

BETWEEN:

MICHEL COUTU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of Diane Miron
(2008-1273(GST)I) on October 24, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Brigitte Landry

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 4, 2005, and bears the number DGE-10225, is dismissed.

Signed at Montréal, Quebec, this 25th day of November 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 16th day of December 2008.

Brian McCordick, Translator

Docket: 2008-1273(GST)I

BETWEEN:

DIANE MIRON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of Michel Coutu
(2008-1272(GST)I) on October 24, 2008, at Montréal, Quebec

Before: The Honourable Justice Lucie Lamarre

Appearances:

Agent for the Appellant: Michel Coutu
Counsel for the Respondent: Brigitte Landry

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 4, 2005, and bears the number DGE-10224, is dismissed.

Signed at Montréal, Quebec, this 25th day of November 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 16th day of December 2008.

Brian McCordick, Translator

Citation: 2008 TCC 641
Date: 20081125
Dockets: 2008-1272(GST)I
2008-1273(GST)I

BETWEEN:

MICHEL COUTU,
DIANE MIRON,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] The Appellants filed an application for a new residential rental property GST rebate with the Minister of Revenue of Quebec ("the Minister") in respect of a triplex that they built. The Appellants live in one of the units (48% of the total area). The Appellant Michel Coutu's parents live in another unit (22% of the total area) and the third unit, which accounts for the remainder of the total area, is rented to a third party.

[2] The Minister's position is that the triplex is used primarily by the Appellants and by people related to the Appellants (namely Mr. Coutu's parents). Consequently, the Minister decided that the Appellants were not required to remit GST to the Respondent on the self-supply of the triplex, as contemplated in subsection 191(3) of the *Excise Tax Act* (ETA), because they benefitted from the exception set out in subsection 191(5) of the ETA. However, this resulted in the Appellants being denied the new residential rental property GST rebate that they claimed under subsection 256.2(3) of the ETA. Specifically, the Minister made an assessment in which the net tax on the self-supply of new residential rental property, and the rebate for the new rental property, were both nil. The Appellants are appealing from that assessment.

[3] The relevant statutory provisions read as follows:

Definitions

123. (1) In section 121, this Part and Schedules V to X,

...

"residential unit"

« *habitation* »

"residential unit" means

(a) a detached house, semi-detached house, rowhouse unit, condominium unit, mobile home, floating home or apartment,

(b) a suite or room in a hotel, a motel, an inn, a boarding house or a lodging house or in a residence for students, seniors, individuals with a disability or other individuals, or

(c) any other similar premises,

or that part thereof that

(d) is occupied by an individual as a place of residence or lodging,

(e) is supplied by way of lease, licence or similar arrangement for the occupancy thereof as a place

Définitions

123. (1) Les définitions qui suivent s'appliquent à l'article 121, à la présente partie et aux annexes V à X.

[...]

« *habitation* »

"*residential unit*"

« *habitation* » Maison individuelle, jumelée ou en rangée, unité en copropriété, maison mobile, maison flottante, appartement, chambre d'hôtel, de motel, d'auberge ou de pension, chambre dans une résidence d'étudiants, d'aînés, de personnes handicapées ou d'autres particuliers ou tout gîte semblable, ou toute partie de ceux-ci, qui est, selon le cas :

a) occupée à titre résidentiel ou d'hébergement;

b) fournie par bail, licence ou accord semblable, pour être utilisée à titre résidentiel ou d'hébergement;

c) vacante et dont la

of residence or lodging for individuals, (f) is vacant, but was last occupied or supplied as a place of residence or lodging for individuals, or (g) has never been used or occupied for any purpose, but is intended to be used as a place of residence or lodging for individuals;	dernière occupation ou fourniture était à titre résidentiel ou d'hébergement; d) destinée à servir à titre résidentiel ou d'hébergement sans avoir servi à une fin quelconque.
"real property" « <i>immeuble</i> »	« immeuble » "real property"
"real property" includes	« immeuble »
(a) in respect of property in the Province of Quebec, immovable property and every lease thereof, (b) in respect of property in any other place in Canada, messuages, lands and tenements of every nature and description and every estate or interest in real property, whether legal or equitable, and (c) a mobile home, a floating home and any leasehold or proprietary interest therein;	Les immeubles comprennent : a) au Québec, les immeubles et les baux y afférents; b) ailleurs qu'au Québec, les terres, les fonds et les immeubles, de toute nature et désignation, ainsi que les droits y afférents, qu'ils soient fondés en droit ou en équité; c) les maisons mobiles, les maisons flottantes ainsi que les tenures à bail ou autres droits de propriété afférents.
"residential complex" « <i>immeuble d'habitation</i> »	« immeuble d'habitation » "residential complex"
"residential complex" means	« immeuble d'habitation »
(a) that part of a building in which one or more residential units are located, ...	a) La partie constitutive d'un bâtiment qui comporte au moins une habitation, [...]

"multiple unit residential complex" « <i>immeuble d'habitation à logements multiples</i> »	« immeuble d'habitation à logements multiples » " <i>multiple unit residential complex</i> "
"multiple unit residential complex" means a residential complex that contains more than one residential unit, but does not include a condominium complex;	« immeuble d'habitation à logements multiples » Immeuble d'habitation, à l'exclusion d'un immeuble d'habitation en copropriété, qui contient au moins deux habitations.
...	[...]

Self-supply of multiple unit residential complex

Fourniture à soi-même d'un immeuble d'habitation à logements multiples

191(3) For the purposes of this Part, where

191(3) Pour l'application de la présente partie, lorsque les conditions suivantes sont réunies :

(a) the construction or substantial renovation of a multiple unit residential complex is substantially completed,

a) la construction ou les rénovations majeures d'un immeuble d'habitation à logements multiples sont achevées en grande partie,

(b) the builder of the complex

b) le constructeur, selon le cas :

(i) gives, to a particular person who is not a purchaser under an agreement of purchase and sale of the complex, possession or use of any residential unit in the complex under a lease, licence or similar arrangement entered into for the purpose of the occupancy of the unit by an individual as a place of residence,

(i) transfère à une personne, qui n'est pas l'acheteur en vertu du contrat de vente visant l'immeuble, la possession ou l'utilisation d'une habitation de celui-ci aux termes d'un bail, d'une licence ou d'un accord semblable conclu en vue de l'occupation de l'habitation à titre

(i.1) gives possession or

use of any residential unit in the complex to a particular person under an agreement for	résidentiel,
(A) the supply by way of sale of the building or part thereof forming part of the complex, and	(i.1) transfère à une personne la possession ou l'utilisation d'une habitation de l'immeuble aux termes d'une convention prévoyant :
(B) the supply by way of lease of the land forming part of the complex or the supply of such a lease by way of assignment, or	(A) d'une part, la fourniture par vente de tout ou partie du bâtiment faisant partie de l'immeuble,
(ii) where the builder is an individual, occupies any residential unit in the complex as a place of residence, and	(B) d'autre part, la fourniture par bail du fonds faisant partie de l'immeuble ou la fourniture d'un tel bail par cession,
(c) the builder, the particular person, or an individual who has entered into a lease, licence or similar arrangement in respect of a residential unit in the complex with the particular person, is the first individual to occupy a residential unit in the complex as a place of residence after substantial completion of the construction or renovation,	(ii) étant un particulier, occupe lui-même à titre résidentiel une habitation de l'immeuble,
the builder shall be deemed	c) le constructeur, la personne ou tout particulier qui a conclu avec celle-ci un bail, une licence ou un accord semblable visant une habitation de l'immeuble est le premier à occuper une telle habitation à titre résidentiel après que les travaux sont achevés en grande partie,
(d) to have made and received, at the later of the time the construction or substantial renovation is substantially completed	le constructeur est réputé : d) avoir effectué et reçu, par vente, la fourniture taxable de l'immeuble le

and the time possession or use of the unit is so given to the particular person or the unit is so occupied by the builder, a taxable supply by way of sale of the complex, and

(e) to have paid as a recipient and to have collected as a supplier, at the later of those times, tax in respect of the supply calculated on the fair market value of the complex at the later of those times.

...

jour où les travaux sont achevés en grande partie ou, s'il est postérieur, le jour où la possession ou l'utilisation de l'habitation est transférée à la personne ou l'habitation est occupée par lui;

e) avoir payé à titre d'acquéreur et perçu à titre de fournisseur, au dernier en date de ces jours, la taxe relative à la fourniture, calculée sur la juste valeur marchande de l'immeuble ce jour-là.

[...]

Exception for personal use

191(5) Subsections (1) to (4) do not apply to a builder of a residential complex or an addition to a residential complex where

(a) the builder is an individual;

(b) at any time after the construction or renovation of the complex or addition is substantially completed, the complex is used primarily as a place of residence for the individual, an individual related to the individual or a former spouse or common-law partner of the individual;

(c) the complex is not used primarily for any other

Exception — utilisation personnelle

191(5) Les paragraphes (1) à (4) ne s'appliquent pas au constructeur d'un immeuble d'habitation ou d'une adjonction à celui-ci si :

a) le constructeur est un particulier;

b) à un moment donné après que la construction ou les rénovations de l'immeuble ou de l'adjonction sont achevées en grande partie, l'immeuble est utilisé principalement à titre résidentiel par le particulier, son ex-époux ou ancien conjoint de fait ou un particulier lié à ce particulier;

c) l'immeuble n'est pas

purpose between the time the construction or renovation is substantially completed and that time; and

(d) the individual has not claimed an input tax credit in respect of the acquisition of or an improvement to the complex.

[Emphasis added.]

...

256.2(3) Rebate in respect of land and building for residential rental accommodation

(3) If

(a) a particular person, other than a cooperative housing corporation,

(i) is the recipient of a taxable supply by way of sale (in this subsection referred to as the "purchase from the supplier") from another person of a residential complex or of an interest in a residential complex and is not a builder of the complex, or

(ii) is a builder of a residential complex, or of an addition to a multiple unit residential complex, that gives

utilisé principalement à une autre fin entre le moment où les travaux sont achevés en grande partie et le moment donné;

d) le particulier n'a pas demandé de crédit de taxe sur les intrants relativement à l'acquisition de l'immeuble ou aux améliorations qui y ont été apportées.

[Je souligne.]

[...]

256.2(3) Remboursement pour fonds et bâtiment loués à des fins résidentielles

(3) Sous réserve des paragraphes (7) et (8), le ministre rembourse une personne (sauf une coopérative d'habitation) dans le cas où, à la fois :

a) la personne, selon le cas :

(i) est l'acquéreur de la fourniture taxable par vente (appelée « achat auprès du fournisseur » au présent paragraphe), effectuée par une autre personne, d'un immeuble d'habitation ou d'un droit dans un tel immeuble, mais n'est pas le constructeur de l'immeuble,

(ii) est le constructeur d'un immeuble

possession or use of a residential unit in the complex or addition to another person under a lease entered into for the purpose of its occupancy by an individual as a place of residence that results in the particular person being deemed under section 191 to have made and received a taxable supply by way of sale (in this subsection referred to as the "deemed purchase") of the complex or addition,

(b) at a particular time, tax first becomes payable in respect of the purchase from the supplier or tax in respect of the deemed purchase is deemed to have been paid by the person,

(c) at the particular time, the complex or addition, as the case may be, is a qualifying residential unit of the person or includes one or more qualifying residential units of the person, and

(d) the person is not entitled to include the tax in respect of the purchase from the supplier, or the tax in respect of the deemed purchase, in determining an input tax credit of the person,

d'habitation ou d'une adjonction à un immeuble d'habitation à logements multiples qui transfère la possession ou l'utilisation d'une habitation de l'immeuble ou de l'adjonction à une autre personne aux termes d'un bail conclu en vue de l'occupation de l'habitation à titre résidentiel et, par suite de ce transfert, elle est réputée par l'article 191 avoir effectué et reçu, par vente, la fourniture taxable (appelée « achat présumé » au présent paragraphe) de l'immeuble ou de l'adjonction;

b) à un moment donné, la taxe devient payable pour la première fois relativement à l'achat auprès du fournisseur ou la taxe relative à l'achat présumé est réputée avoir été payée par la personne;

c) au moment donné, l'immeuble ou l'adjonction, selon le cas, est une habitation admissible de la personne ou comprend une ou plusieurs telles habitations;

d) la personne ne peut inclure, dans le calcul de son crédit de taxe sur les intrants, la taxe relative à

the Minister shall,
subject to subsections
(7) and (8), pay a rebate
to the person equal to

...

l'achat auprès du
fournisseur ou la taxe
relative à l'achat présumé.

Le montant
remboursable est égal
au [...]

[4] The entire dispute is about the interpretation of the phrase that I have underlined in subsection 191(5), with a view to determining whether the Appellants, the builders of the triplex, are making personal use of it. Specifically, Parliament has enacted an exemption for a builder of a residential complex who is an individual. Such an individual is exempt from the tax on self-supplies where the complex is "used primarily as a place of residence for the individual, an individual related to the individual or a former spouse or common-law partner of the individual". If, by virtue of this provision, the Appellants are exempt from the tax on the self-supply, their claim for a rebate of that tax under subsection 256.2(3) cannot be allowed.

[5] Is the triplex in the case at bar "used primarily as a place of residence by [the Appellants] . . . or an individual related to [the Appellants]?"

[6] "Primarily" means more than 50 percent (see *Foote v. Canada*, 2007 TCC 46, [2007] T.C.J. No. 17 (QL)).

[7] The Appellants submit that they live in a single unit in the triplex and do not occupy more than 50 percent of the complex. In their submission, the fact that Mr. Coutu's parents live in another unit of the triplex should not be taken into account. They argue that the enactment refers to a complex used primarily as a place of residence by the individual or an individual related to the individual. They emphasize that the enactment does not say "used primarily . . . by the individual and an individual related to the individual."

[8] The Appellants rely on a decision of the Court of Québec, *Fortin v. Québec (Sous-ministre du Revenu)*, [2006] R.D.R.Q. 153, in which it was held that the use of the word "ou" (or) in subsection 227(2) of the *Act respecting the Québec sales tax*, which is the counterpart of subsection 191(5) of the ETA, is disjunctive, not conjunctive. In *Fortin*, the applicants occupied 50 percent of the complex, and the parents of one of the applicants occupied 25 percent of it. Consequently, the Court held that the applicants did not occupy the complex primarily as a place of residence, because the parents' use of a part of the complex was not to be taken into account. The Minister appealed from this decision. The applicants dropped out of the appeal proceedings.

[9] Counsel for the Respondent relies on the grammatical definition of the word "ou" in the *Dictionnaire des difficultés du français*,¹ which reads:

OU (conjonction) ♦ *Orth.* Jamais d'accent grave, à la différence de l'adverbe relatif. On reconnaît qu'on a affaire à la conjonction à ceci, qu'il est toujours possible de substituer **ou bien** à **ou**. *Il boit du lait, ou du vin, ou de l'eau, ou de la cervoise, indifféremment dans l'or, dans le verre, dans la corne ou dans l'onix* (Valéry). ♦ *Emploi.* Dans une approximation située entre deux nombres consécutifs, on emploie la préposition **ou**. *Il y avait là neuf ou dix personnes.* Mais → À.

[TRANSLATION]

OU (conjunction). ♦ *Spelling.* Never with a grave accent. (This distinguishes it from the relative adverb.) It is clear that it is a conjunction where "**ou bien**" can be substituted for "**ou**". *Il boit du lait, ou du vin, ou de l'eau, ou de la cervoise, indifféremment dans l'or, dans le verre, dans la corne ou dans l'onix* (Valéry). [He drinks milk, wine, water or barley beer from containers of gold, glass or onyx or from horns.] *Usage.* The word "ou" is used in estimates which cite two consecutive numbers: *Il y avait là neuf ou dix personnes.* [There were nine or ten people there.]

[10] Thus, the Respondent's position is that if the word "ou" can be replaced by "ou bien", it is conjunctive on the same basis as "et". In her submission, the word "ou" in subsection 191(5) is used in the conjunctive sense. Thus, if the Appellants and parents occupy more than 50 percent of the complex primarily as a place of residence, the Appellants are exempt from the tax on the self-supply by virtue of subsection 191(5) and are therefore not entitled to the rebate contemplated in subsection 256.2(3) of the ETA.

¹ *Les usuels du Robert : Dictionnaire des difficultés du français.* (Paris: Le Robert, 1980), at page 512.

Analysis

[11] In *Radage v. Canada*, [1996] T.C.J. No. 730 (QL), Judge Bowman stated:

16 A preliminary question, before I come to the meaning of these words, is whether "and" is disjunctive or conjunctive. As Maxwell On Interpretation of Statutes, 12th Ed., observes at pp. 232-233,

In ordinary usage, "and" is conjunctive and "or" disjunctive. But to carry out the intention of the legislature it may be necessary to read "and" in place of the conjunction "or", and vice versa.

[12] In *Russell v. Canada*, [2001] T.C.J. No. 409 (QL), Judge Bowman stated:

11 It should not be automatically assumed without some analysis that "or" in the definition is conjunctive. At the very least the court should consider whether the provision was ambiguous and whether the ambiguity should be resolved in favour of the taxpayer. (*Stubart Investments Limited v. The Queen*, 84 DTC 6305; *Fries v. The Queen*, 90 DTC 6662).

12 I start from the premise that "or" is *prima facie* disjunctive and that it should not be treated as conjunctive without good reason.

13 "Or" can however be conjunctive if the context requires it. If one starts by working backward from the tentative conclusion that "or" in the definition is disjunctive it would seem to mean that one must look to the income of either the individual or the individual's qualified relation (her spouse) but not both. If one starts from the tentative conclusion that "or" means "and" then it seems clear that one totals the income of both spouses. If this was the intention then what principle of legislative drafting requires that "or" be used?

...

22 . . . Presumably the word "or" is susceptible of the same disjunctive/conjunctive interpretation as "and" depending on the context. (*Marzetti v. Marzetti*, [1994] 2 S.C.R. 765).

[13] In *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2002 FCA 187, [2002] F.C.J. No. 690 (QL), the Federal Court of Appeal held:

45 This Court in *Tele-Direct* also suggested that the phrase "skill, judgment or labour" was intended to be used in the conjunctive, rather than disjunctive sense. . . .

[14] In *Mercier v. Canada*, [1997] T.C.J. No. 613 (QL), Dussault J. stated:

10 As to the question whether the word "and" used in s. 118.4(1)(c)(ii) is conjunctive or disjunctive, this is what Judge Bowman said in this regard:

Feeding and dressing oneself - counsel for the Minister, Mr. Bundy, in a very able argument, suggested that feeding and dressing both had to be activities that were restricted. In this I take it he means, or he is suggesting that, "and" is conjunctive rather than disjunctive. This is a matter of interpretation. I think that, and I don't have authorities in front of me, but I think that in some cases "and" can be conjunctive. In some cases I think it can be disjunctive. Here I am adopting a purposive, or what is called in one case a "teleological" approach, to the interpretation of the statute, that is, an interpretation that appears to be consonant with the scheme of the Act and the objective that the statute is endeavouring to achieve. I think it is more consonant with the scheme of the Act and with the object of this section that "and" be construed as disjunctive and therefore either feeding or dressing is sufficient. It need not be the two together. [References omitted.]

[15] The Explanatory Notes concerning subsection 191(5) of the ETA (Canada, Department of Finance. *Goods and Services Tax: Explanatory Notes to Bill C-62* [S.C. 1990, c. 45] *as Passed by the House of Commons on April 10, 1990* (Ottawa: Department of Finance, May 1990)) which pertains to the self-supply of a residential complex, contain the following remarks:

Section 191 Self-supply of residential property

This section introduces self-supply rules where a builder constructs or substantially renovates a residential complex and subsequently rents it out to others or occupies it as a place of residence. In such a circumstance, the builder is treated as having sold and repurchased the residential complex. As a result, the builder is required to remit GST on the fair market value of the complex with the return for the reporting period in which the complex is substantially completed or rented out, whichever is later. As a result, the value-added by the builder is taxed. This rule ensures that such builders are treated the same as persons who purchased a new or substantially renovated residential complex for rental purposes. . . .

. . .

The self-supply rule specifically does not apply to builders who are individuals and occupy a residential complex as their primary place of residence, provided that no input tax credits have been claimed in respect of the acquisition of the land and the construction or renovation.

...

Subsection 191(5) Exception for personal use

The rules in subsections (1) to (4) do not apply where the builder is an individual and where, after the complex is substantially completed, it is used primarily as the builder's place of residence (or that of another individual who is either related to, or as a former spouse of, the builder), provided that the builder did not claim any input tax credits in respect of the complex. This rule treats such builders the same as individuals who self-build their own homes and who are not classed as builders under the GST (and therefore are not subject to the self supply rules). It should be noted that builders that supply their own residence may be eligible to claim a rebate of tax under section 256 is a complex is for use as their primary residence.

[16] The kind of building to which the personal use exemption applies is a substantially completed building used primarily as a place of residence by the builder (or another individual who is related to the builder). We are not referring to a unit in the building, and nor, in fact, does the wording of the enactment.

[17] A "residential complex" is defined as a building in which one or more residential units are located. A "multiple unit residential complex" is defined as a residential complex that contains more than one residential unit. A "residential unit" is defined as a detached house . . . condominium unit . . . or apartment occupied as a place of residence. In the case that concerns us, more than 50 percent of the building is occupied by the Appellants and by individuals related to them.

[18] In my opinion, the context and the legislative intent indicate that the word "ou" is being used in an inclusive sense and expresses a conjunction, not a disjunction. Parliament has used the following wording in the enactment: "*l'immeuble est utilisé principalement à titre résidentiel par le particulier, son ex-époux ou ancien conjoint de fait ou un particulier lié à ce particulier.*" (Emphasis added.) There is a comma between the word "particulier" (individual) and the words "son ex-époux ou conjoint de fait ou un particulier lié à ce particulier" (an individual related to the individual or a former spouse or common-law partner of the individual). In his treatise *Le bon usage*, Maurice Grevisse states, at page 169, §124, that in French, a comma must be placed between terms that are being coordinated without a conjunction, and that, in ordinary usage, the coordinating conjunctions "et" and "ou" (*ou bien*) are placed before the last term of the coordination only (page 1567, §1033).² Bescherelle, in *La grammaire pour tous*, states, at page 201, that if a comma is placed within a grouping, it is unnecessary to repeat the coordinating conjunction, which makes its only appearance with the last coordinated word.³ Lastly, the *Multidictionnaire de la langue française* states, at page 1132, that, in an enumeration, a comma separates the nouns and adjectives that are enumerated but not connected by a conjunction (*et, ou, or ni*).⁴ Thus, by using a comma, Parliament was ascribing a conjunctive, not disjunctive, meaning to the phrase. (In addition, see *CCH Canadian, supra*, where the same sentence structure was used, and where the Federal Court of Appeal held that the terms were being used in a conjunctive sense.)

² Maurice Grevisse & André Goose, *Le bon usage: grammaire française*, 12th ed. (Gembloux, Belgium: J. Duculot, 1986).

³ *Bescherelle 3: La grammaire pour tous*. (Paris: Hurtubise H.M.H., 1991), at page 201.

⁴ Marie-Éva de Villers, *Multidictionnaire de la langue française*, 3d ed. (Montréal: Québec Amérique, 1997), at page 132.

[19] With respect to the context, as I have stated above, we are concerned with the occupation of the complex, not the unit. It makes more sense to me that Parliament meant to consider the primary use of the entire complex by the individual and any related individual, not by just one or the other. As for Parliament's intent, to the extent that the archived explanatory notes can provide us with guidance, it should be noted that they refer to the complex being "used primarily as the builder's place of residence", and that this is followed, in parentheses, by "(or that of another individual who is either related to, or is a former spouse of, the builder)". The *Multidictionnaire*, *supra*, instructs us, at page 1051, that parentheses are an explanatory element inserted into a sentence. Often, the words in parentheses express the author's thoughts about a given part of the sentence (*La grammaire pour tous*, *supra*, at page 205). In my opinion, the use of parentheses confirms the conjunctive, as opposed to disjunctive, sense. Indeed, what Parliament appears to be indicating here is that the residential use by the builder also includes the residential use by the related individual.

[20] Consequently, I am of the opinion that if 50 percent or more of the complex is used as a place of residence by the Appellants and Mr. Coutu's parents, the Appellants are covered by the exception in subsection 191(5), which means that they cannot claim the rebate contemplated in subsection 256.2(3) of the ETA.

[21] The Appellants say that they are being treated unjustly in relation to purchasers of single-family homes, who can claim a GST rebate on a new home, if they, the Appellants, are not entitled to the GST rebate on new residential rental property or the GST rebate on a new home.

[22] It should be pointed out that new home buyers who are entitled to a GST rebate on their new home have paid the GST on the fair market value of the building. The builder of such a residential building who uses it as a place of residence is not required to pay that tax where the exception in subsection 191(5) applies. (See Canada Revenue Agency, Excise and GST/HST Rulings Directorate, Information Letter RITS/No. 37301, February 14, 2002, published in French by CCH Canadian Limited as part of its 2002 GST Rulings and Headquarters Letters database in the Goods and Services Tax Reporter online). Given this context, the injustice that the Appellants are alleging in connection with the GST rebate does not appear to exist.

Decision

[23] For the above reasons, the appeals are dismissed, and the assessments dated November 4, 2005, and bearing the numbers DGE-10224 and DGE-10225, are confirmed.

Signed at Montréal, Quebec, this 25th day of November 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 16th day of December 2008.

Brian McCordick, Translator

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COURT FILE NOS.: 2008-1272(GST)I
2008-1273(GST)I

STYLES OF CAUSE: MICHEL COUTU AND HER MAJESTY
THE QUEEN

DIANE MIRON AND HER MAJESTY THE
QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 24, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: November 25, 2008

APPEARANCES:

For the Appellants: Michel Coutu
Counsel for the Respondent: Brigitte Landry

COUNSEL OF RECORD:

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