

Docket: 2012-2853(GST)I

BETWEEN:

SANDRA WONG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on December 5, 2012,  
at Vancouver, British Columbia

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Amandeep K. Sandhu

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**JUDGMENT**

The appeal from the reassessment made under the *Excise Tax Act*, notice of which bears number GB120531013141 and dated February 3, 2012, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of January 2013.

“B.Paris”

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Paris J.

Citation: 2013TCC23  
Date: 20130118  
Docket: 2012-2853(GST)I

BETWEEN:

SANDRA WONG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Paris J.

[1] Ms. Wong is appealing the disallowance of her claim for a GST/HST new housing rebate of \$22,982.71 relating to the purchase by her and her spouse of unit 501-2550 Spruce Street in Vancouver (the “Property”).

[2] The Minister of National Revenue (the “Minister”) disallowed the rebate on the basis that Ms. and Mr. Wong did not acquire the Property for use as their primary place of residence or as the primary place of residence of a relation.

[3] Paragraph 254(2)(b) of the *Excise Tax Act*, R.S.C., 1985, c. E-15 sets out that the new housing rebate is available where, at the time the purchaser becomes liable or assumes liability under an agreement for purchase and sale of the unit, the purchaser intends to use the unit as a primary residence for him or herself or for a relative.

[4] The relevant parts of paragraph 254(2)(b) read

**(2) New housing rebate – 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,

...

the Minister shall, ... pay a rebate ... .

[5] In this case, it is not disputed that Ms. and Mr. Wong entered into the contract to purchase the Property on December 9, 2009, prior to the construction of the building in which the Property is located. Therefore, it is their intention at that time regarding the use of the Property which is determinative.

[6] Ms. and Mr. Wong both testified that, when they signed the contract, their intention in acquiring the Property was for their son, who was studying at university in the United States, to reside in it when he returned to Vancouver on school breaks. Mr. Wong also testified that they intended to allow their son to live in the Property after he finished his studies, if he returned to Vancouver to work at that time.

[7] On December 9, 2009, Ms. and Mr. Wong were living in a house at 3268 West 15<sup>th</sup> Avenue in Vancouver, which they had purchased in 1997. On December 9, 2009, they intended to continue to occupy the house as their primary place of residence after they obtained possession of the Property.

[8] In August 2011, the Wongs took possession of the Property. Their son moved into the Property and lived there until he returned to the U.S. in late August or early September 2011.

[9] Ms. Wong applied for the new housing rebate sometime in August 2011. In September 2011 she and her spouse went on trip. When they returned, she had two letters from the CRA waiting for her. The first asked her to send in a copy of her driver's licence as proof that she was living in the Property. The second stated that her new housing rebate application had been refused because she did not respond to the first letter in time. Ms. Wong then changed her address on her driver's licence and sent a copy to the CRA. It seems that the CRA officer handling the application ultimately refused it on the basis that neither the Wongs nor their son were using the Property as their primary place of residence. Ms. and Mr. Wong testified that, at that

point, they filed an objection and, in order to get the rebate, they decided to use the property as their primary residence.

[10] As I have noted already, however, it is their intention at the time they entered into the contract to purchase the Property that is determinative. Unfortunately, this does not seem to have been communicated to them by any of the CRA officers who dealt with the matter. As a result, Ms. Wong has been under the mistaken impression that if she can show that she and her spouse, in fact, moved into the Property and were using it as their primary place of residence, she would be entitled to the new housing rebate. This was the position she took at the hearing.

[11] At the hearing before me, Ms. Wong presented a number of household bills to show that she and her spouse had moved into the Property and were continuing to reside there and, at one point, she went so far as to say that she and her spouse moved into the Property in August 2011. I find it extremely unlikely that they did, because it was admitted that when they took possession in August 2011, their son moved in and stayed until the end of his summer break from university. It is implausible that Ms. and Mr. Wong and their son would all stay in the Property and leave the house on West 15<sup>th</sup> Avenue unoccupied. Furthermore, the floor area of the Property was just 631 square feet. The house had a floor area of 2200 square feet and contained an office that Mr. Wong used in the evening.

[12] Mr. Wong testified that they moved into the Property in February 2012. This is consistent with Ms. Wong's evidence that they moved in after the rebate claim had been denied. I accept that they did, in fact, begin using the Property a great deal of the time from February 2012 on, despite the fact that the Property was much smaller than their house. However, the actual use of the Property by the Wongs is not relevant, in light of their own testimony that they did not intend to use the Property as their primary place of residence when they entered into the contract to purchase it.

[13] I also find that Ms. and Mr. Wong did not purchase the Property with the intention that their son would occupy it as his primary place of residence. In December 2009, the Wongs expected that their son would continue with his post-graduate studies in the United States until 2013 and that he would only return to Vancouver during school breaks before then. There was also some suggestion that his return in the summer was dependent on his obtaining employment in Vancouver. His plans after graduation also appeared to depend on where he was able to find work. Mr. Wong stated that, if his son returned to Vancouver after graduation, he would be allowed to live in the Property.

[14] Given that the Wongs' son was expected to spend the majority of his time away from Vancouver in 2011, 2012 and at least the early part of 2013, and that his subsequent plans were uncertain, I find that, in December 2009, the Wongs did not expect or intend that the Property would be his primary residence.

[15] For these reasons, I find that Ms. Wong is not entitled to the GST/HST rebate, and her appeal is dismissed.

Signed at Ottawa, Canada, this 18th day of January 2013.

“B.Paris”

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Paris J.

CITATION: 2013TCC23

COURT FILE NO.: 2012-2853(GST)I

STYLE OF CAUSE: SANDRA WONG AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: December 5, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris

DATE OF JUDGMENT: January 18, 2013

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Amandeep K. Sandhu

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney  
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