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Fairmont Hotels v. R. - OCA: Courts broaden basis for granting rectification in tax cases

Rebecca Jones article appeared on Bill Innes on Current Tax Cases on July 2, 2015, published by Carswell Media.

"Précis: In *Fairmont Hotels Inc v Attorney General of Canada*, the Ontario Court of Appeal upheld the application judge's granting of the equitable remedy of rectification to a taxpayer whose intention to achieve a particular tax result was mistakenly implemented. [Note: notwithstanding the case citation, the Crown was in fact the appellant in this decision.]

The factual background is as follows. From 2002 onwards, the respondent, Fairmont Hotels, intended to execute its loan arrangements with Legacy (a real estate investment trust in which Fairmont Hotels had an interest) on a tax neutral basis, such that foreign exchange gains would be offset by corresponding foreign exchange losses. This intention persisted despite the change in control of Fairmont in 2006, and the unwinding of the loan in 2007. However, a mistake made by a member of Fairmont Hotels' management team (the redemption of preference shares that were not intended to be redeemed) led to adverse and unintended tax consequences. In light of this mistake, and despite the appellant's argument that rectification would sanction impermissible retroactive tax planning, the application judge granted the respondent the remedy of rectification..."

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