

Docket: 2008-252(GST)I

BETWEEN:

ISABELLE COSTA REGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeals of  
**Teresinha Costa Rego (2008-255(GST)I), Miguel Sousa Rego  
(2008-256(GST)I) and Christine Costa Rego (2008-275(GST)I),**  
on November 25, 2008, at Ottawa, Ontario

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Chantal Donaldson

Counsel for the Respondent: Maryse Nadeau-Poissant

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 30, 2006, and bears the reference number 85940 0368 RT 0001, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 23rd day of January 2009.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 10th day of February 2009.

Brian McCordick, Translator

Docket: 2008-255(GST)I

BETWEEN:

TERESINHA COSTA REGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeals of  
**Isabelle Costa Rego (2008-252(GST)I), Miguel Sousa Rego  
(2008-256(GST)I) and Christine Costa Rego (2008-275(GST)I),**  
on November 25, 2008, at Ottawa, Ontario

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Chantal Donaldson

Counsel for the Respondent: Maryse Nadeau-Poissant

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 30, 2006, and bears the reference number 85942 5167 RT 0001, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 23rd day of January 2009.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 10th day of February 2009.

Brian McCordick, Translator

Docket: 2008-256(GST)I

BETWEEN:

MIGUEL SOUSA REGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeals of  
**Isabelle Costa Rego (2008-252(GST)I), Teresinha Costa Rego  
(2008-255(GST)I) and Christine Costa Rego (2008-275(GST)I),**  
on November 25, 2008, at Ottawa, Ontario

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Chantal Donaldson

Counsel for the Respondent: Maryse Nadeau-Poissant

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 30, 2006, and bears the reference number 85750 8923 RT 0001, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 23rd day of January 2009.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 10th day of February 2009.

Brian McCordick, Translator

Docket: 2008-275(GST)I

BETWEEN:

CHRISTINE COSTA REGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on common evidence with the appeals of  
**Isabelle Costa Rego (2008-252(GST)I), Teresinha Costa Rego  
(2008-255(GST)I) and Miguel Sousa Rego (2008-256(GST)I)**  
on November 25, 2008, at Ottawa, Ontario

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Chantal Donaldson

Counsel for the Respondent: Maryse Nadeau-Poissant

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 30, 2006, and bears the reference number 85940 5565 RT 0001, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 23rd day of January 2009.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 10th day of February 2009.

Brian McCordick, Translator



Citation: 2009 TCC 48  
Date: 20090123  
Dockets: 2008-252(GST)I,  
2008-255(GST)I,  
2008-256(GST)I,  
2008-275(GST)I

BETWEEN:

ISABELLE COSTA REGO,  
TERESINHA COSTA REGO,  
MIGUEL SOUSA REGO,  
CHRISTINE COSTA REGO,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Favreau J.

[1] Each of the Appellants separately filed an application with the Minister of Revenue of Québec ("the Minister") for a new residential rental property GST rebate in respect of a triplex that they co-owned. Their respective shares in the ownership of the property are 33.33% each for Christine and Isabelle Costa Rego, and 16.66% each for Miguel Sousa Rego and Teresinha Costa Rego. The Appellants live in one of the units (41.39% of the total area of the building). Individuals related to the Appellants (specifically, Miguel Sousa Rego's mother and sister) occupy another unit as a place of residence (34.60% of the total area of the building) and the third unit (24.01% of the total area) is rented as a place of residence by a third party.

[2] On March 14, 2003, the Appellants jointly acquired an undeveloped parcel of land at 8 Crépuscule Street in Gatineau, Quebec. From March to October 2004, the Appellants engaged a contractor to build a triplex, in respect of which GST rebates were claimed. On the claim forms, the Appellants declared that they were the purchasers and the lessors (claim form No. 6).

[3] The Minister was of the opinion that the triplex was primarily used as a place of residence for the Appellants and for individuals related to them. He determined 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), since they came under the exception set out in subsection 191(5) of the ETA. Consequently, the Appellants were refused the new residential property GST rebate that they had claimed under subsection 256.2(3) of the ETA. Accordingly, the Minister issued assessments which stated that it was unnecessary to pay the tax on the self-supply of a residential rental property, and which denied the residential complex GST rebate. The Appellants have appealed from these assessments.

[4] In making the above determination, the Minister assumed that each of the Appellants was a "builder" of a complex within the meaning of section 123 of the ETA, which reads:

**"builder"** of a residential complex or of an addition to a multiple unit residential complex means a person who

(a) at a time when the person has an interest in the real property on which the complex is situated, carries on or engages another person to carry on for the person

...

(ii) in the case of a residential condominium unit, the construction of the condominium complex in which the unit is situated, and,

...

Since the Appellants engaged another person to construct their complex at a time when they had an interest in the land on which the complex was situated, each of the Appellants was a "builder" within the meaning of the ETA.

[5] In the Minister's submission, the exclusion from the definition of the term "builder", for an individual who engages a person to construct a complex in a non-business context, does not apply to the case at bar because the Appellants supplied property by way of lease to a third party on a regular and continuous basis by renting one of the three units of their complex to that third party. The term "business" is defined as follows in section 123 of the ETA:

**"business"** includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment.

[6] Under subsection 256.2(3) of the ETA, a person who is a builder of a residential complex is entitled to a GST rebate in respect of the land and building leased for residential purposes where the builder is deemed, under section 191 of the ETA, to have made and received a taxable supply by way of sale of the building.

[7] Subsection 191(3) of the ETA creates the irrebuttable presumption whereby, under certain circumstances, the builder of a multiple-unit residential complex is deemed to have made and received a taxable supply by way of sale of the complex. This is known as the rule regarding the "self-supply of a multiple-unit residential complex". However, an exemption exists where the complex is used for personal purposes. Specifically, subsection 191(5) of the ETA states that, where the builder is an individual and the complex is used primarily as a place of residence by the individual or an individual related to the individual, subsections 191(1) through (4) of the ETA do not apply to that builder. Subsection 191(5) of the ETA reads as follows:

**191. (5) Exception for personal use** — 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 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.]

[8] The entire dispute in the instant case concerns the interpretation of the underlined portion of paragraph 191(5)(b) of the ETA. The term "primarily" in this context means more than 50% of the total area of the complex (see *Foote v. Canada*, 2007 TCC 46, [2007] T.C.J. No. 17 (QL)).

[9] Counsel for the Appellants submits that they reside in a single unit of the triplex and do not occupy more than 50% of the complex. In her submission, the fact that Miguel Costa Rego's mother and sister live in another unit of the complex should not be taken into account. She argues that the enactment refers to a complex used primarily as a place of residence for an individual or for an individual related to the individual. She submits that the wording of the enactment must not be interpreted to mean "used primarily . . . for the individual and an individual related to the individual." In other words, the conjunction "or" in paragraph 191(5)(b) of the ETA is exclusive, in that the condition required by it should be fulfilled if only one of the criteria therein is met.

[10] Counsel for the Appellants relies, *inter alia*, on a decision of the Court of Québec, namely *Fortin v. Québec (Sous-ministre du Revenu)*, [2006] R.D.R.Q. 153, where it was held that the word "or" in subsection 227(2) of the *Act respecting the Québec sales tax*, which corresponds to subsection 191(5) of the ETA, designates an alternative, not a conjunction. Consequently, the court held that the Minister should not take into account the use of part of the complex by one of the applicants' parents. The Minister appealed from the decision but the applicants abandoned their appeal.

### Analysis

[11] In a decision rendered on November 25, 2008 in *Coutu v. Canada*, 2008 TCC 641, Lamarre J. of this Court interpreted the phrase "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", as used in paragraph 191(5)(b) of the ETA. The facts of *Coutu* are very similar to the facts of the case at bar. There, the appellants had built the triplex and lived in one of the units (48% of the total area). The parents of the appellant Coutu lived in another unit (22% of the total area) and the third unit, which accounted for the remainder of the area of the complex, was rented to a third party.

[12] Following a detailed examination of

- (i) cases concerning the meaning of the word "or" (*Radage v. Canada*, [1996] T.C.J. No. 730 (QL), *Russell v. Canada*, [2001] T.C.J. No. 409 (QL), *CCH Canada Ltd. v. Law Society of Upper Canada*, 2002 FCA 187, [2002] F.C.J. No. 690 (QL) and *Mercier v. Canada*, [1997] T.C.J. No. 613 (QL);
- (ii) 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)) regarding the self-supply of a residential complex;
- (iii) the grammatical definition of the word "ou" in the *Dictionnaire des difficultés du français*; and
- (iv) the impact of the use of 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),

Lamarre J. concluded as follows, at paragraph 18:

[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. . . .

[13] I fully agree with that interpretation. The interpretation desired by the Appellants would unduly restrict the scope of the personal-use exception and could not be justified from the perspective of the tax policy underlying the provision.

[14] I also agree with the Minister's position that the Appellants are builders for the purposes of the ETA because they always intended to engage, on a regular and continuous basis, in an activity involving the supply of property (housing) by way of lease. They did so prior to having the Crépuscule Street triplex built, and they continued to do so while they were living in it.

[15] From a legal standpoint, the Appellants completed two separate and distinct transactions, namely the initial purchase of the parcel of land, and the subsequent formation of a construction contract with the contractor. Contrary to the submissions of counsel for the Appellants, one cannot consider them to be a single, two-stage transaction because there is no connection between the two transactions.

[16] For these reasons, the appeals are dismissed and the assessments dated November 30, 2006, are confirmed.

Signed at Montréal, Quebec, this 23rd day of January 2009.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 10th day of February 2009.

Brian McCordick, Translator

CITATION: 2009 TCC 48

COURT FILE NO.: 2008-252(GST)I, 2008-255(GST)I,  
2008-256(GST)I, 2008-275(GST)I

STYLES OF CAUSE: Isabelle Costa Rego v. HMQ  
Teresinha Costa Rego v. HMQ  
Miguel Sousa Rego v. HMQ  
Christine Sousa Rego v. HMQ

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 25, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: January 23, 2009

APPEARANCES:

Counsel of the Appellant: Chantal Donaldson  
Counsel for the Respondent: Maryse Nadeau-Poissant

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