Docket: 2015-5542(IT)G

BETWEEN:

WILLIAM RUSSELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on common evidence with the motion in *Lora Raddysh* 2015-5541(IT)G on May 2, 2016 at Vancouver, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Max Matas

ORDER

WHEREAS the Respondent has brought a motion pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*") for an Order:

a) striking out the Amended Notice of Appeal under paragraph 53(1)(b) of the *Rules* on the ground that the Amended Notice of Appeal is scandalous, frivolous or vexatious; or,

b) alternatively, striking out the Amended Notice of Appeal under paragraph 53(1)(c) of the *Rules* on the ground that the Amended Notice of Appeal is an abuse of process; or,

c) alternatively, striking out the Amended Notice of Appeal under paragraph 53(1)(d) of the *Rules* because it discloses no reasonable grounds for appeal; or,

d) in the further alternative, an Order under paragraphs 53(1)(b), 53(1)(c) or 53(1)(d) of the *Rules* striking paragraphs 27, 28, 29, 30, 31, 33, 91-113, 114-163, and 174-182 of the Amended Notice of Appeal; and,

e) in the further alternative, an Order under paragraph 44(1)(b) of the *Rules* extending the time in which the Respondent may file a Reply to the Amended Notice of Appeal.

AND WHEREAS, the Appellant opposed the motion;

UPON hearing the representations of the parties and considering their written argument;

THIS COURT ORDERS that:

The Amended Notice of Appeal filed on February 22, 2016 is struck in its entirety without leave to amend and the appeal is dismissed.

Counsel for the Respondent must serve and file his written representations regarding costs by June 3, 2016.

The Appellant must submit his written response regarding costs by June 17, 2016.

Signed at Ottawa, Canada, this 18th day of May 2016.

"V.A. Miller"

V.A. Miller J.

Citation: 2016TCC122
Date: 20160518
Docket: 2015-5542(IT)G

BETWEEN:

WILLIAM RUSSELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

V.A. Miller J.

[1] The Respondent has brought a motion pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*") for an Order:

a) striking out the Amended Notice of Appeal under paragraph 53(1)(**b**) of the *Rules* on the ground that the Amended Notice of Appeal is scandalous, frivolous or vexatious; or,

b) alternatively, striking out the Amended Notice of Appeal under paragraph 53(1)(c) of the *Rules* on the ground that the Amended Notice of Appeal is an abuse of process; or,

c) alternatively, striking out the Amended Notice of Appeal under paragraph 53(1)(d) of the *Rules* because it discloses no reasonable grounds for appeal; or,

d) in the further alternative, an Order under paragraphs 53(1)(b), 53(1)(c) or 53(1)(d) of the *Rules* striking paragraphs 27, 28, 29, 30, 31, 33, 91-113, 114-163, and 174-182 of the Amended Notice of Appeal; and,

e) in the further alternative, an Order under paragraph 44(1)(b) of the *Rules* extending the time in which the Respondent may file a Reply to the Amended Notice of Appeal.

[2] The grounds for the motion are essentially that the Amended Notice of Appeal does not disclose a cause of action; the pleadings are vexatious or an abuse of process; and, the Appellant cannot obtain relief on the basis of the allegations pled in the Amended Notice of Appeal.

[3] The Respondent has brought a similar motion in respect of the Notice of Appeal filed by Lora Raddysh who is the wife of William Russell (the "Appellant"). The issue in the Lora Raddysh appeal is the Canada Child Tax Benefit and success in her appeal is contingent on the determination of income in the Appellant's appeal. In her appeal, Ms. Raddysh relied on the arguments made in the Appellant's appeal.

Law

[4] Section 53 of the *Rules* reads:

> 53. The Court may 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 action,
>
> (b) is scandalous, frivolous or vexatious, or
>
> (c) is an abuse of the process of the Court.

[5] When considering a motion under section 53 of the *Rules*, the facts alleged in the pleading are assumed to be true: *Operation Dismantle v Canada*, [1985] 1 SCR 441 at 455. Only when it is plain and obvious that the position taken in the pleading has no chance of success will it be struck: *Hunt v Carey Canada Inc* [1990] 2 S.C.R. 959 at page 980. The test is a stringent one and the power to strike out a pleading must be exercised with great care: *Sentinel Hill Productions (1999) Corp v R*, 2007 TCC 742. There is a high onus on the party seeking to strike a pleading: *Robertson v R*, 2006 TCC 147 at para.16-18; *Hickman Motors Ltd v R*, 97 DTC 5363 (SCC) at page 5376. In making the decision whether to strike the Amended Notice of Appeal or paragraphs in it, I cannot review any evidence.

The Amended Notice of Appeal

[6] A summary of the Amended Notice of Appeal follows.

[7] The years at issue are the 2010, 2011 and 2012 taxation years.

[8] The Appellant is a naturopathic doctor. He had DR. WILLIAM RUSSELL NATUROPATHIC INC. (the "Corporation") incorporated in 2003 under the laws of the province of British Columbia. The Corporation carries on the business of providing health care services and the Appellant is a shareholder and director of the Corporation.

[9] The Appellant also claimed that he is an "individual" of the Corporation.

[10] In 2010, 2011 and 2012, the Appellant received income from the Energetic Matrix Church of Consciousness for his services as a facilitator; and, he also received fees from the Corporation for his services as director. He reported these amounts on his income tax returns.

[11] In 2005, the Appellant, as "an individual ("Agent")", signed a contract with the Corporation as "Principal"; a copy of the contract formed part of the Amended Notice of Appeal and it was labelled Appendix B. The contract was titled "Contract for Hire – Private (Free Agent) Agreement" but I will refer to it as the "Contract". In the Contract, the Principal and Agent relationship was defined for the purposes of various legislation including the Canada Pension Plan ("CPP"), Taxes and Employment Insurance. With respect to "Taxes", the Appellant consented "to being engaged for his services in his capacity as a natural person". The Contract further stated that the Appellant did not consent to accepting or performing the duties of an "office or employment" in the capacity of an "officer" or any other entity defined in the *Income Tax Act* ("*ITA*") for provincial or federal income tax purposes.

[12] According to the pleadings, the Appellant performed the duties as Manager for the Corporation. He invoiced the Corporation for his services and the Corporation paid him $108,000, $107,000 and $95,000 in 2010, 2011 and 2012 respectively. He wrote that he reported these amounts to the Canada Revenue Agency ("CRA") in a letter dated February 26, 2014. A copy of that letter formed part of the Amended Notice of Appeal and it was labelled Appendix D. In that letter, the Appellant wrote that these amounts which he received for his services as

Manager from the Corporation were "exempt income" because he "declined the ITA's deeming to be a source while as Manager". He further wrote:

> The written Agreement with the Corporation states that the Manager declined to be a CPP/ITA "officer" with a social insurance number holding an office of profit. While as Manager, I was not a CPP or GST "officer" either, since those are the same as the ITA officer.
>
> As a T1 is for filing income only from sources, there is no line on the T1 to file any exempt income. I believe that I filed all income from all sources (ie., director's fees) but could not file the exempt income, which is also deemed by ITA Part I to be equal to zero. There are no grounds for your proposed "Unreported Business Income" or penalties, as there is no unreported income for the individual as Manager, but instead only exempt income, which is sanctioned by the ITA and by T1 to not be reported.

[13] The Appellant also pled that "it is legally impossible" to report the income made under the Contract on a T1 return that uses the SIN as a "social insurance number" styled all in lower case letters.

[14] The Appellant was reassessed by the Minister of National Revenue (the "Minister"), by notice dated May 23, 2014, to include the amounts he received from the Corporation in his income. Gross negligence penalties were assessed pursuant to subsection 163(2) of the *ITA*.

[15] According to the Amended Notice of Appeal, the Appellant was also assessed under the Canada Pension Plan ("CPP") for contributions.

[16] In his notice of Appeal, the Appellant raised issues with respect to several federal and provincial statutes aside from the *ITA*. Those issues are not relevant to this appeal because this appeal was filed against the Notice of Reassessment issued under the *ITA*. A summary of the issues raised by the Appellant with respect to the *ITA* were:

a) Whether the income earned under the Contract was received by the Appellant in his capacity as an "officer" within the meaning of section 248 of the *ITA*?

b) Whether the Appellant was entitled to receive the Goods and Services Tax Credit for the base years 2010 and 2011?

c) Whether the Minister erred by assessing penalties under subsection 163(2) of the *ITA* against the Appellant for 2010, 2011 and 2012.

d) Whether the term "Social Insurance Number", referred to in subsection 237(1) of the *ITA* and styled in both upper and lower case letters, is to be distinguished from the term "social insurance number", styled in lower case letters only and referred to in various CRA forms. Specifically, whether a Social Insurance Number is assigned exclusively to an individual who is a "legal representative" within the meaning of subsection 248(1) of the *ITA*, and a "social insurance number" is assigned exclusively to an individual who is an "officer" within the meaning of subsection 248(1) of the *ITA*.

[17] In the "Statutory Provisions Relied Upon" portion of the Amended Notice of Appeal, the Appellant relied on the *ITA* and several other statutes which are not relevant.

[18] A brief summary of the "Reasons the Appellant Intends to Rely On" with respect to the *ITA* are as follows:

a) Her Majesty is the (legal) personification of all Canadians. Her Majesty has a dual individual capacity – as a natural person and a corporation sole. Therefore, all Canadians can also have dual individual capacity.

b) The Appellant quoted from various decisions and various sections of the *ITA*; gave his interpretation of the quotes and the sections; and, concluded that, while he performed services under the Contract, he was not "clothed with the powers of an officer" as that term is defined in section 248 of the *ITA*. Therefore he was without legal capacity to convert his income from any source of income into profit.

c) The income he earned pursuant to the Contract is not income from an office, employment, business or property because he did not claim any expenses. Therefore his income is deemed to be zero by paragraph 3(f) of the *ITA*.

d) He never filled an "office" when he earned income under the Contract and he was not charged for making omissions or false statements on a return under paragraph 239(1)(a) or with tax evasion under paragraph 239(1)(d) of the *ITA*.

e) He filed all income by T1 (taxable income for the "office" as "officer") and also by letter (exempt income received not as "officer" under the Contract).

f) The income received by him under the Contract is exempt income and deemed to be zero so that it prevents Her Majesty from doing theft by conversion. That is, it prevents Her Majesty and her agents from converting his private property into "public money" within the meaning of section 2 of the *Financial Administration Act*.

g) With respect to the penalties under subsection 163(2), it is the Appellant's position that an individual who deals with "public money" as an officer owes a fiduciary duty to the public to report all "public money" earned from such "office". Since a fiduciary duty demands a high standard of performance, one cannot be forced to be such an "officer" and he has declined to receive the income he earned under the Contract as "public money". He argued that the CRA agreed with him that he did not make an omission or false statement because he was not charged under paragraph 239(1)(a) of the *ITA*.

Position of the Parties

[19] It was the Respondent's position that the Appellant's legal argument is a variation of the concepts used by so called "de-taxers". Counsel argued that this court has found that the argument and position of de-taxers is without merit; does not disclose a reasonable ground for appeal; and, is an abuse of the court's process.

[20] It was the Appellant's position that he was not using a "natural person" argument. He has reported all of his income in 2010, 2011 and 2012. Some of that income he reported on a T1 and some of it he reported in a letter to the CRA. He stated that all of his income was subject to tax under the *ITA*. However, in 2010, 2011 and 2012, he received some of his income as an officer as defined in the *ITA* and he reported this income and paid tax on it. He also received income in these years not as an officer and this income was deemed by the *ITA* to be equal to zero.

Decision

[21] Although the Appellant argued that the facts in his case are substantially different from the facts of the litigants referred to in the *Meads v Meads*, 2012 ABQB 571 decision, I disagree. He may not have made a "natural person" argument in his Amended Notice of Appeal or at the hearing of this motion, but his position was nevertheless clothed with the "natural person" concept at the time he made the Contract between himself and his Corporation. The Appellant has used the same tactics that J.D. Rooke A.C.J.Q.B. described in *Meads* as belonging to the Organized Pseudolegal Commercial Argument litigants ("OPCA litigants").

[22] The Appellant, like other OPCA litigants, ground his argument in a "belief" that "every binding legal obligation emerges from a contract, and consent is required before an obligation can be enforced": *Meads* at para. 379. In this case, the Appellant argued that he has opted out of being taxed for a large portion of the income he earned in 2010, 2011 and 2012. A taxpayer cannot elect to contract out of the application of the *Income Tax Act*.

[23] The Appellant has also argued in his Amended Notice of Appeal that he exists in two separate states. Those separate states for the Appellant are as an individual and an officer; and, depending on which state he chooses, he doesn't have to pay tax. The Appellant's claims are "pseudolegal nonsense" and are not supported by Canadian courts: *Tuck v The Queen*, 2007 TCC 418; *Ian E Brown v The Queen*, 2014 FCA 301.

[24] First, I will address the amount of the reassessment for the 2012 taxation year and the fact that gross negligence penalties were assessed against the Appellant.

[25] The Appellant has admitted that he received $108,000, $107,000 and $95,000 in 2010, 2011 and 2012 which he did not include in his income tax returns for those years. However, according to counsel for the Respondent, the Appellant was assessed unreported income of $97,000 in 2012.

[26] In the Amended Notice of Appeal, the Appellant has not disputed the quantum of the reassessments. He has not raised any potential discrepancy as an issue in this appeal. His only argument is that he has elected not to be taxed on the amount he earned for his services as Manager for the Corporation. Therefore, I

have concluded that the Appellant did not appeal the additional amount of the assessment for the 2012 year.

[27] The Appellant has been assessed gross negligence penalties and pursuant to subsection 163(3) of the *ITA*, "the burden of establishing the facts justifying the assessment of the penalties is on the Minister". If this appeal proceeded to a hearing, the Respondent would have to prove (1) that the Appellant made a false statement or omission in his 2010, 2011 and 2012 income tax returns, and (2) that the statement or omission was either made knowingly, or under circumstances amounting to gross negligence.

[28] It is my view that the facts necessary to prove that the penalties were properly imposed were admitted in the Amended Notice of Appeal. The Appellant admitted in the Amended Notice of Appeal that he failed to include income of $108,000, $107,000 and $95,000 in his 2010, 2011 and 2012 income tax returns. Although he gave a "pseudolegal" argument as to why he did not report the income he earned under the Contract in his income tax returns, the Appellant also admitted that he knowingly omitted this income. Unlike the case of *Ian E Brown v The Queen*, 2014 FCA 301, the material facts necessary to meet the Minister's burden were admitted in the Amended Notice of Appeal.

[29] I have carefully considered the Amended Notice of Appeal, the oral and written submissions made by the Appellant and counsel for the Respondent and I have concluded that the Amended Notice of Appeal should be struck. The Appellant has not raised a cause of action. It is plain and obvious that the position taken by the Appellant in his Amended Notice of Appeal has no chance of success and it is an abuse of this court's process. I order that the Amended Notice of Appeal be struck in its entirety and the appeal is dismissed.

[30] Counsel for the Respondent requested that he be given the opportunity to address costs. He must serve and file his written representations with respect to costs by June 3, 2016. The Appellant must submit his written response regarding costs by June 17, 2016.

Signed at Ottawa, Canada, this 18th day of May 2016.

"V.A. Miller"

V.A. Miller J.

CITATION:	2016TCC122
COURT FILE NO.:	2015-5542(IT)G
STYLE OF CAUSE:	WILLIAM RUSSELL AND THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 2, 2016
REASONS FOR ORDER BY:	The Honourable Justice Valerie Miller
DATE OF ORDER:	May 18, 2016

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Max Matas

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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