

Docket: 2018-2313(GST)I

BETWEEN:

BAHA PROPERTY INVESTMENT GROUP INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 23, 2019, at Hamilton, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant: Charnkamal Hansra
Counsel for the Respondent: Sophie DeViller

JUDGMENT

In accordance with the accompanying Reasons for Judgment, this appeal of an assessment raised August 2, 2017 pertaining to the Appellant's GST/HST New Residential Rental Property Rebate application under Part IX of the *Excise Tax Act* (Canada) (ETA) is denied, without costs.

Signed at Halifax, Nova Scotia, this 17th day of December, 2019.

“B.Russell”

Russell J.

Citation: 2019TCC279
Date: 20191217
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REASONS FOR JUDGMENT

Russell J.

[1] This is an informal procedure appeal brought by the corporate Appellant, BAHA Property Investment Group Inc. (BAHA), respecting an assessment under Part IX of the *Excise Tax Act* (Canada) (ETA) raised August 2, 2017 by the Minister of National Revenue. That assessment denied BAHA's GST/HST New Residential Rental Property Rebate application, in the amount of \$27,291.69, submitted June 12, 2017. The assessment was objected to and then confirmed, leading to this appeal.

[2] The Respondent's Reply indicates that the reason for denial of BAHA'S rebate application was that BAHA was not a "recipient" as defined at section 123 of the ETA. Clause (a) of that definition (the only clause that potentially could apply) provides:

recipient of a supply or property or a service means

(a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration.

[3] The necessity of being a "recipient" is made clear by subsection 256.2(3) of the ETA, under the statutory heading, "Rebate in respect of land and building for residential rental accommodation". Subparagraph 256.2(3)(a)(i) provides, with underlining added for emphasis:

(3) If

(a) a particular person, other than a cooperative housing corporation,

(i) is the recipient of a taxable supply by way of sale...from another person of a residential complex or of an interest in a residential complex and is not a builder of the complex,

[4] At the hearing Mr. Charnkamal Hansra testified on behalf of BAHA, and introduced documentary evidence. The documents included a one page purchase/sale agreement dated October 28, 2010 (the 2010 p/s agreement), although excluding Schedules “A”, “B”, “C”, “X” and “Z” thereof, which schedules were said in the one page portion, “to form an integral part of the agreement”. This 2010 p/s agreement provided for the purchase/sale of a condominium (unit 5, level 20) of a Toronto condominium building intended to be built (Ex. A-1, p. 5). The 2010 p/s agreement named as purchasers two individuals - Charnkamal Hansra and Balvir Bassi - who as purchasers had each signed the 2010 p/s agreement, which specified a purchase price of \$342,900. The vendor was Ferncastle (Esplanade) Inc., being the developer/builder of the condominium building to be built.

[5] There was no mention in the 2010 p/s agreement that those two named purchasers were signing on behalf of anyone other than themselves - including any corporation to be incorporated. BAHA, in fact was not incorporated until almost four years later - on August 6, 2014. At the hearing, Mr. Hansra testified that his and Mr. Bassi’s shared intention as purchasers per the 2010 p/s agreement was that the yet to be built condominium unit being purchased would be owned by a corporation. In the meantime they had signed as purchasers as, he testified, the vendor would not permit a corporation to be named as a purchaser. However, apparently the vendor would allow the name of a corporation as purchaser to be added immediately prior to closing.

[6] A document entitled, “Final closing statement of adjustments” dated May 17, 2017 (Ex. A-1, p. 6) pertaining to the 2010 p/s agreement shows that the purchase/sale transaction’s closing date was to be May 25, 2017. This document is captioned, “Ferncastle (Esplande) Inc. sale to Amirta Hansra, Sundeep Bassi and Babaljit Hansra”. It is understood that the said Amirta Hansra and Sundeep Bassi are the respective spouses of Charnkamal Hansra and Balvir Bassi – being the two purchasers named in the 2010 p/s agreement. There is no indication as to how any of these three first named individuals came to be identified in this document as purchasers.

[7] A lease of the subject property to a tenant had been entered into on March 21, 2016 with BAHA as landlord (Ex. A-1, p. 12). The signature of the person purportedly signing for BAHA as landlord is illegible. And, BAHA was named as “registered owner” and transferee of title of the subject property per a document entitled “Transfer”, issued May 25, 2017 (Ex. A-1, p. 10). In this document there are no signatures, but BAHA as “transferee” is shown as represented by a named solicitor. The applicable “charge/mortgage” statement of the subject property dated May 25, 2017 showed BAHA as the “chargor”. (Ex. A-1, p.15). A “Direction re title” (Ex. A-1, p. 26) was executed May 24, 2017 instructing the vendor that the deed or transfer regarding sale of the subject property, “to Amirta Hansra, Sundeep Bassi and Babaljit Hansra” be engrossed in BAHA’s name. This document was signed by these three aforementioned persons - Amrita Hansra, Sundeep Basi and Babaljit Hansra. Again, there is no reference or indication as to how these three individuals could here be impliedly identified as purchasers.

[8] Also on March 25, 2017 these three persons executed a document entitled, “Notice of assignment and direction” (Ex. A-1, p. 27). It states that the said three persons, “have assigned the above-noted Agreement of Purchase and Sale to [BAHA]”. (In this document the “above-noted Agreement of Purchase and Sale” reads, “Fercastle (Esplanade) Inc. sale to Amirta Hansra, Sundeep Bassi and Babaljit Hansra” re the subject property being the property specified in the 2010 p/s agreement.) Also in this document is what appears to be a further signature of Sundeep Bassi, purporting to be on behalf of BAHA, whereby BAHA, “covenants and agrees to be bound by the terms of the above-noted Agreement of Purchase and Sale, as Purchaser” [underlining added for emphasis]. The document provides as well that the same three named individuals, “will remains [*sic*] bound by the terms of the above-noted Agreement of Purchase and Sale, as Purchaser [*sic*]”.

[9] This Notice of assignment and direction is the document that BAHA primarily relies upon to support that it is entitled to the denied rebate. BAHA points to the “as Purchaser” reference highlighted above, and argues that it was a purchaser under the 2010 p/s agreement by the time that transaction closed on Mary 25, 2017. BAHA takes support also from the facts that it was recorded as the registered owner of the subject property purchased/sold May 25, 2017 and that as “chargor” referenced above, the mortgage payable in respect of the property was its legal responsibility. Although not indicated in any of the documentation entered in evidence my understanding from testimony is that BAHA paid the amount due on closing to the vendor’s lawyers. That of course does not establish that BAHA was legally bound to pay the contracted amount per the 2010 p/s agreement, which is what the above-cited definition of “recipient” would require.

[10] At page 2 of the 11 page CIBC “Mortgage approval” statement (Ex.A-11, p.23), the two identified purchasers (Charnkamal Hansra and Belvir Bassi) who are the signatories of the 2010 p/s agreement do turn up at least one more time – as two of three guarantors of the CIBC mortgage granted to BAHA.

[11] As stated, the Respondent’s position was that BAHA was not entitled to the rebate as it did not fit the ETA definition of “recipient” insofar as there was no basis for considering that BAHA was liable for the consideration specified in the 2010 p/s agreement for supply of the subject unit 5 level 20 condominium property.

[12] I am obliged to concur with the Respondent. From the evidence there is no documentation showing that the two individuals - Charnkamal Hansra and Balvir Bassi – had assigned or otherwise transferred any of their rights and duties, as the named purchasers under the 2010 p/s agreement, to anyone. Instead, what we have are strangers to the 2010 p/s agreement - Amirta Hansra, Sundeep Bassi and Babaljit Hansra – in 2017 purporting to assign purchaser rights and duties to BAHA under the 2010 p/s agreement by way of the May 24, 2017 Notice of assignment and direction. But, there is no assignment document or any other document showing these three have any standing or authority to assign to BAHA the rights and duties of a purchaser under the 2010 p/s agreement. The fact that some or all of these three persons may have been directors of the corporate entity BAHA and/or spouses of the actual two named purchasers in the 2010 p/s agreement does not change any of this. Additionally, no corporate documentation of BAHA indicating any directors’ or shareholders’ resolutions bearing on this question was put in evidence or referred to.

[13] As well, the fact that the purchased property was put in BAHA’s name as owner and BAHA ultimately is named as the mortgagor on the mortgage secured by the subject property, that does not retroactively make BAHA legally responsible for payment of the purchase price per the 2010 p/s agreement. For starters and in any event the amount of the consideration specified in the 2010 p/s agreement (\$342,000) is quite different than the principal amount of the CIBC mortgage (\$274,320).

[14] I parenthetically add that likely any assignment of purchaser interests would have required the vendor’s consent – noting again that the Court was not provided a copy of any of the schedules to the 2010 p/s agreement. In any one of those schedules there quite possibly would be a clause specifying no assignment by the purchasers except with consent of the vendor.

[15] Accordingly, I have no recourse but to deny this appeal, albeit without costs.

Signed at Halifax, Nova Scotia, this 17th day of December, 2019.

“B.Russell”

Russell J.

CITATION: 2019 TCC 279

COURT FILE NO.: 2018-2313(GST)I

STYLE OF CAUSE: BAHA PROPERTY INVESTMENT
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PLACE OF HEARING: Hamilton, Ontario

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DATE OF JUDGMENT: December 17, 2019

APPEARANCES:

Agent for the Appellant: Charnkamal Hansra
Counsel for the Respondent: Sophie DeViller

COUNSEL OF RECORD:

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