

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180130

Docket: A-119-17

Citation: 2018 FCA 28

**CORAM: PELLETIER J.A.
NEAR J.A.
WOODS J.A.**

BETWEEN:

MICHAEL DILALLA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on January 29, 2018.

Judgment delivered at Vancouver, British Columbia, on January 30, 2018.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**PELLETIER J.A.
NEAR J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] The appellant, Michael DiLalla, has instituted an appeal in the Tax Court of Canada from assessments under the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.). The Minister of National Revenue issued the assessments on the ground that Mr. DiLalla had unreported income for the 2010, 2011 and 2012 taxation years.

[2] In the course of the Tax Court proceeding, Mr. DiLalla brought a motion to compel the production of documents that he had requested in the discovery stage and which the Crown had refused to produce. The motion was dismissed in an unpublished order of the Tax Court dated March 24, 2017 (*per V. Miller J.*). Mr. DiLalla has appealed this order to this Court.

[3] Three types of documents were in dispute before the Tax Court: (1) all policies and interpretations of the Canada Revenue Agency that mention or are in relation to personal endeavours and hobbies, (2) all such documents relating to gross negligence penalties, and (3) Canada Revenue Agency's policies as to whether a net worth audit should be completed. The request for net worth documents was not pursued by Mr. DiLalla in this Court.

[4] In brief reasons, the Tax Court denied the motion for several reasons, including that the first two requests were broad and vague and amount to fishing expeditions. The Tax Court further determined that the requests were abusive and a delaying tactic.

[5] In this Court, the errors alleged by Mr. DiLalla involve questions of mixed fact and law which should be reviewed on a standard of palpable and overriding error (*Canada v. Superior Plus Corp.*, 2015 FCA 241 at paragraph 5). In this context, the term "palpable" means obvious and the term "overriding" means going to the heart of the matter at issue.

[6] We are of the view that the Tax Court made no such reviewable error in dismissing the motion with respect to the documents at issue. In particular, it was not a reviewable error for the Tax Court to conclude that the first two requests were overly broad and vague. Mr. DiLalla

mentions a number of judicial authorities in his submissions, but these authorities are all distinguishable on their facts.

[7] As a result, I would dismiss the appeal with costs to the Crown.

"Judith Woods"

J.A.

"I agree

J.D. Denis Pelletier J.A."

"I agree

D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-119-17

(APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE V.A. MILLER OF THE TAX COURT OF CANADA, DATED MARCH 24, 2017, NO. 2015-5070(IT)G)

STYLE OF CAUSE:

MICHAEL DILALLA v. HER
MAJESTY THE QUEEN

PLACE OF HEARING:

VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING:

JANUARY 29, 2018

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

PELLETIER J.A.
NEAR J.A.

DATED:

JANUARY 30, 2018

APPEARANCES:

Self-Represented

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FOR THE RESPONDENT

SOLICITORS OF RECORD:

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