

BETWEEN:

WILSON 555 AVENUE INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 3, 4, 5 and 10, 2024, at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant: Justin Kutyan
Marta Porodko
Vincent Dionne

Counsel for the Respondent: Linsey Rains
Inta Simonyan

JUDGMENT

The appeal made under the *Income Tax Act* with respect to the appellant's 2017 taxation year is allowed on the basis that:

- a) 555 Wilson Avenue was held as a capital property from January 31, 1996 to September 16, 2011, after which the property underwent a change in use to inventory.
- b) 545 Wilson Avenue was held as a capital property from April 15, 1998 to September 16, 2011, after which the property underwent a change in use to inventory.

- c) Business income in the amount of \$290,119 included in the appellant's income for the 2017 taxation year shall remain as assessed, and as conceded by the appellant.
- d) In light of the appellant's substantial success, the appellant is entitled to costs.
- e) The parties shall have until August 31, 2026 to reach an agreement as to costs, failing which the appellant shall file written submissions by September 29, 2026 and the respondent shall file a written response by October 30, 2026. Any such submissions shall not exceed ten pages in length, including appendices. If the parties do not advise the court that they have reached an agreement and no submissions are received by these dates, then costs are awarded to the appellant in accordance with Tariff B without further order.

Signed this 29th day of May 2026.

"Susan Wong"

Wong J.

Citation: 2026 TCC 104
Date: 20260529
Docket: 2021-1383(IT)G

BETWEEN:

WILSON 555 AVENUE INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Wong J.

I. Issues

[1] The central issue in this appeal is whether net proceeds of \$13,249,499 with respect to the disposition of real property located at 545 and 555 Wilson Avenue were on account of income or capital in the appellant's 2017 taxation year (ending January 2nd).

[2] Within that central issue are the following sub-issues:

- a) whether the properties in question underwent a change in use pursuant to subsections 13(7) and 45(1) of the *Income Tax Act*, triggering a deemed disposition; and
- b) if there was a change in use, when did it occur.

[3] The parties agree that determination of the central issue will resolve the consequential assessments under appeal, which are:

- a) whether a dividend of \$6,450,000 paid on December 12, 2016 was a capital dividend pursuant to subsection 83(2) or whether it was an excessive capital dividend election with respect to the appellant's 2017 taxation year, to which Part III tax applies;

- b) whether the appellant is entitled to the small business deduction with respect to its 2017 taxation year, pursuant to section 125; and
- c) whether the appellant is entitled to a dividend refund in the amount of \$9,200 with respect to its 2018 taxation year, pursuant to section 129.

[4] The Minister of National Revenue also included \$290,119 as business income with respect to the appellant's 2017 taxation year. The appellant has conceded this issue.¹

II. Factual background

[5] The parties filed a comprehensive partial agreed statement of facts. The timeline of events is largely not in dispute, although the nuances are absent.

[6] The appellant is an Ontario corporation incorporated on December 21, 2007² and its only directors are Steven and Michael Wise, who are brothers.³ The appellant is a wholly owned subsidiary of Wise Management Inc.⁴

[7] Steven and Michael's father immigrated to Canada after World War II and opened a business with their uncle in Toronto making and selling fur coats. In 1962, their father used his savings to purchase an ownership interest in a rental apartment building and agreed to work as its superintendent while continuing to operate the fur coat business.⁵ Two more rental apartment buildings were built soon after and by the time of his death in 1999 at the age of 80, he owned and managed five such buildings.⁶

[8] Steven began working in insurance sales in about 1977. In about 1980, he joined a firm which would eventually be known as KRG. He started as a salesperson and became a partner in about 1982, followed by president, and then chair of the company. He testified that he oversees operations with KRG and continues to sell insurance.⁷

[9] Michael sold office supplies after high school and then worked for a car-leasing company. By about age 30 in 1992, he began working full-time for his father and aunt at their property management company managing the five rental apartment buildings mentioned above.⁸ He testified that he and his father were responsible for day-to-day property management such as rental, repairs, and maintenance.⁹

[10] Steven and Michael (sometimes with other members of the Wise family) owned, operated, and/or controlled numerous companies most simply described as the Wise Group, of which the appellant and Wise Management Inc. are two.¹⁰ Steven described his role as making deals while Michael and Roderick MacDonald (the Wise Group's chief financial officer) took care of the process side by ensuring that paperwork and other necessary steps were taken.¹¹ Michael focused on all aspects of property management with respect to the Wise Group's various residential and commercial lease holdings, which included various residential apartment buildings, a strip mall, an office building, a parking lot, and land on which two stand-alone Tim Hortons restaurants were situated (not including the restaurants themselves).¹²

[11] The Wise family generally used corporate entities to structure their affairs and some companies within the Wise Group are more relevant to this appeal than others. For example, Steven has a holding company called Kargo Realty Limited for his insurance commissions and income.¹³ As another example, Kidco Group Ltd. was formed when their father died and consisted of Steven, Michael, and their sister for the purpose of holding the five rental apartment buildings mentioned above.¹⁴ As a third example, when their sister's husband died at a young age, the Wise family set up the Pollack/Pollock Family Trust for her.¹⁵

(a) 555 Wilson Avenue

[12] On December 12, 1995, Steven entered into an agreement to purchase 555 Wilson Avenue which consisted of an office building and the land on which it was situated in North York. He did so as president of KRG and in trust for a corporation to be incorporated, for a purchase price of \$1.18M.¹⁶ 1132168 Ontario Limited was incorporated on May 24, 1995 as a holding company for Steven¹⁷ and used to purchase 555 Wilson Avenue for the agreed purchase price of \$1.18M on January 31, 1996.¹⁸

[13] Steven testified that at the time, KRG was outgrowing its office space in an industrial building.¹⁹ He explained that he had a life-long dislike for renting and preferred to own whenever possible.²⁰ He stated that real estate holdings for the Wise Group were like family members.²¹

[14] He testified that at the time, Wilson Avenue was in a run-down neighborhood where one would not want to walk at night. He stated that there was a family-owned building called Levinter's Furniture at 555 Wilson Avenue and he had heard the Levinter family wished to sell it.²² Steven stated that the premises was especially appealing to KRG because: (a) it had already been converted into an office space for

the Toronto Transit Commission (“TTC”), and (b) the TTC had vacated the premises with two years remaining on its lease so it was continuing to pay out the remainder of the lease on a monthly basis.²³

[15] Steven testified that KRG did not have much money at the time so the TTC payments would help cover the cost of buying the building.²⁴ He stated that KRG purchased 555 Wilson Avenue intending to use it as their offices.²⁵ The agreement of purchase & sale shows that notices and communications to the purchaser under the agreement were to be sent to KRG at 555 Wilson Avenue.²⁶

[16] On December 20, 2001, 1132168 then sold 555 Wilson Avenue to Wise Management Inc. for \$2M.²⁷ During the years under appeal, Wise Management Inc. was owned by Muskoka Property/Properties Management Group Ltd. and 1294172 Ontario Ltd.²⁸ Muskoka Property/Properties Management Group Ltd. was in turn indirectly owned by Steven and Michael through their respective numbered companies.²⁹ 1294172 is wholly owned by the Pollack/Pollock Family Trust.³⁰

[17] On December 31, 2008, the appellant and Roderick MacDonald (CFO for the Wise Group) entered into an agreement by which the appellant would purchase Mr. MacDonald’s beneficial interest in 555 Wilson Avenue for \$160,000. The purchase price was payable by December 31, 2018 and the closing date for the agreement was the date on which the payment was ultimately made.³¹ Mr. MacDonald explained that he was KRG’s CFO before becoming CFO for the Wise Group and his beneficial interest was based on his 7.3% shareholder interest in KRG. He described this agreement with its flexible closing date as a gentleman’s agreement and confirmed that he received the payment.³²

[18] KRG occupied 555 Wilson Avenue as a tenant paying rent and operating its insurance business there from the acquisition in January 1996 until the building’s demolition in May 2012.³³

(b) 545 Wilson Avenue

[19] Steven explained that after KRG moved into 555 Wilson Avenue, they began to go for lunch at the bowling alley next door. He wished to partner with a close friend (now deceased) named Allen Jefferson who operated an insurance business called Global Benefits specializing in union benefits, an area different than his own. Steven stated that Mr. Jefferson was interested but tied to his existing commercial lease at the time.³⁴

[20] On January 23, 1998, 1175543 Ontario Limited entered into an agreement to purchase 545 Wilson Avenue which was a bowling alley and billiard hall beside 555 Wilson Avenue.³⁵ Michael explained that 1175543 was a company the Wise Group used to acquire property and that Steven signed on its behalf.³⁶

[21] The purchase price was \$1.3M with a completion date of April 15, 1998.³⁷ On February 27, 1998, 1175543 assigned its purchase interest to Wise Property Management Ltd.³⁸ Wise Property Management Ltd. was owned in equal parts by Kidco Group Ltd. and 1265130 Ontario Limited (owned by Mr. Jefferson); at the time, Kidco Group Ltd. was also the parent company of Wise Management Inc.³⁹

[22] Steven testified that they decided to purchase 545 Wilson Avenue knowing they would have to run the bowling alley until Mr. Jefferson's lease expired, at which point he could relocate his business to 545 Wilson Avenue.⁴⁰ Michael testified that they planned to convert the bowling alley into office space to be occupied by Global Benefits as the sole tenant. He stated that they kept the existing bowling alley staff and operated it until Mr. Jefferson was ready to relocate his operation about 12 to 18 months later.⁴¹ Steven and Michael recalled that the renovations to convert the bowling alley to an office space cost Global Benefits about \$1.8M because Mr. Jefferson's tastes ran on the more expensive side.⁴²

[23] Kidco Group Ltd. eventually purchased 1265130's (i.e. Mr. Jefferson's) 50% interest in Wise Property Management Ltd. on April 1, 2005 and agreed they would share equally in the proceeds/shortfall of any future sale.⁴³

[24] Global Benefits occupied 545 Wilson Avenue as a tenant paying rent and operating its insurance business there until the building's demolition in May 2012.⁴⁴

(c) Ownership of 545 Wilson Avenue and 555 Wilson Avenue

[25] On January 1, 2006, Wise Management Inc. (which owned 555 Wilson Avenue) and Wise Property Management Ltd. (which owned 545 Wilson Avenue) amalgamated under the name Wise Management Inc.⁴⁵

(d) Development of 545 Wilson Avenue and 555 Wilson Avenue

[26] Steven testified that in about 2005 or 2006, he received an unsolicited visit from two individuals named Elvio DelZotto and Tony Moro. He stated that he knew them to be executives from Tridel which was the largest residential condominium developer in Toronto at the time.⁴⁶ He explained that he later learned his assistant's

mother worked at Tridel and gave Messrs. DelZotto and Moro his address. He stated that he was excited a Fortune 500 company might wish to do insurance business with him.⁴⁷

[27] Steven testified that instead of purchasing insurance, Mr. DelZotto expressed interest in purchasing 545 and 555 Wilson Avenue.⁴⁸ Steven stated that the conversation did not go anywhere but the unsolicited interest made him curious about the development potential of the properties. He later contacted Marco Ventola, whom he knew to be the VP of real estate for Shiplake Management Company. Shiplake was an insurance client of Steven's with experience in land acquisition, development, and construction management; it was a family-owned company and Michael Latner (one of its principals) went to school with Steven.⁴⁹

[28] Mr. Ventola stated that beginning in about 2000, Shiplake sought to get back into real estate development after several quiet years in the 1990s when they had to convert all their apartments to affordable community housing.⁵⁰ He explained that when Steven contacted him in 2005 or 2006, Mr. Ventola's initial concern was that while the location of the properties was desirable due to proximity to a subway station, the land was zoned for employment (i.e. industrial) purposes and the city of Toronto was protective of its industrial land base at the time.⁵¹ Mr. Ventola then prepared an overview for Michael Latner with respect to the zoning issue and the potential of the properties for residential development.⁵²

(i) Subsection 85(1) rollover

[29] On January 31, 2008, the post-amalgamation Wise Management Inc. transferred 545 and 555 Wilson Avenue to the appellant by way of subsection 85(1) rollover.⁵³ The rollover election was filed with the Minister on June 30, 2009 and contained an appraised value of \$6.7M for the properties.⁵⁴

(ii) Development management agreements

[30] Steven testified that his priority was to protect the value of the land before entering into development agreements.⁵⁵ He explained that in preceding verbal discussions with Mr. Latner, he understood the Wise Group would contribute the land, Shiplake would protect the land's value while taking steps to move the project forward, and the anticipated net result would be an earned profit.⁵⁶ Steven required there be no monetary contribution or other involvement on the Wise Group's part, with the land being irrevocably contributed to the project only after Shiplake successfully completed all other pre-steps.⁵⁷ He understood those to be: (a) obtaining

the necessary rezoning for the land so the site would be ready to build on, and (b) qualifying for the necessary bank financing (about \$80M). The latter would require Shiplake to in turn market the pre-sale of the condominium units and pre-sell 75-80% of the units.⁵⁸

[31] On February 21, 2008, the appellant entered into a development management agreement (as owner) with 2137527 Ontario Limited (as development manager) and 555 Wilson Avenue Developments Inc. (as nominee). The nominee was incorporated on January 23, 2008 and held legal title to 545 and 555 Wilson Avenue as bare trustee for the appellant.⁵⁹

[32] The project contemplated under the agreement was the planning, development, and construction of certain improvements on the land in question. Those improvements were in turn defined as the infrastructure, buildings, and improvements necessary for developing and constructing about 350 residential condominium housing units of various types with common amenities as well as some commercial space, all conforming to city requirements. The project was to be carried out in accordance with the “development permit” which was defined to be all necessary city permits.⁶⁰

[33] The development manager (i.e. 2137527) was responsible for coordinating and managing the rezoning, development, sale, and construction of the project.⁶¹ Steven stated that 2137527 was Michael Latner’s company.⁶²

[34] An amended and restated development agreement was signed by the parties on May 15, 2008.⁶³ The May 15, 2008 agreement set out the lands’ value to be \$12M as well as set out the role of the development manager in greater detail, including its obligation to initially fund the project with terms of repayment upon receiving bank financing (among other things).⁶⁴ By this date, an individual named David Hirsch co-signed with Mr. Latner on behalf of 2137527. Steven explained that Mr. Hirsch was president of Brandy Lane Corporation, a new-home development and construction company which would handle the actual construction of the project.⁶⁵

[35] A further amended and restated development agreement followed on August 18, 2011.⁶⁶ Among other things, the August 18, 2011 agreement revised the lands’ value to be \$15.3M and updated the parties to reflect name changes, i.e. 2137527 became SBL Developments Inc. as the development manager and 555 Wilson Avenue Developments Inc. became Wilson Station Development Corporation as nominee.⁶⁷

[36] The appellant as owner and 2137527 (later SBL) had the right to terminate the agreement: (a) at any time under the first two versions of the agreement,⁶⁸ and (b) before the project date under the third/final version of the agreement.⁶⁹ The project date was the latest of the following three events: bank financing, site plan approval, and issuance of the building permit.⁷⁰

(iii) Rezoning

[37] On June 5, 2008, Shiplake filed a development approval application to the city of Toronto for a zoning by-law amendment changing the use of the land from two 2-storey office buildings to two residential buildings of 12 and 15 storeys.⁷¹ The application identified Shiplake and Brandy Lane as the agents and the senior city planner assigned to the file (Cathie Ferguson) recalled dealing with Marco Ventola.⁷²

[38] Ms. Ferguson explained that the underlying zoning for the land was industrial so it would not allow residential uses.⁷³ She stated that she considered who the stakeholders might be and circulated the application to them. Those stakeholders included the city's engineering department (to determine whether there would be sufficient infrastructure such as water capacity to support a residential development), the city's economic development division (due to the possible loss of office space and resulting economic development interest), all private and public utilities services (to consider how the rezoned area might be serviced), the Toronto Transit Commission (because this site was next to the Allen Expressway and a TTC subway entrance), the Downsview Airport (a nearby private airport used by Bombardier, who would be interested in the height of the proposed buildings and possible interference with flight patterns), and the affected community (by way of a community consultation meeting).⁷⁴

[39] She stated that the review process is extensive with no certainty of approval and that at the time of this application, the process typically took one to three years. She described the process as iterative, i.e. the collected feedback would be sent to the applicant to revise its application package in response. She stated that a revised package could take six to ten months, depending on how quickly an applicant worked. The revised package would be circulated to interested stakeholders and collected feedback sent again to the applicant for further revisions. She explained that the process would be repeated until the application hopefully evolves to the point a recommendation report could be submitted to North York community council for review and possible further recommendation to Toronto city council for approval, neither of which was a certainty.⁷⁵

[40] Ms. Ferguson's January 21, 2010 report submitted to North York community council shows that she recommended approval to amend the zoning by-law to allow a mixed-use condominium development consisting of a 7-storey mixed-use base building plus an additional 6-storey tower and 7-storey tower.⁷⁶ The zoning by-law amendment was approved and enacted by the city of Toronto on February 23, 2010.⁷⁷

(iv) Financing

[41] On September 16, 2011, Wilson Station Development Corporation (nominee under the development agreement) entered into a financing agreement with Scotiabank for credit facilities of \$71,946,600 and \$3M.⁷⁸ The loan was guaranteed by three individuals (including David Hirsch of Brandy Lane) plus two real estate companies.⁷⁹ Michael testified that the three individuals were all principals of Brandy Lane while the two real estate companies were owned by the Latner family (i.e. owners of Shiplake).⁸⁰

(v) Construction and beyond

[42] On May 13, 2012, the office buildings on the land were demolished and construction of the project began on October 1, 2012.⁸¹

[43] On February 26, 2016, the project was registered as a condominium corporation.⁸²

[44] The appellant received proceeds of disposition from the sale of 545 and 555 Wilson Avenue totalling \$15.3M consisting of: (a) three installments received between February and May 2016 totalling \$12.5M,⁸³ and (b) the balance of \$2.8M from the deposits of condominium purchasers.⁸⁴

(e) Income tax filing history

[45] In the appellant's T2 return for 2017 (schedule 6), it reported the disposition of the land as a disposition of capital property as follows, with no date of acquisition for the land.⁸⁵

Proceeds of disposition	Adjusted cost base	Gain
\$15,3000,000	\$2,050,501	\$13,249,499

[46] On December 8, 2016, the appellant declared a capital dividend of \$6,450,000 payable on December 12th.⁸⁶ Previously, capital cost allowance was claimed with

respect to the office buildings on 545 and 555 Wilson Avenue for each of the taxation years ending January 2, 2009 to January 2, 2013.⁸⁷ Gross revenues from the rental of these office buildings were identified as rental income in the appellant's financial statements for the same period.⁸⁸

III. Legal framework – Income versus capital

[47] The most determinative factor is the taxpayer's intention at the time of acquiring the property.⁸⁹ An adventure in the nature of trade must involve a "scheme for profit-making", i.e. a legitimate intention to profit from a transaction.⁹⁰

[48] The question of income versus capital is one of fact and the relevant factors were set out by the Supreme Court of Canada in *Friesen*⁹¹:

(i) The taxpayer's intention with respect to the real estate at the time of purchase and the feasibility of that intention and the extent to which it was carried out. An intention to sell the property for a profit will make it more likely to be characterized as an adventure in the nature of trade.

(ii) The nature of the business, profession, calling or trade of the taxpayer and associates. The more closely a taxpayer's business or occupation is related to real estate transactions, the more likely it is that the income will be considered business income rather than capital gain.

(iii) The nature of the property and the use made of it by the taxpayer.

(iv) The extent to which borrowed money was used to finance the transaction and the length of time that the real estate was held by the taxpayer. Transactions involving borrowed money and rapid resale are more likely to be adventures in the nature of trade.

[49] The Federal Court of Appeal's decision in *Canada Safeway Limited*⁹² and the Federal Court's decision in *Happy Valley Farms Ltd.*⁹³ complete the trilogy of cases for the seminal principles on this question.

[50] The Federal Court of Appeal set the principles out as follows in *Canada Safeway*:⁹⁴

- a) The boundary between income and capital gains cannot easily be drawn. Therefore, consideration of various factors including the taxpayer's intent at the time of acquiring the property becomes necessary for a property determination;

- b) For the transaction to constitute an adventure in the nature of trade, the possibility of resale as an operating motivation for the purchase must have been in the taxpayer's mind. To make this determination, inferences will have to be drawn from all of the circumstances, i.e. the taxpayer's whole course of conduct must be assessed;
- c) With respect to "secondary intention", it must have also existed at the time of acquisition of the property and must have been an operating motivation in acquiring the property;
- d) The fact that the taxpayer contemplated the possibility of resale of their property is not in itself sufficient to conclude there was an adventure in the nature of trade. The Court agreed with the view that "the secondary intention doctrine will not be satisfied unless the prospect of resale at a profit was an important consideration in the decision to acquire the property...";⁹⁵ and
- e) The *viva voce* evidence of the taxpayer with respect to their intention is not conclusive and must be tested in light of all the surrounding circumstances.

[51] The Federal Court in *Happy Valley Farms* described the test for secondary intention as one where even if it can be established that a taxpayer's main intention was investment, a gain on sale of the asset would be taxable on account of income if the court believed that at the time of acquisition, the taxpayer had in mind the possibility of resale for profit.⁹⁶

IV. Analysis and discussion – Income versus capital

(1) Intention

(a) Acquisition date

[52] To determine intention at the time of acquisition in this instance, it is first necessary to determine which acquisition date.

[53] With respect to 555 Wilson Avenue, the possible acquisition dates are:

- a) January 31, 1996 – date of purchase by 1132168 Ontario Limited (Steven's holding company);⁹⁷
- b) December 20, 2001 – date of sale by 1132168 to Wise Management Inc.;⁹⁸

- c) January 1, 2006 – date on which Wise Management Inc. (which owned 555 Wilson Avenue) and Wise Property Management Ltd. (which owned 545 Wilson Avenue) amalgamated under the name Wise Management Inc.;⁹⁹ and
- d) January 31, 2008 – subsection 85(1) rollover post-amalgamation where Wise Management Inc. transferred 545 and 555 Wilson Avenue to the appellant.¹⁰⁰

[54] With respect to 545 Wilson Avenue, the possible acquisition dates are:

- a) April 15, 1998 – date of purchase by Wise Property Management Ltd., 50% of which was owned by Kidco Group Ltd. and the other 50% by Mr. Jefferson's company 1265130;¹⁰¹
- b) April 1, 2005 – date on which Kidco Group Ltd. purchased 1265130's (i.e. Mr. Jefferson's) 50% interest;¹⁰²
- c) January 1, 2006 – date on which Wise Management Inc. (which owned 555 Wilson Avenue) and Wise Property Management Ltd. (which owned 545 Wilson Avenue) amalgamated under the name Wise Management Inc.;¹⁰³ and
- d) January 31, 2008 – subsection 85(1) rollover where post-amalgamation Wise Management Inc. transferred 545 and 555 Wilson Avenue to the appellant.¹⁰⁴

[55] With respect to 545 Wilson Avenue, I have identified April 15, 1998 as the purchase date rather than January 23, 1998. The latter date is used in the appellant's written submissions¹⁰⁵ and is the only date offered by the parties in the partial agreed statement of facts.¹⁰⁶ However, that is the date on which the purchase/sale agreement was entered into whereas the completion date for the transaction was April 15, 1998.¹⁰⁷ With respect to 555 Wilson Avenue, the parties used the completion date of January 31, 1996 as the date of purchase.¹⁰⁸ It is more logical to take the same approach and use April 15, 1998 as the purchase date with respect to 545 Wilson Avenue.

[56] One must consider the purpose of the rollover provisions in the Act. In *Husky Oil Limited*,¹⁰⁹ the Federal Court of Appeal described their purpose and mechanism as follows:

[2] The *Income Tax Act* contains a number of provisions that permit a taxpayer to defer the recognition of a capital gain on the disposition of capital property if the

disposition occurs in certain circumstances, typically involving a corporate reorganization or restructuring. These provisions are referred to as “rollovers”. Where one property is exchanged for another property in a transaction to which a rollover applies, the taxpayer is treated for income tax purposes as having sold the original property for proceeds of disposition equal to its tax cost (in income tax terms, its “adjusted cost base”) and acquired the new property for a cost equal to the same amount (thus, the tax cost is “rolled over” to the new property). The capital gain so deferred is recognized when the new property is sold or otherwise disposed of in a taxable transaction.

[57] The Federal Court of Appeal elaborated further in *Oxford Properties Group Inc.*:¹¹⁰

[56] Rollovers, including the one provided for in subsection 97(2), defer the tax consequences of transfers which take place amongst selected groups such as shareholders and their corporations (subsection 85(1)) and partners and their partnerships (subsection 97(2)), the premise being that no tax consequences should be recognized given that there is no fundamental change in ownership – i.e. rather than holding the transferred property, the transferor holds a partnership interest or shares having the same value (Vern Krishna, *The Fundamentals of Canadian Income Tax*, 9th ed. (Toronto: Thomson/Carswell, 2006), at page 1112).

[57] The logic behind rollovers as revealed by the mechanism used to give effect to them – i.e. the fact that a transferor’s deemed proceeds become the transferee’s deemed cost – ACB or UCC as the case may be – makes it clear that any tax thereby deferred will be paid on a subsequent disposition giving rise to a change in the taxpayer’s economic position. As was said in direct reference to subsection 97(2): “[t]ax is not avoided; it is deferred” (*Continental Bank of Canada et al v. the Queen* (1994), 94 D.T.C. 1858, at page 1872 (T.C.C.), affd (1996), 96 D.T.C. 6355 (F.C.A.)). This flows from both the wording and the object, spirit and purpose of subsection 97(2).

[my emphasis added]

[58] Both parties assert that *Bodine*¹¹¹ supports their respective positions. I will accept that *Bodine* stands for the relevant proposition that the Court cannot ignore “real transactions that put in place a legal structure from which specific tax consequences flowed.”¹¹² The Court in *Bodine* also cited with approval the principles set out in *Canada Safeway* regarding income versus capital as well as those in *Edmund Peachey*¹¹³ regarding change in use. However, *Bodine* did not involve a rollover election, which is a factually significant distinction from the present situation.

[59] To determine the appropriate acquisition date, I am mindful that the transactions in question were real and put in place a legal structure from which specific tax consequences flowed.¹¹⁴ Here, there was a rollover election from which the specific tax consequence of tax deferral flowed with no fundamental change in ownership, i.e. the purpose of a rollover as described by the Federal Court of Appeal in *Oxford Properties*.¹¹⁵

[60] The jurisprudence clearly contemplates the time of first acquisition by the taxpayer for the purposes of determining intent.¹¹⁶ To apply this principle without considering the surrounding circumstances would mean that the date of acquisition is January 31, 2008, i.e. the date on which the appellant acquired the properties by subsection 85(1) rollover. It is the date used by the Minister in this instance while on the other hand, the appellant asserts that the 1996 and 1998 purchase dates should be used.

[61] The appellant was incorporated on December 21, 2007,¹¹⁷ i.e. 41 days before the rollover date with no corporate history from which to derive findings as to intention. The respondent's invitation to disregard the pre-rollover history while implying that an inference should be drawn from the proximity of the appellant's incorporation date to the rollover,¹¹⁸ amounts to asking this Court to selectively consider the pre-rollover history.

[62] In these circumstances involving a closely-held corporate appellant which exists within a network of closely-held corporations — all of which are held by members of a nuclear family that typically structures its affairs by incorporating — it is appropriate to consider the whole of the pre-rollover history, which is considerable. Ownership was transferred to the appellant by way of the rollover but the appellant was a wholly owned subsidiary of Wise Management Inc. In several important ways, the appellant stands in the place of the original purchasers so intention should be examined at the time of the original purchases.

[63] On a balance, I find that the original purchase dates of January 31, 1996 for 555 Wilson Avenue and April 15, 1998 for 545 Wilson Avenue are the appropriate dates for determining intention. The January 31, 2008 rollover date will be relevant for determining whether there was a change in use.

(b) Whose intention?

[64] It is next necessary to determine whose intentions are relevant with respect to the original purchase dates.

[65] 555 Wilson Avenue was purchased on January 31, 1996 by 1132168 which was Steven's holding company.¹¹⁹ 545 Wilson Avenue was purchased on April 15, 1998 by Wise Property Management Ltd. which was in turn owned in equal parts by Kidco Group Ltd. and 1265130. As described earlier in these reasons, Kidco Group was owned by Steven, Michael, and their sister while 1265130 was owned by Steven's close friend Allen Jefferson.

[66] In determining intention for the purpose of an income-versus-capital analysis, Justice Sharlow of the Federal Court (as she then was) stated that:

[24] The intention of a corporation is that of the natural persons by whom it is managed and controlled: *Metropolitan Motels Corporation v. Minister of National Revenue* (1966), 1966 CanLII 896 (CA EXC), 66 D.T.C. 5208, [1966] C.T.C. 246 (F.C.T.D.); *Leonard Reeves Inc. v. Minister of National Revenue* (1985), 1985 CanLII 6115 (TCC), 85 D.T.C. 419, [1985] 2 C.T.C. 2054 (T.C.C.). In the case of a widely held public corporation, the requisite intention may be that of a corporate officer or group of officers or directors who made the purchasing decision. The intention of a closely held corporation, however, is normally that of the shareholders.¹²⁰

[67] Therefore, one must look to the natural persons who managed and controlled the corporate purchasers to ascertain intention. With respect to 555 Wilson Avenue, it would be Steven while with respect to 545 Wilson Avenue, it would be Steven, Michael, their sister, and Allen Jefferson.

(c) What was the intention?

[68] There is evidence of generational history in the Wise family with respect to owning and managing residential rental properties, beginning with Steven and Michael's father in 1962 until his death in 1999 by which time he owned and managed five such buildings.¹²¹ There is also evidence that both Steven and Michael had humble professional beginnings before finding their respective footing in insurance and property management. Their demeanour while testifying conveyed the same humility and inclination toward family and close friends. For example, when their sister's husband died at a young age, the family created the Pollack/Pollock Family Trust for her and incorporated it.¹²²

[69] Prior to 545 and 555 Wilson Avenue, there is no evidence of residential condominium development in the Wise Group's business model. The Wise Group's properties consisted of residential and commercial lease holdings, including various residential apartment buildings, a strip mall, an office building, a parking lot, and

land on which two stand-alone Tim Hortons restaurants were situated (not including the restaurants themselves).¹²³

[70] When 555 Wilson Avenue was purchased in January 1996, KRG moved into the vacant office building shortly afterwards and remained until demolition in May 2012. The lengthy occupancy supports Steven's explanation that KRG was outgrowing its own office space and 555 Wilson Avenue was an appealing option because it was not only developed as office space already, but the commercial tenant (TTC) had left and would still pay rent for two more years.

[71] Steven's intention to have KRG use 555 Wilson Avenue as an office building was made more feasible by the two-year rent subsidy from TTC and the intention was carried out for up to 16 years. If he had intended to develop this property upon purchase, he would likely have been less interested in either the fact it was vacant office space or the two-year rent subsidy.

[72] When 545 Wilson Avenue was purchased in April 1998, Steven's friend Allen Jefferson intended to move his insurance business Global Benefits into the premises after his lease elsewhere expired and the existing bowling alley was converted to suitable office space. The fact that: (a) the Wise Group entered into this joint purchase with Mr. Jefferson, (b) agreed to operate the bowling alley for 12 to 18 months after purchase until Mr. Jefferson's other lease expired, (c) Mr. Jefferson then spent about \$1.8M on renovations to convert the bowling alley to office space, and (d) Global Benefits occupied the building until its demolition in May 2012 support the stated intention to use 545 Wilson Avenue as office space for Global Benefits.¹²⁴

[73] The joint intention of the Wise Group and Mr. Jefferson to use 545 Wilson Avenue as an office space for Global Benefits was made feasible by the friendship between Steven and Mr. Jefferson, which appeared to motivate the parties to go to the significant lengths of operating a bowling alley in the interim and doing a complete renovation before Global Benefits could move in.

[74] With respect to both properties, there is no evidence of any inclination toward possible development until the unsolicited visit from Mr. DelZotto in about 2005 or 2006, when Steven's curiosity was piqued to make his own inquiries.¹²⁵

[75] I am satisfied that Steven's intention was to purchase 555 Wilson Avenue for KRG to use as office space, and that intention is borne out by the subsequent course of conduct.¹²⁶ With respect to 545 Wilson Avenue, I am satisfied that the intention

of the Wise family and Mr. Jefferson was to purchase the property for Global Benefits to use as an office space. In both instances, there is no evidence of a secondary intention at the time of purchase to sell the property for profit and the subsequent course of conduct bears out the opposite.¹²⁷

[76] Therefore, this factor favors a finding on account of capital with respect to both properties subject to my discussion below regarding a change in use.

(2) Nature of the business, profession, calling or trade of the taxpayer and associates

[77] A list of the Wise Group's real estate holdings between 2008 and 2017 showed eight commercial and residential lease properties, not including 545 and 555 Wilson Avenue.¹²⁸ On reviewing this list of real estate holdings, one can see that the length of time each property was held ranged from seven to 60 years. The period covered by this list is prior to the Minister's audit, based on the dates of initial assessment as filed (August 30, 2017 and July 16, 2018) and reassessment following audit (June 12, 2019).¹²⁹ The fact that this list of holdings predates the audit reassessment lends credence to the conclusion that the Wise Group was simply conducting business as it ordinarily would.

[78] With respect to 2450 Victoria Park Avenue in Toronto, Steven testified that with the impending demolition of 545 and 555 Wilson Avenue in May 2012, KRG needed to relocate its office of approximately 100 employees. He stated that 2450 Victoria Park was half-vacant, which he knew from experience would typically cause an owner to be more likely to sell. In this case, the owner was Universal Studios and after complicated negotiations, the Wise Group joined with Shiplake to purchase the building in February 2012 following which KRG occupied half of the building while Universal Studios occupied the other half.¹³⁰

[79] The approach Steven described with respect to identifying and acquiring 2450 Victoria Park is consistent with the way the Wise Group identified and acquired the subject properties, i.e. they looked for properties which were either ready or had potential to be leased to commercial or residential tenants. Michael testified that the Wise Group and KRG continue to operate out of 2450 Victoria Park.¹³¹

[80] During the audit, the Minister appeared to consider an excerpt from the Wise Group's website where they describe themselves as having experience as developers.¹³² Michael explained that the Wise Group decided to set up a website for marketing purposes and he helped create this original version in late 2014/early

2015. He stated that the only development experience he and the Wise Group had was with respect to 545 and 555 Wilson Avenue, so the description on the website was aspirational.¹³³ With respect to Steven, he explained that his LinkedIn profile descriptions were written by someone else, that the references to development experience encompassed the Wise Group's partnership with an actual developer such as Shiplake, and that the Wise Group has never built or developed a property on its own.¹³⁴

[81] As stated in *Friesen*, the more closely a taxpayer's business is related to real estate transactions, the more likely the gain will be on income account.¹³⁵ There is little to no evidence of real estate development activity by the Wise Group prior to 545 and 555 Wilson Avenue, regardless of what the website or LinkedIn profile stated.

[82] Therefore, this factor favors a finding on account of capital with respect to both properties subject to my discussion below regarding a change in use.

(3) The nature of the property and the use made of it by the taxpayer

[83] At the time of acquisition in January 1996, 555 Wilson Avenue was a vacant office building.¹³⁶ Following the purchase, KRG moved in as a commercial tenant paying rent and operating its insurance business until the building's demolition in May 2012.¹³⁷

[84] At the time of acquisition in April 1998, 545 Wilson Avenue was a bowling alley and billiard hall.¹³⁸ Following the purchase, the Wise Group operated the bowling alley until Steven's friend Allen Jefferson could complete \$1.8M in renovations to the premises and move his insurance business Global Benefits in about 12 to 18 months later.¹³⁹ Global Benefits then moved in as a commercial tenant paying rent and operating its insurance business until the building's demolition in May 2012.¹⁴⁰

[85] The respondent argues that there was no profit made from renting the properties (particularly after the rollover) while on the other hand, the development project yielded a significant profit.¹⁴¹ However, the test is not whether one activity was more profitable than another but rather whether the properties generated income to the owner by virtue of their ownership. As stated in *Happy Valley Farms*: "[p]roperty which does not yield to its owner an income or personal enjoyment simply by virtue of its ownership is more likely to have been acquired for the purpose

of sale than property that does.”¹⁴² Both 545 and 555 Wilson Avenue were income-producing commercial lease properties.

[86] Therefore, this factor favors a finding on account of capital with respect to both properties subject to my discussion below regarding a change in use.

(4) The extent to which borrowed money was used to finance the transaction and the length of time that the real estate was held by the taxpayer

[87] 555 Wilson Avenue was acquired in January 1996 for \$1.18M and the Wise Group paid a \$50,000 deposit toward the purchase price on signing the agreement in December 1995.¹⁴³ The property was held for 14 years up to successful rezoning in February 2010,¹⁴⁴ 15 years up to successful financing in September 2011,¹⁴⁵ or 16 years up to demolition in May 2012.¹⁴⁶

[88] 545 Wilson Avenue was acquired in April 1998 for \$1.3M and the Wise Group paid a \$100,000 deposit toward the purchase price on signing the agreement in January 1998.¹⁴⁷ The property was held for 12 years up to successful rezoning in February 2010, 13 years up to successful financing in September 2011, or 14 years up to demolition in May 2012.

[89] There is no evidence that the extent to which borrowed money was used to purchase the properties was unusual, and the length of time the properties were held up to the first development condition being met (i.e. successful rezoning) was not short.

[90] Therefore, this factor favors a finding on account of capital with respect to both properties subject to my discussion below regarding a change in use.

V. Legal framework – Change in use

[91] For the purposes of this appeal, deemed dispositions arise in two relevant contexts, being subsections 13(7) and 45(1) of the Act. Both provisions require that in order for there to be a change in use of property, the taxpayer must acquire it for one purpose and subsequently use it for another purpose. Typically, the change is either from or to income-producing as the purpose.

[92] With respect to recaptured depreciation under section 13, subsection 13(7) says in part that:

- a) where a taxpayer acquires income-producing property and later begins to use it for some other purpose, there is a deemed disposition and reacquisition equal to its fair market value at the time of the change;¹⁴⁸ and
- b) where a taxpayer acquires property for some other purpose and later begins to use it for an income-producing purpose, there is a deemed acquisition at the time of the change at a capital cost equal to the lesser of a number of factors (none of which are directly relevant for the purposes of this appeal).¹⁴⁹

[93] With respect to property where there has been a change in use and for the purpose of determining taxable capital gains,¹⁵⁰ paragraph 45(1)(a) says that:

(a) where a taxpayer,

(i) having acquired property for some other purpose, has commenced at a later time to use it for the purpose of gaining or producing income, or

(ii) having acquired property for the purpose of gaining or producing income, has commenced at a later time to use it for some other purpose,

the taxpayer shall be deemed to have

(iii) disposed of it at that later time for proceeds equal to its fair market value at that later time, and

(iv) immediately thereafter reacquired it at a cost equal to that fair market value;

VI. Analysis and discussion – Change in use

[94] While subsections 13(7) and 45(1) are non-specific in terms of purposes other than income-producing, the question here is whether there was a change in use from capital to income-producing (i.e. inventory). It is a question of fact based on all the surrounding circumstances.¹⁵¹

[95] It is also a long-standing principle that “a clear and unequivocal positive act implementing a change of intention” is necessary to change the use or character of land.¹⁵² In *Duthie Estate*, Justice Rothstein (as he then was) stated:¹⁵³

...I do not think moving off the land or physical change constitute conditions precedent to a change of use. *Peachey* speaks of a clear and unequivocal positive act implementing a change of intention. Such words are not restricted to a physical change in the land.

[96] With respect to identifying the “clear and unequivocal positive act”, Justice Bowman (as he then was) described it in *Roos* as the point at which the taxpayer was “fully committed to proceeding”.¹⁵⁴

[97] Here, the rollover took place in January 2008 and the rollover election was filed with the Minister in June 2009.¹⁵⁵ The Minister accepted the election and the respondent does not challenge its validity so it follows that the properties in question were capital properties on the rollover date, i.e. January 31, 2008.¹⁵⁶ However, I am of the view that the properties underwent a subsequent change in use from capital to inventory.

[98] In considering when the change in use occurred, there are several possible points in time:

- a) 2005 or 2006 – when Steven approached Marco Ventola of Shiplake to inquire about residential development potential, following the unsolicited visit from Elvio DelZotto and Tony Moro;
- b) January 31, 2008 – the subsection 85(1) rollover;
- c) February 21, 2008 – the date of the first development management agreement;
- d) June 5, 2008 – the date on which Shiplake filed a development approval application to the city of Toronto to amend the zoning by-law from industrial use to residential;
- e) February 23, 2010 – the date on which the zoning by-law amendment was approved and enacted by the city of Toronto;
- f) September 16, 2011 – the date on which Scotiabank agreed to finance the residential condominium project;
- g) May 13, 2012 – the date on which the office buildings on 545 and 555 Wilson Avenue were demolished; and
- h) October 1, 2012 – the date on which construction of the project began.

[99] Based on all of the circumstances, I am of the view that there was a change in use for both properties on September 16, 2011 when the financing agreement was entered into with Scotiabank.

[100] Rezoning and bank financing were conditions precedent which had to be satisfied before construction of the project could begin. Rezoning is more obvious, given that the project could not proceed without the by-law amendment.

[101] I consider bank financing to be a condition precedent as well because the stated understanding between the parties was that the Wise Group would contribute the land while Shiplake would take steps to move the project ahead while protecting the land's value. The understanding is borne out by the fact that in addition to members of Shiplake handling the rezoning application process, the Scotiabank financing was guaranteed by members of Shiplake and Brandy Lane (the construction company).

[102] Steven's testimony that real estate holdings were like family members for the Wise Group is borne out by the manner in which the Wise Group selected, purchased, and held real property. There is a long-term pattern of acquiring real estate for the purpose of renting to commercial or residential tenants, as well as a tendency to buy properties which were ready to lease. The only exception was 545 Wilson Avenue, which underwent substantial renovations to meet the needs of Steven's close friend Allen Jefferson who paid for the renovations.

[103] The Wise Group also relied heavily on existing relationships with family, friends, and business people whom they had known for a long time and trusted. For example, instead of further engaging with Elvio DelZotto and Tony Moro when they approached him about selling the properties, Steven chose instead to contact Marco Ventola of Shiplake which was owned by Steven's former classmate Michael Latner.

[104] Steven's testimony showed he understood that after completion of these pre-steps (i.e. rezoning and bank financing), the land would be irrevocably contributed to the project.¹⁵⁷ I am of the view that it was not only his understanding but it was factually the point at which the Wise Group was "fully committed to proceeding".¹⁵⁸ For example, in the third/final version of the development agreement (dated August 18, 2011), the appellant's right to terminate the agreement ceased when the latest of three events occurred, being bank financing, site plan approval, and issuance of the building permit. I have treated the latter two events as one because they seemed to be largely contemporaneous.¹⁵⁹

[105] Since the pre-conditions were required to be met before proceeding with the project and financing was obtained after rezoning was approved, the clear and unequivocal positive act is the later one, i.e. financing approval on September 16,

2011. It is the point at which the appellant's unilateral right to terminate the development agreement ceased.

VII. Conclusion

[106] The appeal is allowed on the basis that:

- a) 555 Wilson Avenue was held as a capital property from January 31, 1996 to September 16, 2011, after which the property underwent a change in use to inventory;
- b) 545 Wilson Avenue was held as a capital property from April 15, 1998 to September 16, 2011, after which the property underwent a change in use to inventory; and
- c) Business income in the amount of \$290,119 included in the appellant's income for the 2017 taxation year shall remain as assessed, and as conceded by the appellant.

[107] In light of the appellant's substantial success, the appellant is entitled to costs. I strongly encourage the parties to accede to tariff costs, as there is no apparent basis for another amount.

[108] In any event, the parties shall have until August 31, 2026 to reach an agreement as to costs, failing which the appellant shall file written submissions by September 29, 2026 and the respondent shall file a written response by October 30, 2026. Any such submissions shall not exceed ten pages in length, including appendices. If the parties do not advise the court that they have reached an agreement and no submissions are received by these dates, then costs are awarded to the appellant in accordance with Tariff B without further order.

Signed this 29th day of May 2026.

“Susan Wong”

Wong J.

CITATION: 2026 TCC 104

COURT FILE NO.: 2021-1383(IT)G

STYLE OF CAUSE: WILSON 555 AVENUE INC. AND HIS
MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: June 3, 4, 5 and 10, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: May 29, 2026

APPEARANCES:

Counsel for the Appellant: Justin Kutyan
Marta Porodko
Vincent Dionne

Counsel for the Respondent: Linsey Rains
Inta Simonyan

COUNSEL OF RECORD:

For the Appellant:

Name: Justin Kutyan

Firm: KPMG Law LLP
Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, Ontario M5H 2S5

For the Respondent: Marie-Josée Hogue
Deputy Attorney General of Canada
Ottawa, Canada

¹ Appellant's written submissions at paragraph 45; Respondent's written submissions at paragraph 33(b)

² Partial Agreed Statement of Facts at paragraph 1

³ Partial Agreed Statement of Facts at paragraphs 3 and 4

⁴ Partial Agreed Statement of Facts at paragraph 6

⁵ Transcript of proceeding (June 3, 2024), page 36 at lines 7 to 22

⁶ Transcript of proceeding (June 3, 2024), page 36 at lines 18 to 20, page 156 at lines 1 to 19

⁷ Transcript of proceeding (June 3, 2024), pages 27 to 30

⁸ Transcript of proceeding (June 3, 2024), page 155 at lines 14 to 28; page 156 at lines 1 to 10

⁹ Transcript of proceeding (June 3, 2024), page 156 at lines 22 to 25; page 157 at lines 1 to 9

¹⁰ Joint book of documents (Exhibit AR-1), volume 1, tab 18; Partial Agreed Statement of Facts at paragraph 9

¹¹ Transcript of proceeding (June 3, 2024), page 33 at lines 18 to 28

¹² Transcript of proceeding (June 3, 2024), page 159 at lines 21 to 27; page 160 at lines 1 to 25; page 162 at lines 26 to 28; page 163 at lines 1 to 28; page 164 at lines 1 to 6 and lines 10 to 20; Joint book of documents (Exhibit AR-1), volume 1, tab 19

¹³ Transcript of proceeding (June 3, 2024), page 33 at lines 2 to 7

¹⁴ Transcript of proceeding (June 3, 2024), page 34 at lines 5 to 12

¹⁵ Transcript of proceeding (June 3, 2024), page 34 at lines 20 to 24

¹⁶ Joint book of documents (Exhibit AR-1), volume 1, tab 4; Partial Agreed Statement of Facts at paragraph 10

¹⁷ Transcript of proceeding (June 3, 2024), page 33 at lines 8 to 15; page 34 at lines 2 to 4; page 158 at lines 25 to 28; Joint book of documents (Exhibit AR-1), volume 1, tab 18

¹⁸ Partial Agreed Statement of Facts at paragraphs 11 and 12

¹⁹ Transcript of proceeding (June 3, 2024), page 48 at lines 4 to 8 and lines 21 to 27

²⁰ Transcript of proceeding (June 3, 2024), page 35 at lines 18 to 20

²¹ Transcript of proceeding (June 3, 2024), page 48 at lines 12 to 16

²² Transcript of proceeding (June 3, 2024), page 49 at lines 1 to 17

²³ Transcript of proceeding (June 3, 2024), page 49 at lines 17 to 28

²⁴ Transcript of proceeding (June 3, 2024), page 50 at lines 1 to 3

²⁵ Transcript of proceeding (June 3, 2024), page 50 at lines 4 to 13

²⁶ Joint book of documents (Exhibit AR-1), volume 1, tab 4 at page 45

²⁷ Partial Agreed Statement of Facts at paragraph 13

²⁸ Partial Agreed Statement of Facts at paragraph 7; Joint book of documents (Exhibit AR-1), volume 1, tab 18

²⁹ Partial Agreed Statement of Facts at paragraph 8; Joint book of documents (Exhibit AR-1), volume 1, tab 18; Amended Reply at paragraphs 24.12 to 24.14

³⁰ Partial Agreed Statement of Facts at paragraph 9; Joint book of documents (Exhibit AR-1), volume 1, tab 18

³¹ Joint book of documents (Exhibit AR-1), volume 1, tab 22 at paragraphs (1) and (3)

³² Transcript of proceeding (June 4, 2024), page 139 at lines 19 to 26

³³ Partial Agreed Statement of Facts at paragraphs 14 to 17, and 49; Transcript of proceeding (June 3, 2024), page 50 at lines 7 to 17

³⁴ Transcript of proceeding (June 3, 2024), page 50 at lines 19 to 25; page 51 at lines 2 to 28

³⁵ Partial Agreed Statement of Facts at paragraph 18; Transcript of proceeding (June 3, 2024), page 49 at lines 8 to 12; page 177 at lines 13 to 21

³⁶ Transcript of proceeding (June 3, 2024), page 178 at lines 2 to 21

³⁷ Joint book of documents (Exhibit AR-1), volume 1, tab 5 at page 49

³⁸ Partial Agreed Statement of Facts at paragraph 21

³⁹ Partial Agreed Statement of Facts at paragraph 22

⁴⁰ Transcript of proceeding (June 3, 2024), page 52 at lines 1 to 10; page 178 at lines 22 to 28; page 179 at lines 1 to 5 and lines 10 to 28; page 180 at lines 1 to 21

⁴¹ Partial Agreed Statement of Facts at paragraphs 19 and 20

⁴² Transcript of proceeding (June 3, 2024), page 52 at lines 14 to 28; page 53 at lines 1 to 4; page 180 at lines 18 to 26

⁴³ Partial Agreed Statement of Facts at paragraph 23; Joint book of documents (Exhibit AR-1), volume 1, tab 9 at paragraph 3

⁴⁴ Partial Agreed Statement of Facts at paragraphs 25 and 49; Transcript of proceeding (June 3, 2024), page 96 at lines 13 to 18

⁴⁵ Partial Agreed Statement of Facts at paragraph 24; Joint book of documents (Exhibit AR-1), volume 1, tab 11 at pages 134 and 136

⁴⁶ Transcript of proceeding (June 3, 2024), page 105 at lines 21 to 28; page 106 at lines 1 to 24

⁴⁷ Transcript of proceeding (June 3, 2024), page 106 at lines 27 to 28; page 107 at lines 1 to 7

⁴⁸ Transcript of proceeding (June 3, 2024), page 108 at lines 4 to 28; page 109 at lines 1 to 18

⁴⁹ Partial Agreed Statement of Facts at paragraph 35; Transcript of proceeding (June 3, 2024), page 109 at lines 27 and 28; page 110 at lines 1 to 18; page 111 at lines 1 to 5 and lines 11 to 17

-
- ⁵⁰ Transcript of proceeding (June 4, 2024), page 80 at lines 12 to 25
- ⁵¹ Transcript of proceeding (June 4, 2024), page 81 at lines 15 and 16; page 82 at lines 5 to 25; page 84 at lines 4 to 6
- ⁵² Transcript of proceeding (June 4, 2024), page 83 at lines 11 to 28; page 84 at lines 1 to 3
- ⁵³ Partial Agreed Statement of Facts at paragraph 26
- ⁵⁴ Joint book of documents (Exhibit AR-1), volume 1, tab 24 at pages 330, 332, and 335; Partial Agreed Statement of Facts at paragraphs 27 and 28
- ⁵⁵ Transcript of proceeding (June 3, 2024), page 121 at lines 14 and 15; page 126 at lines 2 to 12
- ⁵⁶ Transcript of proceeding (June 3, 2024), page 121 at lines 23 to 26
- ⁵⁷ Transcript of proceeding (June 3, 2024), page 122 at lines 16 to 25
- ⁵⁸ Transcript of proceeding (June 3, 2024), page 122 at lines 22 to 28 ; page 123 at lines 1 to 28; page 124 at lines 1 to 9
- ⁵⁹ Partial Agreed Statement of Facts at paragraphs 31, 32, and 38; Joint book of documents (Exhibit AR-1), volume 1, tab 20 at page 249
- ⁶⁰ Partial Agreed Statement of Facts at paragraph 37; Joint book of documents (Exhibit AR-1), volume 1, tab 20 at pages 249 to 251 (definitions of “Project”, “Improvements” and “Development Permit”)
- ⁶¹ Joint book of documents (Exhibit AR-1), volume 1, tab 20 at pages 249, 252 to 255
- ⁶² Transcript of proceeding (June 3, 2024), page 124 at lines 27 and 28; page 125 at line 1
- ⁶³ Joint book of documents (Exhibit AR-1), volume 1, tab 21
- ⁶⁴ Joint book of documents (Exhibit AR-1), volume 1, tab 21 at pages 283 to 285, and Article 3
- ⁶⁵ Joint book of documents (Exhibit AR-1), volume 1, tab 21; Transcript of proceeding (June 3, 2024), page 127 at lines 15 to 28
- ⁶⁶ Joint book of documents (Exhibit AR-1), volume 1, tab 32
- ⁶⁷ Joint book of documents (Exhibit AR-1), volume 1, tab 32 at page 411; Transcript of proceeding (June 4, 2024), page 10 at lines 14 to 28
- ⁶⁸ Joint book of documents (Exhibit AR-1), volume 1, tab 20 at Article 7 and tab 21 at Article 12
- ⁶⁹ Joint book of documents (Exhibit AR-1), volume 1, tab 32 at Article 12
- ⁷⁰ Joint book of documents (Exhibit AR-1), volume 1, tab 32 at page 420
- ⁷¹ Exhibit R-3 (Development Approval Application), page 1
- ⁷² Exhibit R-3 (Development Approval Application), pages 1 and 4; Transcript of proceeding (June 10, 2024), page 10 at lines 17 to 25

⁷³ Transcript of proceeding (June 10, 2024), page 11 at lines 6 to 10

⁷⁴ Transcript of proceeding (June 10, 2024), page 11 at line 20 to page 13 at line 21; page 14 at lines 6 to 15; page 15 at lines 8 to 11

⁷⁵ Transcript of proceeding (June 10, 2024), page 14 at line 21 to page 16 at line 9; page 20 at lines 15 to 22

⁷⁶ Joint book of documents (Exhibit AR-1), volume 1, tab 26 at page 375

⁷⁷ Joint book of documents (Exhibit AR-1), volume 1, tab 27

⁷⁸ Partial Agreed Statement of Facts at paragraph 48; Joint book of documents (Exhibit AR-1), volume 1, tab 33

⁷⁹ Joint book of documents (Exhibit AR-1), volume 1, tab 33 at page 457

⁸⁰ Transcript of proceeding (June 4, 2024), page 16 at lines 2 to 18

⁸¹ Partial Agreed Statement of Facts at paragraphs 49 and 50

⁸² Partial Agreed Statement of Facts at paragraph 51

⁸³ Partial Agreed Statement of Facts at paragraph 52

⁸⁴ Joint book of documents (Exhibit AR-1), volume 1, tab 32 at page 428

⁸⁵ Partial Agreed Statement of Facts at paragraphs 55 and 56; Joint book of documents (Exhibit AR-1), volume 1, tab 35 at page 508

⁸⁶ Joint book of documents (Exhibit AR-1), volume 1, tab 36 at page 541

⁸⁷ Joint book of documents (Exhibit AR-1), volume 1, tab 40

⁸⁸ Joint book of documents (Exhibit AR-1), volume 1, tab 23 at page 328; tab 25 at pages 345, 351, 354, and 358

⁸⁹ *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII) at paragraph 43

⁹⁰ *Friesen v. Canada*, 1995 CanLII 62 (SCC) at paragraph 16

⁹¹ *Friesen v. Canada*, 1995 CanLII 62 (SCC) at paragraph 17

⁹² *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII)

⁹³ *Happy Valley Farms Ltd. v. The Queen*, 1986 CanLII 7434 (FC), [1986] 2 CTC 259

⁹⁴ *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII) at paragraph 61

⁹⁵ *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII) at paragraph 61

⁹⁶ *Happy Valley Farms Ltd. v. The Queen*, 1986 CanLII 7434 (FC) at paragraphs 16 to 19, [1986] 2 CTC 259 at pages 263 and 264

⁹⁷ Partial Agreed Statement of Facts at paragraph 12

⁹⁸ Partial Agreed Statement of Facts at paragraph 13

⁹⁹ Partial Agreed Statement of Facts at paragraph 24; Joint book of documents (Exhibit AR-1), volume 1, tab 11 at pages 134 and 136

¹⁰⁰ Partial Agreed Statement of Facts at paragraph 26

¹⁰¹ Joint book of documents (Exhibit AR-1), volume 1, tab 5 at page 49; Partial Agreed Statement of Facts at paragraph 21; Joint book of documents (Exhibit AR-1), volume 1, tab 6

¹⁰² Joint book of documents (Exhibit AR-1), volume 1, tab 9 at page 130

¹⁰³ Partial Agreed Statement of Facts at paragraph 24; Joint book of documents (Exhibit AR-1), volume 1, tab 11 at pages 134 and 136

¹⁰⁴ Partial Agreed Statement of Facts at paragraph 26

¹⁰⁵ Appellant's written submissions (filed June 11, 2024) at paragraph 17

¹⁰⁶ Partial Agreed Statement of Facts at paragraphs 18 to 24

¹⁰⁷ Partial Agreed Statement of Facts at paragraph 18; Joint book of documents (Exhibit AR-1), volume 1, tab 5 at page 49

¹⁰⁸ Partial Agreed Statement of Facts at paragraph 12

¹⁰⁹ *Husky Oil Limited v. Canada*, 2010 FCA 125 (CanLII) at paragraph 2

¹¹⁰ *Canada v. Oxford Properties Group Inc.*, 2018 FCA 30 (CanLII) at paragraphs 56 and 57

¹¹¹ *Bodine v. The Queen*, 2010 TCC 426 (CanLII), affirmed 2011 FCA 157

¹¹² *Bodine v. The Queen*, 2010 TCC 426 (CanLII) at paragraph 27

¹¹³ *Edmund Peachey Limited v. The Queen*, 1979 CanLII 4500 (FCA)

¹¹⁴ *Bodine v. The Queen*, 2010 TCC 426 (CanLII) at paragraph 27

¹¹⁵ *Canada v. Oxford Properties Group Inc.*, 2018 FCA 30 (CanLII) at paragraphs 56 and 57

¹¹⁶ *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII) at paragraph 43

¹¹⁷ Partial Agreed Statement of Facts at paragraph 1

¹¹⁸ Respondent's written submissions (filed June 11, 2024) at paragraph 15

¹¹⁹ Transcript of proceeding (June 3, 2024), page 33 at lines 8 to 15; page 34 at lines 2 to 4; page 158 at lines 25 to 28; Joint book of documents (Exhibit AR-1), volume 1, tab 18; Partial Agreed Statement of Facts at paragraphs 11 and 12

¹²⁰ *Roseland Farms Ltd. v. Canada*, 1999 CanLII 36321 (FC) at paragraph 24

¹²¹ Transcript of proceeding (June 3, 2024), page 36 at lines 7 to 22, page 156 at lines 1 to 19

¹²² Transcript of proceeding (June 3, 2024), page 34 at lines 20 to 24

¹²³ Transcript of proceeding (June 3, 2024), page 159 at lines 21 to 27; page 160 at lines 1 to 25; page 162 at lines 26 to 28; page 163 at lines 1 to 28; page 164 at lines 1 to 6 and lines 10 to 20; Joint book of documents (Exhibit AR-1), volume 1, tab 19

¹²⁴ Transcript of proceeding (June 3, 2024), page 50 at lines 19 to 25; page 51 at lines 2 to 28; page 52 at lines 1 to 28; page 53 at lines 1 to 4; page 178 at lines 22 to 28; page 179 at lines 1 to 28; page 180 at lines 1 to 26; Partial Agreed Statement of Facts at paragraphs 19 and 20

¹²⁵ Transcript of proceeding (June 3, 2024), page 108 at lines 4 to 28; page 109 at lines 1 to 28; page 110 at lines 1 to 18; page 111 at lines 1 to 5 and lines 11 to 17; Partial Agreed Statement of Facts at paragraph 35

¹²⁶ *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII) at paragraph 61

¹²⁷ *Canada Safeway Limited v. Canada*, 2008 FCA 24 (CanLII) at paragraph 61

¹²⁸ Joint book of documents (Exhibit AR-1), volume 1, tab 19 at page 248

¹²⁹ Amended Reply at paragraphs 18 and 19

¹³⁰ Joint book of documents (Exhibit AR-1), volume 1, tab 19 at page 248; Transcript of proceeding (June 3, 2024), page 41 at line 6 to page 43 at line 13

¹³¹ Transcript of proceeding (June 3, 2024), page 164 at line 20 to page 165 at line 8

¹³² Joint book of documents (Exhibit AR-1), volume 1, tab 3 at pages 34 and 35; Transcript of proceeding (June 3, 2024), page 196 at lines 20 to 22

¹³³ Transcript of proceeding (June 3, 2024), page 196 at line 24 to page 198 at line 12; page 199 at lines 1 to 16

¹³⁴ Exhibit R-2; Transcript of proceeding (June 3, 2024), page 142 at lines 7 to 19, page 147 at line 19 to page 148 at line 15

¹³⁵ *Friesen v. Canada*, 1995 CanLII 62 (SCC) at paragraph 17

¹³⁶ Transcript of proceeding (June 3, 2024), page 49 at lines 1 to 28

¹³⁷ Partial Agreed Statement of Facts at paragraphs 14 to 17; Transcript of proceeding (June 3, 2024), page 50 at lines 7 to 17

¹³⁸ Partial Agreed Statement of Facts at paragraph 18; Transcript of proceeding (June 3, 2024), page 49 at lines 8 to 12; page 177 at lines 13 to 21

¹³⁹ Transcript of proceeding (June 3, 2024), page 52 at lines 1 to 28; page 53 at lines 1 to 4; page 178 at lines 22 to 28; page 179 at lines 1 to 5 and lines 10 to 28; page 180 at lines 1 to 26; Partial Agreed Statement of Facts at paragraphs 19 and 20

¹⁴⁰ Partial Agreed Statement of Facts at paragraph 25; Transcript of proceeding (June 3, 2024), page 96 at lines 13 to 18

¹⁴¹ Respondent's written submissions (filed June 11, 2024) at paragraph 78

¹⁴² *Happy Valley Farms Ltd. v. The Queen*, 1986 CanLII 7434 (FC), [1986] 2 CTC 259 at page 263

¹⁴³ Joint book of documents (Exhibit AR-1), volume 1, tab 4 at page 41; Partial Agreed Statement of Facts at paragraphs 10 to 12

¹⁴⁴ Joint book of documents (Exhibit AR-1), volume 1, tab 27

¹⁴⁵ Partial Agreed Statement of Facts at paragraph 48; Joint book of documents (Exhibit AR-1), volume 1, tab 33

¹⁴⁶ Partial Agreed Statement of Facts at paragraph 49

¹⁴⁷ Partial Agreed Statement of Facts at paragraph 18; Joint book of documents (Exhibit AR-1), volume 1, tab 5 at page 49

¹⁴⁸ *Income Tax Act*, paragraph 13(7)(a)

¹⁴⁹ *Income Tax Act*, paragraph 13(7)(b)

¹⁵⁰ *Income Tax Act*, subdivision c

¹⁵¹ *Roos v. Her Majesty the Queen*, 1993 CarswellNat 1231 (TCC) at paragraph 36; *Cantor et al v. Minister of National Revenue*, 1984 CarswellNat 527 (TCC) at paragraph 23; *Duthie Estate v. Minister of National Revenue*, 1991 CarswellNat 681 (TCC) at paragraph 52

¹⁵² *Edmund Peachey v. Her Majesty the Queen*, 1979 CarswellNat209 (FCAD) at paragraph 10; *Duthie Estate v. Canada*, 1995 CarswellNat 395 (FCTD) at paragraph 21

¹⁵³ *Duthie Estate v. Canada*, 1995 CarswellNat 395 (FCTD) at paragraph 36

¹⁵⁴ *Roos v. Her Majesty the Queen*, 1993 CarswellNat 1231 (TCC) at paragraph 38

¹⁵⁵ Partial Agreed Statement of Facts at paragraphs 26 and 28; Joint book of documents (Exhibit AR-1), volume 1, tab 24

¹⁵⁶ *Income Tax Act*, paragraph 85(1.1)(h)

¹⁵⁷ Transcript of proceeding (June 3, 2024), page 122 at lines 16 to 28; page 123 at lines 1 to 28; page 124 at lines 1 to 9

¹⁵⁸ *Roos v. Her Majesty the Queen*, 1993 CarswellNat 1231 (TCC) at paragraph 38

¹⁵⁹ Joint book of documents (Exhibit AR-1), volume 1, tab 32 at Article 12 and page 420