

Toronto
1966

May 16, 17

BETWEEN:

CLARE LECKIE, Executrix of the
Estate of ADAM NEWTON LECKIE}

APPELLANT;

AND

THE MINISTER OF NATIONAL
REVENUE } RESPONDENT.

Revenue—Estate tax—Estate Tax Act, s. 9(8)(d)(i)—“Place of transfer of shares”—The situs of shares is “in the province where the deceased was domiciled at the time of his death”—Deduction for provincial taxes—Meaning of “place of transfer”—Interpretation of statutes.

The Estate of Adam Newton Leckie was assessed by the Minister under the *Estate Tax Act*. The deceased died on January 2, 1962, at Oakville, Province of Ontario, where he was domiciled. The total value of his estate was \$818,851.10 Of the property passing on the death of the deceased, there was 30,001 common shares and 165 preferred shares in the public company known as Leckie Enterprises Limited (a Manitoba company) having a value of \$607,514 75, and certain shares in Anglo-Newfoundland Development Co. Ltd. The estate paid Ontario Succession duties on these assets.

As to shares in Leckie Enterprises Ltd., there was no formal register for the transfer of shares anywhere but in Manitoba. As to the shares in Anglo-Newfoundland Development Co. Ltd. there was in fact a branch register of transfer of shares in Ontario.

The issue on both appeal and cross-appeal is whether or not there was a “place of transfer” for each of these shares in Ontario so as to qualify the Estate for the deductions sometimes called the provincial tax credits, on certain property passing on the death of the deceased calculated and prescribed by s. 9 of the *Estate Tax Act*.

Held, That, in so far as the subject matter of the cross-appeal is concerned, namely the Anglo Newfoundland Development Co. Ltd. shares, there is no error in law in the decision of the Tax Appeal Board and, therefore, the cross-appeal is dismissed with costs.

2. That, as to the shares in Leckie Enterprises Ltd., the provincial tax credit from the aggregate taxable is allowable to this estate as on the facts of this case there was a “place of transfer” within the meaning of section 9(8)(d)(i) of the *Estate Tax Act* in the Province of Ontario where the deceased was domiciled at his death
3. That, for determining the situs of the subject matter, the purposes of the *Estate Tax Act* are set out in s. 9(8)(d)(i) which statutory provision says that such situs is “in the province where the deceased was domiciled at the time of his death” if any register of transfers or place of transfer is maintained by the corporation in that province.
4. That it was established that the deceased Adam Newton Leckie operated, considered and treated Leckie Enterprises Limited as if it was a sole proprietorship owned by himself, in the same manner as so many lay persons do in reference to corporations they wholly own and control.

5. That the deceased in effect considered the shares of Leckie Enterprises Ltd. could be transferred at any material time where he resided, namely, in Oakville, Province of Ontario. This is sufficient to constitute Oakville a "place of transfer" within the statutory prescription that the corporation at the time of the deceased's death must in fact maintain a "place of transfer" in the Province of Ontario.
6. That Leckie Enterprises Ltd., at the time of the death of Adam Newton Leckie, maintained a "place of transfer" for its shares in the Province of Ontario within the meaning of s 9(8)(d)(i) of the *Estate Tax Act*.
7. That the appeal of the appellant is allowed with costs and the matter referred back for reassessment not inconsistent with these reasons.

1966
—
LECKIE
v.
M.N.R.
—

APPEAL from a decision of the Tax Appeal Board.

D. A. Keith, Q.C. for appellant.

G. W. Ainslie and Gordon V. Anderson for respondent.

GIBSON J.:—This is an appeal and cross-appeal from the decision of the Tax Appeal Board dated November 12, 1965 concerning the tax levied against the estate of Adam Newton Leckie under the *Estate Tax Act*. The deceased died on January 2, 1962 resident at Oakville, Ontario and domiciled in the Province of Ontario. The total value of this estate was \$818,851.10. The estate has paid Ontario Succession Duties.

The issue on both appeal and cross-appeal is whether the deductions, sometimes called the provincial tax credits, on certain property passing on the death of the deceased, calculated and prescribed by s. 9 of the *Estate Tax Act*, are allowable to this estate.

The property passing on the death of the deceased with which the appeal is concerned consists of 30,001 common shares and 165 preferred shares in the public company known as Leckie Enterprises Limited, having a value of \$607,514.75. The provincial credit if allowable would amount to somewhere between eighty and ninety thousand dollars.

The property passing on the death of the deceased with which the cross-appeal is concerned consists of 300 shares of Anglo Newfoundland Development Company Limited having a value of \$2,925.

Insofar as the subject matter of the cross-appeal is concerned, I am of the opinion that there is no error in law in

1966
LECKIE
v.
M.N.R.
Gibson J.

the decision of the Tax Appeal Board and therefore the cross-appeal is dismissed with costs.

As to the subject matter of the appeal, namely, the shares in Leckie Enterprises Limited, the provincial tax credit from the aggregate taxable value is allowable to this estate if the situs of these shares for the purpose of the *Estate Tax Act* was the Province of Ontario and not the Province of Manitoba. The Tax Appeal Board found that these shares did not have such a situs within the Province of Ontario.

The rules for determining the situs of the subject matter of this appeal for the purposes of the *Estate Tax Act* are set out in s. 9, s.s. (8), para. (d), s-para. (i). In brief this statutory provision says that such situs is "in the province where the deceased was domiciled at the time of his death, if any register of transfers or place of transfer is maintained by the corporation in that province..."

There is no dispute about the fact that the deceased was domiciled in the Province of Ontario at the time of his death and the parties have agreed that Leckie Enterprises Limited kept only one "register of transfers" of shares and it was kept at Winnipeg, Manitoba.

The issue for decision therefore resolves itself into the question of whether or not on the facts of this case the corporation Leckie Enterprises Limited maintained a "place of transfer" for its shares in the Province of Ontario within the meaning of s. 9(8)(d)(i) of the *Estate Tax Act*.

The *Estate Tax Act* does not define "place of transfer". The only evidence adduced dealing specifically with these words was to the effect that public corporations with large numbers of shareholders often maintain one or more recognized trust company offices as places of transfer of its shares, but that a corporation such as Leckie Enterprises Limited never does. The meaning therefore of "place of transfer" in this case must be determined from all the other facts adduced.

The parties have agreed to the following Statement of Facts:

1. The deceased, Adam Newton Leckie, died testate on the 2nd day of January, A.D. 1962.
2. Under the last will and testament of the deceased, probate of which was granted to the Appellant by the Surrogate Court for the County of Halton, Province of Ontario, on the 17th day of April, 1962, the Appellant was appointed the sole executrix of his will.

3. At the time of his death, and for at least ten years prior thereto, the deceased was domiciled and resident in the County of Halton in the Province of Ontario.

4. At the date of his death, the deceased was the beneficial owner of 30,003 common shares of Leckie Enterprises Limited, being all of the issued and outstanding common shares of the said company. 30,001 of the common shares at the date of death were registered in his name, and the other two were registered in the names of nominees for the deceased. The deceased was the beneficial owner of 165 preferred shares of Leckie Enterprises and Hunter Enterprises was the beneficial owner of 100 preferred shares being the balance of preferred shares which had been issued and had not been redeemed at the date of death.

5. Leckie Enterprises Limited was incorporated on the 2nd day of October, 1957, under the provisions of the Manitoba Companies Act.

6. The head office of Leckie Enterprises Limited was at all times at the City of Winnipeg.

7. At the date of the death of the deceased, Leckie Enterprises Limited kept only one register for the transfer of shares, which register was kept at the head office of the Company at the City of Winnipeg, and at no time had the directors appointed any place, within the meaning of s.s. (1) of sec. 346 of the Manitoba Companies Act for the keeping of a branch register of transfers.

8. At the meeting of the first or provisional directors of Leckie Enterprises Limited, held on the 7th day of October, A.D. 1957, By-Law Number 1, being a by-law relating generally to the transaction of the business and affairs of the company was passed, and at the first general and special general meeting of the shareholders of Leckie Enterprises Limited, held on 7th October, 1957, the said By-Law was passed, sanctioned and confirmed by the shareholders.

9. Anglo Newfoundland Development Company Limited was incorporated under the provisions of the Companies Act of Newfoundland, R.S.N. 1952, c. 168, and the registered office of the company was in St. John's, Newfoundland.

10. Anglo Newfoundland Development Company was authorized by its Articles of Association to keep a branch register of members outside of the province of Newfoundland, and at the time of the deceased's death, kept a branch register in the Province of Ontario.

11. At the date of death, the deceased was the beneficial owner of 300 common shares of Anglo Newfoundland Development Company Limited. These shares were never transferred by the estate following the death of Adam Newton Leckie, the said shares being redeemed by the company in the month of July, 1962, and the redemption price being paid directly to the Executrix in the Province of Ontario some time during the said month. No releases were ever required by the Province of Newfoundland and no proceedings of any kind were had or taken in the Province of Newfoundland with respect to the transfer of the said shares.

12. The Province of Ontario was a prescribed province, but neither the Provinces of Manitoba nor Newfoundland were prescribed provinces, within the meaning of sec 9 of the Estate Tax Act.

1966

LECKIE

v.

M.N.R.

Gibson J.

1966

LECKIEv.M.N.R.Gibson J.

13. The parties agree that the following documents shall be admitted in evidence without formal proof and shall form part of this Agreed Statement of Facts:

- (a) Letters Probate of the Surrogate Court of the County of Halton, dated 17th of April, 1962, of Last Will and Testament of the deceased, with a certified copy of the Last Will and Testament of Adam Newton Leckie attached thereto;
- (b) Letters Patent of Leckie Enterprises Limited, dated 2nd day of October, A.D. 1957;
- (c) By-Law Number 1 of Leckie Enterprises Limited.

The evidence adduced at the trial of this action established the kind of company that Leckie Enterprises Limited is and how it operated. It is a public company incorporated under the Manitoba *Companies Act*. Mr. D. A. Thompson, Q.C., Winnipeg, Manitoba, gave evidence that at the material time only public companies could be incorporated under the Manitoba *Companies Act*. He described from the minute book Exhibit A-4 and the so-called stock ledger Exhibit A-5 how in fact this company did operate.

This evidence established that the late Adam Newton Leckie was the sole beneficial shareholder and the sole operative officer and sole director with authority of this company; that in the minute book of the company *ex post facto* from time to time were recorded various transactions entered into by the late Mr. Leckie which required some corporate record; that there was no reference in the minutes of the company to the maintaining of any "register of transfers of shares" or "place of register".

In brief, the evidence established that the late Mr. Leckie operated Leckie Enterprises Limited as if it was a sole proprietorship owned by him.

The so-called share "register of transfers" in fact consisted merely of stubs from printed forms of share certificates. And at all material times the actual share certificates were endorsed in blank, and in such street form were pledged to and were in the custody of the Bank of Montreal head office branch in Winnipeg, Manitoba as collateral security for a loan, so that the "register of transfers" that the parties have agreed was kept at Winnipeg was a very basic thing, but quite satisfactory for a company such as this.

The problem is what would a company such as this do to maintain a "place of transfer". Certainly, as indicated in the evidence, it would be ridiculous for it to have a public

trust company as such, which, as stated, a company with many public shareholders often does.

To reach a practical answer to this problem, it is relevant to keep in mind that the deceased Adam Newton Leckie considered and treated Leckie Enterprises Limited as part of himself, in the same manner as so many lay persons do in reference to corporations they wholly own and control. They do not look on such corporations as third parties separate and distinct from themselves even though legally it is uncontrovertible that such corporations are separate legal entities.

1966
LECKIE
v.
M.N.R.
Gibson J.

Taking this into consideration, there is no doubt in my mind on the facts of this case that the deceased in effect considered the shares of Leckie Enterprises Limited could be transferred at any material time where he was, as, for example, where he resided, namely, in Oakville, Ontario. The question is whether or not this is sufficient to constitute Oakville a place of transfer to bring it within the statutory prescription that the corporation at the time of the deceased's death must in fact have maintained a "place of transfer" in the Province of Ontario before the provincial credit to this estate is allowable.

It is unequivocal that this statutory provision is remedial and it is also patent on the facts of this case that a grievous injustice and absurd result will obtain if this estate is denied this deduction of provincial tax credit.

On considering this sub-section in the *Estate Tax Act* it would seem clear that this provision was enacted having in mind the usual situation that obtains with a public corporation, namely, a large number of public shareholders, substantial corporate staff, good corporate business practice which would dictate the necessity of having a register of transfers of shares and places of transfer in all provinces where there were any number of shareholders, and so forth. But this provision also in law does apply to Leckie Enterprises Limited which it is clear is an entirely different kind of corporation and one which the drafters of the legislation may not have had in mind. But the proper rules of construction of statutes must also apply to the case of this corporation.

Important among these rules is the rule prescribing that where there are two constructions, the one which will do injustice and the other which will avoid that injustice and

1966
LECKIE
v.
M.N.R.
Gibson J.

will keep exactly within the purpose for which the statute was passed, the court should always adopt the second and not adopt the first of these constructions. In many cases the courts have applied this rule of construction.

Also without breaching any of the principles of law set out in *Salomon v. Salomon & Co*¹, in many other cases the courts have lifted the corporate veil so as to come to a correct conclusion in law on the facts of the matters before the courts.

An example of this is the situation where the court has been called upon to determine whether there was any basis for granting a company winding-up order. (See *Re Bondi Better Bananas et al.*²; and *Re R. C. Young Insurance Ltd.*³).

Another example is the situation in which the court was called upon to decide whether during the first war a corporation whose shareholders were alien enemies could institute an action against an English company for payment of a debt where payment of a debt was prohibited as trading with the enemy. (See *Daimler Company, Limited v. Continental Tyre and Rubber Company (Great Britain), Limited*⁴).

There are also cases in which the court for the purposes of certain statutory offences has found that a corporation can have *mens rea*. (See the reference to the "brains of the company" in *John Henshall (Quarries) Ltd. v. Harvey*⁵).

The principles enunciated however in the numerous cases establishing the jurisprudence as to the situs of shares for purposes other than s. 9 of the *Estate Tax Act* are not helpful in deciding the issue here; and the provisions of the Manitoba *Companies Act* are irrelevant.

Instead, in this case I am of the opinion that applying the said rule of statutory construction and lifting the corporate veil of Leckie Enterprises Limited the correct conclusion in law will be reached in this case.

In doing so the finding of fact and law must be and is that the will of Leckie Enterprises Limited for the purposes of s. 9(8)(d)(i) of the *Estate Tax Act* was that of the late Adam Newton Leckie its sole beneficial shareholder and sole operative officer and sole director with authority at all

¹ [1897] A.C. 22.

³ [1955] O.R. 598.

² [1951] O.R. 845.

⁴ [1916] 2 A.C. 307.

⁵ [1965] 2 W.L.R. 758.

material times; that the late Adam Newton Leckie also at all material times considered that where he was domiciled and resided, namely, for example, Oakville in the County of Halton in the Province of Ontario was a "place of transfer" for the shares of Leckie Enterprises Limited; and that Leckie Enterprises Limited at the time of the death of Adam Newton Leckie maintained a "place of transfer" for its shares in the Province of Ontario within the meaning of s. 9(8)(d)(i) of the *Estate Tax Act*.

The appeal is therefore allowed with costs and the matter referred back for reassessment not inconsistent with these reasons.

1966

LECKIE

v.

M.N.R.

Gibson J.