Docket: 2011-2160(IT)G

BETWEEN:

RABINDER PARIHAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with the appeal of
*Michael Parihar*, 2012-4571(IT)G on November 3, 2014,
at Vancouver, British Columbia

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

| | |
|---|---|
| Counsel for the Appellant: | George Douvelos and<br>Christopher Corsetti |
| Counsel for the Respondent: | Christa Akey and Max Matas |

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**JUDGMENT**

In accordance with the Reasons for Judgment attached, the appeal of Notice of Assessment No. 769507, dated October 30, 2009 in the amount of $100,000.00 raised pursuant to section 160 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.), is hereby dismissed.

Costs are awarded to the Respondent on a party and party basis in accordance with the relevant portions of the Tariff, however, either party may make submissions otherwise for consideration by the Court within 30 days of this judgment.

Signed at Ottawa, Canada, this 3rd day of March 2015.

"R. S. Bocock"

Bocock J.

Docket: 2012-4571(IT)G

BETWEEN:

MICHAEL PARIHAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on common evidence with the appeal of
*Rabinder Parihar*, 2011-2160(IT)G on November 3, 2014,
at Vancouver, British Columbia

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

| | |
|---|---|
| Counsel for the Appellant: | George Douvelos and Christopher Corsetti |
| Counsel for the Respondent: | Christa Akey and Max Matas |

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## JUDGMENT

In accordance with the Reasons for Judgment attached, the appeal of Notice of Assessment No. 1765622, dated April 12, 2012 in the amount of $56,333.33 raised pursuant to section 160 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.), is hereby dismissed.

Costs are awarded to the Respondent on a party and party basis in accordance with the relevant portions of the Tariff, however, either party may make submissions otherwise for consideration by the Court within 30 days of this judgment.

Signed at Ottawa, Canada, this 3rd day of March 2015.

"R. S. Bocock"

Bocock J.

Citation: 2015 TCC 52
Date: 20150303
Docket: 2011-2160(IT)G

BETWEEN:

RABINDER PARIHAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-4571(IT)G

AND BETWEEN:

MICHAEL PARIHAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

## COMMON REASONS FOR JUDGMENT

Bocock J.

[1] On consent, these two appeals were heard together on common evidence, although the appeals concern distinct transactions in respect of which the Minister has raised assessments under subsection 160(1) of the *Income Tax Act* (the "*Act*") against a mother and son, respectively.

I. Facts

A. Rabinder Parihar

[2] With respect to the Appellant, Rabinder Parihar, Aaremic Travel Corp. ("Aaremic") owed the Minister substantial tax debts relating to the 1996, 1997, and 1998 taxation years.

[3] Rabinder is married to Ranjit Parihar ("Randy"). Rabinder and Randy's children are Reema McGonagle ("Reema"), Michael Parihar (the other appellant), and Aaron Parihar ("Aaron").

[4] Both Randy and Rabinder testified at trial. According to their testimony, Aaremic operated a full service travel agency mainly earning commission income on airline tickets. Rabinder and Reema were each 50% shareholders and directors of Aaremic. Randy was the president and principal manager of Aaremic.

[5] Aaremic owned a bank account at Scotiabank (the "Aaremic Account") in respect of which Rabinder and Randy each had signing authority. Randy and Rabinder also held a personal joint bank account at Scotiabank (the "Joint Account").

[6] On July 15, 2002, the Minister assessed Aaremic's 1996, 1997, and 1998 taxation years and accordingly issued notices on that date. On December 28, 2006, the Minister further reassessed Aaremic's 1996, 1997, and 1998 taxation years pursuant to a waiver signed by Randy on behalf of Aaremic.

[7] As a result of the further reassessments, Aaremic became indebted for taxes related to its 1996, 1997, and 1998 taxation years in the total amount of $183,834.02 (the "Tax Debt").

[8] Previously, at or around November 28, 1998 (the "Date of Transfer"), Randy became aware that a client was considering suing Aaremic. To protect Aaremic's assets, Randy directed Aaremic to transfer funds to Rabinder in order to protect those funds from a potential garnishment by the client. On the Date of Transfer, Aaremic transferred $100,000 into a Scotiabank GIC (the "GIC") in Rabinder's name.

[9] During the period March 1 to 25, 1999, capital and interest from the GIC were distributed as follows:

(a) $37,539.69 was deposited to Aaremic's Account; and,

(b) $63,736.67 was deposited to the Joint Account.

[10] In turn, the amount of $63,736.67 was deposited to RRSPs in various amounts to the benefit of Randy, Rabinder, Michael, Reema, and Aaron.

[11] A bare trust and agency agreement (the "Trust Declaration") was signed on June 1, 2000 and backdated to December 1, 1998 which provided that Rabinder held the monies in trust for Aaremic and not on her own behalf.

[12] On June 19, 2002, Rabinder's 1996, 1997, and 1998 taxation years were reassessed by the Minister assessing shareholder benefits and unreported income of $334,761, $479,058, and $212,862, respectively, and levying gross negligence penalties for all three years.

[13] On November 6, 2006, Rabinder signed a waiver agreeing to be reassessed on the basis that her shareholder benefits and unreported income for 1996, 1997, and 1998 would be reduced by $308,671, $431,002, and $74,437, respectively, and gross negligence penalties would be deleted (the "Rabinder Waiver").

[14] The first provision of the Rabinder Waiver reads as follows:

> "I waive my right of objection or appeal in respect of all issues if Canada Revenue Agency re-assesses as follows:
>
> 1. Reduce the amount of the subsection 15(1) benefit by $300,369, $426,710 and $70,239 for the 1996, 1997 and 1998 taxation years respectively with respect to temporary investments in GICs and securities made on behalf of Aaremic Travel Corp."

[15] On January 29, 2007, Rabinder's 1996, 1997, and 1998 taxation years were reassessed in accordance with the terms resolved with the Minister.

[16] On October 30, 2009, the section 160 assessment at issue was raised against Rabinder in respect of the Tax Debt and the transfer of funds by Aaremic into the GIC in Rabinder's name on the Date of Transfer.

[17] As a result of the further reassessments of these taxation years, as of March 22, 2012, Rabinder remained indebted for taxes, penalties, and interest related to her 1996, 1997, and 1998 taxation years in the amount of $232,912.80.

B. Michael Parihar

[18] On March 27, 2008, Randy and Rabinder purchased a condominium known as 1202 – 738 Farrow Street, Coquitlam, British Columbia (the "Condo") for $338,000.

[19] In the agreement of purchase and sale for the Condo dated March 17, 2008 (the "APS"), the purchasers were identified as "R & R Parihar and/or Nominee". Randy and Rabinder took title to the property jointly later in March 2008 (the "Initial Transfer").

[20] On July 17, 2009, Randy and Rabinder transferred legal title to a one-third interest (the "One-Third Interest") in the Condo to Michael. On July 17, 2009, the fair market value of the Condo was $338,000, and the fair market value of the One-Third Interest was $112,667. Arithmetically, the fair market value of Rabinder's half of that One-Third Interest was $56,333.33 on that date. Michael gave consideration of $1.00 and love and affection for the One-Third Interest. In his testimony, Michael confirmed that he did not receive the One-Third Interest in relation to any repayment of loans between Michael and his parents, he did not contribute any money to the purchase of the Condo, and has never paid strata fees, utilities, or property taxes in respect of the Condo.

[21] Michael did not see the Condo before it was purchased and did not discuss the purchase of the specific Condo before his parents purchased it. Michael did not know about the purchase of the Condo until he returned from a trip to Holland, Mexico, and Las Vegas.

[22] Randy and Rabinder conducted renovations to the Condo. Michael did not contribute any money to the renovations of the Condo. After renovations were complete, Randy, Rabinder, and Aaron, not Michael, moved in. Michael has occasionally stayed at the Condo on a short-term basis, but he has never resided at the Condo.

[23] On April 12, 2012, the Minister raised the section 160 assessment against Michael to the extent of the lesser of Rabinder's tax debt and the value of the One-Third Interest in the Condo.

## II. Law

### (1) The Purpose of Subsection 160(1)

[24] The purpose of subsection 160(1) of the *Act* is to protect the Minister's ability to collect tax debts. The object and spirit of subsection 160(1) is to prevent a taxpayer from transferring his or her property to a related person, in order to thwart the Minister's ability to collect a tax debt: *Her Majesty The Queen v. Livingston*, 2008 FCA 89 at paragraph 18 ("*Livingston*"); *Medland v. Canada*, 98 DTC 6358 (FCA); and *Canada v. Heavyside*, 51 DTC 5026 (FCA), at paragraph 10.

[25] The application of subsection 160(1) can be "draconian" (*Wannan v. Canada*, 2003 FCA 423, ("*Wannan*") at paragraph 3). However, it is also recognized as an "important tax collection tool" (*Wannan*, at paragraph 3). The Federal Court of Appeal has observed, "[t]he power to tax means little without the power to collect" (*Livingston*, at paragraph 1).

### (2) The Four-Part Test from *Livingston*

[26] In *Livingston*, the Federal Court of Appeal established a four-part test for subsection 160(1) assessments, as follows (*Livingston*, at paragraph 17):

> 1) The transferor must be liable to pay tax under the Act at the time of transfer;
>
> 2) There must be a transfer of property, either directly or indirectly, by means of a trust or by any other means whatever;
>
> 3) The transferee must either be:
>
> i. the transferor's spouse or common-law partner at the time of transfer or a person who has since become the person's spouse or common-law partner;
>
> ii. a person who was under 18 years of age at the time of transfer; or
>
> iii. a person with whom the transferor was not dealing at arm's length.
>
> 4) The fair market value of the property transferred must exceed the fair market value of the consideration given by the transferee.

[27] If all four elements are met, the Court has no option but to uphold the assessment (*Woodland v. Canada,* 2009 TCC 434, ("*Woodland*") at paragraph 28).

[28] The four-part test from *Livingston* does not look to the subjective motivations of the transferee. There is no due diligence defence to an assessment under subsection 160(1) (*Woodland*, at paragraph 28). Further, although it may be relevant in determining the adequacy of any consideration given, there is no requirement that the transferee intended to defraud the CRA or frustrate the Minister's ability to collect (*Livingston*, at paragraph 19; *Woodland*, at paragraph 27; and *Wannan*, at paragraph 3).

[29] In fact, there is no requirement that the transferee have any knowledge of the transferor's underlying tax debt (*Wannan*, at paragraph 3).

[30] The underlying tax debts are admitted in both appeals.

A. Rabinder Parihar

(1) Law

[31] The relevant provisions of the *Act* read as follows:

> **Benefits conferred on shareholder**
>
> **15. (1)** If, at any time, a benefit is conferred by a corporation on a shareholder of the corporation, on a member of a partnership that is a shareholder of the corporation or on a contemplated shareholder of the corporation, then the amount or value of the benefit is to be included in computing the income of the shareholder, member or contemplated shareholder, as the case may be, for its taxation year that includes the time, except to the extent that the amount or value of the benefit is deemed by section 84 to be a dividend or that the benefit is conferred on the shareholder …
>
> **Waived issues**
>
> **169. (2.2)** Notwithstanding subsections 169(1) and 169(2), for greater certainty a taxpayer may not appeal to the Tax Court of Canada to have an assessment under this Part vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the taxpayer.

[32] "Arm's length" and "related persons" are defined in the *Act* by the following provisions:

**Arm's length**

**251.** (1) For the purposes of this Act,

(*a*) related persons shall be deemed not to deal with each other at arm's length;

… and

(*c*) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

**Definition of "related persons"**

(2) For the purpose of this Act, "related persons", or persons related to each other, are

…

(*b*) a corporation and

(i) a person who controls the corporation, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the corporation, or

(iii) any person related to a person described in subparagraph 251(2)(*b*)(i) or 251(2)(*b*)(ii); and …

(2) Arguments of Rabinder

*(a) Monies held in trust for Aaremic*

[33] Rabinder has argued that she was holding the transferred funds in the GIC in trust for Aaremic pursuant to the terms of the Trust Declaration.

*(b) A subsisting waiver estoppes the assessment*

[34] Rabinder argues that the Respondent should be estopped from making the subsection 160(1) assessment since the same issue has been resolved and exhausted pursuant to subsection 15(1), the shareholder benefit assessment, which was in turn the subject of the Rabinder Waiver. To this end, Rabinder advances the following arguments and authorities:

(a) Pursuant to *Livingston*, the Federal Court of Appeal has cautioned that courts should remain mindful as to the provision's intended purpose and its effect in the context of the factual circumstances of each case;

(b) Justice Archambault of this Court noted in *Bleau v. The Queen*, 2006 TCC 36 ("*Bleau*"), that a subsection 160(1) assessment is not intended to impose a tax on the taxpayer's income, but rather to provide an avenue to collect tax from a third party as distinct from the purposes of a subsection 15(1) assessment which is a taxing section *per se*; however, the facts in *Bleau* are distinguishable and *Livingston* is the authoritative case, the caution within *Livingston* provides that the contextual factors of each case must be taken into account and given great weight; and

(c) The doctrine of *res judicata* should be applied as accepted by Justice Woods of this Court in *Lee v. Her Majesty The Queen*, 2012 TCC 335 ("*Lee*"). In that case, the Court followed the decision of the Judicial Committee of the Privy Council in *Thomas v. Trinidad and Tobago (Attorney General)* (1990), 115 NR 313 (UK PC) ("*Thomas*"). In *Thomas*, the Privy Council noted that *res judicata* recognizes that there should be finality to litigation such that no person should be subjected to legal action more than once in relation to the same issue. In *Lee*, Justice Woods also outlined that two forms of estoppel which have been recognized: issue estoppel and cause of action estoppel. Reference was made to Chief Justice Laskin's decision in *Angle v. Canada (Minister of National Revenue)*, [1975] 2 SCR 248 ("*Angle*"), noting that *res judicata* encompasses the principles regarding finality and double-peril noted above. Further, it is in the general interest of the community to have finality, and for the rights of the individual to be protected from vexatious multiplication of suits and prosecutions.

*(c) Rabinder Parihar was arm's length to Aaremic*

[35] In this argument, Rabinder has challenged the third condition that must be met for the subsection 160(1) assessment to succeed: the transferee must be a person with whom the transferor was not dealing at arm's length. It is submitted that Rabinder, while legally a director and shareholder of Aaremic, factually was not a directing mind of the corporation and did not have *de facto* control of

Aaremic. Instead, Randy was the directing mind exercising control and Rabinder acquiesced to or merely took instructions from him.

[36] It was Randy who opened the subject GIC account, unbeknownst to Rabinder. Randy did so to avoid a potential garnishment from a possible execution creditor which was considering suing Aaremic at the time. The action was not taken to avoid collection proceedings from the CRA. Appellants' counsel argues, therefore, that the deeming provisions cannot apply as Aaremic was its own legal person and was controlled by a person that was not Rabinder: namely, Randy. Rabinder also could not be a member of a related group that controlled Aaremic as Randy was the sole person in control of Aaremic.

(3) Analysis

*(a) Monies held in trust*

[37] Subsection 160(1) applies to all transfers, including those by means of a trust. In *Livingston*, the Federal Court of Appeal explained that there is a transfer for the purposes of subsection 160(1), even where beneficial ownership has not been transferred. Thus, following *Livingston*, even if Aaremic had simply transferred legal title to Rabinder, but not beneficial interest, that transfer would constitute a transfer of property for the purposes of subsection 160(1).

[38] In any event, there is no valid trust where the intention of the parties is to transfer property solely in order to avoid creditors. In *Raphael v. Canada*, 2002 FCA 23 ("*Raphael*"), the taxpayer's husband transferred funds to an account under the taxpayer's name in an effort to avoid creditors. The taxpayer claimed that she held the funds in trust for her husband and he retained beneficial interest. The Federal Court of Appeal determined that an intention to secure funds from creditors was inconsistent with a trust.

[39] Similarly, in *Rose v. Canada*, 2009 FCA 93 ("*Rose*"), the taxpayer's husband transferred a half interest in their matrimonial home to the appellant in order to avoid a creditor. Like *Raphael*, the taxpayer claimed that her husband had only transferred legal title (not beneficial title) in order to avoid a creditor who threatened to put a lien on the property. Again, the Federal Court of Appeal found that a trust was inconsistent with an exclusive or predominant intention to keep property safe from creditors.

[40] Lastly, the evidence, if any, of a trust is inadequate. In order to support a finding that property is not owned by the individuals who hold legal title, especially between related parties, the law requires "very cogent evidence": *Campbell v. Canada*, 2009 TCC 431, at paragraph 43. The following are critical evidentiary weaknesses in Rabinder's argument that a trust existed:

(a) the Trust Declaration was not signed until June 1, 2000, long after the Date of Transfer;

(b) the Trust Declaration was backdated, effective December 1, 1998, which "backdating", if acceptable, nonetheless gave effect to the "trust" after the Date of Transfer (November 24, 1998);

(c) Rabinder was not aware of the Trust Declaration or related arrangement; and

(d) on March 1, 1999, approximately $63,000 was transferred from the $100,000 GIC to the Joint Account and subsequently to RRSPs belonging to Randy, Rabinder, and their children, who as ultimate beneficiaries do not include the alleged beneficial owner: Aaremic.

[41] In light of the above, the contention that Rabinder held the funds in trust for Aaremic is neither supported by the law nor the facts and cannot be accepted by this Court.

*(b) Waiver and issue estoppel*

[42] The respective criteria for an assessment under subsection 15(1) and subsection 160(1) are different. In support of an assessment under subsection 15(1), a benefit must have been conferred on a shareholder whereas there is no similar requirement that a benefit be conferred in order to assess pursuant to subsection 160(1): *Doucet v. Canada*, 2007 TCC 268 ("*Doucet*"). In *Doucet*, Justice Tardif of this Court noted the following at paragraph 45:

> To claim and indeed to prove that the transferee was not enriched following the transfer is neither a sufficient nor, for that matter, a relevant basis for excluding the application of section 160.

[43] In *McGonagle v. Canada*, 2009 TCC 168, 2009 DTC 1120 ("*McGonagle TCC*"), the very issue before the Court was whether this very appellant, Rabinder,

was precluded by subsection 169(2.2) of the *Act* from appealing the underlying assessment which was the subject of the Rabinder Waiver. Rabinder argued in that appeal that she was coerced by the CRA into signing the Rabinder Waiver and thus the Rabinder Waiver should be found to be invalid. Further, Rabinder argued that she did not understand the financial implications contained in the settlement within the Rabinder Waiver until she received the Minister's subsequent reassessment. Justice Campbell Miller of this Court granted the Respondent's motion to quash the income tax appeals for the 1996 to 1998 taxation years. For various factual reasons, the Court found that the CRA auditor's repeated suggestions of closing the file did not have such a cumulative effect as to constitute undue influence.

[44] With respect to the factors contained in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, regarding the determination of whether issue estoppel should apply, there can be no dispute that the decision of *McGonagle v. Canada*, 2010 FCA 108 ("*McGonagle FCA*"), was itself final and binding, and that Rabinder and the Respondent are the same parties in this case as in *McGonagle FCA*. The only requirement at issue is whether the same issue in this case was decided in *McGonagle FCA*, and, if so, whether issue estoppel should apply.

[45] In *McGonagle TCC*, this Court was faced with the issue of whether Rabinder was precluded by subsection 169(2.2) of the *Act* from appealing the assessment of the 1996 to 1998 taxation years subject to the Rabinder Waiver. This Court did not adjudicate on the issue of the assessment of Rabinder's shareholder benefits. In support of an assessment under subsection 15(1), a benefit must have been conferred on a shareholder while there is no similar requirement that a benefit be conferred to assess pursuant to subsection 160(1). Finally, a shareholder who has been assessed under subsection 15(1) can also be assessed under subsection 160(1) given the different purposes of the two provisions. As this Court found in *Bleau*, subsection 160(1) may be applicable to an amount transferred, notwithstanding that the same amounts may have already been taxed under the provisions of subsections 15(1) and (2).

*(c) Rabinder as arm's length transferee*

[46] Rabinder's arguments cannot succeed under either subparagraphs 251(2)(*b*)(ii) and (iii); a finding that she was related to Aaremic under either of these subparagraphs is sufficient for the purpose of the definition within paragraph 251(2)(*b*). For this reason, it is not necessary to make a determination of whether Rabinder was a directing mind and controlled Aaremic.

[47] Subparagraph 251(2)(*b*)(ii) deems a person to be related to a corporation if the person is a member of a related group that controls the corporation. Rabinder argues that she could not have been part of a related group that controlled Aaremic as only one person (Randy), and not a group, controlled Aaremic. However, Rabinder and Randy were related by marriage and were thus, together, members of a related group of persons that controlled Aaremic.

[48] Similarly, subparagraph 251(2)(*b*)(iii) deems a person to be related to a corporation if she is related to a person who controls the corporation, if the corporation is controlled by one person. The presumption is irrebuttable: *Fluxgold v. R*, 90 DTC 6187 (FCTD) at paragraph 26. Even if Aaremic were controlled by Randy alone, Rabinder was still related to Randy by marriage and Randy, in turn and as admitted, controlled Aaremic. Definitionally, the definitions are plainly and clearly worded. Rabinder was not arm's length to Aaremic because of her non-arm's length relationship to the controlling person: Randy.

B. Michael Parihar

(1) Law

[49] Under the Torrens land registration system operable in British Columbia, the register for a parcel of land is said to be a mirror of all rights in relation to the land (Bruce Ziff, *Principles of Property Law*, 5th ed. (Toronto: Carswell, 2010) at 472). The system aims to make it possible to examine a record of title for a specific parcel of land and find listed there all the interests in the land that pertain to that parcel (*ibid.*).

[50] The British Columbia *Land Title Act*, RSBC 1996, c. 250 (the "*LTA*") defines an "owner" of property as "a person registered in the records as owner of land or of a charge on land, whether entitled to it in the person's own right or in a representative capacity or otherwise, and includes a registered owner". The *LTA* defines "indefeasible title" as "(a) a certificate of indefeasible title issued by the registrar under this Act or the former Act, at any time before August 1, 1983, and (b) that part of the information stored in the register respecting one title number, that is required under section 176(2) to be contained in a duplicate indefeasible title".

[51] Pursuant to section 23 of the *LTA*, an indefeasible title is conclusive evidence at both law and in equity that the person named as the registered owner is

indefeasibly entitled to the land as described. The section then lists statutory exceptions, which include a caution or caveat.

[52] Pursuant to section 20 of the *LTA*, an instrument purporting to transfer land does not operate to pass an interest unless that instrument is registered in accordance with the *LTA*. Section 22 further provides that the document registered takes effect as of the time of registration, regardless of when it was executed.

(2) Argument of Michael

*(a) No transfer occurred since Michael was already an owner*

[53] On March 17, 2008, Randy and Rabinder entered into the APS related to the Condo. In the APS, the buyers were described as "R & R Parihar and/or Nominee". Randy and Rabinder, as well as their son, Michael Parihar, testified that Michael was intended to be the nominee referred to in the APS and that such document bears sufficient witness to this statement. All three stated they had a prior agreement among themselves and a common intention that they were all intended to be owners of the Condo. Michael was simply listed as "nominee" because he was out of the country during the time of the purchase of the Condo. As well, the seller of the unit purportedly knew of this intention. The seller did not testify.

[54] Michael's interest was eventually registered with the land title office under the *LTA* as an owner of the Condo by virtue of a transfer registered in July, 2009 (the "Registration Date"). However, only the interest of Rabinder and Randy was registered in the Initial Transfer. Michael argues that the registration merely reflected the pre-existing interests among the three parties established in the APS, and merely gave effective notice to the world at large of the One-Third Interest. As a result, registration was reflective of past ownership and no actual transfer took place at the time of the Registration Date.

(3) Analysis

[55] While, at common law, conveyancing was fundamentally a private matter, the land title office of government is interposed in the Torrens system and warrants the ownership rights to persons examining title. Pursuant to section 23 of the *LTA*, registered title is conclusive evidence at both law and equity that the person named as the registered owner is indefeasibly entitled to the land as described unless the interest falls within the statutory exceptions, which include a situation where a caution or caveat is registered on title.

[56] Michael cannot have maintained against a third party that he held the One-Third Interest until he was registered as an owner on the Registration Date. The Torrens system does not recognize private arrangements for the division of land ownership, unless, as noted, same are reflected in some way upon the parcel register of land. Factually, a simple caveat or caution or notation in the Initial Transfer of Randy and Rabinder's partial trustee capacity might have accomplished this, but none occurred so to afford the Land Registrar and others reliance upon the state of the parcel register as regards the alleged undisclosed trust: *Smith v. Graham*, 2009 BCCA 192, at paragraphs 16 and 17. Further and consistent with this conclusion, the notation in the APS of "and/or Nominee" is not factually sufficient to constitute evidence of a beneficial interest in favour of a specific person (i.e. Michael) for a specific share (i.e. the One-Third Interest). The APS could easily have reflected this supposed intention by simply stating Randy and Rabinder's interest *qua* trustee for Michael. Michael's absence from the country would not have impeded that reference.

[57] Similarly, neither a specific interest in favour of a specific person, aside from Randy and Rabinder, was noted in the land title system in any manner in the Initial Transfer or any time before the Registration Date, nor was Randy and Rabinder's supposed capacity as trustees. As well and aside from the legal doctrine of merger, the vague reference to "and/or Nominee" in the APS, as the only documentary or corroborative evidence, is not, on the balance of probability, probative of Michael's One-Third Interest in the Condo prior to the Registration Date. Therefore, Michael's interest in the Condo, beneficial or otherwise, did not have legal effect until the Registration Date and was not factually reflected at any time prior to that date by any evidence which, on balance, would constitute a prior ascertainable intention that he held or was to hold a One-Third Interest.

III. Summary and Costs

[58] For these reasons, the appeals are dismissed. Costs are awarded to the Respondent on a party and party basis in accordance with the relevant provisions of the Tariff, however, any of the parties may make submissions otherwise for consideration by the Court within 30 days of this judgment.

Signed at Ottawa, Canada, this 3rd day of March 2015.

"R. S. Bocock"

Bocock J.

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| CITATION: | 2015 TCC 52 |
| COURT FILE NOS.: | 2011-2160(IT)G and 2012-4571(IT)G |
| STYLE OF CAUSE: | RABINDER PARIHAR AND HER MAJESTY THE QUEEN<br><br>MICHAEL PARIHAR AND HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Vancouver, British Columbia |
| DATE OF HEARING: | November 3, 2014 |
| REASONS FOR JUDGMENT BY: | The Honourable Mr. Justice Randall S. Bocock |
| DATE OF JUDGMENT: | March 3, 2015 |

APPEARANCES:

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| Counsel for the Appellants: | George Douvelos and Christopher Corsetti |
| Counsel for the Respondent: | Christa Akey and Max Matas |

COUNSEL OF RECORD:

For the Appellants:

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|---|---|
| Name: | George Douvelos and Christopher Corsetti |
| Firm: | Wiebe Douvelos Wittmann LLP |

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| For the Respondent: | William F. Pentney<br>Deputy Attorney General of Canada<br>Ottawa, Canada |