Docket: 2012-3088(IT)G

BETWEEN:

ADRIAN CASSA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on January 21, 2013 at Toronto, Ontario and Reasons for Order delivered orally from the Bench on January 23, 2013

Before: The Honourable Justice Diane Campbell

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	H. Annette Evans Rishma Bhimji

ORDER

UPON Motion by the Respondent dated January 10, 2013 for:

1. An Order striking the Amended Notice of Appeal filed on November 20, 2012;

2. In the event that this Court does not grant an Order striking out the Amended Notice of Appeal and/or dismissing the Appeal, an Order extending the time for the respondent to serve and file a Reply to the Amended Notice of Appeal to 60 days after the date of the Order disposing of the within motion;

3. In the alternative, in the event that the Court grants an Order allowing the appellant leave to amend by permitting filing of a Further Amended Notice of Appeal, an Order extending the time for the Respondent to serve and file a Reply to the Further Amended Notice of Appeal to 60 days after the date of service of the Further Amended Notice of Appeal; and

4. The costs of this motion in any event of the cause;

(Respondent's Amended Notice of Motion, pages 1 and 2, paragraphs 1 to 4)

AND WHEREAS, at the hearing of the Motion, Counsel for the Respondent amended the relief sought to include the Appellant's Further Amended Notice of Appeal filed January 17, 2013, which was filed by the Appellant subsequent to being served with the Respondent's Amended Notice of Motion;

AND UPON hearing submissions of the parties;

IT IS ORDERED THAT:

The Respondent's Motion to strike the Amended Notice of Appeal filed on November 20, 2012 and the Further Amended Notice of Appeal filed on January 17, 2013 is granted;

Costs are awarded to the Respondent in the amount of $1,000, payable by the Appellant forthwith;

All in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 1st day of February 2013.

"Diane Campbell"

Campbell J.

Citation: 2013TCC43
Date: 20130201
Docket: 2012-3088(IT)G

BETWEEN:

ADRIAN CASSA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Campbell J.

[1] This is a Motion by the Respondent to strike the Appellant's Further Amended Notice of Appeal filed with the Court on January 17, 2013.

[2] The Appellant made two prior attempts to the filing of his Further Amended Notice of Appeal with a Notice of Appeal originally filed on July 20, 2012 and an Amended Notice of Appeal filed on November 20, 2012.

[3] The content in all of the Appellant's documentation is similar to those that were before me on Motions by the Respondent in June of last year. These appeals form part of a large group that I have been assigned to case manage. About half are represented by legal counsel while the remainder are self-represented. Because of the thread of similarities in wording in hundreds of these appeals, it is apparent that these Appellants have received "counsel" from a third party. Such third parties are referred to by Associate Chief Justice Rooke of the Alberta Court of Queen's Bench in *Meads v. Meads*, 2012 ABQB 571, as "gurus".

[4] The majority of the appeals that have come before me on these Motions have employed the following argument in order to have their tax returns accepted as filed and presumably avoid the proper payment of the appropriate taxes or the avoidance of other tax obligations that the *Income Tax Act* (the "*Act*") might otherwise impose upon them. That argument goes like this: If the Minister of National Revenue (the "*Minister*") does not issue a Notice of Confirmation within the time set out in paragraph 169(1)(*b*) of the *Act*, then the taxpayer's return has not been "proved to be incorrect" and shall be accepted as filed. Therefore, it follows that this Court should vacate the Minister's assessment.

[5] I dealt with this issue in my Reasons in similarly worded appeals that were before me in June, 2012. At that time, I canvassed the caselaw, including a number of Federal Court of Appeal decisions and made it clear that vacating an assessment for the Minister's delay will not be an appropriate remedy and not one that I would grant. In those same Reasons, I made it clear that the documentation required to commence their appeals in this Court must comply with the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*") and, particularly, Form 21A – that is, the Notices of Appeal must contain 1) the material facts upon which they rely to dispute the assessment and 2) a statement of the issues that will be before this Court.

[6] Almost all of these appeals are commenced pursuant to the general procedure *Rules* and therefore must comply with the procedural rules that govern those types of appeals. The first step is to file the proper Notice of Appeal – one to which the Crown can properly respond. I have attempted to give as much guidance and time as possible to these self-represented individuals, being mindful that each of them have chosen to come to this Court to represent themselves. They have every right to do so. However, it must be remembered that I cannot provide legal advice, that they must either retain legal counsel or represent themselves and not through agents, trustees or powers of attorney and, finally, that this is a court, not a forum for debate with the presiding Judge.

[7] The Respondent is requesting that I strike the Appellant's Amended Notice of Appeal and Further Amended Notice of Appeal pursuant to Rule 53 of the *Rules*.

[8] Rule 53 reads as follows:

> 53. The Court may strike out or expunge all of part of a proceeding or other document, with or without leave to amend, on the grounds 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.

This provision gives the Court a power which must be exercised with great care and only in exceptional circumstances. As stated at paragraph 11 by former Chief Justice Bowman in *Sentinel Hill 1999 Master Limited Partnership (Designated member of) v. The Queen*, 2007 TCC 742, "… their application should be reserved for the plainest and most egregiously senseless assertions …". At paragraph 4, he outlined the principles that this Court should apply on a Motion to strike:

> [4] I shall begin by outlining what I believe are the principles to be applied on a motion to strike under Rule 53. There are many cases in which the matter has been considered both in this court and the Federal Court of Appeal. It is not necessary to quote from them all as the principles are well established.
>
> (a) The facts as alleged in the impugned pleading must be taken as true subject to the limitations stated in *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441 at 455. It is not open to a party attacking a pleading under Rule 53 to challenge assertions of fact.
>
> (b) To strike out a pleading or part of a pleading under Rule 53 it must be plain and obvious that the position has no hope of succeeding. The test is a stringent one and the power to strike out a pleading must be exercised with great care.
>
> (c) A motions judge should avoid usurping the function of the trial judge in making determinations of fact or relevancy. Such matters should be left to the judge who hears the evidence.
>
> (d) Rule 53 and not Rule 58, is the appropriate rule on a motion to strike.

[9] Now, when I look at the Appellant's three attempts at getting his Notice of Appeal to comply with the *Rules*, he has failed to do so even in regard to the most basic aspect of his appeal: his decision to forge ahead with his paragraph 169(1)(*b*) argument despite my June 2012 Reasons and despite sitting in court listening to me reiterate to a number of Appellants that preceded him that that argument was without merit and could not succeed. Even if I separate that portion of the appeal document that deals with paragraph 169(1)(*b*), the balance contains disjointed and meaningless statements and assertions that have no hope of succeeding in this Court or any other. While Mr. Cassa's oral submissions might have shed some light on what material

facts he was actually relying upon, they instead muddied the waters even further. They amounted to nothing more than an absurd blend of the ridiculous arguments he included in his appeal documents. His documentation and his submissions engaged in the so-called “de-taxer” language. Those included:

- “the Appellant, Adrian Cassa, acted as agent for an undisclosed Principal”;
- “Principal is a living-soul, flesh-and-blood man”;
- “Principal is commonly called Adrian of the Cassa family”;
- “Principal earned wages in exchange for labour”;
- “the wages were collected by Appellant”;
- “Appellant incurred labour expenses”;
- “Appellant did not use or benefit from any Expenses”.

And continuing on, the Appellant claims:

- “an individual is not defined as being a man under the ITA”;
- “in Section 248(1) of the ITA a business is an “undertaking of any kind whatever””;
- “acting as an agent is a business”;
- “without Principal, Appellant could not continue acting as an agent”;
- “without Appellant, Principal could not continue to labour”.

And in reference to this last statement, he contended in his submissions that the *Act* contains no provision which allows government to tax labour. The Appellant also suggested I was required to take judicial notice of the difference between facts and inference, between facts and conjecture and between facts and assumptions.

[10] Included in his appeal was a list of the endless statutory provisions he intended to reply upon. Those included “the Bills of Exchange Act, Canadian Charter of Rights and Freedoms, Canadian Bill of Rights, Income Tax Act of Canada, Income War Tax Act, 1917, Civil Code of Quebec, Canada Evidence Act, UNCITRAL, Vital Statistics Act, UPU Agreements, Criminal Code and UCC” (Amended Notice of Appeal, paragraph 37). However, he gives no indication of why or how he intended to incorporate this divergent and largely irrelevant array of legislation into his appeal and, more particularly, the precise provisions of each piece of legislation upon which he intended to rely.

[11] The Appellant's Further Amended Notice of Appeal is fraught with incomprehensible arguments and allegations. It fails to identify any specific material facts and focuses almost entirely on avoiding obligations imposed under the *Income Tax Act*.

[12] I referred in the beginning of these Reasons to the *Meads* case. The Appellant referred to the decision as "prejudicial and premature" in an attempt to persuade me, I assume, to ignore those Reasons. Of course, that suggestion is as absurd as many of his other assertions. The *Meads* decision contains an exhaustive review and analysis of litigants who engage in a variety of litigation techniques and arguments, promoted by so-called gurus and designed to interfere with court operations and proceedings. Associate Chief Justice Rooke refers to such litigants under the global name "Organized Pseudolegal Commercial Argument Litigants" ("OPCA"), although he acknowledges that they may be identified by any number of names and that some such individuals and groups have no particular identity except for the types of arguments and schemes they attempt to put before the Canadian courts.

[13] Among many other such groups, the *Meads* decision identifies specifically the so-called "de-taxers" or those attempting to avoid income tax obligations as well as the "freemen on land" notion and the double or split person concept. The Cassa appeal contains all of the foregoing elements. In the Further Amended Notice of Appeal, the Appellant refers to the "principal" as commonly called "Adrian of the Cassa family". In the Certificate of Service, he engages in the following similar language: "Comes, Adrian Cassa, as agent for the free will man, commonly called Adrian of the Cassa family, the undisclosed principal". Apparently, this is a common strategy in which such litigants engage. As the *Meads* decision notes, this duality argument is both a strange and confusing concept which uses an artificial and fictitious division of the person in an attempt to support an otherwise absurd argument. Whatever it is, it is without merit, it detracts from the court proceedings and it is total and utter nonsense. My method of dealing with any attempt by the Appellant to employ this nonsense in my Court was to simply ignore it.

[14] The majority of the Appellant's proposed appeal is peppered throughout with many of the concepts and language referred to in *Meads*. It contains statements and assertions that are unintelligible, incomprehensible, meaningless, irrelevant and factually hopeless. I consider those types of arguments an abuse of the Court's processes. Such "song and dance" routines hinder and limit the availability of Court resources for those self-represented litigants who are making an honest attempt to advance their appeals through the Court system in a timely manner.

[15] I will allow the Respondent's Motion to strike the Appellant's Further Amended Notice of Appeal, with costs to the Respondent of $1,000 payable forthwith. As Case Management Judge, although these Reasons have been delivered orally, I intend to have them issued forthwith in writing. There are other such appeals waiting in the wings and I trust that my Reasons will give some guidance on the type of statements and assertions that cannot and will not promote the advancement of their appeals. Those Appellants that remain unsure of the avenue they should pursue may benefit from retaining legal counsel. As Case Management Judge, it is my aim to move the appeals along in an orderly fashion with the end result being a fair hearing for all those Appellants that comply with the *Rules* governing these proceedings and any Reasons that I have issued or will be issuing.

Signed at Ottawa, Canada, this 1st day of February 2013.

"Diane Campbell"

Campbell J.

CITATION:	2013TCC43
COURT FILE NO.:	2012-3088(IT)G
STYLE OF CAUSE:	ADRIAN CASSA AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 21, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice D. Campbell
DATE OF JUDGMENT:	February 1, 2013

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	H. Annette Evans Rishma Bhimji

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada