

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20161124**

**Docket: A-122-16**

**Citation: 2016 FCA 298**

**CORAM: STRATAS J.A.  
WEBB J.A.  
WOODS J.A.**

**BETWEEN:**

**PAUL LAUZON**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on November 23, 2016.

Judgment delivered at Toronto, Ontario, on November 24, 2016.

**REASONS FOR JUDGMENT BY:**

**WOODS J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
WEBB J.A.**

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**REASONS FOR JUDGMENT**

**WOODS J.A.**

[1] The appellant, Paul Lauzon, appeals from a judgment of the Tax Court of Canada (2016 TCC 71) which upheld the imposition of a gross negligence penalty in circumstances where false business losses were claimed. The penalty was imposed pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the Act).

[2] In Mr. Lauzon's return of income for the 2008 taxation year, a deduction for net business losses in the amount of \$308,073 was claimed, as well as a refund for that year in the amount of \$19,178.

[3] Mr. Lauzon also signed a loss carryback request to obtain a refund of tax for the three prior years using the balance of the losses that could not be used in 2008. If the losses were allowed in full, Mr. Lauzon's entire tax for the years 2005 to 2008 would be refunded.

[4] In a reassessment for the 2008 taxation year, the Minister of National Revenue denied the deduction and imposed a gross negligence penalty.

[5] As it turned out, the losses were totally fictitious, having been made up by the tax return preparer from Fiscal Arbitrators. The Tax Court found that Mr. Lauzon was a victim of fraud.

[6] Mr. Lauzon appealed to the Tax Court with respect to the penalty only. The appeal was dismissed by Deputy Judge Masse (the trial judge) on the basis that Mr. Lauzon was grossly negligent in claiming the false business losses in his 2008 income tax return.

[7] In this appeal, Mr. Lauzon submits that the trial judge: (1) "made an error of law by applying the legal test for the imposition of Gross Negligence Penalties objectively, instead of subjectively;" and (2) made palpable and overriding errors in applying the legal test to the facts.

[8] This Court recently commented on the legal test for determining gross negligence in the context of penalties under subsection 163(2) of the Act in *Strachan v. The Queen*, 2015 FCA 60, 2015 D.T.C. 5044, at paragraph 4:

Gross negligence may be established where a taxpayer is willfully blind to the relevant facts in circumstances where the taxpayer becomes aware of the need for some inquiry but declines to make the inquiry because the taxpayer does not want to know the truth (*Canada (Attorney General) v. Villeneuve*, 2004 FCA 20, 327 N.R. 186, at paragraph 6; *Panini v. Canada*, 2006 FCA 224, [2006] F.C.J. No. 955, at paragraphs 41-43).

[9] In the passage above, reference is made to the prior decision of this Court in *Panini v. The Queen*, 2006 FCA 224. At paragraph 43 of that decision, the Court stated:

[...] the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest that an inquiry should be made with respect to his or her tax situation, refuses or fails to commence such an inquiry without proper justification.

[10] In this case, the trial judge found that Mr. Lauzon was grossly negligent because he “had a duty to exercise care and accuracy in the completion of his return and he failed in this duty, making no effort at all to verify the accuracy and completeness of his return” (reasons, paragraph 45).

[11] The trial judge also relied on a constellation of facts identified throughout the reasons which, in his view, supported a finding of gross negligence based on the jurisprudence. The factors that he considered were to be taken into account included: “(a) the magnitude of the omission in relation to the income declared, (b) the opportunity the taxpayer had to detect the error, (c) the taxpayer’s education and apparent intelligence, (d) genuine effort to comply”

(reasons, paragraph 29). He also set out the non-inclusive set of factors identified by the Tax Court in *Torres v. The Queen*, 2013 TCC 380, affirmed by this Court in *Strachan*, above.

[12] In this case, it is clear that the trial judge had ample evidence before him to find that the test for gross negligence described in *Strachan* and *Panini*, above, was satisfied. His conclusion is not vitiated by palpable and overriding error.

[13] In particular, the trial judge found that Mr. Lauzon was an intelligent, sophisticated and well-educated man who in the past had prepared his own tax returns. He was aware of the refund that was being claimed and at trial he was asked why he did not inquire about such a large amount. The trial judge considered his answer to be implausible (reasons, paragraph 7). Based on this and a myriad of other factual circumstances that were well described in the reasons, the trial judge found (at para 24) that Mr. Lauzon acquiesced in the making of false statements in his return in circumstances amounting to gross negligence. There are no grounds to interfere with this amply-supported conclusion.

[14] Mr. Lauzon also submits that palpable and overriding errors were made in applying the legal test to the facts. I do not agree. None of the factual findings of the trial judge contain errors that are obvious or overriding.

[15] Finally, I would comment in particular concerning a submission of counsel for Mr. Lauzon that “it is un-contradicted [sic] evidence that Lauzon did not have any suspicions when signing his return in that he did not know he was claiming business losses and did not know that

someone differently [sic] that year was preparing his return” (Memorandum, paragraph 43(a)(i)). This statement neglects to mention that the trial judge did not believe Mr. Lauzon’s explanation for not making further inquiries about claiming such a large refund.

[16] In my view, the trial judge made no reviewable error in concluding that Mr. Lauzon was grossly negligent. I would dismiss the appeal with costs.

“Judith M. Woods”

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J.A.

“I agree  
David Stratas J.A.”

“I agree  
Wyman W. Webb J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-122-16

**APPEAL FROM A JUDGMENT OF THE HONOURABLE ROMMEL G. MASSE OF  
TAX COURT OF CANADA DATED MARCH 21, 2016 IN FILE NO. 2013-2945(IT)G.**

**STYLE OF CAUSE:** PAUL LAUZON v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 23, 2016

**REASONS FOR JUDGMENT BY:** WOODS J.A.

**CONCURRED IN BY:** STRATAS J.A.  
WEBB J.A.

**DATED:** NOVEMBER 24, 2016

**APPEARANCES:**

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