

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
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**Date: 20101028**

**Docket: A-84-10**

**Citation: 2010 FCA 289**

**CORAM: BLAIS C.J.  
EVANS J.A.  
SHARLOW J.A.**

**BETWEEN:**

**PASQUALE RUPOLO**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on October 28, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on October 28, 2010.

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

**SHARLOW J.A.**

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**BETWEEN:**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on October 28, 2010)**

**SHARLOW J.A.**

[1] The appellant is appealing the judgment of Justice Woods of the Tax Court of Canada dismissing his tax appeal (2010 TCC 68). His appeal was dismissed because no case was presented for the appellant at the hearing. The appellant's representative had come to the hearing unprepared because he or the appellant, or both of them, assumed that the requested adjournment would be granted but it was not. The Crown had not opposed the request.

[2] The appellant had also requested an adjournment two days before the hearing. The Crown did not oppose that request either but the Chief Justice denied it.

[3] At the hearing, the appellant's representative explained that the request for adjournment was being renewed because he did not have the necessary information to present the appellant's case. However, no explanation was offered as to why the appellant had not sought the necessary information on a timely basis. The judge denied the request for adjournment essentially because of the lack of an explanation for the appellant's lack of diligence.

[4] A judge is not obliged to accede to a party's request for an adjournment, even if the other party consents. Generally, once a matter is set down for hearing, the parties must be prepared to proceed at the scheduled time or risk losing their case. The decision of a trial judge to grant or deny an adjournment is discretionary. This Court will not intervene in the absence of an error of law or principle.

[5] In this Court, the appellant appeared on his own behalf and explained that his problems were the result of various failures by his representatives to pursue his appeals with appropriate diligence. Unfortunately, that is not a basis upon which this Court can properly reverse the decision of the Tax Court judge. Having reviewed the record, we have been able to discern no error of law or principle that would justify appellate intervention.

[6] The appeal will be dismissed.

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“K. Sharlow”

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-84-09

**(AN APPEAL FROM THE JUDGMENT OF THE HONOURABLE MADAM JUSTICE J. WOODS FROM THE TAX COURT OF CANADA, DATED FEBRUARY 3, 2010, IN DOCKET NO. 2009-1859 (GST)I.)**

**STYLE OF CAUSE:** PASQUALE RUPOLO v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 28, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:** (BLAIS, EVANS, SHARLOW JJ.A.)

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

**APPEARANCES:**

PASQUALE RUPOLO FOR THE APPELLANT, ON HIS OWN BEHALF

RICKY Y. M. TANG  
ANDREA JACKETT FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Toronto, Ontario FOR THE APPELLANTS

Myles J. Kirvan  
Deputy Attorney General of Canada FOR THE RESPONDENT