

Docket: 2011-1497(GST)G

BETWEEN:

ROANEX HOMES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Counsel for the Appellant: Gordon Beck  
Counsel for the Respondent: Gregory Perlinski

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**ORDER**

Upon reading the motion dated January 19, 2012, filed on behalf of the Respondent, seeking an Order:

- a) compelling the Appellant to comply with the Court's Order of December 2, 2011 to amend its Amended Notice of Appeal to bring it into compliance with Rule 48, with costs to the Respondent; and
- b) granting the Respondent 60 days from the date of service of the Amended Amended Notice of Appeal to file a Reply to the Amended Amended Notice of Appeal;

And upon consideration of the Appellant's submissions and a review of the Amended Notice of Appeal;

IT IS ORDERED that the motion is allowed. The Appellant shall serve and file an Amended Amended Notice of Appeal on or before April 30, 2012. The Respondent shall serve and file a Reply to the Amended Amended Notice of Appeal

within 60 days of service. Costs of this motion to the Respondent in any event of the cause.

Signed at Ottawa, Canada, this 28<sup>th</sup> day of March 2012.

“V.A. Miller”

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V.A. Miller J.

Citation: 2012TCC98  
Date: 20120328  
Docket: 2011-1497(GST)G

BETWEEN:

ROANEX HOMES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

V.A. Miller J.

[1] This motion was brought by the Respondent for:

- a) An Order to compel the Appellant to amend its Amended Notice of Appeal so that it complies with Rule 48 of the *Tax Court of Canada Rules (General Procedure)*;
- b) An Order granting the Respondent 60 days from the date of service of the Amended Amended Notice of Appeal to file a Reply to the Amended Amended Notice of Appeal; and,
- c) An Order for costs to the Respondent.

[2] This is the second time that the Respondent has brought a motion to compel the Appellant to amend its notice of appeal.

[3] The history of this appeal is that the Appellant filed its Notice of Appeal with the Court on May 2, 2011. The appeal was filed under the informal procedure. The Minister of National Revenue (the “Minister”) was served with the Notice of Appeal on May 19, 2011 and the Reply to the notice of appeal was filed on July 15, 2011.

[4] On July 14, 2011, the Respondent brought a motion to have the *Tax Court of Canada Rules (General Procedure)* apply to this appeal. The affidavit evidence filed

with the motion disclosed that the amount in dispute in this appeal is \$555,801.67 in net tax, plus interest and penalties. Because the motion was brought within sixty days after the Minister was served with the Notice of Appeal, the motion was granted in accordance with subsection 18.3002(2) of the *Tax Court of Canada Act* and an Order granting the motion was issued on September 2, 2011.

[5] On November 7, 2011, the Respondent brought a motion for an Order to compel the Appellant to amend its Notice of Appeal so that it complied with Rule 48 of *Tax Court of Canada Rules (General Procedure)*. That motion was granted and the Court issued an Order dated December 2, 2011. The Appellant filed an Amended Notice of Appeal on December 16, 2011.

[6] On a review of the Amended Notice of Appeal, I conclude that it does not comply with *Rule 48*. The only amendment which the Appellant made to its Notice of Appeal was to add the headings specified in Form 21(1)(a), an issue and the statutory provisions upon which it relied. In other words, it complied with the form given in *Rule 48* but it did not comply with the substance of that Rule.

[7] The rule of pleadings was discussed by Bowie J. in *Zelinski v. R.*, 2002 D.T.C. 1204 (TCC) at paragraphs 4 and 5:

[4] The purpose of pleadings is to define the issues in dispute between the parties for the purposes of production, discovery and trial. **What is required of a party pleading is to set forth a concise statement of the material facts upon which she relies. Material facts are those facts which, if established at the trial, will tend to show that the party pleading is entitled to the relief sought.** (emphasis added) Amendments to pleadings should generally be permitted, so long as that can be done without causing prejudice to the opposing party that cannot be compensated by an award of costs or other terms, as the purpose of the Rules is to ensure, so far as possible, a fair trial of the real issues in dispute between the parties.

[5] The applicable principle is stated in *Holmsted and Watson*: This is *the* rule of pleading: all of the other pleading rules are essentially corollaries or qualifications to this basic rule that the pleader must state the material facts relied upon for his or her claim or defence. The rule involves four separate elements: (1) every pleading must state facts, not mere conclusions of law; (2) it must state material facts and not include facts which are immaterial; (3) it must state facts and not the evidence by which they are to be proved; (4) it must state facts concisely in a summary form.

[8] In the present Amended Notice of Appeal, the facts pled by the Appellant are vague and imprecise.

[9] The only issue raised by the Appellant in the Amended Notice of Appeal is “whether the Minister erred in issuing the reassessment”. This issue does not engage the details of the reassessment. The Appellant does not dispute the correctness or the quantum of the net tax reassessed by the Minister.

[10] For the above reasons, I allow the Respondent’s motion and order that the Appellant file an Amended Amended Notice of Appeal which contains a precise statement of the material facts on which it intends to rely and all the issues it intends to raise at the hearing of this appeal.

[11] The Respondent is awarded its costs for this motion in any event of the cause.

Signed at Ottawa, Canada, this 28<sup>th</sup> day of March 2012.

“V.A. Miller”

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V.A. Miller J.

CITATION: 2012TCC98  
COURT FILE NO.: 2011-1497(GST)G  
STYLE OF CAUSE: ROANEX HOMES LTD. AND  
THE QUEEN  
PLACE OF HEARING: By written submission in Ottawa, Ontario  
REASONS FOR ORDER BY: The Honourable Justice Valerie Miller  
DATE OF ORDER: March 28, 2012

Counsel for the Appellant: Gordon Beck  
Counsel for the Respondent: Gregory Perlinski

COUNSEL OF RECORD:

For the Appellant:

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