

Citation: 2009 TCC 634
Date: 20100107
Docket: 2009-1296(GST)I

BETWEEN:

GEORGE HORVATH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

**(Delivered orally via
teleconference on October 21, 2009)**

D'Arcy J.

[1] The Appellant, George Horvath, has appealed an assessment issued in respect of a GST/HST new housing rebate application. The Appellant filed a GST/HST new housing rebate application in which he claimed a new housing rebate in the amount of \$6,036.98.

[2] In a Notice of Assessment, dated March 7, 2008, the Minister disallowed \$783.50 of the amount of the new housing rebate claimed by the Appellant. The issue in this appeal is whether the Appellant was entitled to the disallowed portion of his rebate claim.

[3] Based upon the testimony of the Appellant and the written evidence before the Court, I have made the following findings of fact:

Background

[4] The Appellant retained a third party, Aspen Homes, to construct a home for the Appellant and his spouse. The home was constructed on land that was owned by Aspen Homes at the time of construction.

[5] It was the Appellant's testimony that the contract with Aspen Homes allowed the Appellant to construct certain portions of the home.

[6] The Appellant noted that the following work was performed by the Appellant outside of the contract with Aspen Homes:

Kitchen cupboards

[7] The cupboards were built by the Appellant at a heated shop on his farm. Once completed, they were transported to his new home where the Appellant installed the cupboards in the new kitchen.

Bedroom vanities

[8] Similar to the kitchen cupboards, the bedroom vanities were constructed at the heated shop on the farm and then transported to the new home where they were installed by the Appellant.

Subfloor in the kitchen and bathroom

[9] Appellant purchased the material for the subfloors and installed the subfloors in the new home.

Hardwood and linoleum floors

[10] The Appellant purchased the hardwood and linoleum and then installed the materials in the new home.

Closet shelving

[11] The Appellant purchased the required materials and then installed the shelving in the new home.

[12] All of this work was performed by the Appellant prior to his acquiring and taking possession of his new home.

[13] Once the house was constructed, the Appellant purchased the home and land from Aspen Homes for \$223,064.00, including GST.

[14] The Appellant performed additional work after taking ownership and possession of his new home. This work included construction of a driveway (including sealer), installation of window blinds, landscaping and finishing the basement.

[15] When filing the GST/HST housing rebate application, the Appellant claimed a rebate of \$6,036.98 in respect of the amounts paid to Aspen Homes and in respect of the amounts the Appellant incurred personally for the work he performed outside of the contract with Aspen Homes.

[16] This included work performed by the Appellant before and after he acquired ownership of the home.

[17] The Minister allowed the Appellant's rebate claim in respect of the amounts paid to Aspen Homes. This rebate equalled \$5,253.48.

[18] The Minister disallowed the portion of the rebate claim that related to the work performed by the Appellant. As noted previously, the disallowed portion equalled \$783.50.

[19] Counsel for the Respondent argued the claim for the rebate in the amount of \$5,253.48 and the claim for the rebate in the amount of \$783.50 were separate rebate claims.

[20] It was the position of the Appellant that it was a single rebate claim.

[21] I agree with the submission of counsel for the Respondent.

[22] The rebate in the amount of \$5,253.48 arose under Section 254 of Division VI of Part IX of the *Excise Tax Act*.

[23] This rebate applies when an individual purchases a new home from a third party builder.

[24] The rebate in the amount of \$783.50 did not arise under Section 254, since it did not relate to amounts paid to the third party builder as consideration

for the purchase of the new home. The amounts in question were paid by the Appellant to third party suppliers of building materials.

[25] The amounts paid by the Appellant to the third party suppliers of the building materials would only qualify for a rebate if the conditions of Section 256 of Division VI of Part IX of the *Excise Tax Act* were satisfied.

[26] The rebate under Section 256 arises in certain situations where an individual constructs his or her own home. It is separate from the rebate paid under Section 254.

[27] It is not clear from the evidence whether the Appellant satisfied the conditions of Section 256; however this is a moot point.

[28] As counsel for the Respondent noted, Subsection 262(2) of the *Excise Tax Act* provides that:

Only one application may be made under... Division [VI] for a rebate with respect to any matter.

[29] Unfortunately for the Appellant, once he claimed the rebate in respect of the amounts paid to Aspen Homes, he was prevented by Subsection 262(2) from claiming a second rebate in respect of the amounts paid personally by him to third party suppliers.

[30] As a result, the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 7th day of January, 2010.

“S. D’Arcy”

D’Arcy J.

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STYLE OF CAUSE: GEORGE HORVATH and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: October 14, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Steven K. D'Arcy

DATE OF ORAL REASON: October 21, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nalini Persaud

COUNSEL OF RECORD:

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Name: N/A

Firm:

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