Federal Court of Appeal | Cour d'appel fédérale

Date: 20210702

Docket: A-319-19

Citation: 2021 FCA 132

CORAM: **WEBB J.A.**
NEAR J.A.
LASKIN J.A.

BETWEEN:

JOHN WALL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online video conference hosted by the registry on June 10, 2021.

Judgment delivered at Ottawa, Ontario, on July 2, 2021.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: NEAR J.A
LASKIN J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20210702

Docket: A-319-19

Citation: 2021 FCA 132

CORAM: **WEBB J.A.**
NEAR J.A.
LASKIN J.A.

BETWEEN:

JOHN WALL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an appeal from a judgment of the Tax Court of Canada, *per* Visser, J. (2019 TCC 168) that, except for certain adjustments arising as a result of the concessions made by the Minister of National Revenue (Minister), dismissed Mr. Wall's appeals from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA) and assessments made under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA).

[2] The tax disputes arose as a result of Mr. Wall purchasing three houses, demolishing these houses, constructing new houses and then selling them during the period from 2004 to 2010. He was reassessed under the ITA on the basis that the gains realized on the disposition of these properties were on income account. He was assessed under the ETA on the basis that the supplies of the properties were taxable supplies.

[3] For the reasons that follow, I would dismiss this appeal.

I. Background

[4] The evidence that was presented by Mr. Wall and the Crown is set out in detail in the reasons of the Tax Court Judge. It is not necessary to repeat the Tax Court Judge's summary of the evidence. A few key facts will be highlighted. Unless otherwise noted in these reasons, any references to paragraph numbers are references to the paragraphs in the reasons of the Tax Court Judge.

[5] Although Mr. Wall is a licensed real estate agent in Vancouver, during the taxation years in issue (2006, 2008, and 2010) Mr. Wall only reported modest amounts of income of $15,000 - $20,000 per year as a realtor (paragraph 18).

[6] The three properties which are at the heart of this dispute have a similar fact pattern. The first property (4007 West 21st Street) was purchased on November 29, 2004 for $580,000. After acquiring the property, Mr. Wall obtained a demolition permit and demolished the existing house

that was on the property. On March 10, 2005, he received a building permit to construct a new house on this property. He arranged for the construction of the new house and listed the property for sale on January 13, 2006 and again on February 13, 2006. Subsequent to listing the property for sale, he obtained an occupancy permit on April 4, 2006. The property was sold two days later on April 6, 2006 for $1,418,000.

[7] The second property (4324 West 14th Avenue) was purchased on June 12, 2006, approximately two months after Mr. Wall sold the first property on April 6, 2006. The purchase price for this property was $890,000. As with the first property, it would appear that he demolished the existing house and constructed a new house on the land. The building permit for this property was received on August 14, 2006. This property was listed for sale on January 19, 2008, before the final construction inspection from the city was completed on April 22, 2008. This property was sold on March 25, 2008 for $1,951,000.

[8] The third property that is at issue in this appeal (4668 West 14th Avenue) was purchased on August 12, 2009 for $1,127,500. As with the other two properties, there was an existing house on the property that was demolished. The building permit for this property was issued on September 16, 2009. This property was listed for sale on October 7, 2010, prior to the issuance of the occupancy permit on November 23, 2010. The property was sold three days later on November 26, 2010 for $2,265,000.

[9] For each property in issue, Mr. Wall testified that he had acquired the property as a place of residence for himself and his son. He also testified that he occupied each property for a period

of time prior to the property being sold. He did not report the gain arising as a result of the disposition of any of these properties in his tax returns because he had assumed that the houses would qualify as his principal residence for the purposes of the ITA and therefore that he would not have to report any gain on the sale of these properties. Similarly, he did not consider himself to be a builder for the purpose of the ETA and, therefore, did not report any net tax liability under the ETA.

[10] Mr. Wall was reassessed under the ITA for his 2006, 2008 and 2010 taxation years to include unreported net business income in respect of the sale of these three properties. Penalties under subsection 163(2) of the ITA were also assessed. Notices of assessment were also issued under the ETA for unreported net tax in relation to the sale of these properties and penalties were also imposed.

II. Decision of the Tax Court

[11] The primary focus of the reasons of the Tax Court Judge is on the issue of whether Mr. Wall was carrying on a business or an adventure or concern in the nature of trade in building and selling three houses during the period from 2004 to 2010. The Tax Court Judge reviewed the evidence presented by Mr. Wall and by the Crown. Essentially, the Tax Court Judge did not find that Mr. Wall was a credible witness. In particular, in paragraph 15 he noted the following in relation to the testimony of Mr. Wall:

> [15] In my view, Mr. Wall's testimony was largely unreliable, self-serving, and evasive. He also could not (or chose not to) provide documentary evidence to support much of his position. When faced with evidence that contradicted his

> position, he was incredulous, offering explanations that were implausible or illogical. In addition, when faced with his own prior inconsistent statements, he dismissed the inconsistencies as trivial. He was also selective in remembering details about the Three Homes and other properties he developed or transacted with.

[12] The Tax Court Judge's finding with respect to whether Mr. Wall lived in the three houses is stated in paragraph 19:

> [19] It is unclear whether Mr. Wall lived in any of the Three Homes. Considering all of the evidence, it is my view, on a balance of probabilities, that he did not. In my view, neither he nor the witnesses he called could reliably verify his claims. Throughout the entire period under appeal there is evidence that Mr. Wall lived in and used his apartment and Ms. Pillon's homes as his mailing address. While there is some evidence showing that Mr. Wall used each of the Three Homes as his mailing address for some limited purposes (such as receiving gas bills), that evidence is insufficient to establish that he lived in any of the Three Homes. Overall, it is my view that Mr. Wall's testimony about living in each of the Three Homes (and how long he lived in each) was self-serving and inconsistent with the documentary evidence presented at trial.

[13] The Tax Court Judge then reviewed the evidence related to the properties and also set out the relevant case law to be applied in determining whether a disposition of property is on account of capital or income. In paragraph 156, the Tax Court Judge found that:

> […] In my view, however, it is abundantly clear from the evidence in this case that Mr. Wall carried on the development of the Three Homes in the course of a real estate development business which he carried on as a sole proprietor, and that the profit he earned therefrom was accordingly earned on account of income. As discussed further below, I am therefor [*sic*] of the view that Mr. Wall was required to include the profits he earned from the sale of the Three Homes when reporting his income in his 2006, 2008, and 2010 taxation years.

[14] In paragraph 184, the Tax Court Judge reiterated his conclusion that "Mr. Wall's testimony was not credible" and that he "did not ordinarily inhabit any of the Three Homes for

any period of time". As a result, the Tax Court Judge concluded that Mr. Wall could not claim the reductions in capital gains that would apply if he had sold his principal residences.

[15] It should be noted that the reduction in the gain as provided in paragraph 40(2)(b) of the ITA for the gain realized on the disposition of a principal residence, would only be available if the property was a capital property. If the property was not a capital property, it is not relevant whether the property could satisfy the definition of principal residence in section 54 of the ITA. There is no "principal residence exemption" in the ITA for individuals who sell houses in the course of carrying on a business or an adventure or concern in the nature of trade.

[16] The Tax Court Judge also concluded that the Minister had established the facts that would support the assessment of the penalties under subsection 163(2) of the ITA and that would support the reassessment of Mr. Wall after the expiration of the normal reassessment period under subparagraph 152(4)(a)(i) of the ITA.

[17] At the hearing before the Tax Court, Mr. Wall's position with respect to the ETA was that he was not a builder as defined in the ETA. The Tax Court Judge found that Mr. Wall was the builder of the residential complexes for the purpose of the ETA. Since he was the builder of the residential complexes, the supplies of these properties were not exempt supplies under section 2 of Part I of Schedule V of the ETA.

[18] The Tax Court Judge also noted that even though Mr. Wall did not argue that section 3 of Part I of Schedule V of the ETA applied to exempt the sales of the homes from the application of

GST, this section did not apply in any event. A key requirement for this section to apply is that the homes were used primarily as a place of residence of Mr. Wall, someone related to him or a former spouse or common-law partner of Mr. Wall. Since the Tax Court Judge found that Mr. Wall and his son did not occupy these houses as their place of residence and since no other person was identified by Mr. Wall as a resident of the houses, the Tax Court Judge concluded that Mr. Wall could not rely on the exemption from GST provided by section 3 of Part I of Schedule V of the ETA. In order to satisfy this requirement of section 3, the house must be used as a place of residence. Mr. Wall's testimony that he included a cat room in the design of one of the houses with Ms. Pillon's children in mind, does not establish that it was used as place of residence by Ms. Pillon.

[19] The penalties imposed pursuant to section 280.1 of the ETA were also upheld. With respect to the penalty imposed by the Minister pursuant to paragraph 280(1)(a) of the ETA in respect of the first property, Mr. Wall did not raise any issue in relation to the computation of that penalty. As a result, the imposition of that penalty was not considered by the Tax Court Judge.

III. Issues and standard of review

[20] In his memorandum of fact and law, Mr. Wall identified the issues in this appeal as follows:

> 36. The issue [*sic*] in this appeal are:
>
> a) whether judge in the trial judge [*sic*] made a palpable and overriding error of fact and law in finding that the Appellant was carrying on a business as a

> "builder" of the Three Homes and that section 2 of Schedule V of Part IX of the *ETA* did not apply to exempt the sale of each of the Three Homes by the Appellant from the application of GST.
>
> b) Whether the trial judge made errors of fact and law by drawing adverse inferences when these [*sic*] was no basis in fact or law to do so.

[21] Mr. Wall does not make any reference to the ITA in his description of the issues nor does he raise any issue with respect to any assessments of penalties under either the ITA or the ETA nor does he raise any issue concerning the determination of the amount of net tax assessed under the ETA. As acknowledged by Mr. Wall in paragraph 36 a) of his memorandum, the central question with respect to the application of the provisions of the ETA was whether Mr. Wall satisfied the definition of builder. This turns on the findings of fact or mixed fact and law made by the Tax Court Judge with respect to whether Mr. Wall was carrying on a business or an adventure or concern in the nature of trade.

[22] The standard of review for a question of law is correctness and for a question of fact or mixed fact and law (where there is no extricable question of law), is palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33). As noted by this Court in *Canadian Imperial Bank of Commerce v. Canada*, 2021 FCA 10:

> [55] An error is palpable when it is plainly seen, and overriding when it affects the result: *Hydro-Québec v. Matta*, 2020 SCC 37 at para. 33. […]

IV. Analysis

[23] There is no dispute in this case that Mr. Wall hired various contractors to build the houses in issue. If Mr. Wall, in the course of carrying on a business or an adventure or concern in the nature of trade, engaged these contractors to construct the houses in issue, then Mr. Wall would be a builder as defined in section 123 of the ETA:

"builder" of a residential complex […] means a person who	constructeur Est constructeur d'un immeuble d'habitation […] la personne qui, selon le cas :
(a) at a time when the person has an interest in the real property on which the complex is situated, […] engages another person to carry on for the person	a) réalise, […] par un intermédiaire, à un moment où elle a un droit sur l'immeuble sur lequel l'immeuble d'habitation est situé :
[…]	[…]
(iii) […] the construction […] of the complex,	iii) […] la construction [...] de l'immeuble d'habitation;
[…]	[…]
but does not include	N'est pas un constructeur :
(f) an individual described by paragraph (a) […] who […],	f) le particulier visé aux alinéas a) […] qui, en dehors du cadre d'une entreprise, d'un projet à risques ou d'une affaire de caractère commercial:
(ii) engages another person to carry on the construction […] for the individual	(i) […] fait construire l'immeuble d'habitation […]
[…]	[…]
otherwise than in the course of a business or an adventure or concern in the nature of trade,	

[…]

[24] Therefore, the critical issue in this appeal is whether Mr. Wall was engaged in a business or an adventure or concern in the nature of trade when he had the three houses constructed. Neither party disputed that the tests to be considered in determining whether a gain realized on a disposition of property is an income gain or a capital gain are as set out in *Happy Valley Farms Limited v. Minister of National Revenue*, [1986] 2 C.T.C. 259, 86 D.T.C. 6421 (F.C.T.D.):

- the nature of the property sold;
- the length of the period of ownership;
- the frequency or number of similar transactions;
- work expended on or in connection with the property;
- the circumstances that were responsible for the sale of the property;
- motive.

[25] The tests are all based on the facts of the particular case and directly or indirectly lead back to the intention of the taxpayer. The significance of the taxpayer's motive or intention was noted by the Supreme Court of Canada in *Friesen v. Canada*, [1995] 3 S.C.R. 103, 127 D.L.R. (4th) 193:

> 16 The first requirement for an adventure in the nature of trade is that it involve a "scheme for profit-making". The taxpayer must have a legitimate intention of gaining a profit from the transaction. Other requirements are conveniently summarized in Interpretation Bulletin IT-459 "Adventure or Concern in the Nature of Trade" (September 8, 1980) which references Interpretation Bulletin IT-218 "Profit from the Sale of Real Estate" (May 26, 1975) for a summary of the relevant factors when the property involved is real estate.

> 17 IT-218R, which replaced IT-218 in 1986, lists a number of factors which have been used by the courts to determine whether a transaction involving real estate is an adventure in the nature of trade creating business income or a capital transaction involving the sale of an investment. Particular attention is paid to:
>
> > (i) The taxpayer's intention with respect to the real estate at the time of purchase and the feasibility of that intention and the extent to which it was carried out. An intention to sell the property for a profit will make it more likely to be characterized as an adventure in the nature of trade.
> >
> > (ii) The nature of the business, profession, calling or trade of the taxpayer and associates. The more closely a taxpayer's business or occupation is related to real estate transactions, the more likely it is that the income will be considered business income rather than capital gain.
> >
> > (iii) The nature of the property and the use made of it by the taxpayer.
> >
> > (iv) The extent to which borrowed money was used to finance the transaction and the length of time that the real estate was held by the taxpayer. Transactions involving borrowed money and rapid resale are more likely to be adventures in the nature of trade.

[26] In *Cardella v. Her Majesty the Queen*, 2001 FCA 39 (FCA), this Court stated that a taxpayer's intention is "a factor of utmost importance":

> [26] The courts have consistently emphasized that, in determining whether a transaction was intended as an adventure in the nature of a trade, regard must be had to the surrounding circumstances: *Happy Valley Farms Ltd. v. The Queen*, 86 DTC 6421 (F.C.T.D.), at 6424. The taxpayer's intention as a factor of utmost importance was stressed by the Supreme Court of Canada in *Friesen v. Canada*, [1995] 3 S.C.R. 103.

[27] Whether the gains realized by Mr. Wall, in this case, on the dispositions of the three properties in dispute were income gains (*i.e.* he was carrying on a business or an adventure or concern in the nature of trade) or capital gains will depend on the facts of this case. In particular, what was his intention in acquiring the properties, demolishing the existing houses, building new homes and then selling them?

[28] Mr. Wall's general submission was that when the evidence is reviewed in its entirety, it supports his position that he was not carrying on a business or an adventure or concern in the nature of trade. However, this is, in effect, an invitation for this Court to reweigh the evidence and arrive at a different conclusion than the one reached by the Tax Court Judge. It is not the role of this Court, however, to reweigh the evidence (*Barnwell v. Canada*, 2016 FCA 150, at para. 12).

[29] Mr. Wall testified that he acquired the properties for the purpose of constructing homes that he and his son would occupy as a place of residence. As noted above, the Tax Court Judge had difficulty accepting the evidence of Mr. Wall with respect to his stated intention. The Tax Court Judge also noted a lack of documentation to support the positions of Mr. Wall.

[30] With respect to a taxpayer's stated intentions, in *MacDonald v. Canada*, 2020 SCC 6, the majority of the Supreme Court of Canada noted:

> [43] Mr. MacDonald's *ex-post facto* testimony regarding his intentions cannot overwhelm the manifestations of a different purpose objectively ascertainable from the record.

[31] In this particular case, Mr. Wall focused on the statements he made with respect to his intentions in acquiring the various properties including emails that he had written and submissions he had previously made to the Canada Revenue Agency. However, in accordance with the guidance of the Supreme Court of Canada, Mr. Wall's "*ex-post facto* testimony regarding his intentions cannot overwhelm the manifestations of a different purpose objectively

ascertainable from the record". Therefore, his stated intentions must be considered in light of the other evidence presented at the hearing.

[32] In this appeal, Mr. Wall focused, in particular, on the adverse inference that was drawn by the Tax Court Judge, which would be an inference based on the absence of the evidence of a particular person. The adverse inference was drawn with respect to the failure of Mr. Wall to call Ms. Pillon as a witness. The Tax Court Judge noted, in paragraph 110, that Ms. Pillon was "variously referred to as Mr. Wall's friend, girlfriend and spouse". The Tax Court Judge noted, in paragraph 111, that "[o]n the second day of trial, [Mr. Wall] said that he would not be calling Ms. Pillon as a witness". Following a six-month adjournment, the trial resumed. On the fourth day of trial (which was following the adjournment) Ms. Pillon was present in the courtroom and Mr. Wall indicated that he wanted to call her as a witness. The Crown sought an adjournment to prepare for the cross-examination of Ms. Pillon. However, in response to the request for an adjournment, Mr. Wall withdrew his request to call Ms. Pillon. The Tax Court Judge then noted, in paragraph 111:

> The evidence suggests that Ms. Pillon had knowledge of the circumstances surrounding the Three Homes because of her relationship with Mr. Wall. I have drawn an adverse inference from Mr. Wall's failure to call Ms. Pillon as a witness.

[33] In my view, it is not necessary to determine whether it was appropriate for the Tax Court Judge to draw an adverse interest as a result of the failure of Mr. Wall to call Ms. Pillon as a witness. Even without any adverse inference having been drawn, there is more than a sufficient basis for the Tax Court Judge to reach the conclusion that he did on a balance of probabilities. Mr. Wall failed to establish that the Tax Court Judge made any error, let alone a palpable and

overriding error, with respect to any of the other findings of fact that were made by the Tax Court Judge based on the evidence that was presented at the hearing.

[34] Mr. Wall also submitted that it was inappropriate for the Tax Court Judge to make the inferences that he did with respect to the intentions of Mr. Wall from the bits of evidence that were presented. With respect to inferences that can be drawn by a trial judge, this Court noted in *Loving Home Care Services Ltd. v. Canada (Minister of National Revenue)*, 2015 FCA 68:

> [10] In *H.L. v. Canada*, 2005 SCC 25; 2005 1 S.C.R. 301, Fish J., writing on behalf of the majority of the Supreme Court of Canada, noted that:
>
> > 74 I would explain the matter this way. Not infrequently, different inferences may reasonably be drawn from facts found by the trial judge to have been directly proven. Appellate scrutiny determines whether inferences drawn by the judge are "reasonably supported by the evidence". If they are, the reviewing court cannot reweigh the evidence by substituting, for the reasonable inference preferred by the trial judge, an equally - or even more - persuasive inference of its own. This fundamental rule is, once again, entirely consistent with both the majority and the minority reasons in *Housen*.
>
> [11] The onus in this case was on Loving Home Care to establish, on a balance of probabilities, the applicable terms and conditions for each worker. Failing to introduce sufficient evidence to do so does not mean that Loving Home Care should be successful. Because the evidence was sparse and inconsistent in relation to the agreements and what terms and conditions were included in each agreement, the Tax Court Judge drew the inference referred to above. I am not persuaded that the Tax Court Judge committed any error in doing so as this inference is reasonably supported by the evidence. It is not the role of this Court to reweigh the evidence and substitute another inference.
>
> (emphasis in paragraph 74 of *H.L. v. Canada* added by the Supreme Court of Canada)

[35] Just as in *Loving Home Care Services Limited*, the evidence concerning the intention of Mr. Wall in acquiring the properties and his use of the properties after he constructed the new

houses is sparse and inconsistent. In alleging that the Tax Court Judge erred in drawing the inferences that he did from the bits and pieces of evidence that were submitted, Mr. Wall chose to not make any reference to the evidence that did not support his assertion that he was not carrying on a business or an adventure or concern in the nature of trade. Unfortunately for Mr. Wall, the evidence that supported his assertion was outweighed by the evidence that contradicted this assertion.

[36] The fact pattern for each house was substantially similar. In each case, there was an existing house on the property that was demolished and replaced with a new house. In each case, the house was listed for sale before the occupancy permit was obtained. Listing each house for sale before the occupancy permit for such house was obtained does not support a finding that Mr. Wall was building each house to be occupied as his residence.

[37] Another example of the evidence that contradicted Mr. Wall's stated intention is related to his explanation for selling each house. Mr. Wall submitted that he sold each house because he felt that his debt was too high and he wanted to pay his debts (paragraphs 38, 58 and 74). Yet, shortly after selling each house, he incurred more debt than he had previously. For the first house, the mortgage amount was $812,500 (paragraph 31). For the second house, the mortgage amount was $1,150,000 (paragraph 49). For the third house, the mortgage amount was $2,100,000 (paragraph 63). A person who wants to reduce their debt would not incur more debt shortly after selling a house and paying off the previous debt.

[38] Mr. Wall stressed during the hearing of his appeal that since the facts of his case differed from those in *Lacina v. Canada*, 216 N.R. 373, [1997] G.S.T.C. 69 (F.C.A.D.) he should be successful in this appeal. In *Lacina*, the taxpayer was found to be a builder of the properties in question for the purpose of the ETA. In that case, the person had arranged for the construction and then sold three upmarket houses in less than two years. Since the period of time in *Lacina* was shorter than in this case, Mr. Wall submitted that he should not be found to be a builder.

[39] It should, however, be noted that in the case of *Moss v. Canada*, [1999] 4 C.T.C. 2813, 99 D.T.C. 1229 (TCC), three houses (2 Hopwood, 2 Dumfries and 51 Dumbarton, Winnipeg) were sold over a 4 year period. The properties had been held for periods ranging from seven months to 28 months. The Tax Court found that the gains realized on the dispositions of these properties were on income account.

[40] In any event, the length of time that a property is held is only one factor to be taken into account and it must be viewed in light of the circumstances of the particular case. In this case, since it was Mr. Wall's stated intention to occupy each house as his place of residence, it is important to determine the period of potential occupancy for each house.

[41] In this case, there were existing dwellings on the properties that had to first be demolished before the new houses could be constructed. As Mr. Wall indicated during the hearing, it would take approximately six months of construction before a person could live in the house (paragraph 33). The three properties in question were owned for periods ranging from 16 months to 21 months. Allowing for the period during which the existing dwellings were

demolished and the new houses were constructed, there is not a lot of time remaining for Mr. Wall to have occupied the homes as a place of residence.

[42] For the first property, the building permit was obtained on March 10, 2005. Allowing six months for the period of construction, this would only leave 4 months during which the house could have been occupied before it was listed for sale on January 13, 2006. It would also mean that the house was occupied before the occupancy permit was obtained on April 4, 2006.

[43] For the second property, he received a building permit to construct a new house on this property on August 14, 2006. This property was listed for sale on January 19, 2008. Allowing six months for construction from the date of the building permit would leave 11 months during which it could have been occupied before it was listed for sale. Again, the house would have to have been occupied before the occupancy permit was obtained.

[44] The building permit for the third property was issued on September 16, 2009. Allowing the six months for construction would leave less than seven months for the occupation of this house before it was listed for sale on October 7, 2010. As with the other two houses, it also would have had to have been occupied before the occupancy permit was obtained.

[45] The relatively short period of potential occupancy, which would also, in each case, have had to occur before the occupancy permit was obtained, would reasonably support an inference that Mr. Wall intended to build and sell the houses for a profit.

[46] There is no basis to overturn the finding of the Tax Court Judge that Mr. Wall was carrying on a business in acquiring the properties, demolishing the existing dwellings, constructing new homes and selling them. He, therefore, was a builder for the purpose of the ETA.

[47] A person who is a builder of a residential complex may be able to avoid the application of the self-supply rules in subsection 191(1) of the ETA and also have a sale of the property qualify as an exempt supply under paragraph 3 of Part I of Schedule V of the ETA.

[48] One of the conditions for the application of the self-supply rules under subsection 191(1) of the ETA is the occupation by the builder (who is an individual) of the particular property as a place of residence (subparagraph 191(1)(b)(iii) of the ETA).

[49] However, the self-supply rules do not apply if the conditions as set out in subsection 191(5) of the ETA are satisfied. One of these conditions is that the residential complex must be "used primarily as a place of residence of the individual, an individual related to the individual or a former spouse or common-law partner of the individual".

[50] If the conditions as set out in section 3 of Part I of Schedule V of the ETA are satisfied, the supply of the particular residential complex will be an exempt supply. One of the conditions of this section 3 is the same condition identified for subsection 191(5) of the ETA, *i.e.* the residential complex must be "used primarily as a place of residence of the individual, an individual related to the individual or a former spouse or common-law partner of the individual".

[51] Since Mr. Wall has not established that the Tax Court Judge made any error, let alone a palpable and overriding error, in finding that the properties were not "used primarily as a place of residence of the individual, an individual related to the individual or a former spouse or common-law partner of the individual", Mr. Wall cannot succeed in establishing that the supplies of the houses in issue were exempt supplies under section 3 of Part I of Schedule V of the ETA.

[52] As a result, I would dismiss the appeal with costs fixed in the amount of $3,000.

"Wyman W. Webb"
J.A.

"I agree
D. G. Near J.A."

"I agree
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED AUGUST 14, 2019, CITATION NO. 2019 TCC 168

DOCKET:	A-319-19
STYLE OF CAUSE:	JOHN WALL v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	HEARD BY ONLINE VIDEO CONFERENCE HOSTED BY THE REGISTRY
DATE OF HEARING:	JUNE 10, 2021
REASONS FOR JUDGMENT BY:	WEBB J.A.
CONCURRED IN BY:	NEAR J.A. LASKIN J.A
DATED:	JULY 2, 2021

APPEARANCES:

George Douvelos	FOR THE APPELLANT
Selena Sit Geraldine Chen Alexander Wind	FOR THE RESPONDENT

SOLICITORS OF RECORD:

George Douvelos Law Corporation C/O DG Barristers Vancouver, British Columbia	FOR THE APPELLANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT