

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170213**

**Docket: A-268-16**

**Citation: 2017 FCA 33**

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

**BETWEEN:**

**PASQUALE PALETTA**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on February 13, 2017

Judgment delivered from the Bench at Toronto, Ontario, on February 13, 2017.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**WOODS J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario on February 13, 2017)

**WOODS J.A.**

[1] This is an appeal by Pasquale Paletta of an order of Owen J. of the Tax Court of Canada which dismissed Mr. Paletta's motion to have a statute barred issue determined prior to trial pursuant to Rule 58 of the *Tax Court of Canada Rules (General Procedure)*.

[2] The question that the appellant sought to have answered is whether the reporting of the appellant's income/loss from certain trading transactions is attributable to neglect, carelessness or wilful default. The appellant proposed to narrow the Rule 58 determination by conceding for statute barred purposes that the tax filings contain a misrepresentation.

[3] For reasons cited as 2016 TCC 171, the Tax Court concluded that the statute barred issue should be decided in the course of the trial and not on a preliminary basis under Rule 58.

[4] The decision to allow a determination under Rule 58 is discretionary and, absent an error of law, can be set aside only on the basis of palpable and overriding error: *Hospira Healthcare Corp. v. Kennedy Institute of Rheumatology*, 2016 FCA 215, at paragraph 79.

[5] We are of the view that the Tax Court made no reversible error in concluding that the application under section 58 should be dismissed.

[6] Central to the decision of the Tax Court was the rejection of the appellant's submission that it would be possible to have a fairly short hearing of the Rule 58 determination. According to the Tax Court reasons at paragraph 32, the statute barred issue required an appreciation of "all of the circumstances surrounding the filing positions taken by the Appellant in his returns for the Taxation Years." At paragraph 43, the judge concluded that the "Appellant's suggested approach to the evidence would not provide a fair and just adjudication of the statute-barred issue." There is no palpable and overriding error in this conclusion.

[7] The appellant also submits that the Tax Court was in error when it stated that the appellant bore part of the burden of proof relating to the correctness of the tax filings. According to the appellant, this error affected the decision because the Tax Court did not appreciate that the preliminary determination could save the appellant time, costs, delays and stress.

[8] The problem with this submission is that the decision of the Tax Court did not turn the onus of proof. The essence of the decision was that the statute barred issue requires detailed evidence, and that the same evidence is also at the heart of the substantive issue.

[9] The appellant also submitted that the Tax Court erred in law in failing to consider all the relevant factors for purposes of Rule 58. The Tax Court did not make any reversible error in this respect. Since the judge rejected the appellant's approach to the evidence required on the statute barred issue, it was open to him to conclude that proceeding under Rule 58 would not be appropriate.

[10] For these reasons, the appeal will be dismissed with costs.

"Judith M. Woods"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-268-16

**STYLE OF CAUSE:** PASQUALE PALETTA v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** FEBRUARY 13, 2017

**REASONS FOR JUDGMENT OF THE COURT BY:** PELLETIER J.A.  
RENNIE J.A.  
WOODS J.A.

**DELIVERED FROM THE BENCH BY:** WOODS J.A.

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