Case Name:

Waxman v. Waxman

Chester Waxman, Chester Waxman, in trust, Chesterton Investments Limited and I. Waxman & Sons Limited
v.
Morris Waxman, Michael Waxman, Shirley Waxman, Douglas Waxman, The Waxman Holding Corporation Inc., Morriston Investments Limited, Solid Waste Reclamation Limited, and Solid Waste Reclamation Inc.
And between
Robert Waxman and Warren Waxman
v.
Morris Waxman, Michael Waxman, Shirley Waxman, Douglas Waxman, The Waxman Holding Corporation Inc., Morriston Investments Limited, Solid Waste Reclamation Limited, and Solid Waste Reclamation Inc.

[**2004**] **S.C.C.A**. **No**. **291**

File No.: 30418

Supreme Court of Canada

Record created: June 22, 2004.

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Status:

Applications for leave to appeal dismissed with costs (without reasons) March 31, 2005.

Catchwords:

Commercial law -- Remedies -- Breach of Fiduciary Duty -- Constructive Trust -- Knowing Receipt -- Oppression Remedy -- Whether the lower courts erred in law in holding that Chester Waxman

held 50% of the shares of IWS on constructive trust for Morris Waxman after December 22, 1983 who was also entitled to recover 50% of all profits and distributions of IWS after December 22, 1983 -- Whether such an order is punitive and not in accordance with the principles of fiduciary duty and oppression under s. 248 of the Ontario Business Corporations Act -- Whether the lower courts erred in law in holding Robert and Warren Waxman liable to account to Morris Waxman in knowing receipt for bonus monies received from IWS between 1981 and 1993 -- Whether the lower courts erred in law in holding Robert and Warren Waxman were liable to Morris Waxman on the basis of constructive knowledge of acts of oppression by Chester Waxman -- Ontario Business Corporations Act, R.S.O. 1990, c. B. 16.

Counsel:

Gary Graham (Gowling Lafleur Henderson), for the motion. Robert Harrison (Fasken Martineau DuMoulin), contra. Alan J. Lenczner, Q.C. (Lenczner Slaght Royce Smith Griffin), for the motion. Robert Harrison (Fasken Martineau DuMoulin), contra.

Chronology:

1. Application for leave to appeal [Chester Waxman]:

FILED: June 22, 2004. S.C.C. Bulletin, 2004, p. 1122.
SUBMITTED TO THE COURT: February 7, 2005. S.C.C. Bulletin, 2005, p. 218.
DISMISSED WITH COSTS: March 31, 2005 (without reasons). S.C.C. Bulletin, 2005, p. 463.
Before: McLachlin C.J. and Binnie and Deschamps JJ.

The application for an extension of time is granted and the application for leave to appeal are dismissed with costs.

2. Application for leave to appeal [Robert Waxman]:

FILED: June 25, 2004. S.C.C. Bulletin, 2004, p. 1122.
SUBMITTED TO THE COURT: February 7, 2005. S.C.C. Bulletin, 2005, p. 218.
DISMISSED WITH COSTS: March 31, 2005 (without reasons). S.C.C. Bulletin, 2005, p. 463.

Before: McLachlin C.J. and Binnie and Deschamps JJ.

The application for an extension of time is granted and the application for leave to appeal are dismissed with costs.

Procedural History:

First Application:

Judgment at first instance: Applicant Chester found to hold 50% of shares of I. Waxman & Sons Limited (IWS) on constructive trust for Respondent Morris since December 22nd, 1983 and shall forthwith convey them; Morris to recover from Chester and IWS 50% of profits and distributions of equity of IWS from December 22nd, 1983 onwards; Morris to recover from Chester and IWS bonuses for the fiscal year 1979, 1981-82; other relief awarded as per the terms of the order Ontario Superior Court of Justice, Sanderson J., June 27, 2002.
[2002] O.J. No. 2528.

Supplementary reasons: Supplementary reasons for decision regarding tracing orders and other issues. Ontario Superior Court of Justice, Sanderson J., September 16, 2002.
[2002] O.J. No. 3533.

Supplementary reasons: Supplementary reasons for decision regarding pre-judgment interest and costs. Ontario Superior Court of Justice, Sanderson J., January 10, 2003.

Judgment on appeal: Appeal allowed in part and judgment of trial judge varied as per terms of the order.
Court of Appeal for Ontario, Doherty, Laskin, and Goudge JJ.A., April 30, 2004.
[2004] O.J. No. 1765.

Judgment on costs: Endorsement regarding costs.
Court of Appeal for Ontario, Doherty, Laskin and Goudge JJ.A., September 29, 2004.

[2004] O.J. No. 3990.

Second Application:

Judgment at first instance: Respondent Morris entitled to recover from Applicants Warren and Robert any adjusted amounts received either directly or indirectly by bonus, or by other distributions from IWS; Respondent Morris entitled to recover from Applicants Warren and Robert specified amounts in respect of bonuses declared for fiscal years 1981-1982.
Ontario Superior Court of Justice, Sanderson J., June 27, 2002.
[2002] O.J. No. 2528.

Supplementary reasons: Supplementary reasons for decision regarding tracing orders and other issues. Ontario Superior Court of Justice, Sanderson J., September 16, 2002.
[2002] O.J. No. 3533.

Supplementary reasons: Supplementary reasons for decision regarding pre-judgment interest and costs. Ontario Superior Court of Justice, Sanderson J., January 10, 2003.

Judgment on appeal: Appeal allowed in part and judgment of trial judge varied as per terms of the order.
Court of Appeal for Ontario, Doherty, Laskin, and Goudge JJ.A., April 30, 2004.
[2004] O.J. No. 1765.

Judgment on costs: Endorsement regarding costs.
Court of Appeal for Ontario, Doherty, Laskin and Goudge JJ.A., September 29, 2004.
[2004] O.J. No. 3990.