

Docket: 2017-4797(GST)I

BETWEEN:

SAIF-AL-DIN YOUNIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 26, 2019, at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant: Akram Khalilieh

Counsel for the Respondent: Rini Rashid

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**JUDGMENT**

WHEREAS on this date the Court has issued its reasons for judgment in this appeal.

NOW THEREFORE the appeal from the reassessment made under the *Excise Tax Act*, RSC 1985, c. E-15, as amended, in respect of the reporting period of September 1, 2014 to September 30, 2014 (the “Period”) is dismissed, without costs.

Signed at Ottawa, Canada, this 23<sup>rd</sup> day of September 2019.

“R.S. Boccock”

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Boccock J.

Citation: 2019TCC198  
Date: 20190923  
Docket: 2017-4797(GST)I

BETWEEN:

SAIF-AL-DIN YOUNIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Bocock J.

[1] The *Excise Tax Act*, R.S.C., 1985 c. E-15, as amended (the “ETA”) provides for a regime of rebates for taxpayers who acquire and occupy new residential real estate. There are certain rules for new home rebates and others for rental properties. Generally, a rebate is afforded a new owner who is the first to occupy the unit. With respect to suppliers who build or are deemed to build and who do not sell a unit, but lease instead, certain provisions deem the builder the first to occupy. When this occurs, the builder is said to “self-supply” and must remit the tax.

[2] The Appellant, Mr. Younis, was assessed by the Minister as a “builder” deemed to self-supply upon entering into a residential lease agreement through an agent. Mr. Younis rejects this characterization on the basis that he had previously assigned his interest before the assignee entered into the lease. Therefore, the sole issue is whether Mr. Younis was, in the circumstances, a builder who made a self-supply under the provisions of the ETA.

[3] The relevant excerpted provisions of the ETA state:

#### **Section 123**

**Builder of a multiple unit residential complex means a person who,**

(b) acquires an interest in the complex at a time when

(ii) the complex is under construction or substantial renovation

But does not include

(f) an individual described in paragraph (a), (b) or (d) who

(iii) engages another person to carry on the construction or substantial renovation for the individual

Otherwise than in the course of a business or an adventure or concern in the nature of trade,

**Section 191(10)**

**Transfer of possession attributed to builder**

(10) for the purposes of this section, if

(a) a builder of a residential complex or an addition to a multiple unit residential complex makes a supply of a residential unit in the complex by way of lease, licence or similar arrangement and the supply is an exempt supply included in section 6.1 or 6.11 of Part I of Schedule V,

[...]. the builder shall be deemed to have at that time given possession of the unit to an individual under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence.

[4] The appellant, Mr. Younis, did not testify. This was unfortunate because he may have clarified issues upon which the Court was required to make factual determinations by assigning weight to contradictory documents or was required to adopt the Minister's unchallenged assumptions. Normal clarification through the benefit of knowledgeable, first-hand testimony was not possible. Instead, Mr. Khalilieh, Mr. Younis' accountant, testified and represented Mr. Younis. While certain documents were presented to the Court, the transactions reflected were not supported through testimony by the parties who executed them.

[5] The chronological sequence, parties, consequence and critical terms of the tendered documents are summarized below:

<u>No.</u>	<u>Date</u>	<u>Document</u>	<u>Parties</u>	<u>Critical Term(s)</u>	<u>Consequence</u>
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1	September 23, 2014	Statement of Adjustments on Acquisition	Amacon Developments (City Centre) Corp., Vendor  Mr. Younis, Purchaser	Unit transfer Date: September 23, 2014	Mr. Younis owns property as of September 23, 2014 HST Rebate Assigned \$47,703
2	January 1, 2015	Residential/Short Term Condo Lease	Shana Dewar, Tenant  Accurate Plus Limited, Landlord	Terms of Lease 6 months: Jan. 16, 2015 to July 15, 2015	Accurate Plus acting as lessor
3	January 27, 2015	Assignment Agreement	Amacon, Vendor  Mr. Younis, Assignor  Alan Yousif, Assignee	Title Transfer Date: Feb. 17, 2015	Agreement bears dates Jan. 27, 2015 and Jan. 28, 2015
4	January 28, 2015	Agreement to Lease	Accurate Plus Limited, Tenant Alaa [sic] Yousif, Landlord	Term of lease one year: Feb. 1, 2015, Jan. 31, 2015	Mr. Yousif purports to lease: date Jan. 28, 2015
5	January 29, 2016	Notice of Reassessment	CRA	Credits \$47,703 HST rebate, but assesses \$60,637.19	Difference based upon incremental market value

[6] Mr. Younis' agent made submissions to the Court which may be generously described as follows:

- a) In the reassessment, the Minister approved the rebate as described in document #5 above, but inappropriately assessed HST on the deemed self-supply. As a preliminary matter, the Court explained that the assessment was for the net amount of tax. This is derived by deducting from the approved rebate the HST on the taxable supply arising from the deemed self-occupancy within subsection 191(10) of the ETA. It was apparent the agent's real contention was with the net HST owing by virtue of this latter sequence. As such, the applicability of subsection 191(10) is the only issue.
- b) When Mr. Yousif, the assignee, executed the lease above, he did so as owner by virtue of the rights arising under the assignment agreement, as described in document #3 above. Therefore, on January 28, 2015, Mr. Younis was no longer an owner or person having an interest in the unit. As such, he no longer fulfilled the characteristics of a deemed builder in section 191(10) and was outside the ambit of its deemed supply provisions.

[7] The Court makes some preliminary observations. Where the documents conflict, the Court will adopt the logical, consistent and customary view of same or that interpretation supported by the Minister's assumptions. It does so because it did not receive any direct evidence to clarify the discrepancies. As seen below, most of the Minister's assumptions were not challenged or were supported by a reasonable and balanced interpretation of the appellant's own evidence. Certain key assumptions are therefore accepted as fact: *Morrison et al v. HMQ*, 2018 TCC 220 at paragraph 120, referencing *House v. HMQ*, 2011 FCA 234 at paragraph 30; itself interpreting *Hickman Motors Ltd. V. HMQ*, [1997] 2 S.C.R. 336 at paragraphs 92 to 95.

[8] To that point, the relevant and unassailed assumptions of the Minister, not otherwise challenged by other evidence, are as follows:

*(adapted to utilize defined terms in these reasons for judgment)*

- a) the Property was a unit in a multi-unit residential condominium complex;
- b) at the time Mr. Younis entered into an agreement of purchase and sale, the Property [to be acquired] was still under construction;
- c) the purchase price of the Property was \$366,946.16, exclusive of HST;

- d) the seller collected HST from Mr. Younis in the amount of \$47,703 in respect of the sale of the Property;
- e) Mr. Younis acquired the Property with the intention of leasing the Property with a view to profit;
- f) Mr. Younis took possession of the Property on September 23, 2014;
- g) the Property was substantially completed on February 1, 2015;
- h) the fair market value of the Property on February 1, 2015 was no less than \$424,000;
- i) after September 23, 2014, Ms. Younis owned the Property;
- j) by lease agreement dated January 28, 2015, Mr. Yousif, on behalf of Mr. Younis, leased the Property to Accurate Plus Limited for the purpose of subleasing the Property to individuals as a place of residence or lodging;
- k) ..., Accurate Plus Limited was a corporation involved in leasing residential purposes;
- l) Mr. Younis gave Accurate Plus Limited possession of the Property for the purpose of leasing the Property on or about February 1, 2015; and
- m) Accurate Plus Limited subsequently leased the Property to individuals as a place of residence, beginning on or about February 1, 2015, for lease terms from two weeks to six months.

[9] Mr. Younis' submission that he did not own or have an interest in the Property after January 27, 2015 and the critical January 28, 2015 date fails.

[10] The documents provided by the appellant are generally contradictory. From the dates noted above, the document, if taken at face value, leads to confusion concerning the timing of several critical events: the assignment from Mr. Younis to Mr. Yousif, the transfer of title and the two distinct head and sub-lease document. Whatever they constitute, cumulatively the documents do not marshal a *prima facie* case against the Minister's assumptions.

[11] What the documents telegraph is a significant time sequence error going to the chain of title of the Property. The head-tenant, Accurate Plus, leases the Property on January 1, 2015 before it takes title on February 17, 2015. That lease commences on January 16, 2015, again one month before title transfer. The Agreement to Lease is dated January 28, 2015 with possession granted on February 1, 2015. The Assignment Agreement is executed between Mr. Younis and Mr. Yousif, with a title transfer date of February 17, 2015. It bears two dates: January 27, 2015 on the first page and January 28, 2015 on the last. There is no precise date for the referenced, but not produced, tri-party agreement of purchase and sale for the Property beyond “the \_\_\_\_ day of January 2015” reflected in the first recital of the Assignment Agreement. It merely describes Amacon, as vendor, and Mr. Younis, as purchaser.

[12] All of the foregoing leads to uncertainty and confusion. Many possibilities exist within these facts. One is that Mr. Younis assigned his rights completely to Mr. Yousif on January 28, 2015, effective January 27, 2015. This requires the Court to believe, without any testimony, the effectiveness of this document which contradicts other facts. For instance, the sub-lease must be reconciled. An alternate conclusion is that the Assignment Agreement included within it, when executed on January 28, 2015, the rights and obligations arising under the sub-lease, a sub-lease executed by Mr. Yousif not as owner, but as agent for the owner, Mr. Younis. This alone would create the deemed self-supply.

[13] Given the absence of testimony by Mr. Younis, Mr. Yousif or any representative for the ultimate owner, Accurate Plus Limited at the hearing, the Court opts for one of many possibilities: Mr. Younis supplied the property for residential leasing purposes on February 1, 2015 and was required to remit the HST as a builder deemed to make a self-supply. This is consistent with the Minister’s assumptions which remain unassailed.

[14] In short, the person who had the subsisting right of ownership granted a lease of his interest in the unit possibly on January 1, 2015 through an agent and again on February 1, 2015 in order to give occupancy under the Lease Agreement on February 1, 2015. Factually, that person was the Appellant, Mr. Younis. That act constitutes a deemed supply by a builder. It carried an obligation to remit HST equal to the fair market value of the property on that date under subsection 191(10) of the ETA.

[15] Implicitly raised was the collateral issue of the fair market value (FMV) of the Property at February 1, 2015. Mr. Younis’ agent suggested there was no

increase in FMV from \$366,946 when acquired to \$424,000 when leased. Again, no evidence, reliable or otherwise, was adduced to contradict the Minister's assumption of increased FMV. Mr. Younis was assessed as a builder having made a deemed supply on February 1, 2015. He was given credit for the value of the HST paid by him upon acquisition of the Property as a rebate utilizing the purchase price of \$366,946.16 as of September 23, 2014. The FMV of the Property utilized on February 1, 2015 was \$424,000.00. The FMV was assumed. No evidence was tendered to suggest another value. While perhaps numerically significant, the incremental increase is not patently unreasonable or in error; there is a generally acknowledged measure of increasing condominium values in the Greater Toronto Area real estate market from April 2011 to February 1, 2015. Conclusively, the Minister's assumption of FMV is to be adopted as one of fact in the absence of any evidence to the contrary.

[16] On balance, before purportedly selling the property on February 17, 2015, Mr. Younis delivered possession of the property to Accurate Plus Limited to lease the Property as a primary place of residence, which the evidence shows it did. For the above reasons, the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 23<sup>rd</sup> day of September 2019.

“R.S. Bocock”

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Bocock J.

CITATION: 2019TCC198

COURT FILE NO.: 2017-4797(GST)I

STYLE OF CAUSE: SAIF-AL-DIN YOUNIS AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 26, 2019

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.  
Bocock

DATE OF JUDGMENT: September 23, 2019

APPEARANCES:

Agent for the Appellant: Akram Khalilieh

Counsel for the Respondent: Rini Rashid

COUNSEL OF RECORD:

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