Docket: 2016-128(GST)I

BETWEEN:

RÉAL COLLIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 13, 2018, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Bobbie Dion

[ENGLISH TRANSLATION]

JUDGMENT

The appeal from the assessment against the applicant under Part IX of the *Excise Tax Act*, notice of which is dated May 26, 2015, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of July 2018.

"Réal Favreau"

Favreau J.

Citation: 2018 TCC 145
Date: 20180718
Docket: 2016-128(GST)I

BETWEEN:

RÉAL COLLIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal filed by Réal Collin, who is a judge of the Administrative Tribunal of Québec, Immovable Property Division.

[2] This appeal deals with an assessment made under Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the ETA), by the Quebec Minister of Revenue as an agent of the Minister of National Revenue (the Minister), notice of which is dated May 26, 2015.

[3] The assessment at issue arises from an application for a $4,446.68 goods and services tax / harmonized sales tax (GST/HST) new housing rebate for the condominium unit located at 1008-10200 De l'Acadie Boulevard in Montréal (the condominium unit).

[4] The amount of the assessment is $4,849.94, which includes the $4,445.68 rebate that was denied and $404.26 interest on arrears.

[5] The issue is whether the condominium unit was Nadia Maftah's primary place of residence. She is the appellant's spouse and is of Moroccan origin.

[6] The circumstances that led to the acquisition of the condominium unit are as follows:

(a) The appellant and his spouse married in 1998;
(b) Ms. Maftah immigrated to Quebec in 1999 and came to live with the appellant at 6397 Monette Street in Val-Morin (6397 Monette Street), wholly owned by the appellant;
(c) From 1999 to 2004, Ms. Maftah worked as a passenger service agent at Mirabel Airport;
(d) Following the closure of Mirabel Airport in 2004, Ms. Maftah was transferred to Pierre Elliott Trudeau Airport in Montréal, where she performed the same duties;
(e) The 190-kilometre round trip between Montréal Airport and Val-Morin, four to five and sometimes six times a week, depending on her employer's requirements, the variable schedules consisting of day, evening and night shifts, not to mention the many delays in aircraft schedules, and winter road conditions became unbearable over the years;
(f) In December 2011, the appellant and his spouse had the opportunity to purchase the condominium unit on a pre-sale basis and took possession at the end of construction, in September 2013.

[7] The terms and conditions of the condominium unit purchase are as follows:

(a) The appellant first signed an initial condominium unit purchase and sale agreement dated November 11, 2011;
(b) Ms. Maftah's name was added to the original condominium unit purchase and sale agreement and, on December 22, 2011, the appellant and his spouse signed a new condominium unit purchase and sale agreement;
(c) According to this offer to purchase, the total purchase price of the condominium unit was $271,900, payable in part by successive deposits of $13,595 upon the signing of the purchase and sale agreement and on the following dates: February 23, 2012, and May 17, 2012;
(d) The notarized condominium unit sales contract was dated September 16, 2013, and was entered into between, on one side, 9245-4818 Québec Inc., 9239-1309 Québec Inc. and 9214-7669 Québec Inc. and, on the other side, Réal Collin and Nadia Maftah;
(e) The total sale price of the condominium unit was $271,900, broken down as follows:

- Price of the condominium unit (land and building) = $246,982.20
- Goods and services tax (GST) = $12,349.11

- GST rebate = $4,445.68
- Québec sales tax (QST) = $22,043.16
- QST rebate = $5,028.79

(f) Under the terms of the sales contract, the sellers credited the purchasers with the amounts of the GST and QST rebates, $4,445.68 and $5,028.79 respectively, and the purchasers assigned all their rights to these rebates to the sellers.

[8] The property is a 975-square-foot condominium unit with 2 bedrooms, 2 bathrooms, a kitchen and a living room, located on the 10th Floor of a 150-unit tower. According to the appellant, he and his spouse have always occupied the unit, which has never been subleased since its acquisition.

[9] The appellant entered into evidence statements of credit cards issued in his name and his spouse's name showing, among other things, that curtains, light fixtures and furniture had been purchased in Montréal and Laval to furnish the condominium.

[10] The appellant also entered into evidence a Videotron Ltd. invoice dated November 13, 2015, sent to the appellant at the condominium's address, a bundle of statements of credit cards belonging to the appellant and his spouse for periods prior to and subsequent to the acquisition of the condominium, and a note dated December 15, 2015, from Ms. Maftah's dentist, indicating that she is a patient at the dental clinic located on Bélanger Street in Montréal.

[11] During his testimony, the appellant made the following clarifications:

(a) His spouse paid $120,000.00 to $140,000.00 of the purchase price of the condominium unit and he paid the balance;
(b) The appellant has paid the condominium mortgage, taxes, electricity and cable invoices since it was acquired;
(c) The appellant paid for all the furniture used in the condominium, and no furniture from the Val-Morin residence was moved to the condominium;
(d) The appellant indicated that he occasionally uses the condominium when travelling to the Montréal offices of the Administrative Tribunal of Québec. His spouse uses it on weekdays when she works, and she usually spends weekends in Val-Morin;
(e) The condominium unit has been insured as a secondary place of residence since its acquisition; and

(f) The appellant and his spouse did not file any changes of address with their respective employers, the Canada Revenue Agency, the Agence du Revenu du Québec, the Régie de l'assurance-maladie Quebec, the Régie de l'assurance-automobile du Québec, their bank in Sainte-Agathe-des-Monts, the Ville de Montréal for property taxes, or with Élections Québec.

[12] Ms. Maftah also testified at the hearing and explained that she lived in Montréal during the week and in Val-Morin on weekends; that she did her grocery shopping in Montréal; that she was a patient at a dental clinic and a walk-in medical clinic; and that she was a client at a gym, all located in Montréal.

[13] Ms. Maftah also said she had shopped to furnish and decorate the condominium with her friend, Naima Chenfouri, who lived in the building next to the condominium she and her husband had purchased. Before they had purchased the condominium, she was able to spend the night at her friend's apartment when she could not return to Val-Morin. Ms. Maftah therefore had the key to her friend's apartment.

[14] Ms. Maftah also acknowledged that she had not filed any changes of address with her employer, the bank in Sainte-Agathe-Des-Monts, the Société d'assurance-automobile du Québec, the Ville de Montréal or Élections Québec.

[15] Ms. Chenfouri testified at the hearing and explained that she became Ms. Maftah's friend in 2006 when Ms. Maftah was transferred to Montréal and that she had lent her the key to her apartment so she could use it on days when she was unable to return to Val-Morin.

[16] Ms. Chenfouri also explained that the couple had purchased only new furniture to furnish the condominium.

[17] According to Ms. Chenfouri, Ms. Maftah lived in Montréal during the week and in Val-Morin on weekends. She also indicated that Ms. Maftah did not spend the night in Val-Morin if the appellant was not there.

Relevant statutory provisions

[18] Individuals who purchase new housing from a builder are eligible for a partial rebate of the GST or the federal component of the HST, under special conditions. One of the special conditions is that the housing must be purchased by

individuals for use as their primary place of residence. This condition is set out in paragraph 254(2)(b) of the ETA, which reads as follows:

> 254(2)(a) Where
>
> . . .
>
> (b) at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the complex or unit entered into between the builder and the particular individual, the particular individual is acquiring the complex or unit for use as the primary place of residence of the particular individual or a relation of the particular individual;

[19] For the purposes of the above provision, the word "relation" means the former spouse or common-law partner of an individual or other individual related to that individual (see subsection 254(1) of the ETA).

[20] Another relevant provision for the purposes of this case is subsection 299(3) of the ETA, which establishes that an assessment under the ETA is deemed to be valid and binding subject to a reassessment or subject to being vacated on an objection or appeal.

Analysis and conclusion

[21] The assessment made by the Minister based on assumptions of fact is deemed to be valid and binding, and the onus is on the appellant to refute the Minister's assumptions in order to show that the assessment is erroneous. The appellant can meet this burden by presenting a *prima facie* case that the Minister's assumptions are erroneous.

[22] The jurisprudence has repeatedly established that *prima facie* evidence is such that raises such a degree of probability in its favour that it must be accepted by the Court, unless it is rebutted or the contrary is proved.

[23] The Minister found that the appellant was not entitled to the rebate because he and his spouse did not meet the requirements of paragraph 254(2)(b) of the ETA, which stipulates that the unit must be acquired for use as the "primary place of residence."

[24] The appellant and his spouse stated in the condominium unit sales contract that they were acquiring the said condominium unit for use as their primary place

of residence by taking possession on September 16, 2013. The terms of this statement are as follows:

> [TRANSLATION] The purchaser declares that he is an individual acquiring the said condominium unit for use as his primary place of residence by taking possession on the date herein.

[25] For the purposes of the sales contract, the term "purchaser" included both the appellant and his spouse.

[26] In the paragraph following the statement referred to in paragraph 24, the parties to the sales contract stated that they met all the requirements of section 254 of the ETA regarding eligibility for a GST new housing rebate. In this case, the parties definitely referred to the signing of the prescribed form for the new housing rebate granted by the builder. The appellant signed the form on September 5, 2013, and stated in it that he had purchased a condominium unit for himself or a relative as his primary place of residence.

[27] The case law of this Court and several policy statements relating to GST/HST legislation used the following factors to determine what constitutes a primary place of residence:

- The taxpayer’s intention to use the new housing as the primary place of residence;
- How long the new housing has been occupied;
- Mailing address used;
- Move-in date and date on which the personal effects were moved;
- Causes of a possible delay in the move, if any;
- Insurance coverage details; and
- Any other factors, given the circumstances of the case.

[28] In this case, the appellant’s and his spouse’s stated intention in the sales contract and the tax rebate application form was that they were going to use the condominium unit as their primary place of residence, but this intention was not implemented with concrete steps showing they had moved their home base or centre of economic interests from Val-Morin to Montréal.

[29] I am satisfied that the appellant and his spouse occupied and lived in the condominium unit, but not on a regular basis. There is no overriding evidence on

the record that the appellant or his spouse used the condominium unit as their primary place of residence.

[30] The appellant and his spouse did not make any changes of address. The appellant never intended to sell his residence in Val-Morin and did nothing in that regard. The condominium unit was insured as a secondary place of residence. According to the evidence, no furniture was moved from Val-Morin to Montréal because the condominium unit was completely furnished with new furniture purchased in the Montréal area. Also, there is nothing in the evidence to show that the personal effects of the appellant's spouse were moved to the condominium. The appellant's spouse continued to do her banking in Sainte-Agathe-Des-Monts. The evidence did not reveal any estimates based on accurate data on the percentage of time the appellant's spouse spent at the condominium unit versus the time she spent in Val-Morin.

[31] Based on all the evidence submitted, I find that the condominium unit was used as a pied-à-terre in Montréal for both the appellant and his spouse in the course of their respective employment.

[32] In light of the foregoing, I find that the appellant and/or his spouse did not acquire the condominium unit for use as their primary place of residence within the meaning of paragraph 254(2)(b) of the ETA as required by this provision. Consequently, the appeal is dismissed.

Signed at Ottawa, Canada, this 18th day of July 2018.

"Réal Favreau"

Favreau J.

CITATION:	2018 TCC 145
DOCKET:	2016-128(GST)I
STYLE OF CAUSE:	Réal Collin and Her Majesty the Queen
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 13, 2018
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATE OF JUDGMENT:	July 18, 2018

APPEARANCES:

For the appellant:	The appellant himself
Counsel for the respondent:	Bobbie Dion

COUNSEL OF RECORD:

For the appellant:	
Name:	
Firm:	
For the respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada