

Docket: 2008-3913(GST)I

BETWEEN:

MAXIM PARENTEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on September 10, 2009, at Montréal, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Édith-Geneviève Giasson

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**JUDGMENT**

The appeal from the goods and services tax assessment under Part IX of the *Excise Tax Act*, notice of which is dated May 14, 2007 and bears the number 85279 8396 RT0001, is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 15th day of October 2009.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 26th day of November 2009.

Brian McCordick, Translator

Citation: 2009 TCC 519  
Date: 20091015  
Docket: 2008-3913(GST)I

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**REASONS FOR JUDGMENT**

Bédard J.

[1] This is an appeal from an assessment made under Part IX of the *Excise Tax Act* ("the Act"). In the assessment, dated October 18, 2007, the Respondent, acting through the Minister of Revenue of Quebec ("the Minister"), disallowed the Appellant's claim of a \$5,069.66 goods and services tax (GST) rebate in respect of new housing located at 2335-2337 Charbonneau Street in Terrebonne, Quebec ("the new housing").

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

[TRANSLATION]

- (a) The construction of the new housing in respect of which a GST rebate was claimed ended on or about December 1, 2006. **(admitted)**.
- (b) The said new housing is a duplex. **(admitted)**
- (c) The Appellant did not build the new housing for the purpose of using it as his primary place of residence. **(denied)**

- (d) The new housing was not the Appellant's primary place of residence. **(denied)**

[3] I note from the Notice of Appeal that the Appellant in the case at bar is also contesting the assessment against him under the *Act respecting the Québec sales tax*, by which the Minister apparently also disallowed his new housing Québec sales tax (QST) rebate. In this regard, I should emphasize from the outset that this Court does not have jurisdiction to hear that appeal. If the Appellant wishes to appeal from the assessment under the *Act respecting the Québec sales tax*, the appropriate relief is set out in sections 93.1.10 *et seq.* of the *Act respecting the Ministère du Revenu*, R.S.Q., c M-31, and he must seek it from the Court of Québec, not this Court. This Court has jurisdiction to hear the appeal from the assessment under Part IX of the Act.

[4] The only real issue in the case at bar is whether the Appellant built new housing for use as a primary place of residence. This is because subsection 256(2) of the Act states that an individual who has built a residential complex, for use by the individual as a primary place of residence, is entitled to a new housing GST rebate.

#### Preliminary remarks

[5] I should immediately note that the Appellant was the only person to testify in support of his position, and that he adduced only one document (Exhibit A-1). The Appellant's evidence in support of his argument that he built the new housing for use as his primary place of residence was therefore essentially his own testimony.

#### The Appellant's testimony

[6] Essentially, the Appellant's testimony (which was generally vague, imprecise, ambiguous, and frequently incomprehensible) was as follows:

- (i) In December 2005, he mandated a licenced real estate broker to sell his residence, which was located on Charny Street in Mascouche, and in which he had been residing for several years. In support of this allegation, the Appellant tendered in evidence the letter from this broker (Exhibit A-1) in which he thanks the Appellant for entrusting the mandate to him.

- (ii) In the spring of 2006, he had a duplex built on Charbonneau Street in Mascouche.
- (iii) In mid-May 2006, he packed up his bags and moved to one of the units of this duplex ("the housing unit") and allegedly lived in that housing unit until July 1 of that year. I note that the Appellant did not see fit to support his allegations in this regard with serious documentary evidence (such as a change of postal address, a telephone or electrical bill, a moving-related invoice, a cable installation bill, etc.)
- (iv) On July 1, 2006, he rented out the housing unit and moved back to his Mascouche residence. The reasons that he did so are worth quoting:

[TRANSLATION]

A. That's right. So I had an opportunity there, I don't have the means to ... I didn't have the means to pay for both residences in a way that is very... for a long time, especially when the construction came to an end, when our finances, all of a sudden, were really affected. It's no longer really regular finances. So, at that stage, I needed to find a solution. I had tried to sell the house in Mascouche, I tried to rent out my former residence in Mascouche and then I got an opportunity to rent out the unit in which I was living at the time.

Q. How long had you been living there?

A. Roughly a month and a half or two months.

- (v) He made no change to his postal address when he moved in mid-August. His testimony in this regard, which I would characterize as incomprehensible to say the least, is worth quoting:

[TRANSLATION]

A. No, because 154 Charny Street was still vacant and there was no one else occupying it, I was still kind of at two... because everything was still... my things were still there, all my address changes, everything was still there, I let that be sent there, which was vacant, I left my correspondence there, because, given, also, that ... that's it. That's pretty much why.

Analysis and conclusion

[7] In the case at bar, the burden is on the Appellant to show that he built the new housing for use as his primary place of residence. I should repeat that the Appellant was the only person who testified in support of his position, and that he produced no documentary evidence (other than Exhibit A-1) in support of it. In sum, the Appellant's evidence essentially rested on his testimony alone, which I found to be of little credibility. In the case at bar, the Appellant could not hope to convince me with generally vague, imprecise and often incomprehensible answers. The Appellant did not even satisfy me that he lived in the housing unit in question for a month and a half. The Appellant could have adduced documentary or testimonial evidence in support of his allegation in this regard. He did not do so. The inference that I draw from this is that such evidence would have been unfavourable to him. In addition, apart from my finding that the Appellant never lived in the housing unit, the evidence discloses that when the duplex was being built, the Appellant's intention to make it his primary place of residence was conditional on his selling his residence in Mascouche. However, subsection 256(2) of the Act is drafted in such a way that the individual's intent when the new housing is being built cannot be conditional.

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

Signed at Ottawa, Canada, this 15th day of October 2009.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 26th day of November 2009.  
Brian McCordick, Translator

CITATION: 2009 TCC 519

COURT FILE NO.: 2008-3913(GST)I

STYLE OF CAUSE: MAXIM PARENTEAU AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 10, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: October 15, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Édith-Geneviève Giasson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
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