Date: 20080915

**Dockets: A-16-08** 

A-17-08

**Citation: 2008 FCA 264** 

CORAM: NADON J.A.

SEXTON J.A. PELLETIER J.A.

**BETWEEN:** 

**JOSE PEREIRA** 

**Appellant** 

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on September 15, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on September 15, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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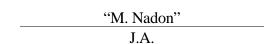
Respondent

# <u>REASONS FOR JUDGMENT OF THE COURT</u> (Delivered from the Bench at Toronto, Ontario, on September 15, 2008)

## NADON J.A.

[1] Notwithstanding Mr. Klug's forceful arguments, we have not been persuaded that Bowie J. erred in dismissing the appellant's application for an extension of time to file a Notice of Objection to the assessment made by the Minister under section 227.1 of the *Income Tax Act* and subsection 323(4) of the *Excise Tax Act* for the liabilities of United Growth Inc., in his capacity of Director thereof, for income tax withholdings, GST, interests and penalties.

- [2] Bowie J. concluded as he did because, in his view, the appellant had neither filed a Notice of Objection within 90 days of the mailing of the assessment, as required by section165 of the *Income Tax Act* and subsection 301.1 of the *Excise Tax Act*, nor had he filed an application for an extension of time to do so within 1 year after the expiry of the 90-day period provided to file a Notice of Objection, as required by section 166.1 of the *Income Tax Act* and section 303 of the *Excise Tax Act*.
- [3] In our view, on the record before him, the conclusion reached by Bowie J. was unavoidable and, as a result, the appeals will be dismissed with costs.
- [4] In concluding, we wish to make it absolutely clear that, in our view, *Haight v. Canada*, [2000] 4 C.T.C. 2546 was wrongly decided and ought not to be followed.



## FEDERAL COURT OF APPEAL

## NAMES OF COUNSEL AND SOLICITORS OF RECORD

**DOCKETS:** A-16-08

A-17-08

(FILE NO. A-16-08, APPEAL FROM AN ORDER OF THE HONOURABE MR. JUSTICE BOWIE OF THE TAX COURT OF CANADA DATED JANUARY 8, 2008, FILE NO. 2007-3137 (IT) APP.

FILE NO. A-17-08, APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE BOWIE OF THE TAX COURT OF CANADA DATED DECEMBER 10, 2008, FILE NO. 2007-3139 (GST) APP.)

**STYLE OF CAUSE:** JOSE PEREIRA v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

**DATE OF HEARING:** September 15, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** (NADON, SEXTON & PELLETIER

JJ.A.)

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

**APPEARANCES:** 

LEO KLUG FOR THE APPELLANT

BRIANNA CARYLL FOR THE RESPONDENT

**SOLICITORS OF RECORD:** 

LEO KLUG

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John H. Sims, Q.C.

Deputy Attorney General of Canada FOR THE RESPONDENT