MARRIOTT INTERNATIONAL RESORTS, L.P., and MARRIOTT INTERNATIONAL JBS CORPORATION, Plaintiffs-Appellants, v. UNITED STATES, Defendant-Appellee.

2009-5007

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

586 F.3d 962; 2009 U.S. App. LEXIS 24995; 2009-2 U.S. Tax Cas. (CCH) P50,719; 104 A.F.T.R.2d (RIA) 7171

October 28, 2009, Decided

PRIOR HISTORY: [**1]

Appeal from the United States Court of Federal Claims in consolidated case nos. 01-CV-256 and 01-CV-257, Judge Charles F. Lettow.

Marriott Int'l Restorts, L.P. v. United States, 83 Fed. Cl. 291, 2008 U.S. Claims LEXIS 250 (2008)

DISPOSITION: AFFIRMED.

JUDGES: Before MAYER, RADER and MOORE, Circuit Judges.

OPINION

[*962] PER CURIAM.

Marriott International Resorts, L.P. and Marriott International JBS Corporation (collectively, "Marriott") appeal the decision of the United States Court of Federal Claims in *Marriott International Resorts, L.P. v. United States*, 83 Fed. Cl. 291 (2008). The court determined that in 1994 the obligation to close a short sale qualified as a liability under I.R.C. § 752 and that the IRS properly adjusted the outside basis of the Marriott partners for the 1994 tax year to account for the partnership's assumption of the obligation to close certain short sales. Therefore, the court granted the United States' motion for summary judgment and entered judgment for the United States. *Marriott Int'l Resorts, L.P. v. United States*, 83 Fed. Cl. 291 (Fed. Cl. 2008) (judgment). Marriott, relying primarily on a line of cases from the United States Tax Court beginning with *Helmer v. Commissioner*, T.C. Memo 1975-160, 34 T.C.M. (CCH) 727 (1975), argues that as of 1994, the obligation to [**2] close a short sale did not qualify as a "liability" for purposes of I.R.C. § 752.

We review a trial court's grant of summary judgment *de novo*, reapplying the same standard used by the trial court. *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 149 F.3d 1309, 1315 (Fed. Cir. 1998). We have applied that standard in our consideration of the record, including the briefs and arguments of counsel, and we conclude that the Court of Federal Claims correctly determined that the obligation to close a short sale qualified as a "liability" under I.R.C. § 752 as of 1994. We therefore affirm, and we adopt the opinion of the Court of Federal Claims for the reasons stated in its opinion, a copy of which is attached as an Appendix.

AFFIRMED

[EDITOR'S NOTE: THIS DOCUMENT IS REPORTED AT: [83 Fed. Cl. 291, 2008 U.S. Claims LEXIS 250].] [*963] [*964] [*965] [*966] [*967] [*968] [*969] [*970] [*971] [*972] [*973] [*974]

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