

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

THE DEPUTY MINISTER OF FINANCE,	)	<u>Samuel Thomson</u>
	)	<u>Jarod Standil Margovski</u>
applicant.	)	for the applicant
	)	
- and -	)	
	)	<u>Adam D. Pollock</u>
	)	<u>Jonathan Katz</u>
BROOKE PROUTT,	)	for the respondent
	)	
respondent.	)	
	)	<u>Judgment Delivered:</u>
	)	October 23, 2026

TOEWS J.

INTRODUCTION

[1] For many years, Craig Heglin was the sole owner and CEO of Hegland Holdings Ltd., operating as Kirkfield Heating, a Winnipeg-based HVAC company (the "Company"). During those years, the Company consistently failed to remit retail sales tax to Manitoba Finance ("Finance" or "the applicant"), accumulating a significant tax debt. All told, Mr. Heglin's business tax debt was \$377,537.27 inclusive of penalties and interest.

[2] It was in this context that Mr. Heglin's business entered into an agreement with his stepdaughter, Brooke Proutt ("Ms. Proutt" or the "respondent"). On March 1, 2017, Mr. Heglin and Ms. Proutt prepared a document entitled "Transfer of Ownership Document – Bill of Sale" (the "Bill of Sale"). By operation of the Bill of Sale, the applicant submits that Ms. Proutt became the owner of virtually all of the company's assets and intangibles (the "Transaction").

[3] At first instance before the Tax Appeals Commission (the "TAC"), Finance argued that the Transaction was a sale involving the liquidation of a company's assets, by an indebted company, to a non-arm's length young adult.

[4] Ms. Proutt countered that notwithstanding the written Bill of Sale and the surrounding circumstances, what she and her stepfather had actually intended was a secured loan agreement, whereby the company pledged all of its equipment in exchange for a \$20,000 loan. She supported her position with affidavit evidence from herself and Mr. Heglin.

[5] The TAC agreed with Ms. Proutt, holding that the Transaction constituted a secured loan rather than a sale. Based on that finding, the TAC rescinded a bulk sale assessment against the respondent in the amount of \$377,537.27, that is, the tax debt that had been transferred from Mr. Heglin's company to Ms. Proutt under subsection 45(6) of *The Tax Administration and Miscellaneous Taxes Act*, C.C.S.M. c. T2 ("**TAMTA**").

THE POSITION OF THE APPLICANT

[6] Finance takes the position that the TAC made a palpable and overriding error in characterizing the Transaction in the way it did. The TAC's holding ignored the clear text of the Bill of Sale, and accepted dubious extrinsic evidence when there were ample reasons to doubt the veracity of that evidence. Finance asks the court to quash the TAC's decision and reinstate the tax assessment. This was a clear and significant error because it disregarded the Bill of Sale, and ascribed significant weight to certain unpersuasive extrinsic evidence, while ignoring other more germane and contradictory extrinsic evidence.

[7] Finance submits that in disregarding the Bill of Sale, the TAC ignored the most central piece of evidence in the proceeding. This caused the TAC to characterize the transaction in a manner which was irreconcilable with the evidence.

[8] Finance argues what made the Bill of Sale most significant was its text. It was a clear and unambiguous expression of what was being exchanged. The Bill of Sale – which was entitled "Transfer of Ownership Document – Bill of Sale" – specified that Ms. Proutt was purchasing the Company's assets and intangibles for \$20,000. Further, there was no reference in the Bill of Sale suggesting that the Transaction was a loan, or involved security, or was intended to take effect sometime after it was executed.

[9] But the Bill of Sale was also significant because of the context in which it came before the TAC. It was Ms. Proutt herself who produced it to Finance during the audit, and then tendered it at the outset of the TAC proceeding. It was she who sought to rely on it to support her assertion as to the date the Transaction occurred: March 1, 2017,

which was the date identified in the Bill of Sale. In this sense, far from denying the Bill of Sale was binding or a representation of the parties' agreement, it was Ms. Proutt who put it into evidence.

[10] The TAC explained its rationale for disregarding the Bill of Sale. For one, it said the Bill of Sale was unsigned, and therefore, "[e]ither party could have drafted this agreement without the knowledge or agreement of the other party". It also said that Ms. Proutt's own characterization of the Transaction (as a conditional sale), "[does] not make sense from a legal perspective ... [i]f the \$20,000 was the purchase price for the conditional sale, why would it need to be repaid to [Ms. Proutt]? (See Application Brief of Applicant, at paras. 22 and 42)

[11] Finance argues this reasoning does not withstand scrutiny. On the TAC's first point, it is true that the absence of a signature could have some significance in circumstances where the one of the parties challenges the agreement's validity. But that was not the case here. The Bill of Sale was written by Mr. Heglin and tendered by Ms. Proutt in the TAC proceeding to support her position. As well, there is ample case law indicating that a contract does not always require a written signature.

[12] On the second point, a conditional sale is a legally cognizable type of sale – including under ***The Sale of Goods Act***, C.C.S.M. c. S10, so it was a mistake for the TAC to dismiss this contention outright. Contrary to the TAC's holding, Ms. Proutt's framing of her own transaction was plausible.

[13] For these reasons, Finance says the TAC's handling of the Bill of Sale was a significant error going to the core of the Transaction's characterization.

[14] Finance further submits that the TAC also erred in its treatment of the extrinsic evidence – that is, the evidence tendered by Ms. Proutt which was external to the Bill of Sale. Centrally, the TAC accepted Ms. Proutt's affidavit evidence as true without engaging with or addressing clear and obvious reasons to doubt the veracity of this evidence.

[15] One of the central sources of extrinsic evidence was a pair of affidavits filed by Ms. Proutt. Sworn by herself and Mr. Heglin, these affidavits were short and virtually identical. In them, Ms. Proutt and Mr. Heglin both deposed that contrary to the text of the Bill of Sale, they had actually intended for the Transaction to be a secured loan. While conceding that the wording of the Bill of Sale did not match up with this apparent intention, in her affidavit sworn June 1, 2020, Ms. Proutt attributed this defect to their failure to obtain legal advice:

7. Neither [Mr. Heglin] nor I obtained legal advice prior to the finalization of [the Bill of Sale] nor did we obtain legal advice with respect to preparing [the Bill of Sale]. I am advised by [Mr. Heglin] and verily believe to be true that he could not afford legal advice nor did he think it was necessary as we were preparing a document for a private loan.

(See Tab 5(1) of the Record, Vol. 1)

[16] Ms. Proutt and Mr. Heglin also said that after Mr. Heglin defaulted on this apparent loan, Ms. Proutt permitted Mr. Heglin to continue using the assets and intangibles for another nine months until his business could no longer continue. As stated in her affidavit:

6. [Mr. Heglin] and I agreed that he had until March 1, 2018 to repay me the \$20,000.00. Unfortunately, [Mr. Heglin] was unable to pay me back and as a result I became entitled to the assets listed in paragraph 1 through 16 of [the Bill of Sale]. I officially took control over the assets ... on March 1, 2018 and I allowed [Mr. Heglin] to continue to use the assets until he was no longer able to have [the Company] remain viable as a business December of 2018.

(See Tab 5(1) of the Record, Vol. 1)

[17] Finance argues other extrinsic evidence makes these assertions dubious. First, the affidavits concealed the familial relationship between Ms. Proutt and Mr. Heglin. This was no small oversight, as neither Finance nor the TAC were aware of this relationship at that point in time. Ms. Proutt had not mentioned this relationship to Finance during its audit, nor to the TAC in either her initial appeal documents, or in this follow-up affidavit evidence. That information only came to light later in the proceeding, on questioning from the TAC.

[18] It is Finance's position that the nature of this familial relationship was highly germane to the case. Not only did the relationship provide a motive for the Transaction (an indebted stepfather transferring assets to his stepdaughter in order to evade his creditors), but it also undermined the notion that a young adult stepdaughter would truly loan her father money for him to get back on his feet. That Ms. Proutt and Mr. Heglin were family also helped explain why Mr. Heglin was permitted by Ms. Proutt to continue using and possessing the assets after for almost two years after the date of the Bill of Sale, something that would be unheard of in a typical vendor-purchaser (or borrower-lender) relationship.

[19] Finance submits that the second contradictory aspect of the extrinsic evidence was Ms. Proutt's initial statement in her appeal document that the Transaction was a sale. She did not explain or justify why her perspective had changed, nor did she try to reconcile the two contradictory statements.

[20] Finance further submits that the third contradictory aspect of the extrinsic evidence was Ms. Proutt's comment at the outset of the proceeding explaining why she had failed to obtain a clearance certificate before executing the Transaction:

[The Company] did not apply for a Clearance Certificate and I was not able to obtain a copy as there was a large balance owing and the payment arrangement that [the Company] had in place is such that the debt can never be paid back due to the onerous penalties and interest (a reasonable arrangement did not exist). As a result, the tax debt of [the Company] can't be transferred to me.

(See Application Brief of the Applicant, at para. 52)

[21] Finance says this initial statement revealed how Ms. Proutt conceived of the Transaction. Here she admitted that she had a sense that a clearance certificate was required or advisable before a bulk sale. She was also aware of the significant tax debts owed by the Company to Finance. Her reason for not obtaining a clearance certificate was not her lack of sophistication or her conception that the Transaction was a loan. She was very candid that she knew the Transaction constituted a sale, and her goal was simply to circumvent **TAMTA's** bulk sale provisions.

[22] Nonetheless, the TAC accepted Ms. Proutt's affidavit evidence in its decision and ignored all the other relevant extrinsic evidence contradicting the affidavits. In its brief evaluation of the extrinsic evidence, the TAC held that Ms. Proutt and Mr. Heglin's conduct was inconsistent with the Bill of Sale:

15. The conduct of the parties following March 1, 2017 was not consist [sic] with the terms set out in the Bill of Sale memorandum if viewed in isolation. Based upon the evidence provided ... it has been established to the satisfaction of the Commission that [the Company] continued to carry on [business] until at least October, 2018. Accordingly, it is reasonable to conclude that the Bill of Sale document did not reflect the entire transaction or arrangement between the parties. ...

(See Tab 12 of the Record, Vol. 2, letter dated September 14, 2020 from TAC)

[23] Again, emphasizing Ms. Proutt's and Mr. Heglin's conduct, the TAC also described in their letter of September 14, 2020, at para. 17, the affidavit evidence as, "more internally consistent and therefore plausible explanation of what the intention of the parties was in their overall transaction, given the conduct of the parties as well as their basic layman's explanation of the nature of the transaction."

[24] Finance argues the TAC's decision also offered no consideration whatsoever of Ms. Proutt and Mr. Heglin's relationship. The relationship was not even mentioned. This omission is hard to explain, particularly because it was the TAC that asked Ms. Proutt to disclose this relationship. Finance takes the position that the TAC's failure to take stock of the relationship caused it to interpret Ms. Proutt and Mr. Heglin's conduct in an absurd way. It states this is evident in the fact that Mr. Heglin continued to possess and use the Company's assets for more than a year after the Transaction. The TAC interpreted this conduct as proving that the Transaction was not a sale. But if the TAC had been aware of the relationship, another interpretation of Ms. Proutt and Mr. Heglin's conduct would have been apparent: that the Transaction was not at arm's length, and Ms. Proutt was continuing to let her stepfather run his business.

[25] Finance argues that the TAC's disregard for the Bill of Sale and disordered handling of the extrinsic evidence rose to the level of a palpable and overriding error. Finance therefore submits that in light of the nature of its asserted error, the TAC's decision should be rescinded, and Finance's assessment reinstated.

POSITION OF THE RESPONDENT

[26] The respondent submits that substantial deference is owed to the TAC. It states it is a highly specialized quasi-judicial body and the most significant arbitrator in provincial tax matters. The respondent notes *The Tax Appeals Commissions Act*, C.C.S.M. c. T3 (the "**TACA**") governs how the TAC is to conduct proceedings and confirms that the TAC has the power and discretion to investigate, inquire and require any evidence be submitted. It also expressly provides that the formal rules of evidence applicable to judicial proceedings do not apply to the TAC proceedings.

[27] The respondent points out that in addition to being codified in legislation, the TAC has discretion on how to proceed in any given case including having all the powers necessary to conduct a full hearing, including receiving evidence and making findings of fact.

[28] The respondent states that while Finance acknowledged the right to cross-examine in its submissions in the record, it elected to not cross-examine on both affidavits submitted on behalf of the respondent. It also did not file any additional evidence after being given the opportunity to do so. The respondent submits that Finance did not outright challenge her credibility and elected to not cross-examine her. There is no transcript to consider.

[29] The respondent submits that Finance's position on extrinsic evidence is contradictory. For example, Finance is claiming that the extrinsic evidence it had should have been given more weight than the extrinsic evidence unfavourable to it. This is not a proper error, especially given the flexibility and lack of restrictions in the TAC process.

[30] With respect to the parol evidence rule concerns raised by Finance, the respondent states these concerns were properly considered in the TAC's decision in detail. It properly determined that the parol evidence rule did not apply. To go even further, despite its finding that it did not apply, it still reviewed whether any of the exceptions for the rule were present in the event that its assessment was incorrect. The TAC still found that the first exception, mainly that the evidence demonstrated that the written document did not represent the whole agreement, still applied because the objective evidence of the parties' conduct throughout the period in question supported that conclusion.

[31] The respondent argues that the TAC was entitled to make these determinations based on the facts and evidence on the record and that Finance is simply attempting to re-argue this same point without outlining any error.

[32] In respect of Finance's argument that the TAC neglected to consider the relationship between Ms. Proutt and Mr. Heglin and therefore there was a flaw in the Decision, the respondent submits that the record clearly establishes that the TAC was aware of this information through inquiry and submissions.

[33] The respondent states that a decision-maker need not write in its decision every piece of evidence that was considered provided the reasons sufficiently adhere to the following principles:

- Reasons must be assessed functionally and be sufficient to let those whose rights are affected know why the decision was made;
- The basis of the decision must be explained and logically connected;

- A tribunal need not set out every piece of evidence or set out every finding;
and
- There is considerable latitude of the decision maker.

(See ***Guttman v. Law Society of Manitoba***, 2010 MBCA 66)

[34] The respondent states that Finance takes the position that the TAC allegedly erred by holding that the Transaction did not constitute a “sale in bulk” under s. 45 of **TAMTA**. It claims that the TAC disregarded the Bill of Sale and gave significant weight to unpersuasive evidence. In response, the respondent states the real finding by the TAC was to first rule on the nature of the transaction being a realization on security and then finding that the transfer of assets was not a transaction to which the “sale in bulk” rules of s. 45 of **TAMTA** applied.

[35] The respondent notes the TAC begins its analysis at page 4 of its decision (see Record Tab 12, Vol. 2, at para. 12), by stating “[t]he most challenging aspect of this appeal is determining the nature of the transaction between the taxpayer and [Hegland Holdings Ltd.]”. The respondent submits what follows is an in-depth analysis of all relevant evidence. She argues that despite already raising this argument before the TAC, Finance continues to overemphasize the importance of the Bill of Sale. The respondent submits the TAC rightfully considered the Bill of Sale in detail, the conduct of the parties, and the unchallenged testimony of the parties as part of its focus.

[36] The respondent submits that since the Bill of Sale was not executed by either the respondent or Mr. Heglin, the TAC used its discretion and asked the parties for more

information and additional submissions to clearly comprehend what the true nature of the transaction was.

[37] The TAC also determined that a conditional sale did not make sense from a legal perspective and felt that the June 1, 2020 sworn statements of Ms. Proutt and Mr. Heglin explained the plausible intention of the parties. The respondent says this led to a finding that the true nature of the transaction was a secured loan. In its submissions, Finance expressly acknowledged that s. 45 of **TAMTA** does not apply in this situation, particularly on a realization on security. Accordingly, and given the extensive analysis performed by the TAC on the nature of the transaction, there was no “sale in bulk” and the assessment had to be rescinded.

[38] The respondent submits the TAC clearly considered all the evidence and arguments and was in tune with the difficult task this case presented: mainly determining what the transaction was. It argues that not only was the decision correct, but there was also no error, identified by Finance or otherwise. The respondent says Finance simply disagrees with the outcome and wants to re-argue its case.

DECISION

[39] In coming to the conclusion that the applicant’s appeal must be dismissed, I am especially mindful of the distinct function that this court exercises while conducting these review proceedings. This hearing proceeds on the record and not as a *de novo* hearing. While my review of the evidence and the conclusions which the TAC arrived at following its review of the evidence may not have been the conclusion I would have arrived at, it

is not my function in these proceedings to reweigh the evidence and substitute my opinion for that of the TAC.

[40] The parties are agreed that this court may only intervene to rescind the TAC's decision where it is evident that there has been a palpable and overriding error. **TACA** governs how the TAC is to conduct proceedings and confirms that the TAC has the power and discretion to investigate, inquire and require any evidence be submitted. In ***Santarsieri (Michele) Inc. et al. v. Manitoba (Minister of Finance)***, 2015 MBCA 71, the Manitoba Court of Appeal stated the following on the role of the TAC:

[58] Despite the respondents' argument that the commission lacked expertise to decide the issues before it, I would repeat that the commission is a quasi-judicial body. With the enactment of TAMTA, the role of the commission became that of a general tax appeal tribunal for the many taxing statutes to which it applies. The legislative scheme of [the Tax Administration Miscellaneous Taxes Act] suggests that the commission would establish expertise in determining issues involving tax assessments and appeals involving those statutes.

[41] In view of the highly specialized quasi-judicial nature of the tribunal that has rendered this decision and the statutory provisions that have created this process, it is my obligation to apply a deferential standard of review.

[42] In this case the TAC had a very complete written record of submissions. All of the evidence was in the form of documents, including emails and affidavits. Although the document purporting on its face to be a bill of sale was not signed by either Ms. Proutt or Mr. Heglin, neither party disputed its authenticity. However, following its examination and analysis of the evidence and those submissions, the TAC apparently came to the conclusion that what might appear at a superficial level to be a sale rather than a loan, the transaction that occurred between Ms. Proutt and Mr. Heglin was, when examined in

depth, a loan and not a sale. While the Bill of Sale appears to be a very clear and unambiguous document confirming that a sale had taken place of the assets, the TAC in its decision explained that in the context of all of the evidence, the Bill of Sale was part of a broader loan transaction.

[43] In my opinion the TAC was entitled to make its determinations based on the facts and the evidence on the record. The TAC considered all the evidence and arguments and specifically acknowledged the difficult task before it, namely determining what the nature of the Transaction was. The TAC sought clarification from the parties when it was of the opinion it was necessary to do so and made its decision on the basis of the evidence before it. The reasons which it issued clearly set out the extent to which that evidence was considered, and in my opinion, within the latitude provided by the statute, made its final decision.

[44] Accordingly, the appeal is dismissed. The respondent shall have her costs in relation to this hearing based on the applicable tariff.

_____ J.