Docket: 2004-3699(GST)G

BETWEEN:

JAMES NING LAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 25, 2007, at Vancouver, British Columbia

By: The Honourable Justice C.H. McArthur

Appearances:

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| Counsel for the Appellant: | Marjorie E. Brown and Brian J. Wallace, Q.C. |
| Counsel for the Respondent: | Linda L. Bell |

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## JUDGMENT

The appeal from the third party notice of assessment made under the *Excise Tax Act*, notice of which is dated July 30, 2002 and bears number 68731, is allowed, with costs to the Appellant, and the assessment is vacated.

Signed at Ottawa, Canada, this 5th day of December, 2007.

"C.H. McArthur"

McArthur J.

Citation: 2007TCC718
Date: 20071205
Docket: 2004-3699(GST)G

BETWEEN:

JAMES NING LAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

## REASONS FOR JUDGMENT

McArthur J.

[1] The Appellant, James Ning Lau, appeals a third party notice of assessment dated July 30, 2002 made by the Minister of National Revenue (the "Minister") pursuant to subsection 323(1) of the *Excise Tax Act* ("*Act*"). The Minister alleges that the Appellant, as sole shareholder of Golden Leaf Development Company Ltd. ("GL Trust"), is liable in respect of unremitted net tax in the amount of $998,100. GL Trust was assessed $1,095,270 for goods and services tax on the self-supply of 78 condominium units.

[2] The issues include:

(i) whether GL Trust was liable to collect and remit $998,100 under the self-supply rules of the *Act* as required by subsection 228(2); and

(ii) if yes, whether the Appellant exercised the degree of care, diligence and skill to prevent failure of GL Trust to remit net GST that a reasonably prudent person would have exercised under comparable circumstances.

[3] I will first deal with the primary issue. Was GL Trust liable to collect and remit $998,100 under subsection 228(2) of the *Act*? The Appellant's right to

challenge the liability of the corporation was not seriously disputed by the Minister. The Appellant's position includes that the Minister assessed the wrong party in that GL Trust was a bare trustee for the joint venture beneficiaries.

[4] The Minister submits that by virtue of its registration for GST and its inclusion in the joint venture agreement, GL Trust was an operator and participant in the joint venture and as such, was required to remit tax for all members of the joint venture pursuant to subsection 273(1) of the *Act*.

Facts

[5] The Minister, in assessing the Appellant, relied on the following facts:

a) GL Trust was at all material times a registrant for GST purposes with registration number 12497 3165 RT 0001;

b) In 1997, GL Trust built a 128 unit residential complex consisting of two 14-storey buildings containing 124 condominium units and four adjoining townhouse units. (the "Project");

c) By July 1999, 50 of the units had been sold and by December 31, 1999, the remaining 78 units were rented out;

d) From reporting periods of December 1, 1997 to November 230 (*sic*), 2000, GL Trust filed GST returns reporting GST on the sale of the condominium units and claiming ITC's for the Project;

e) GL Trust did not report any GST in respect of the self-supply of the rental of the remaining 78 units;

f) The fair market value of the remaining 78 units was $12,663,000.

g) GST on the self-supply of the remaining 78 units was $886,410;

h) GL Trust was assessed January 30, 2002 by Notice of Assessment numbered 11BU0601988 for the period of December 1, 1997 to November 30, 2000 in respect of the GST on the self supply of the remaining 78 units for the total amount of $1,095,270.19 consisting of the following:

| | | |
|---|---|---|
| GST | | $886,410.00 |
| Penalty | $111,199.72 | |
| Interest | $ 97,660.47 | |

i) GL Trust did not object to the assessment;

j) A certificate for the amount of $1,104,417.33 (the "Certificate") in respect of GL Trust's unpaid tax, penalty and interest was filed with the Federal Court of Canada on February 21, 2002;

k) On May 13, 2002 a Writ was issued in respect of the Certificate;

l) On July 18, 2002 the Writ was returned unable to locate exigible assets;

m) The Appellant was a director of GL Trust from December 13, 1989 to August 2, 2000.

[6] For the most part these assumptions are accurate. However, paragraph (b) distorts reality, in that GL Trust was a bare trustee. In fact, the beneficiaries of the trust, Thompson & Redford Holdings Ltd. and Golden Leaf Trust, built the complex with the expertise of MAA Management Company Ltd. Further, I note that the Appellant was not a director of GL Trust when the Minister's assessment was issued. He had been released from his duties about one and a-half years previously.

[7] The Appellant testified on his own behalf and J. Leung, auditor, testified for the Minister. The facts as agreed to and as I find them include the following. GL Trust was founded by Dr. Moh[1], a businessman residing in Taipei, Republic of China. It entered into a joint venture and project management agreement (the "Agreement") with:

(i) Thompson and Redford Holdings Ltd., a BC corporation, ("Thompson");
(ii) Golden Leaf Development Trust ("Golden Leaf");[2] and
(iii) MAA Management Co. Ltd., a BC corporation ("MAA").

for the purpose of purchasing and developing land on behalf of Thompson and Golden Leaf (the "Joint Venturers).[3]

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1 Za-Chieh Moh received a doctorate degree from the Massachusetts Institute of Technology.

2 A business unit trust created on December 29, 1989 between Za-Chien Moh, Ching Tien Chou, Jimmy Tseng and James Ning Lau.

[8] Dr. Moh hired the Appellant and had him appointed the sole shareholder and director of GL Trust. Upon request of Dr. Moh, Thompson was organized by the Appellant, and the Appellant held no beneficial interest in the joint venture or in Thompson.

[9] Exhibit A-1, Tab 1 is a copy of the Agreement dated December 29, 1989, which sets out the working arrangements of the joint venture. The preamble of the agreement reads in part as follows:

> A. Golden Leaf and Thompson & Redford, as the Joint Venturers, have agreed to purchase the Lands described herein, through the Trustee [GL Trust], as bare trustee, for the purpose of constructing thereon the Project described herein;
>
> B. The Trustee will be the registered owner of the Lands and as such will hold undivided beneficial interests in the Lands in trust for the respective Joint Venturers pursuant to the trust declaration provided for herein;
>
> C. The Joint Venturers will, on and subject to the terms of this Agreement, have the respective Proportionate Interests herein described, as tenants in common.
>
> D. MAA has represented to the Joint Venturers that MAA has the skill and expertise necessary to supervise the planning, development, construction, marketing and sale of the Project;

Again, GL Trust, as a bare trustee for beneficiaries of the joint venture, Golden Leaf 90% and Thompson 10%, had no beneficial interest in the real estate project.

[10] In 1997 and 1998, the Joint Venturers caused to be constructed Golden Leaf Towers consisting of two 15-storey towers (124 condominium units) and four townhouses on Granville Avenue, Richmond, British Columbia. Only 50 units were sold by November 30, 1998 and the beneficiaries were disappointed with not

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[3] Pursuant to paragraph 1.9 of the Agreement.

only the lack of return on their investment, but also with the many requests for cash they received over the years since 1989.

[11] A reverse takeover was completed on May 18, 1999 wherein Total Global Venturers ("Global") acquired all the beneficiary interest in the remaining 74 units and four townhouses for $1.00, and the beneficial investors were issued shares in Global. The reverse takeover was intended to provide the investors with flexibility because their shares could be traded in the public market. Apparently, this maneuver did not work as anticipated. The reverse takeover is described in Tab 19 of the joint book of documents.

[12] Commencing May 18, 1999, Rancho Management Services, a property management company, was engaged to rent the remaining 78 units of the Project. The real estate market for residential condominiums in 1999 had collapsed and all units were rented before December 31, 1999 to provide some income for the operating of the joint venture. No GST was paid as required by subsection 228(2) of the *Act*.

[13] At the request of the majority beneficiaries, the Appellant resigned from GL Trust in August 2000, after which he was "no longer in the loop." By 2002, all the units were sold and GL Trust no longer held any assets either in trust or on its own behalf.[4]

[14] Strangely, the Minister was conducting an audit at the time GL Trust was selling and did not issue an assessment until GL Trust no longer held any units. It was assessed January 30, 2002 for the total amount of $1,095,270 for the self-supply of 78 units as of December 31, 1999, pursuant to subsection 191(1) of the *Act*. It had no way of paying this liability and the Minister assessed the Appellant and not the beneficiaries of GL Trust.

[15] The Appellant, who had been a director from December 13, 1989 to August 2, 2000, objected to the third party notice of assessment dated July 30, 2002.

[16] The Minister's position as taken from the Reply to the Notice of Appeal is as follows:

> (i) The GL Trust was liable to collect and remit net GST in respect of the self-supply of the remaining 78 condominium units. The GL Trust was a

4 It never did hold any assets in its own right.

participant in the Agreement, which was a joint venture agreement made prior to 1990. The GL Trust was a GST registrant and was the operator for purposes of the *Excise Tax Act*. In filing the GST returns for its first reporting period after 1990 and reporting net GST in respect of the Project, GL Trust is deemed to have jointly made an election together with the other joint venturers under section 273 and is therefore liable for the collection and remittance of GST in respect of the Project, and in particular on the self supply of the remaining 78 units when they were rented.

(ii) Alternatively, GL Trust was a participant in the Agreement and the joint venture by having GL Trust apply for a Business Number for GST elected under section 273 to have GL Trust assume liability for the properties and services supplied and acquired under the agreement by GL Trust for the joint venturers. The Appellant was the director of GL Trust, a member of the Committee under the Agreement with the authority to make decisions binding on the joint venturers, and an employee of MAA Management Co. Ltd. charged with the management and operation of the Project and as such had knowledge of all the circumstances at the time GL Trust became the registrant. The Minister relied on GL Trust's registration that it was the person liable for the GST.

(iii) The Appellant is jointly and severally liable together with GL Trust for the unpaid GST, since he was a director of GL Trust at the time GL Trust was required to remit the GST. The remaining 78 units were rented by December 31, 1999. The trustee company was required to remit the GST calculated on the fair market value of the units on or before January 31, 2000. The Appellant was a director of GL Trust from December 13, 1989 to August 2, 2000; consequently, he was a director at the time GL Trust was required to make the remittance. All pre-requisites for assessing the Appellant under subsection 323(1) have been met.

(iv) To date the Appellant has not demonstrated that he exercised the degree of care diligence and skill to prevent the failure of GL Trust to collect and remit net GST on the self supply of the 78 units that a reasonably prudent person would have exercised in comparable circumstances.

[17] The most relevant legislation includes the following:

273(1) There a registrant (in this section referred to as the "operator") is a participant in a joint venture (other than a partnership) under an agreement, evidenced in writing, with another person (in this section referred to as the "co-venturer") for the exploration or exploitation of

mineral deposits or for a prescribed activity, and the operator and the co-venturer jointly make an election under this subsection,

(*a*) all properties and services that are, during the period the election is in effect, supplied, acquired, imported or brought into a participating province under the agreement by the operator on behalf of the co-venturer in the course of the activities for which the agreement was entered into shall, for the purposes of this Part, be deemed to be supplied, acquired, imported or brought into the province, as the case may be, by the operator and not by the co-venturer;

(*b*) section 177 does not apply in respect of a supply referred to in paragraph (*a*); and

(*c*) all supplies of property or services made, during the period the election is in effect, under the agreement by the operator to the co-venturer shall, for the purposes of this Part, be deemed not to be supplies to the extent that the property or services are, but for this section, acquired by the co-venturer for consumption, use or supply in the course of commercial activities for which the agreement was entered into.

…

273(3) An operator and a co-venturer who have jointly made an election under this section may jointly revoke the election.

273(4) An election or revocation under this section made jointly by an operator and a co-venturer is not a valid election or revocation unless it is made in prescribed form containing prescribed information and specifies the effective date of the election or revocation.

…

273(6) Where an operator who is a participant in a joint venture (other than a partnership) under an agreement referred to in subsection (1) entered into before 1991 with a co-venturer files a return for the operator's first reporting period beginning after 1990 in which all properties and services supplied, acquired or imported by the operator on behalf of the co-venturer in the course of the activities for which the agreement was entered into are reported as having been supplied, acquired or imported, as the case may be, by the operator and not by the co-venturer, the operator shall be deemed to have made jointly with the co-venturer an election under this section in accordance with subsection (4).

273(7) Subsection (6) applies as between an operator and a co-venturer, in respect of an agreement, only where

(*a*) the operator sends a notice in writing to the co-venturer not later than December 31, 1990 of the operator's intention to file a return for the operator's first reporting period beginning after 1990 reporting on the basis provided in subsection (6) with respect to all property and services supplied, acquired or imported by the operator on behalf of the co-venturer in the course of the activities for which the agreement was entered into; and

(*b*) the co-venturer has not, on or before the day that is the earlier of February 1, 1991 and the day that is 30 days after receipt of the notice from the operator, advised the operator in writing that all property and services supplied, acquired or imported by the operator on the co-venturer's behalf in the course of the activities for which the agreement was entered into are not to be treated as having been supplied, acquired or imported by the operator.

## Analysis

[18] The parties agree that the first issue is determined by the provisions of section 273. Before dealing with that section, a comment with respect to GL Trust and the legal definition of "bare trust" is useful. The respected author, Vern Krishna defined "bare trust" as:

> A "bare" trust is one where the trustee holds property for the benefit of another person but does not have any duties to perform other than to hold the property and obey the instructions of the beneficiary. Thus, a bare trustee does not perform any active duties in respect of the trust…

[19] GL Trust meets the definition of "bare" trust. Although Canada Revenue Agency provides concessions for bare trusts in its policy document TIB B-068,[5] the application is limited to trusts that only hold legal title in the trust property with no duties, responsibilities or powers to exercise as trustee which was not the situation with GL Trust. Section 273 does not provide special considerations to bare trusts and as such the provisions would apply accordingly due to GL Trust's registration under the *Act*.

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[5] Technical Information Bulletin TIB B068 – Bare Trusts, January 20, 1993.

[20] Section 273 requires that a registrant (referred to as the "operator"), who is a participant in a joint venture under agreement, jointly elect with co-venturers to remit GST on behalf of the joint venture. Subsection 273(4) specifies that such election must be in prescribed form, specifying the effective date. Subsection 273(6) is a deeming provision which is based on the date in which the joint venture agreement was entered. Application of subsection 273(6) is limited by subsection 273(7) which requires the operator to send written notice to the co-ventures of its intention of filing returns on their behalf. I agree with the parties that the answers to the following questions are crucial to their positions:

(a) whether GL Trust was a "participant" in the joint venture in the context of section 273;

(b) whether GL Trust and the co-venturers are deemed to have elected GL Trust as operator under subsection 273(6); or

(c) whether GL Trust and the co-venturers made or purported to make an election under subsection 273(4).

[21] For section 273 to apply, it must be established that GL Trust was a "participant" in the joint venture. While I agree that "participant" is not defined in the *Act,* I do not accept the Appellant's submission that the decision in *Westcan Malting Ltd. v. The Queen*[6] defines "participant". Referring to the definition as provided by the Appellant, and as defined by *Shorter Oxford English Dictionary*, I conclude that GL Trust was a participant of the joint venture, as the trust partook and shared in the responsibilities of the joint venture through its management of the lands. The *Canadian Oxford English Dictionary*, *5th Edition* defines "participant" as follows:

> A person who participates in something; a participator.

Also, I agree with the following from the decision in *Canada Trustco Mortgage Co. v. The Queen:*[7]

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6 1998 G.S.T.C. 34 (T.C.C.).

7 2005 Carswell Nat 3212.

> The modern rule of statutory interpretation requires that the words of the *Act* are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of Parliament. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. Where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context, and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an *Act* as harmonious whole.

[22] The Minister submits that section 273 applies by virtue of the application of subsection 273(6) which deems the operator liable (in this instance, GL Trust) to remit tax on behalf of the joint venture. The application of subsection 273(6) is restricted by subsection 273(7) which specifically refers to "written" notice being provided to the co-venturers by a specified date. Also, the Minister states that that notice was satisfied by the Appellant signing the GST registration application for GL Trust and, during the required intervals, GST returns were filed by GL Trust claiming input tax credits and reporting net tax on a monthly basis.

[23] Although the Minister submits that the Appellant bares the onus of establishing that no notice was sent to the co-venturers, I believe such onus has been met through the Appellant's testimony.

[24] Additionally, the Minister submitted that the Appellant had professional advisors to determine which company would be registered for GST. If it was the intention of the parties to fall within the application of subsection 273(6) of the *Act*. Would these advisors not ensure that the proper procedures be undertaken to allow the application of this provision? Based on the foregoing, I do not believe that subsection 273(6) of the *Act* applies to the current case.

[25] Conversely, the Minister purports that if the deemed election does not apply, it should be found that a joint election was made between the co-venturers and GL Trust pursuant to subsection 273(4) of the *Act*. The Minister maintains that the requirements of subsection 273(4) have been met, as the required prescribed information is contained in the filed application for a business number and the Joint Venture Agreement. The *Act* does not set out the prescribed information or form in which such election is to be made. It does, however, provide that the effective date of the election must be included.

[26] While not binding on me, the Minister's policy as set out in P-187 is helpful.[8] The policy states that the prescribed information must be set out in *a* document. The Minister also submitted that the prescribed information may be contained in a joint venture agreement or an appendix thereto "provided it is set out in a manner which ensures the co-venturers are aware of the obligation under section 273".[9] This is common sense in that one should not have to guess or to join pieces of a puzzle to find and connect the prescribed information. Here the Minister wants it both ways. Usually he demands strict adherence to the form yet when it suits his purpose as in the present circumstances, a more informal standard is requested.

[27] I agree with the Minister that the application of section 273 is meant to be a relieving provision evidenced by the very restrictive means by which taxpayers can avail themselves of this provision. Throughout that section, there is the overall theme that all parities are to be aware of and in acceptance of the election, evidenced by some type of written acknowledgement. I cannot alter statutory provisions. If it was the intention of legislators that through the review of various extraneous documents the requirement of section 273 would be met, they would have said so. Otherwise, any taxpayer could rely on its application.

[28] The requirements of subsection 273(4) are not met because based on the reasoning in P-187, the information relied on by the Minister is not contained in one document, and there is no mention of an effective date of the election in either of the documents. Although the Minister believes that the only material detriment to an election would be a missing effective date, I believe that acknowledgement by all parties that the election is being made, is also a significant requirement for a valid election.

[29] The language used in the Agreement further evidences the intentions of the parties that both the benefits and liabilities of the joint venture were to be vested in the Joint Venturers and not GL Trust, and more specifically, the following:

> 2.4 This Agreement is not intended to create, nor shall it be construed as creating any partnership or agency whatsoever between the Joint Venturers. Nothing herein shall deem the Project to be partnership property. No party shall by reason of any provision

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[8] Policy Statements P-187 – Prescribed Form for Joint Venture Elections, October 16, 1997.

[9] Respondent's written submissions page 8, paragraph 37.

> herein contained be deemed to be the partner, agent or legal representative of any other party or parties, whether for the purposes of this Agreement, the Project or otherwise, nor shall any party have, nor represent itself to have, any authority or power to act for, or to undertake any obligation or responsibilities on behalf of, any other party or parties, for the Project or otherwise, except as may herein be expressly provided.
>
> 2.5 The obligations of the Joint Venturers with respect to the Project and all contracts and obligations entered into by the Joint Venturers in connection therewith shall, in every case, be several to the extent of each party's Proportionate Interest, and not joint or joint and several, unless expressly otherwise agreed to in writing by both of the Joint Venturers.
>
> 2.6 Neither the trustee of Golden Leaf nor any officer or employee of such trustee shall be held personal liability under this agreement or otherwise in respect of the Project or the Joint Venture except to the extent that such liability can be enforced against or satisfied out of Golden Leaf's Proportionate Interest Only.
>
> 8.3 All interest, profit and advantage arising or accruing from the Lands and all costs incurred or accrued in connection therewith shall be received, held or incurred by the Trustee [GL Trust] for the use, benefit and advantage or cost of the Joint Venturers in the respective proportions referred to in Section 8.2 above. The Trustee will deposit all receipts of any manner from the Lands in an account with a Canadian chartered bank and will deal with the money in such account as directed by the Joint Venturers from time to time.

[30] In conclusion, I agree with the Appellant that subsection 273(4) does not apply as there was no election made between the parties as required under that provision. Based on my findings that section 273 does not apply to the current case, GL Trust was not liable to collect and remit tax on behalf of the Joint Venturers and as such, the third party assessment of the Appellant must fail on these grounds.

[31] Having found that GL Trust had no tax liability there is no need to go further but to be thorough I will deal briefly with the Appellant's secondary issue. Had GL Trust been liable for tax, did the Appellant exercise due diligence within the meaning of subsection 323(3) of the *Act*?

[32] Subsection 323(3) provides that a director will not be liable for a failure to remit where the director has exercised the degree of care, diligence and skill to prevent the failure to remit that a reasonably prudent person would have exercised in comparable circumstances.

[33] The essence of a successful due diligence defence is prevention and it must be determined if the Appellant diligently exercised his authority to prevent the failure to remit tax. The Minister maintains that due to the Appellant's status as an inside director, he has a greater onus in establishing due diligence. However, I agree with the Appellant that the test is whether the director acted reasonably in the circumstances.

[34] There is much debate as to whether the standard of care is based on a subjective/objective test as established in *Soper v. The Queen*,[10] or an objective test as established by the Supreme Court of Canada in *Peoples Department Stores Inc. (Trustee of) v. Wise.* [11] Likely, the test may best be 'described' as being objective, having regard to the specific circumstances and abilities of the director in question, creating a subjective-like element.

[35] The Appellant submits that he did what he could reasonably be expected to do, which included: seeking professional advice regarding the possibility that there may be a GST liability resulting from the rental of the units; attempting to raise funds from investors/bank; all investors were made aware of the impending GST liability due to its inclusion in the 1999 financial statements of Global; prior to his departure from Global he ensured that both his successor and the board of directors were made aware of the outstanding GST liability; and at the time of his departure Global had sufficient assets to pay the GST liability. As stated by Sharlow J. of the Federal Court of Appeal in *Gordon E. Smith v. The Queen*:[12]

> A director is required only to act reasonably in the circumstances. The fact that his efforts are unsuccessful does not establish that he failed to act reasonably.

[36] As evidenced by the various correspondence submitted by the Appellant, and the very restrictive language found in the Agreement, it is evident that the Appellant was required to obtain approval of all activities from the Joint Venturers. Decisions that impacted the joint venture had to be approved unanimously by the Committee which consisted of both Dr. Moh and the Appellant.

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[10] 97 DTC 5407 (F.C.A.)

[11] [2004] 3 S.C.R. 461.

[12] 2001 G.T.C. 3516 (F.C.A.).

[37] The Appellant did not have the authority to make payments to CRA without the authorization and acceptance by Dr. Moh, so his only recourse was to ensure that all parties were informed of the outstanding GST liability and advocate for its payment.

[38] Although we were informed the Appellant was a civil engineer by trade, regardless of his business expertise, nothing could have been done without the consent and authority of Dr. Moh. And although Dr. Moh was made aware of the GST liability, he did not provide his authorization to resolve the issue through payment. It was his authority to do so not the Appellant's.

[39] Furthermore, during two board meetings held in August and September, 2000, both of which the Appellant attended, Mr. Tai Chen, the Appellant's successor, assured all parties that a plan was in place to remit the outstanding tax, and that with his expertise in similar situations the matter would be resolved.

[40] The Minister's audit commenced in March 2001, and the CRA auditor had no contact with the Appellant. Seventy-seven units were sold between March and August 2001 the audit period, for total proceeds of $11,845,200. However, various negotiations were undergone during that period between the auditor and Mr. Chen, the new manager. With the sale of the units and the threat of bankruptcy as purported by Mr. Chen, the only recourse was to assess the Appellant.

[41] Given the very restrictive circumstances under which the Appellant was able to perform his duties as director of GL Trust, and the steps undertaken to ensure the outstanding GST liability was addressed and at the forefront of the Joint Venturers agenda, I believe the Appellant acted diligently and in a manner in which a reasonably prudent person would have in comparable circumstances.

[42] The appeal is allowed, with costs, and the assessment is vacated.

Signed at Ottawa, Canada, this 5th day of December, 2007.

"C.H. McArthur"

McArthur J.

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| CITATION: | 2007TCC718 |
| COURT FILE NO.: | 2004-3699(GST)G |
| STYLE OF CAUSE: | JAMES NING LAU and<br>HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Vancouver, British Columbia |
| DATE OF HEARING: | June 25, 2007 |
| REASONS FOR JUDGMENT BY: | The Honourable Justice C.H. McArthur |
| DATE OF JUDGMENT: | December 5, 2007 |

APPEARANCES:

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| Counsel for the Appellant: | Marjorie E. Brown and<br>Brian J. Wallace, Q.C. |
| Counsel for the Respondent: | Linda L. Bell |

COUNSEL OF RECORD:

For the Appellant:

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| Name: | Marjorie E. Brown and<br>Brian J. Wallace, Q.C. |
| Firm: | |
| For the Respondent: | John H. Sims, Q.C.<br>Deputy Attorney General of Canada<br>Ottawa, Canada |