

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170605**

**Docket: A-324-16**

**Citation: 2017 FCA 119**

**CORAM: NOËL C.J.  
SCOTT J.A.  
BOIVIN J.A.**

**BETWEEN:**

**MICHAEL J. GRANOFSKY**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on June 5, 2017.  
Judgment delivered from the Bench at Montréal, Quebec, on June 5, 2017.

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

**SCOTT J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on June 5, 2017).

**SCOTT J.A.**

[1] This is an appeal by Mr. Michael J. Granofsky (the appellant) against an Order of the Tax Court of Canada (TCC) rendered by D'Auray J. (the Judge) on August 17, 2016 (2016 TCC 181). In this Order, the Judge dismissed the appellant's motion seeking to invalidate a settlement agreement (the Agreement) reached between himself and the Minister of National Revenue (the

Minister) pursuant to subsection 169(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), and thus recognized the validity of the Minister's reassessments.

[2] In her reasons for Order, the Judge found that the appellant's counsel had been mandated to negotiate a settlement on the appellant's behalf, given the express wording of an email addressed to his counsel on September 3, 2015, whereby the appellant accepted the Minister's settlement offer. She further concluded that the appellant's personal signature was not required to execute an agreement signed pursuant to subsection 169(3) of the Act where a taxpayer is represented by counsel.

[3] The appellant argues before us that the Judge erred in her interpretation of subsection 169(3) of the Act when she concluded that he consented to the settlement, as this provision, in addition to clause 3 of the Agreement, required him to personally review the Agreement and consent to its terms in writing, which he claims he never did. In his view, his counsel did not have the authority to execute the Agreement on his behalf, as she was solely mandated to negotiate a settlement with the Minister. He asserts that the Agreement is therefore invalid, as he never consented to discontinue his appeal before the TCC and have new reassessments issued against him pursuant to subsection 169(3) of the Act.

[4] Despite the arguments of counsel for the appellant, we have not been convinced that the Judge committed any legal error or any palpable and overriding error in her analysis of the governing legal principles and her appreciation of the evidence given the terms of the Agreement and the counsel's authority to sign the settlement documents (*Housen v. Nikolaisen*, 2002 SCC

33, [2002] 2 S.C.R. 235), with respect to the validity of the reassessments issued by the Minister under subsection 169(3) of the Act.

[5] Contrary to what the appellant asserts, the email sent by counsel outlining the settlement reached, outlined all the modifications, which she was able to negotiate on his behalf. The modifications so described were accepted without any form of ambiguity by the appellant's email in response.

[6] Upon sending this email to his counsel on September 3, 2015, the appellant conferred an express mandate to execute the Agreement on his behalf. She was therefore the counsel of record, within the meaning of Rule 31 of the *Tax Court of Canada Rules (General Procedure)*, S.O.R./90-688a, and was entitled to provide, for the purposes of executing the Agreement, the "consent in writing" referred to in subsection 169(3) of the Act. It follows that we can find no fault with the Judge's conclusions with respect to the Agreement's validity and the enforceability of the Minister's reassessments.

[7] The appeal will therefore be dismissed with costs.

"A.F. Scott"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-324-16

**STYLE OF CAUSE:** MICHAEL J. GRANOFSKY v.  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** JUNE 5, 2017

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL C.J.  
SCOTT J.A.  
BOIVIN J.A.

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

**APPEARANCES:**

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Christina Ham

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