Federal Court of Appeal  Cour d'appel fédérale

Date: 20131107

Docket: A-95-13

Citation: 2013 FCA 260

CORAM: **NOËL J.A.**
SHARLOW J.A.
NEAR J.A.

BETWEEN:

GF PARTNERSHIP

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 7, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on November 7, 2013.

REASONS FOR JUDGMENT OF THE COURT BY: NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on November 7, 2013)

NOËL J.A.

[1] This is an appeal from a decision of Woods J. of the Tax Court of Canada (the Tax Court judge) dismissing GF Partnership's (the appellant) appeal from assessments for Goods and Services Tax (GST) issued pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) pertaining to the reporting periods commencing June 1, 2001 and ending May 23, 2006.

[2] The main issue turns on the construction of two standard form purchase and sale agreements entered into by the appellant and homebuyers and specifically, whether these agreements created an agency relationship and made the homebuyers liable for development charges paid by the appellant to municipalities on land being developed. After construing these agreements in light of the relevant facts, the Tax Court judge answered this question in the negative. In so holding, she rejected the appellant's contention that it paid the development charges as agent for the homebuyers and found that the development charges were part of the consideration paid for the homes. As such, the homebuyers were not liable "to pay development charges as development charges." (reasons, para. 36).

[3] In support of its appeal on the main issue, the appellant essentially asks us to construe the purchase and sale agreements differently and hold that on a proper construction, the homebuyers are liable for the payment of the charges based on the agency relationship which, it alleges, was created.

[4] We have not been persuaded that the Tax Court judge erred in any way in construing the purchase agreements as she did. In our view, it was open to her to hold, for the reasons that she gave (reasons, paras. 31 to 40), that the appellant did not pay the development charges as agent for the homebuyers, that the homebuyers had no direct liability for the payment of those charges and that they formed part of the purchase price of the homes.

[5] As to the entitlement to/or liability for additional New Home Rebates (NRSs), the Tax Court judge noted that the Appellant had to administer the NHRs by paying or crediting them to homebuyers and where appropriate seek reimbursement through a deduction from its own net tax.

The appellant did this on the basis that the development charges did not form part of the purchase price.

[6] The result of the Tax Court judge's decision to the contrary is that some purchasers would be entitled to more NHRs and some less. The issue before us on appeal is whether the appellant is entitled to an increased deduction from net tax where the NHR entitlement was greater than it determined.

[7] The Tax Court judge held against the appellant, she noted that subsection 296(2) is the relevant provision and that in order for this provision to apply, an amount must have been paid or credited by the appellant on account of the unclaimed portion of the NHRs pursuant to subsection 254(4). The evidence in this case is that no such amount was paid or credited to the homebuyers (reasons, paras. 83 to 87).

[8] As to subsection 296(2.1), the Tax Court judge explained that this provision applies where "an amount … would have been payable to the person as a rebate". Only the purchaser of a new home is entitled to the NHR. The appellant's entitlement is simply to a deduction in computing net tax under subsection 234(1) (reasons, para. 81). As further explained by the Tax Court judge, the provision in issue in *United Parcel Service Canada Ltd. V. The Queen*, 2009 SCC 20 (subsection 261(1)) is worded quite differently with the result that this decision is of no assistance to the appellant (reasons, para. 82).

[9] We can detect no error in the Tax Court judge's conclusion that the appellant had no entitlement to further deductions.

[10] The appeal will be dismissed with costs.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-95-13

(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE WOODS OF THE TAX COURT OF CANADA DATED FEBRUARY 12, 2013, DOCKET NUMBER 2008-2571(GST)G.)

DOCKET:	A-95-13
STYLE OF CAUSE:	GF PARTNERSHIP v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 7, 2013
REASONS FOR JUDGMENT OF THE COURT BY:	NOËL J.A. SHARLOW J.A. NEAR J.A.
DELIVERED FROM THE BENCH BY:	NOËL J.A.

APPEARANCES:

Irving Marks Michael Gasch	FOR THE APPELLANT
Michael Ezri Tamara Watters	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robins Appleby & Tabu LLP Toronto, Ontario	FOR THE APPELLANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT