellant, WITHIN 10 DAYS after 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.

Date:

Issued by: Alastair Long

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TO: Shalene Curtis-Micallef
Deputy Attorney General of Canada
c/o Department of Justice Canada
British Columbia Region
National Litigation Sector
900- 840 Howe Street
Vancouver, BC V6Z 2S9

Attention: Perry Derksen
Yanick Houle
Eric Brown

AND TO: Minister of National Revenue

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Judgment of the Honourable Justice Graham dated December 27, 2023, by which the Appellant's appeals from reassessments of its taxation years ended December 31, 2009 and 2011 and August 31, 2013 were dismissed with costs (Tax Court File No. 2014-3959(IT)G).

THE APPELLANT ASKS that the appeal be allowed with costs in this Court and in the Court below, the judgment of the Tax Court of Canada be set aside, and the reassessments of the Appellant's taxation years ended December 31, 2009 and 2011 and August 31, 2013 be vacated.

THE GROUNDS OF APPEAL are as follows:

1. The Trial Judge erred in law and in fact by:
 - a. failing to properly articulate the correct test for a "group of persons" as established by case law,
 - b. failing to correctly apply the test for a "group of persons," and
 - c. erroneously concluding that Madison Venture Corporation and Vanac Development Corporation formed a "group of persons";
2. The Trial Judge erred by improperly expanding the *lis* between the parties by, of his own initiative, extending the relevant period of time for determining whether a "group of persons" existed;
3. The Trial Judge breached the duty of procedural fairness owed to the Appellant by failing to allow the parties to make submissions on the impact of the Federal Court of Appeal's decision in *Canada v. MMV Capital Partners Inc.*, 2023 FCA 234;
4. The Trial Judge erred in law and in fact by concluding that the transactions at issue abused subsections 111(4) of the *Income Tax Act*, and in concluding that the general anti-avoidance rule in section 245 of the *Income Tax Act* applies;
5. With respect to grounds 1 and 4 above, the Trial Judge made palpable and overriding errors of fact by:
 - a. failing to give weight to the passage of approximately 25 years between the transactions and the hearing as a result of the Canada Revenue Agency's delay in auditing the transactions, and
 - b. improperly rejecting, ignoring and/or misapprehending evidence and substituting his own unsupported findings of fact; and

6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (i) Notice of Appeal;
- (ii) Reply to the Notice of Appeal;
- (iii) All exhibits entered at trial;
- (iv) Judgment of Justice Graham, dated December 27, 2023; and
- (v) Reasons for Judgment of Justice Graham, dated December 27, 2023.

DATED this 26th day of January, 2024.



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