

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250304**

**Docket: A-141-24**

**Citation: 2025 FCA 53**

**CORAM: WOODS J.A.  
ROUSSEL J.A.  
HECKMAN J.A.**

**BETWEEN:**

**1351231 ONTARIO INC.**

**Appellant**

**and**

**HIS MAJESTY THE KING**

**Respondent**

Heard at Ottawa, Ontario, on March 4, 2025.

Judgment delivered from the Bench at Ottawa, Ontario, on March 4, 2025.

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

**WOODS J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on March 4, 2025).

**WOODS J.A.**

[1] This is an appeal of a decision of the Tax Court of Canada (*per* D'Arcy J.) cited as 2024 TCC 37. The decision concerns an assessment under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (GST Act) issued to 1351231 Ontario Inc. (appellant) which determined that GST/HST was collectible on the sale of a condominium unit it owned (Property).

[2] The Tax Court determined that the appellant was properly assessed since the sale was a taxable supply. The sale was not an exempt supply because the Property was not a “residential complex”, as that term is defined in subsection 123(1) of the GST Act. In reaching the conclusion, the Court found that the Property satisfied a carve out at the end of that definition. In particular, the Court found that:

- (i) the Property was similar premises to a hotel, a motel, an inn, a boarding house, or a lodging house; and
- (ii) all or substantially all of the leases, licences or similar arrangements, under which the Property was supplied, provided, or was expected to provide, for periods of continuous possession or use of less than 60 days.

[3] The appellant submits that the Tax Court erred in each of these findings, and that the carve out does not apply to the Property. The applicable standards of review are as set out in *Housen v. Nikolaisen*, 2002 SCC 33.

[4] A summary of the facts was set out in the Tax Court’s reasons at paragraphs 4-11. The summary is reproduced below:

[4] The Appellant is registered for GST purposes under Part IX of the *Excise Tax Act*, R.S.C. 1985, C. E-15 (the “**GST Act**”). It is an annual filer, with a reporting period ending on May 31 of each year. It is owned equally by [two brothers], who are the only shareholders and directors of the Appellant.

[5] On February 29, 2008, the Appellant purchased a used condominium unit located [in] Ottawa (the “**Condominium**”).

[6] Between February 2008 and February 2017, the Appellant leased the Condominium to persons who signed a contiguous series a long-term leases. Each lease exceeded 60 days. The last lease expired in February 2017.

[7] Beginning on February 25, 2017 and ending in April 2018, the Appellant listed the Condominium on the Airbnb platform and rented out the property through a series of short-term leases. The Appellant realized gross revenue from the short-term leases of \$11,200 in 2017 and \$43,179 in 2018.

[8] The Appellant's final Airbnb reservation was for a stay of 31 nights ending February 26, 2018.

[9] On December 12, 2017, the Appellant listed the Condominium for sale. On January 24, 2018, the Appellant entered into an agreement of purchase and sale with [...] an arm's-length purchaser, for the Condominium. The sale closed on April 11, 2018.

[10] Neither the Appellant nor the purchaser remitted GST in respect of the sale of the Condominium.

[11] When assessing the Appellant for its annual GST reporting period between June 1, 2017 and May 31, 2018, the Minister assessed the Appellant \$77,079.64 as GST/HST collectable on the sale of the Condominium.

[5] We have considered the appellant's arguments. However, the appellant has not persuaded us that the Tax Court made a reviewable error based on the record before it when it concluded that the carve out was applicable to the Property.

[6] Accordingly, we will dismiss the appeal with costs.

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"Judith Woods"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

<b>DOCKET:</b>	A-141-24
<b>STYLE OF CAUSE:</b>	1351231 ONTARIO INC. v. HIS MAJESTY THE KING
<b>PLACE OF HEARING:</b>	Ottawa, Ontario
<b>DATE OF HEARING:</b>	MARCH 4, 2025
<b>REASONS FOR JUDGMENT OF THE COURT BY:</b>	WOODS J.A. ROUSSEL J.A. HECKMAN J.A.
<b>DELIVERED FROM THE BENCH BY:</b>	WOODS J.A.

**APPEARANCES:**

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