

Docket: 2018-4318(GST)APP

BETWEEN:

MARINA POUR AFKARI,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on March 20, 2019 at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Applicant: Joseph G. LoPresti

Counsel for the Respondent: Eric Myles

ORDER

The application under section 304 of the *Excise Tax Act* for an extension of time to object is dismissed, without cost.

Signed at Ottawa, Canada, this 21st day of August 2019.

“Susan Wong”

Wong J.

Citation: 2019 TCC 173
Date: 20190821
Docket: 2018-4318(GST)APP

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REASONS FOR ORDER

Wong J.

Introduction

[1] The Applicant Ms. Pour Afkari seeks an extension of time to object to the Minister of National Revenue's July 25, 2016 assessment denying her application for the GST/HST New Housing Rebate.

[2] The rebate application arises from the Applicant's purchase of a residential condominium being Suite 1908, 32 Davenport Road in Toronto (the "Rebate Property").

[3] The Applicant testified on her own behalf. Sarah Faria (Canada Revenue Agency litigation officer) testified on behalf of the Respondent. In advance of the hearing, the Respondent filed affidavits of Ms. Faria and Mr. Trevor Neill (CRA Manager for the Print to Mail Division) under section 335 of the *Excise Tax Act*.

Issues

[4] In applying for the time extension, the Applicant says that the Minister incorrectly sent the notice of assessment to the Rebate Property rather than to the Applicant's home address, being 2604 – 1 Rean Drive in Toronto (the "Residential Address"). She says that as a result, she did not receive the notice until the end of

July 2018 and the computation of time for making her time extension application should start from July 31, 2018.

Factual background

A. Rebate application

[5] The Applicant is a radiologist and currently pursuing post-graduate studies at the University of Toronto.

[6] She testified that she purchased the Rebate Property on a pre-sale basis in March 2011. She stated that she bought it for her daughters, who were in high school at the time and planned to attend the University of Toronto. She testified that to assist with her purchase, she engaged the services of a realtor recommended to her by friends.

[7] She stated that at the time she bought the Rebate Property, she was living at the Residential Address, where she had lived for about seven years.

[8] She testified that construction of the Rebate Property was expected to be completed by September 2015.

[9] She stated that she spent March and April 2015 in Iran to celebrate the Iranian New Year. She testified that her realtor was also celebrating the New Year in Iran. She stated that when it became clear the construction of the Rebate Property would be finished while she was away, she gave her realtor's husband, Behrouz Javadi, power of attorney to complete the purchase on her behalf.

[10] In section A of the GST/HST New Housing Rebate Application form (Exhibit A of the Faria affidavit), the address of the Rebate Property appears in the box designated for the address of the purchased property. Two lines down is the area for the claimant's mailing address and the box which reads "As above" is checked while the adjacent area for entering a different mailing address is blank.

[11] In section B of the application form, the box marked "Yes" is checked in response to the question: "Did you purchase the house for use as your, or your relation's, primary place of residence?"

[12] The rebate application form is signed by Mr. Javadi on behalf of the Applicant and dated June 12 or 17, 2015 (the handwriting is unclear).

[13] A statutory declaration and an assignment of the rebate to the builder accompany the rebate application form (Exhibit A of the Faria affidavit). They are also signed by Mr. Javadi on behalf of the Applicant and dated June 12 or 17, 2015 (the handwriting is again unclear). At paragraph 2 of the statutory declaration, the Applicant solemnly declares that:

...I was acquiring the Property as my primary place of residence or as the primary place of residence of a relation to me/us, within the meaning of Section 254 of the Excise Tax Act (Canada) or as amended or replaced and that I or a relation was the first occupant of the above-noted unit, and continue to occupy the property as my/our primary place of residence as of the date hereof.

B. Communications between the Minister and the Applicant

(1) From the Minister's perspective

[14] The rebate application form (Exhibit A of the Faria affidavit) is date-stamped as received by the Minister on August 5, 2015.

[15] Exhibit B of the Faria affidavit is two copies of a June 2, 2016 letter from the Minister to the Applicant. The letters are identical except that one is addressed to the Rebate Property and the other contains the Residential Address. The letter is from an excise tax examiner named Teresa Gallant and refers to unsuccessful attempts to contact the Applicant by telephone. The letter refers to the rebate application and advises that additional information is needed. The letter also gives a deadline of July 2, 2016, for a response.

[16] Exhibit C of the Faria affidavit is a copy of an electronic note dated July 14, 2016. The note is made by a user whose identification number was confirmed by Ms. Faria as belonging to Ms. Gallant. The note says that an initial letter was sent to the Rebate Property and the "RAPID" address on June 2, 2016. Ms. Faria testified that CRA's RAPID system would contain the Applicant's address for T1 income purposes, i.e. the Residential Address.

[17] Exhibit D of the Faria affidavit is a reproduction of the July 25, 2016 notice of assessment disallowing the rebate. The notice is addressed to the Rebate Property.

(2) From the Applicant's perspective

[18] The Applicant testified that her older daughter was not ready to live alone so the Applicant decided to rent the Rebate Property to a third party. She stated that the tenant ultimately stayed for about three years and left in June 2018. The Applicant testified that upon leaving, the tenant gave a box of letters to the Applicant's realtor to give to the Applicant.

[19] The Applicant stated that the Minister's June 2, 2016 letter addressed to the Rebate Property and the July 25, 2016 notice of assessment were in the tenant's box. She also testified that she never received the duplicate June 2, 2016 letter sent to the Residential Address.

[20] This Court was referred to a handwritten letter from the tenant at Tab A of the notice of application. In the letter, the tenant states that she gave a box of Canada Post envelopes, including a CRA envelope, to the Applicant on July 31, 2018. The Applicant testified that she asked her realtor to request this letter from the tenant.

Test

[21] In *Mpamugo v. Her Majesty the Queen*, 2016 TCC 215 at para. 6, affirmed by 2017 FCA 136, this Court set out a four-step process for situations involving an allegation that the income tax notice of assessment was never mailed. For the purposes of a GST rebate application, I would summarize the four-step process as follows:

- (1) the applicant must assert that the notice of assessment was not mailed or sent, whether at all or to the correct address;
- (2) the Minister must introduce sufficient evidence to establish, on a balance of probabilities, that the notice of assessment was mailed or sent;

- (3) if the Minister establishes that the notice of assessment was sent, then there is a rebuttable presumption that the day of sending is the date of the notice [per subsection 335(10)]; and
- (4) where the notice is sent by mail and the mailing date is established, the assessment is deemed to have been made on that date [per subsection 335(11)]. The notice of assessment is also deemed to have been received on that date [per subsection 334(1)].

[22] The Federal Court of Appeal clarified that credibility can be assessed at the first or second step of the process: see *Mpamugo* at paragraph 12.

Analysis

[23] In the present case, the Applicant acknowledges receiving the notice of assessment, but says that the Rebate Property was the wrong address to which to send the notice. Therefore, step two of the process is satisfied and I will focus on step one.

Step one

[24] The notice of assessment was sent to the Rebate Property, which was the address checked off as the mailing address on the rebate application form. That should be sufficient to establish that the notice was sent to the correct address.

[25] There is nothing in the evidence to suggest that Mr. Javadi acted beyond the scope of the power of attorney or that the wrong mailing address was identified on the rebate application form. Mr. Javadi used the power of attorney granted to him by the Applicant to complete the rebate application form along with the other documents relating to closing the purchase of the Rebate Property.

[26] In cross-examination, the Applicant said that at the time Mr. Javadi completed the rebate documents, she and her husband expected their daughters to live at the Rebate Property. She stated that Mr. Javadi did not check with her as to the mailing address and probably assumed that the Rebate Property would be the mailing address for the purposes of the rebate application. She also testified that Mr. Javadi may have given her a copy of the rebate application when she came

back from Iran in 2015, but that she did not look at it until June 2018. She stated that she simply trusted him and that she did not understand the process.

[27] The Applicant's testimony lacked precision in all respects other than her certainty that the notice of assessment was not received at the Residential Address. For example, in cross-examination, she testified that she was out of the country in March and April 2015 but that perhaps it was longer. On re-direct, she stated that she was away until June or July 2015. Later during the same re-direct, she testified that she remembered returning from Iran in August 2015 in time for the start of the school year in September.

[28] As another example, the Applicant testified at separate points during her direct evidence that in June 2018: (1) her tenant left, (2) she received the box of correspondence from the tenant, and (3) she first saw the notice of assessment. She testified that she and her family moved into the Rebate Property one month after the tenant moved out. She also testified that she received a July 16, 2018 collection letter from CRA (Exhibit A-1, Tab 3) at around the time of their move, and that it was either in the box of letters or she received it personally. On the other hand, the letter from the tenant says that the box of correspondence was given to the Applicant on July 31, 2018.

[29] The lack of precision does not suggest dishonesty in this instance but rather, a general lack of attentiveness to her own affairs such that deadlines will inevitably be missed.

[30] I conclude that the notice of assessment was sent to the correct address, being the Rebate Property.

Step two

[31] As indicated earlier, the Applicant acknowledges receiving the notice of assessment at the Rebate Property address. Therefore, step two of the process is satisfied.

Step three

[32] No evidence was led to challenge the presumption that the day of sending is the date of the notice (i.e. July 25, 2016). Therefore, the notice of assessment was sent on July 25, 2016.

Step four

[33] In the present case, the notice of assessment was mailed and the mailing date has been established as July 25, 2016. Pursuant to subsection 335(11), the notice of assessment is deemed to have been made on that date. Pursuant to subsection 334(1), the notice is deemed to have been received by the Applicant on the same date.

Conclusion

[34] Based on the mailing date of July 25, 2016, the time to object to the assessment expired on October 24, 2016, pursuant to subsection 301(1.1).

[35] Pursuant to subsection 304(5), the additional one year to apply for an extension of time to object expired on October 24, 2017. As no application for a time extension was made to the Minister by this date, this Court cannot grant the present application.

[36] The application is dismissed, without costs.

Signed at Ottawa, Canada, this 21st day of August 2019.

“Susan Wong”

Wong J.

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STYLE OF CAUSE: MARINA POUR AFKARI and THE QUEEN
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REASONS FOR ORDER BY: The Honourable Justice Susan Wong
DATE OF ORDER: August 21, 2019

APPEARANCES:

Counsel for the Applicant: Joseph G. LoPresti
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