

BETWEEN:

OLUKAYODE ADEBOGUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion disposed of on consideration of written representations

Before: The Honourable Lucie Lamarre, Associate Chief Justice

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Alexander Menticoglou

ORDER

Upon motion in writing made by the Respondent for an order striking out the Notice of Appeal with leave to amend, pursuant to subsection 53(1) of the *Tax Court of Canada Rules (General Procedure)* (Rules), and granting the Respondent 60 days from the date that the Amended Notice of Appeal is filed and served to file a Reply, pursuant to section 12 and paragraph 44(1)(b) of the Rules.

And upon reading the written submissions made by the parties;

IT IS ORDERED that the motion is granted and the Appellant shall have 60 days from the date of this order to file and serve an Amended Notice of Appeal setting out the material facts upon which he intends to rely and the issues to be decided, and stating explicitly the reasons upon which this appeal is based so as to disclose a reasonable cause of action.

The Respondent shall file a Reply to the Amended Notice of Appeal within 60 days from the date that the Appellant's Amended Notice of Appeal is filed and served.

The Respondent shall be entitled to costs on this motion.

Signed at Ottawa, Canada, this 30th day of August 2018.

“Lucie Lamarre”

Lamarre A.C.J.

Citation: 2018 TCC 181
Date: 20180830
Docket: 2018-1086(IT)G

BETWEEN:

OLUKAYODE ADEBOGUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Lamarre A.C.J.

[1] The Respondent is seeking an order striking out the Notice of Appeal with leave to amend, pursuant to subsection 53(1) of the *Tax Court of Canada Rules (General Procedure)* (Rules), and granting the Respondent 60 days from the date that the Amended Notice of Appeal is filed to file a Reply, pursuant to section 12 and paragraph 44(1)(b) of the Rules. The Appellant objects to this motion. The motion is being decided on the basis of written submissions filed by the parties.

[2] The Respondent asserts that the Notice of Appeal is not compliant with the Rules because it fails to clearly plead the material facts, statutory provisions and reasons relied on in support of the Appellant's appeal for the 2011, 2012 and 2013 taxation years.

[3] In response to the Respondent's application, the Appellant says that the Notice of Appeal clearly addresses the matters under appeal and is well laid and without ambiguity.

[4] The Respondent states that in paragraph c) of the Notice of Appeal, relating to the material facts relied on, the Appellant has referenced several documents without providing any context or any explanation as to their relevance.

[5] With respect to the issues to be decided and relief sought, at paragraphs d) and g) of the Notice of Appeal, the Respondent points to the fact that the Appellant seeks expenses associated with business use of his home without

pleading any material facts establishing the business use of his home and without specifying what the associated expenses were and when they were incurred.

[6] Another example given by the Respondent is that the Appellant refers to a “misallocation of funds”, to “intra bank transfer[s]” and to “proceeds from refinance of primary residence”, without pleading any facts relating to such funds or transfers or any facts explaining how these pertain to his taxes for the years at issue.

[7] The Respondent also refers to “disallowed business travels” and “meals deductions” claimed by the Appellant, who does not, however, specify any material fact related to any such disallowed expenses.

[8] The Respondent relies on the decision of this Court in *Klundert v. The Queen*, 2013 TCC 208, in which Pizzitelli J. outlined the importance of pleading sufficient material facts, as follows:

[20] The Appellant must make more than broad statements inviting conjecture on the part of the Court. His pleadings must set out a concise statement of the material facts he relies on in sufficient detail to enable the Court and the Respondent to know each cause of action to properly address. Here, the Appellant has done no such thing. In *Simon v Canada*, 2011 FCA 6, 2011 DTC 5016, Dawson J.A. said at paragraph 18:

18. The requirement that a pleading contain a concise statement of the material facts relied upon is a technical requirement with a precise meaning at law. Each constituent element of each cause of action must be pleaded with sufficient particularity. A narrative of what happened and when it happened is unlikely to meet the requirements of the Rules. ...

[21] This sentiment was also expressed by the Federal Court of Appeal in *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184, [2010] GST 105 (FCA), where Stratas J.A., relying on that Court’s earlier decision in *Vojic v Canada (MNR)*, 87 DTC 5384 (FCA), confirmed that where a pleading “contains a set of conclusions, but does not provide any material facts for the conclusions”, then “The bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of a material fact”.

[9] The Respondent also referred to another decision of this Court, *Okoroze v. The Queen*, 2012 TCC 360, in which Paris J. stated the following at paragraph 17:

[17] ... Self-represented taxpayers who bring appeals under the *General Procedure* must be held to a reasonable standard of compliance with the *Rules* in order to ensure that the litigation proceeds in an orderly, efficient and fair manner. It is a basic requirement of pleading in the General Procedure that an appellant set out clearly what issues he or she is putting in dispute and the material facts that will be relied upon.

[10] I agree with the Respondent that the Appellant has failed to set out a concise statement of the material facts on which he relies and to plead each ground of appeal with sufficient particularity. Subsection 53(1) of the Rules reads:

Striking out a Pleading or other Document

53.(1) The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document

- (a) may prejudice or delay the fair hearing of the appeal;
- (b) is scandalous, frivolous or vexatious;
- (c) is an abuse of the process of the Court; or
- (d) discloses no reasonable grounds for appeal or opposing the appeal.

[11] Failure to disclose a reasonable cause of action may occur when there is a failure to plead any material facts that evidence a cause of action. In *Klundert, supra*, at paragraph 22, Pizzitelli J. referred to a decision of the Federal Court of Canada, as follows:

[22] In *Nelson v Canada (Minister of Customs and Revenue Agency)*, 2001 DTC 5644, Rouleau J. also stated at paragraph 15:

15. ... Generally material facts in the statement of claim must be taken as true and in determining whether a reasonable cause of action is disclosed, cannot be based on assumptions and speculations and they cannot be taken as true simply because they are bold statements unless there is substantive facts to support the allegations. ...

[12] I agree with the Respondent that, as the Notice of Appeal stands now, the Crown is placed in the position of having to speculate as to the facts and reasons upon which this appeal is based.

[13] The case law referred to by the Appellant himself makes it clear that a claim will be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action (*Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at paragraph 15).

[14] I find that the deficiencies in the Notice of Appeal are extensive enough that the proper remedy is to set it aside and to allow the Appellant 60 days from the date of my order to file and serve an Amended Notice of Appeal setting out the material facts upon which he intends to rely and the issues to be decided, and stating explicitly the reasons upon which this appeal is based so as to disclose a reasonable cause of action.

[15] The Respondent shall file a Reply to the Amended Notice of Appeal within 60 days from the date that the Appellant's Amended Notice of Appeal is filed and served.

Signed at Ottawa, Canada, this 30th day of August 2018.

“Lucie Lamarre”

Lamarre A.C.J.

CITATION: 2018 TCC 181

COURT FILE NO.: 2018-1086(IT)G

STYLE OF CAUSE: OLUKAYODE ADEBOGUN v. THE QUEEN

REASONS FOR ORDER BY: The Honourable Lucie Lamarre, Associate Chief Justice

DATE OF ORDER: August 30, 2018

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Alexander Menticoglou

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

For the Respondent:

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