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Docket: 2008-1135(GST)I

BETWEEN:

YVES LEMIEUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 19, 2008, at Montréal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Maryse Nadeau-Poissant

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, the Notice for which is dated June 5, 2007, and bearing the number 851943795RT0001, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 16th day of March 2009.

"Alain Tardif"

Tardif J.

Translation certified true
on this 5th day of May 2009.
Bella Lewkowicz, Translator

Citation: 2009 TCC 17
Date: 20090316
Docket: 2008-1135(GST)I

BETWEEN:

YVES LEMIEUX,

Appellant,

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[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal from the decision of the Quebec Minister of Revenue to refuse a tax rebate in the amount of $3,015.17 by the Appellant for "substantial renovations" to a single unit residential complex pursuant to sections 123 and 256 of the *Excise Tax Act*, R.S.C. (1985) c. E-15, (the ETA).

[2] The evidence consists only of the testimony of Yves Lemieux. He explained that he managed a group home for nine girls between the ages of 14 and 17. The adolescents were sent there under the recommendation of the D.P.J. (Directeur de la protection de la jeunesse - Youth Protection Director). They are people requiring support and intervention from a resource person in a timely manner.

[3] At one point, Mr. Lemieux decided to make an addition to the girls' existing 2,400 square foot residence by incorporating a 1,120 square foot loft that would be his exclusive residence. The purpose of this was to ensure greater privacy as it was completely separate from where the girls lived.

[4] The residence in question, which is on top of a two-car garage, was reserved exclusively for the Appellant and his family. A door with a mechanical lock

separated them; they benefitted from an independent exterior door, well identified on the pictures submitted as Exhibit A-2.

[5] The Appellant explained that the addition was totally independent from the old residence, since he benefitted from his own electrical system, his own heating system and his own water heater. Both units shared the septic tank.

[6] The loft had its own account with Hydro-Québec and was issued a separate bill.

[7] The addition at issue required expenditures of $140,000. However, the land where the building was built was not subject to a cadastral subdivision. Contiguous and attached to the existing building, which had 2,400 square feet of habitable space, the addition was constructed and installed on the same land.

[8] The insurance coverage was for the whole building, which had one municipal address; Hydro-Québec billed a separate unit identified by the number 500A for electricity, while the other bore the number 500. The municipality refuses to attribute an independent civic number.

[9] It is these original facts that are at the heart of issue, which, moreover, were not subject to dispute or objection.

[10] The Appellant maintains that his building is divided into two residential complexes under one deed. He confirms having made an error when he filled out an application for a GST/HST rebate pursuant to section 256 of the ETA.

[11] He alleges that it was not a major addition, but a newly constructed residential complex that possess all the attributes that make it independent. From this description and interpretation, the Appellant maintains that he met the criteria to qualify for the GST credit because the loft is a completely separate apartment from the pre-existing structure, thus a building in itself.

[12] The Appellant relied on Information Bulletin B-092[1] and argues that the example provided at page 16 of the Bulletin corresponds to his situation. The building that is described there is physically distinctive from the existing residence. It would seem arbitrary to distinguish the Appellant's situation from the William L.

[1] CRA Information Bulletin, B-092 "Substantial Renovations and the GST/HST New Housing Rebate" (January 6, 2005, corrected January 31, 2007).

example but it is clear that the Information Bulletin has no legal force and that the established case law does not provide for a rebate in a situation like the Appellant's.

[13] The Appellant also maintained that his project was very specific and that he qualified for special treatment, even exceptional. In his written notes, the Appellant indicated that the evidence showed that it was a new building and not substantial renovations, like he himself described them when requesting a rebate.

Analysis

[14] The photos submitted clearly illustrate that the work carried out incorporated the existing building, continuing a project that was very important and bore the significant cost of $140,000.

[15] To start, it is important to separate the overall project from the rest of the garage, which in itself is proves to be very difficult because the evidence did not separate the expenses for the garage from those for the loft erected on top.

[16] It is important to remember the definitions of the various concepts.

> 123(1). **"substantial renovation"** of a residential complex means the renovation or alteration of a building to such an extent that all or substantially all of the building that existed immediately before the renovation or alteration was begun, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced where, after completion of the renovation or alteration, the building is, or forms part of, a residential complex;
>
> 256(1). "single unit residential complex" includes
>
> (*a*) a multiple unit residential complex that does not contain more than two residential units, and
>
> (*b*) any other multiple unit residential complex if it is described by paragraph (c) of the definition "residential complex" in subsection 123(1) and contains one or more residential units that are for supply as rooms in a hotel, motel, inn, boarding house, lodging house or similar premises and that would be excluded from being part of the residential complex if the complex were a residential complex not described by that paragraph.
>
> 123(1). "residential complex" means
>
> (*a*) that part of a building in which one or more residential units are located, together with

> (i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
>
> (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,
>
> (*b*) that part of a building that is
>
> (i) the whole or part of a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and
>
> (ii) a residential unit,
>
> together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals,
>
> . . .

[17] Other decisions are relevant. The Honourable Justice Lucie Lamarre, in *France Camiré*, docket 2007-1560(GST)I, confirmed in paragraph 9:

> … Bulletin B-092 states, under "Eric L.": "To be considered a newly constructed residential complex, the addition must at least double the size of the habitable area of the existing residence." The Bulletin states that an added garage does not count because it is not considered a "habitable" area. Similarly, I would say that a patio is not a habitable area. In my opinion, the Bulletin is not mistaken on this point, considering the definition of "residential complex", which refers specifically to the residential use of the building.

[18] In *Alex and Lynn McLean*, docket 97-2286(GST)I, it is indicated in paragraphs 6 and 9 :

> 6. The definition of substantial renovation is restrictive. Firstly, it has no reference to the total costs of the renovation in relation to the value of the home. …additions are not to be considered. The only items that are considered are the renovations or alterations of "the building that existed immediately before the renovation or alteration was begun". …

> 9. The definition of substantial renovation is quite severe as is evident from the above analysis. But that is what the Act says and I am bound by the Act. It may be that substantial new additions to an existing structure might qualify as new housing but that would not appear to apply to the relatively minor additions contemplated in this appeal.

[19] In *Robert B. Sneyd v. Her Majesty the Queen*, docket A-306-99, in paragraphs 9 to 12, the Honourable Justice Létourneau of the Federal Court of Appeal wrote:

> 9. First, the term "complex" denotes an aggregate of units. Where a building has more than one residential unit within it, the "residential complex" is the aggregate of the various residential units. In my view, it runs counter to the very meaning of the word "complex" to qualify as a complex each and every residential unit of a "residential complex". The meaning given by the judge to the words "residential complex", whereby any area containing a single apartment constitutes a residential complex, inescapably leads to a proliferation of residential complexes within a single building which has many residential units.
>
> 10. Second, the judge's interpretation of "residential complex" is not supported by the statutory definition of these words. Indeed, "residential complex" is defined in subsection 123(1) of the Act as "that part of a building in which one or more residential units are located" (my emphasis). The definition does not refer to "a" part of the building, but rather "that" part of the building which contains one or more residential units. This means that if a building has one residential unit, then the relevant residential complex is that part of the building where that one unit is located. Where the building has two residential units, then the "residential complex" is that part of the building where the two units are located.
>
> 11. In my view, the French definition of "residential complex" (immeuble d'habitation) strengthens that interpretation. "Immeuble d'habitation" is defined in paragraph 123(1)(*a*) of the Act as "la partie constitutive d'un bâtiment qui comporte au moins une habitation". Again, the French text uses the definite article. Furthermore, the use of the word "constitutive" is indicative of Parliament's intent. The word "constitutive" has been defined as "Qui constitue l'essentiel de" and "Qui constitue la base, le fondement d"une chose": See Le Petit Robert, Dictionnaire de la langue française; Trésor de la langue française: Dictionnaire de la langue du XIXe et du XXe siècles (1789-1960), Paris, Éditions du Centre national de la recherche scientifique, 1978. The use of this word with the definite article indicates that "residential complex" is intended to refer to that core part of a building given over or assigned to residential purposes. Had Parliament intended to break up a building into many constitutive parts or a number of such parts, it would

> have used the words "une partie" or "une partie constitutive", but not "la partie constitutive".
>
> 12. Third, the judge's interpretation of "residential complex" defeats the overall purpose of the Act as well as that of the GST New Housing Rebate. The Act is a taxing statute whose purpose is to raise government revenues. The GST New Housing Rebate is a limited exception to that purpose. Housed in subsection 256(2) of the Act, its object is to provide a construction and renovation incentive to owners of small dwellings, i.e., dwellings which contain a single residential unit (subsection 123(1)) or no more than two residential units (subsection 256(1)). That the provision is aimed at owners of relatively small buildings is further indicated by the ceiling of $450,000 on the total fair market value of the "residential complex" and by the requirement that the owner or a relative be the first inhabitant of the newly constructed or renovated unit (subsection 256(2)). To interpret "residential complex" within the phrase "single unit residential complex", as the judge did, to include any single apartment in a much larger aggregate of residential units would go against this carefully tailored scheme. Otherwise, construction or substantial renovation to any apartment worth less than $450,000 would qualify for the rebate, even if the building as an aggregate was worth millions of dollars and contained dozens of apartments or residential units. This offends the expanded definition of "single unit residential complex" in subsection 256(1) which, while recognizing the benefit of the tax rebate to a multiple unit residential complex, limits it, however, to a complex that does not contain more than two residential units.

[20] In light of the dispositions provided by the ETA and the various decisions on the subject, two strong elements come to light: first, it is a different situation, and second, Parliament not only outlined extremely specific parameters with respect to eligible buildings but also the eligible cost of a project, which can be a maximum of $450,000.

[21] The definitions of “additions” and “substantial renovations” must be appreciated in the context in that it is not possible to obtain a rebate indirectly when the ETA does not authorize it directly. To circumvent the $450,000 ceiling, a person could proceed in steps or in stages, both of which will exceed the ceiling established by the ETA.

[22] It also provides that the rebate applies to a new structure; renovations or an addition could represent a way of indirectly procuring what the ETA does not authorize.

[23] Therefore, the entire area of the garage must be removed from the analysis; with respect to the habitable area above that, the project does not meet the requirements of the ETA.

[24] For these reasons, the appeal must be dismissed.

Signed at Ottawa, Canada, this 16th day of March 2009.

"Alain Tardif"

Tardif J.

Translation certified true
on this 5th day of May 2009.
Bella Lewkowicz, Translator

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COURT FILE NO.:	2008-1135(GST)I
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APPEARANCES:

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