

Docket: 2008-4085(GST)I

BETWEEN:

JIANYI YANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 1, 2009, at Montreal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Édith-Geneviève Giasson

JUDGMENT

The appeal with respect to the assessment under the *Excise Tax Act* dated May 12, 2008 is allowed in accordance with the attached Reasons for Judgment.

Signed at Edmundston, New Brunswick, this 21st day of December 2009.

"François Angers"

Angers J.

Citation: 2009 TCC 636
Date: 20091221
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BETWEEN:

JIANYI YANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers J.

[1] This is an appeal from an assessment issued under the *Excise Tax Act* (the "Act"). The appellant applied for and was refused a new housing goods and services tax rebate for a new condominium (the "condominium") situated on Marcel-Laurin Boulevard in Saint-Laurent, Quebec. The Minister of National Revenue (the "Minister") refused the rebate on the basis that the new condominium was not acquired for use as a primary place of residence for the appellant and the co-owner, Ms. Doris Sau Mei Tam.

[2] The appellant and Ms. Tam met in 2001. At that time, Ms. Tam occupied an apartment with her son on Alma Street in Montreal, Quebec. The apartment was located in a six-unit building that belonged to her brother. As for the appellant, he was residing with his sister on Robichaud Street in Montreal. He and Ms. Tam did not live together even though, in 2002, they purchased the apartment building on Alma Street from Ms. Tam's brother. The appellant never moved in with Ms. Tam on Alma Street because the relationship between Ms. Tam's son and the appellant was not the best.

[3] A few years later, in the fall of 2006, they decided to purchase the condominium located on Marcel-Laurin Boulevard with the intention of moving in together. At that time, Ms. Tam's son was 17 and old enough to continue occupying the Alma Street property. The appellant and Ms. Tam shared the cost of new furniture they bought for the condominium and also shared the other expenses.

[4] The purchase deal was closed on December 11, 2006. They gradually moved into the condominium in early 2007. Although Ms. Tam kept on going back to the Alma Street apartment to prepare her son's dinner, she slept at the condominium and had moved her personal belongings there. She continued going back to the Alma Street property once every four days to pick up mail and visit her son, who still occupies the apartment.

[5] The appellant signed his 2006 return on April 22, 2007 and indicated his address to be on Robichaud Street and Ms. Tam signed hers on April 20, 2007, showing Alma Street as her address. Ms. Tam's explanation is that she thought she had to indicate her address for the 2006 taxation year. As for the appellant, his knowledge of both English and French is very limited and he must rely on Ms. Tam. They were both late in sending their change of address to the Société de l'assurance automobile du Québec. The appellant sent in the change of address on April 28, 2008 and Ms. Tam did so on June 13, 2008. The appellant explained that he sent in his change of address after he was stopped by a police officer who told him he had to do it. As for Ms. Tam, she did not send in the change of address because her son continued to reside on Alma Street, and as she went there on a regular basis — every 3 or 4 days — to pick up her mail and deal with tenant issues, it was not an urgent thing to do. The statements for their joint bank account were sent to the Alma Street address until October 2007. The school tax invoice for the condominium was also mailed to the Alma Street address.

[6] The only issue is whether the condominium property was acquired for use as a primary place of residence for both the appellant and Ms. Tam. Pursuant to subsection 262(3) of the Act, the appellant and Ms. Tam must satisfy the requirement of paragraph 254(2)(b), namely that the condominium have been acquired for use as their primary place of residence.

[7] Many factors that assist in determining what constitutes a primary place of residence are found in previous decisions of this Court as well as in policies issued under the Goods and Services Tax/Harmonized Sales Tax legislation. Some of these factors are the following: the parties' intention with regard to the use of the housing unit as their primary residence; their length of stay at the new unit; the address they use for correspondence; when they moved in and when they moved their personal belongings, and if the move was delayed, what events occurred that caused the delay; details of the insurance coverage; what they did with their former residence or rental unit; and other factors that may be relevant depending on the facts of the case.

[8] As stated previously, the appellant and Ms. Tam met in 2001. In 2002, they bought a 6-unit apartment building together. In 2003, they went on a cruise and have been going out with each other ever since. For family reasons, the appellant did not move in with Ms. Tam in her apartment on Alma Street. He instead continued to live with his sister. In December 2006, they finally purchased the condominium property so that they could move in together and make that property their home. They purchased new furniture for the condominium because Ms. Tam's son continued to occupy the Alma Street apartment and the appellant was living at his sister's place.

[9] The appellant and Ms. Tam both testified that the purchase of the condominium property was made so that they could move in together and make it their home. They were in fact both residing there as of the trial date. Their intention in purchasing the property in question is therefore clear. They both appeared very credible and honest in explaining their intentions and motives in that respect. I also find that they were just as credible in explaining why it took so long to send in their respective changes of address. Although the explanation given for having used their old addresses on their tax returns may sound a little far-fetched to some, I find it to be a probable and acceptable one considering the circumstances of this case and the appellant's and Ms. Tam's backgrounds.

[10] Moreover, the change of address factor may be of less importance in determining use as a primary residence where both new owners still have relatives residing at their former places of residence. Although both the appellant and Mrs. Tam may have been negligent when it came to reporting the change of address, I am satisfied that the purchase of the condominium property was with a view to its use as their primary residence. The gradual move by Ms. Tam is justified by the fact that she was leaving behind her son and had to adjust progressively to the new situation. In my opinion, all the conditions required in order to qualify for the new

housing rebate have been met by both the appellant and Ms. Tam. The appeal is allowed.

Signed at Edmundston, New Brunswick, this 21st day of December 2009.

"François Angers"

Angers J.

CITATION: 2009 TCC 636
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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
Ottawa, Canada