

Citation: 2010 TCC 95
Date: 20100217
Docket: 2009-986(GST)I

BETWEEN:

GABYE GOULET and GHISLAIN CANUEL,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

AMENDED REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from an assessment made under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the Act). In an assessment dated June 13, 2008, and bearing the number 1881221, the Minister of National Revenue, through the Minister of Revenue of Quebec (collectively the Minister), disallowed the application for a rebate of Goods and Services Tax (GST) for new housing located at 3880 Mountainview Street in Saint-Hubert, Quebec, (new housing) in respect of which the appellants were claiming a rebate of \$3,584.13.

[2] In making the assessment, the Minister relied, among other things, on the following assumptions of fact and findings:

[TRANSLATION]

- (a) The construction of the new housing in respect of which a GST rebate was claimed ended on or about December 21, 2007. (**admitted**)
- (b) The new housing is a detached house. (**admitted**)
- (c) The appellants did not build the new housing for the purpose of using it as their primary place of residence. (**denied**)
- (d) The new housing was not the appellants' primary place of residence. (**denied**)

[3] The only issue in this case is whether the new housing was built to be used as the appellants' primary place of residence.

[4] Subsection 256(2) of the Act states that a particular individual is entitled to a GST rebate for new housing if he or she builds a residential complex for use as the primary place of residence of the particular individual or his or her relation. The word "relation" is defined in subsection 256(1) of the Act as a former spouse or common-law partner of the particular individual or another individual who is related to the particular individual.

[5] At the objection stage, the appellants indicated in a letter dated August 27, 2008, that, around the time that the construction of the new housing was being finished, they were intending to rent it out, but then they changed their minds. Their daughter lived in the new housing from January to April 2008, and their son lived in the new housing from May 2008 until August 31, 2008. In that letter, the appellants also stated that they had decided that address changes were not necessary because they lived next door at 2870 Mountainview Street, Saint-Hubert, and because they knew for a fact that it would be for a short period of time, since the property was put up for sale through a real-estate agent on May 13, 2008. The new housing was sold in September 2008.

[6] The appellant Ghislain Canuel testified at the hearing and confirmed that he had the new housing built during the period between September and December 2007 and that he had put it up for sale on May 13, 2008. A copy of the listing was filed in evidence. He also stated that he had initially intended to live in the new housing, but that he then decided to rent it out in order to generate income. This statement is confirmed by the confirmation of insurance filed in evidence. The occupancy for the new housing indicated that it was intended to be rented out to third parties. In fact, the new housing was never rented out to third parties, and no evidence of a correction to the insurance policy was filed in evidence. In addition, the witness filed no telephone (cell phone), electricity or insurance bills with the Court.

[7] Maude Goulet Canuel, the appellants' daughter, also testified at the hearing. She confirmed that she had lived in the new housing from January to April 2008 with her entire household. Electric household appliances with the exception of a dishwasher were installed in the new housing.

[8] The auditor from the Ministère du Revenu du Québec, Jacques Bourbonnais, also testified at the hearing. He indicated that, based on the records of the Société de l'Assurance-Automobile du Québec, the appellants and their children had not

changed their addresses to reflect the fact that they had lived in the new housing for a period of time. In his testimony, he emphasised the temporary nature of the appellants' children's stay in the new housing.

Analysis and conclusion

[9] In this case, the appellants had the burden of demonstrating that they had had the new housing built for the purpose of using it as their primary place of residence. The appellants produced no documentary evidence (such as changes of address, moving invoices or invoices for installing cable, phone or internet) demonstrating that they or any of their relations had used the new housing as a primary place of residence.

[10] On the contrary, the documentary evidence shows that the appellants had intended to rent out the new housing to generate income. The insurance certificate with respect to said property reveals a great deal since the occupancy indicated that the property was intended to be rented out to third parties. It is also important to note that the policy came into force on December 19, 2007, a date that was very close to the end of the construction of the new housing and before the appellants' daughter lived there.

[11] The other important document is the exclusive brokerage contract for the sale of the new housing signed on May 13, 2008. That document demonstrates that the appellants' son's stay in the new housing from May to August 2008 was not as permanent as would be required for it to be his primary place of residence.

[12] The appellants' daughter's occupancy of the new housing for the four-month period without a change of address, without invoices related to moving, installing cable, internet or telephone or notices to the insurance company or Hydro-Québec, is insufficient, in my opinion, to prove that the new housing was used as her primary place of residence.

[13] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 17th day of February 2010.

"Réal Favreau"

Favreau J.

Translation certified true
on this 20th day of May 2010

François Brunet, Revisor

CITATION: 2010 TCC 95

COURT FILE NO.: 2009-986(GST)I

STYLE OF CAUSE: Gabye Goulet and Ghislain Canuel
and Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 25, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: February 16, 2010

DATE OF AMENDED
REASONS FOR JUDGMENT: February 17, 2010

APPEARANCES:

For the appellants:	The appellants themselves
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