

Docket: 2011-1123(IT)G

BETWEEN:

URANIA DAPONTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on July 22, 2011 at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jenny P. Mboutsiadis

ORDER

Upon a motion by the Respondent for an Order to strike the Notice of Appeal; or, in the alternative, an Order granting the Respondent a 30 day extension of time from the date of this Order to file a Reply to the Notice of Appeal, it is ordered that:

The Appellant will have 60 days from the date of this Order to file an Amended Notice of Appeal which conforms to section 48 of *Tax Court of Canada Rules (General Procedure)*; and

The Respondent will have 60 days after service of the Amended Notice of Appeal to file a Reply to the Amended Notice of Appeal and five days after filing the Reply with the Court to serve a copy of it on the Appellant.

Signed at Ottawa, Canada, this 27th day of September 2011.

“V.A. Miller”

V.A. Miller J.

Citation: 2011TCC448
Date: 20110927
Docket: 2011-1123(IT)G

BETWEEN:

URANIA DAPONTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

V.A. Miller J.

[1] This is a motion by the Respondent for an Order to strike the Notice of Appeal; or, in the alternative, an Order granting the Respondent a 30 day extension of time from the date of this Order to file a Reply to the Notice of Appeal. The Grounds for the Motion are that the Notice of Appeal discloses no reasonable grounds of appeal; it includes a plethora of evidence and irrelevant material; the Notice of Appeal may prejudice or delay the fair hearing of the action; and, the Notice of Appeal does not comply with section 48 of the *Tax Court of Canada Rules (General Procedure)*.

[2] The Appellant was present at the hearing of this motion. She was not represented by counsel but her daughter-in-law appeared with her and translated for her.

[3] The test that is used for striking out pleadings is whether, assuming the facts stated in the pleadings are true, is it “plain and obvious” that the appeal cannot succeed¹? A Notice of Appeal will only be struck if the appeal is certain to fail².

[4] The Notice of Appeal disclosed that expenses were disallowed by the Minister of National Revenue for the Appellant’s 2005 and 2006 taxation year. There are no facts plead with respect to these expenses.

[5] The Notice of Appeal does include evidence and irrelevant material.

[6] The Appellant, through her daughter-in-law, has stated that she is in the process of hiring a lawyer to represent her in this appeal.

[7] After consideration and because the Appellant was not represented by counsel at the hearing of the motion, I will not order that the Notice of Appeal be struck in its entirety; but I do order that the second paragraph be struck. It reads:

My previous accountant did not render his services for the years of 2005 and 2006. Upon discovering that my tax affairs were not handled professionally, I had to hire a new accountant to complete the outstanding tax returns. My previous accountant was extremely uncooperative with me and my new accountant. When I did receive my records, they were thrown in many boxes and were not organized in any fashion. I am sure that many original documents were lost by my previous accountant.

[8] The Appellant will have 60 days from the date of this Order to file an Amended Notice of Appeal which conforms to section 48 of *Tax Court of Canada Rules (General Procedure)*.

[9] The Respondent will have 60 days after service of the Amended Notice of Appeal to file a Reply to the Amended Notice of Appeal and five days after filing the Reply with the Court to serve a copy of it on the Appellant.

Signed at Ottawa, Canada, this 27th day of September 2011.

“V.A. Miller”

V.A. Miller J.

¹ *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959

² *Main Rehabilitation Co. v. The Queen*, 2004 FCA 403

CITATION: 2011TCC448

COURT FILE NO.: 2011-1123(IT)G

STYLE OF CAUSE: URANIA DAPONTE AND
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 22, 2011

REASONS FOR ORDER BY: The Honourable Justice Valerie Miller

DATE OF ORDER: September 27, 2011

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jenny P. Mboutsiadis

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada