Docket: 2020-2170(GST)G

BETWEEN:

1351231 ONTARIO INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on September 19, 2023, at Ottawa, Ontario

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant:	Bobby Solhi Frédérique Duchesne
Counsel for the Respondent:	Robert Zsigo

JUDGMENT

In accordance with my reasons for judgment:

The appeal from an assessment made under the *Excise Tax Act* by Notice of Assessment dated January 14, 2019 is dismissed with costs.

Signed at Halifax, Nova Scotia, this 15th day of March 2024.

"S. D'Arcy"

D'Arcy J.

Citation: 2024TCC37
Date: 20240315
Docket: 2020-2170(GST)G

BETWEEN:

1351231 ONTARIO INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

D'Arcy J.

[1] This appeal relates to the sale of a used condominium unit that the Appellant acquired as an investment property. For the first 9 years that it owned the condominium unit, the Appellant rented it to third parties under long-term leases. However, for most of the last 14 months that it owned the condominium unit, the Appellant leased the property under a number of short-term leases through the Airbnb platform. The question before the Court is whether, in such a situation, the sale of the condominium unit was subject to GST/HST.

[2] The parties filed an Agreed Statement of Facts (the "**ASF**") and a joint book of documents. The parties agreed that the documents included in the joint book of documents were authentic true copies of the original documents and agreed on the truth of the contents of the documents. On the basis of this agreement, I entered the book of documents as Exhibit AR-1.[1]

[3] Neither party called a witness during the hearing.

Summary of Facts

[4] The Appellant is registered for GST purposes under Part IX of the *Excise Tax Act*, R.S.C. 1985, C. E-15 (the "**GST Act**"). It is an annual filer, with a reporting

[1] Although I entered the joint book of documents as Exhibit AR-1, it was marked as Exhibit A-1.

period ending on May 31 of each year. It is owned equally by brothers David and Dean Ross, who are the only shareholders and directors of the Appellant.

[5] On February 29, 2008, the Appellant purchased a used condominium unit located at 2204-179 George Street, Ottawa (the "**Condominium**").

[6] Between February 2008 and February 2017, the Appellant leased the Condominium to persons who signed a contiguous series of long-term leases. Each lease exceeded 60 days. The last lease expired in February 2017.

[7] Beginning on February 25, 2017 and ending in April of 2018, the Appellant listed the Condominium on the Airbnb platform and rented out the property through a series of short-term leases. The Appellant realized gross revenue from the short-term leases of $11,200 in 2017 and $43,179 in 2018.

[8] The Appellant's final Airbnb reservation was for a stay of 31 nights ending February 26, 2018.

[9] On December 12, 2017, the Appellant listed the Condominium for sale. On January 24, 2018, the Appellant entered into an agreement of purchase and sale with MLJFS Holdings, an arm's-length purchaser, for the Condominium. The sale closed on April 11, 2018.

[10] Neither the Appellant nor the purchaser remitted GST in respect of the sale of the Condominium.

[11] When assessing the Appellant for its annual GST reporting period between June 1, 2017 and May 31, 2018, the Minister assessed the Appellant $77,079.64 as GST/HST collectable on the sale of the Condominium.

The Relevant Law and the Issues to be Decided by the Court

[12] The question before the Court is whether the sale of the Condominium was subject to GST under Division II of the GST Act. Section 165 levies the Division II tax.

[13] Subsection 165(1) imposes Division II tax at the rate of 5% on the recipient of a *taxable supply* that is *made in Canada*. Subsection 165(2) provides that if the *taxable supply* is made in a *participating province*, the rate of tax is increased by the

tax rate for that province. The tax levied under each of subsections 165(1) and 165(2) is levied on the value of the consideration for the supply.

[14] The Condominium is situated in Ontario; therefore, under subsection 142(1) and section 144.1, the sale of the Condominium was *made in Canada* and was *made in a participating province*, namely Ontario. As a result, if the sale was a taxable supply, then it was subject to tax at the 13% HST rate applicable to supplies made in Ontario.

[15] The sale of the Condominium was clearly a supply, since *supply* is defined in subsection 123(1) as the provision of property or a service in any manner, including sale.

[16] The issue before the Court is whether the sale was a *taxable* supply. *Taxable supply* is defined in subsection 123(1) as a supply made in the course of a *commercial activity*. *Commercial activity* is defined in subsection 123(1). Paragraph (c) of the definition states that a commercial activity means "the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply".

[17] The Appellant's sale of the Condominium was a supply of real property of the Appellant. Therefore, it was made in the course of a commercial activity unless the sale of the Condominium was an exempt supply.

[18] Exempt supplies for purposes of the GST Act are set out in Schedule V of the Act. Part I of Schedule V exempts various supplies of real property. The relevant provision for purposes of this appeal is section 2 of Part I of Schedule V.

[19] The relevant portion of the section reads as follows:

> 2. A particular supply by way of sale of a residential complex or an interest in a residential complex made by a particular person who is not a builder of the complex or, if the complex is a multiple unit residential complex, an addition to the complex, unless
>
> (a) the particular person claimed an input tax credit in respect of the last acquisition by the person of the complex or in respect of an improvement to

> the complex acquired, imported or brought into a participating province by the person after the complex was last acquired by the person; or …[2]

[20] This section will apply to the sale of the Condominium if the following conditions are satisfied:

- the sale of the Condominium was the sale of a *residential complex*;
- the Appellant was not a builder of the Condominium; and
- the Appellant did not claim an input tax credit in respect of the last acquisition by the Appellant of the Condominium or in respect of an improvement to the Condominium.

[21] The term *builder of a residential complex* is defined in subsection 123(1). The parties have agreed that the Appellant is not a builder for purposes of this definition. There are no facts before the Court that would suggest that the Appellant was a builder of the Condominium for purposes of the definition.

[22] Paragraph 21 of the ASF states that the Appellant claimed input tax credits in respect of the tax paid on the purchase of furniture in December of 2016 and on the purchase of the service of painting in January 2017. The ASF states at paragraph 22 that the Appellant did not claim any input tax credits with respect to the purchase of or improvement to the Property.

[23] These paragraphs are inconsistent if, as a question of fact, the painting that occurred in January of 2017 constituted an improvement to the Condominium within the meaning of the definition of *improvement* in subsection 123(1) of the GST Act. I do not have any facts before me that would allow me to determine whether the painting constitutes an improvement. However, during the hearing, the Respondent and the Appellant conceded that whatever painting occurred at the Condominium, it did not constitute an improvement for purposes of the GST Act.

[24] In addition, it is not clear to me how the Appellant could claim input tax credits in respect of property and services that it acquired for consumption or use in

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[2] The section contains a second exclusion in paragraph 2(b) that allows the parties to the sale to jointly elect, in specific circumstances, to not exempt the sale of the residential complex from tax. It is not relevant for purposes of this appeal.

the course of supplying the Condominium under a long-term residential lease. As I will discuss, such a supply constitutes an exempt supply.

[25] In summary, there are no facts before me that would lead me to question the concession made by the parties that the Appellant did not claim any input tax credits with respect to the purchase of or improvements to the Condominium.

[26] The only issue before the Court is the remaining condition that must be satisfied before the sale of the Condominium will be considered an exempt supply: the sale of the Condominium must constitute the sale of a *residential complex*.

[27] *Residential complex* is defined in subsection 123(1) of the GST Act. The relevant portions of that definition for the purpose of this appeal, are as follows:

> "residential complex" means
>
> (a) that part of a building in which one or more residential units are located, together with
>
> > (i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
> >
> > (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,
>
> (b) that part of a building that is
>
> > (i) the whole or part of a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and
> >
> > (ii) a residential unit,
>
> together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals,
>
> (c) the whole of a building described in paragraph (a), or the whole of a premises described in subparagraph (b)(i), that is owned by or has been supplied by way of sale to an individual and that is used primarily as a place of residence of the

> individual, an individual related to the individual or a former spouse or common-law partner of the individual, together with
>
> > (i) in the case of a building described in paragraph (a), any appurtenances to the building, the land subjacent to the building and that part of the land immediately contiguous to the building, that are reasonably necessary for the use and enjoyment of the building, and
> >
> > (ii) in the case of a premises described in subparagraph (b)(i), that part of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for the use and enjoyment of the unit,
>
> …
>
> but does not include a building, or that part of a building, that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises, or the land and appurtenances attributable to the building or part, where the building is not described in paragraph (c) and all or substantially all of the leases, licences or similar arrangements, under which residential units in the building or part are supplied, provide, or are expected to provide, for periods of continuous possession or use of less than sixty days;

[28] Under this definition, the Condominium will be a residential complex if the following conditions are satisfied:

- the Condominium is either a residential unit or a residential condominium unit; and
- the exclusion at the end of the definition does not apply to the Condominium.

[29] The Condominium is a residential unit. Residential unit is defined, in part, in subsection 123(1) to mean a condominium unit.

[30] The Condominium is also a residential condominium unit under the definition in subsection 123(1) provided that it is a residential complex.

[31] The Condominium will constitute a residential complex provided that the general exclusion in the definition of residential complex does not apply to the Condominium. This exclusion will apply to the Condominium if:

- the Condominium is that part of a building that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises;

- the building in which the Condominium is located is not described in paragraph (c) of the definition; and

- all or substantially all of the leases, licences or similar arrangements, under which the Condominium was supplied, provided, or were expected to provide, for periods of continuous possession or use of less than 60 days.

[32] The building in which the Condominium is located is not described in paragraph (c) of the definition. That paragraph only applies to a building or condominium owned by an individual.

[33] The Appellant argues that the exclusion does not apply to the Condominium for two reasons. First, the Condominium is not a hotel, motel or other similar premises. Second, if the Condominium is a hotel, motel or other similar premises, then the all or substantially all test contained in the exclusion does not apply to the supplies of the Condominium.

[34] A provision that is relevant when determining whether the exclusion in the definition of residential complex applies to the Condominium is the change-in-use rule for real property contained in subsection 206(2).

[35] Subsection 206(2) apples when a registrant did not acquire real property for use as capital property in its GST commercial activities and then begins, at a particular time, to use the property as capital property in its commercial activities.[3] The subsection reads as follows:

> (2) **Beginning use in commercial activities** For the purposes of this Part, where a registrant last acquired real property for use as capital property of the registrant but not for use in commercial activities of the registrant and the registrant begins, at a particular time, to use the property as capital property in commercial activities of the registrant, except where the registrant becomes a registrant at the particular time, the registrant shall be deemed
>
> > (a) to have received, at the particular time, a supply of the property by way of sale; and
> >
> > (b) except where the supply is an exempt supply, to have paid, at the particular time, tax in respect of the supply equal to the basic tax content of the property at the particular time.

[3] Except where the registrant became a registrant at the time that it begins to use the property in its commercial activities.

[36] This subsection will apply in respect of the Condominium if the following conditions are satisfied:

- the Appellant last acquired the Condominium for use as capital property in GST non-commercial activities;

- the Appellant began, at a particular time, to use the Condominium as capital property in its commercial activities; and

- the Appellant did not become a registrant at the particular time.

[37] If the subsection applies, then the registrant is deemed, at the time that it began to use the Condominium in commercial activities, to have received a supply of the Condominium by way of sale and, except where the supply is an exempt supply, to have paid GST equal to the basic tax content of the property.

[38] Generally speaking, the basic tax content is the tax paid by the registrant on the acquisition of the property and on any improvements to the property, provided that such tax was not recovered by way of rebate, refund or remission.

[39] The ASF states that the Appellant was a GST registrant at the time that it acquired the property and retained that status throughout the relevant period.

[40] The Appellant acquired the Condominium on February 29, 2008 for use as capital property. *Capital property* is defined in subsection 123(1) as property that is capital property under the *Income Tax Act*. The Condominium would clearly be capital property under that Act.

[41] The evidence before me is that on February 29, 2008, the Appellant acquired the Condominium for use in non-GST commercial activities. In particular, the Appellant acquired the Condominium to make exempt supplies that were long-term residential leases.

[42] Section 6 of Part I of Schedule V of the GST Act exempts the supply of a residential unit, such as the Condominium, by way of lease, licence or similar arrangement for the purpose of its occupancy as a place of residence or lodging by an individual, where the period throughout which continuous occupancy of the complex or unit is given to the same individual under the arrangement is at least one month.

[43] Paragraph 8 of the ASF states that each of the Appellant's leases of the Condominium between February 2008 and February 2017 were to persons who each signed a contiguous series of long-term residential leases, with each lease exceeding 60 days. As a result, each of these supplies was an exempt supply. Therefore, the Appellant did not acquire the Condominium on February 29, 2008 for use in commercial activities.

[44] On February 25, 2017, the Appellant listed the Condominium on the Airbnb platform for lease as a short-term lease. Tab 6 of Exhibit AR-1 shows that between March of 2017 and April of 2018, the Appellant supplied the Condominium by way of lease on numerous occasions for periods of less than one month. Most of the supplies were for fewer than seven nights, with many for only one night. Such supplies were not exempt supplies since they were for periods of less than one month. The short-term leases were taxable supplies of real property.

[45] As noted previously, a commercial activity includes the making of any supply of real property, other than an exempt supply. Paragraph 141.1(3)(a) provides that to the extent that a person does anything (other than make a supply) in connection with the establishment of a commercial activity of the person, the person is deemed to have done that thing in the course of commercial activities of the person.

[46] It appears from the ASF that the first step that the Appellant took to establish the commercial activity of leasing the Condominium on short-term leases was the listing of the Condominium on the Airbnb website on February 25, 2017. Under paragraph 141.1(3)(a), the Appellant was deemed to have listed the Condominium in the course of its commercial activities. By offering the Condominium for short-term lease on February 25, 2017, the Appellant began to use the Condominium in the course of its commercial activities on that date. Since the Appellant made such supplies in the course of its commercial activities, they constituted taxable supplies.

[47] As a result, unless subsection 206(2) is subject to another section, the change-in-use rules in subsection 206(2) applied to the Appellant on February 25, 2017, the particular time that the Appellant began to use the Condominium in commercial activities.

[48] Therefore, assuming that subsection 206(2) applies, the Appellant was deemed under paragraph 206(2)(a) to have received a supply of the Condominium on February 25, 2017 by way of sale.

[49] Paragraph 206(2)(b), which deems tax to be paid equal to the basic tax content, has no application. Paragraph 4 of the ASF states that the Condominium was a used condominium at the time that it was purchased by the Appellant. I assume this means that the Appellant did not pay GST when it acquired the Condominium. This was confirmed during the hearing by counsel for the Appellant. In such a situation, the basic tax content of the Condominium was zero on February 25, 2017.

[50] The Appellant argues that subsection 206(2) does not apply because of the application of section 197. Section 197 limits the application of the change-in-use rules in subsections 206(2), (3), and (5), subsection 207(2), and subsections 208(2) and (3) to situations where the change in use is 10% or more.

[51] Section 197 reads as follows:

> **Insignificant changes in use** — For the purposes of subsections 206(2), (3) and (5), 207(2) and 208(2) and (3), where in any period
>
> (a) beginning on the later of
>
> (i) the day a registrant last acquired or imported property for use as capital property of the registrant, and
>
> (ii) the day subsection 206(3) or (5), 207(2) or 208(3) last applied to the property, and
>
> (b) ending at any time after that day,
>
> the extent to which the registrant changed the use of the property in commercial activities of the registrant is less than 10% of the total use of the property, the registrant shall be deemed to have used the property throughout that period to the same extent and in the same way as the registrant used the property at the beginning of that period, unless the registrant is an individual who began in that period to use the property primarily for the personal use and enjoyment of the individual or a related individual.

[52] One of the situations where section 197 will apply to a change in use of real property is the situation where, between the time that a registrant last acquired the real property and a specific point in time, the extent to which the registrant changed the use of the real property is less than 10%. If the section applies in this situation then, for purposes of subsection 206(2) (and the other specified change-in-use rule for real property), the change in use is ignored. If the registrant is a corporation, it is deemed to have used the real property throughout the period to the same extent and

in the same way as the registrant used the property at the time that it acquired the real property.

[53] The Appellant argued that section 197 applies to the change in use of the Condominium that occurred on February 25, 2017.

Disposition of Appeal

[54] The issues before the Court are the application of the real property change-in-use rules, specifically subsection 206(2) and section 197, and the application of the definition of *residential complex* contained in subsection 123(1).

[55] There is no dispute with respect to the relevant facts. The issues are purely matters of statutory interpretation.

[56] In *Canada Trustco Mortgage Co. v. Canada*,[4] the Supreme Court of Canada identified the "textual, contextual and purposive" principle as the principle that is to be used when interpreting the Act. At paragraph 10 of its reasons, the Court explained the principle as follows:

> [10] … The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play[s] a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

Change-in-Use Rules

[57] I will first address the application of the real property change-in-use rules to the Condominium.

[58] The Appellant argued that when applying section 197, one looks to the period beginning on the date that the Appellant acquired the Condominium (February 29, 2008) and ending on the date that the Condominium was sold (April 11, 2018). The Appellant noted that during these 3,694 days of ownership, the Appellant supplied the Condominium by way of taxable short-term leases for

[4] 2005 SCC 54.

366 days. On this basis, during the time that the Appellant owned the Condominium, it was used 9.9% of the time in commercial activities. As a result, section 197 applied, and the change-in-use rule in subsection 206(2) did not apply to the Condominium during the period that it was owned by the Appellant.

[59] Section 206 contains rules whose primary purpose is to cause an increase or decrease in input tax credits when there is a change in use of capital real property. The section applies to registrants who are not individuals and to public sector bodies that file a section 211 election. The section applies to the Appellant, a corporation.

[60] In most instances, subsection 206(2) applies to a GST registrant who, at the time that it acquired the real property, intended to use the real property exclusively in the making of exempt supplies. In such a situation, the registrant is not entitled to claim an input tax credit for the GST that it paid on the acquisition of the real property, since it did not acquire the real property for use in its commercial activities. However, if the registrant begins to use the real property in its commercial activities, then subsection 206(2) allows the registrant to claim, at the time that it begins to use the real property in its commercial activities, an input tax credit. The input tax credit is based on the GST that the registrant paid on the acquisition of the real property, and the extent to which it is now using the real property in its commercial activities.

[61] This is accomplished by deeming the registrant, for purposes of the GST Act, to have repurchased the property at the time of the change in use and to have paid tax at that time equal to the tax that it paid on the acquisition of the real property that was not previously recovered by way of rebate, refund or remission (the basic tax content of the property).

[62] The remaining subsections of section 206 provide similar rules for situations where a registrant that is using real property in its commercial activities increases or decreases the extent to which it is using the real property in its commercial activities, or the registrant ceases to use real property in its commercial activities.

[63] It is clear from the wording of the section 206 change-in-use rules, that the change-in-use rules apply at the point in time that a change in use occurs. It is at the time of each change in use that a supply is deemed to occur and that the amount of any additional input tax credit or the amount that the registrant is required to pay in respect of a previous claimed input tax credit is determined.

[64] This can be seen from the wording of section 206. Subsection 206(2) applies to a registrant who begins, *at a particular time*, to use the real property as capital

property in its commercial activities. Subsection 206(3), which deals with increases in use in commercial activities, applies where the registrant increases, *at a particular time*, the use of the real property in commercial activities. Subsection 206(4), which deals with ceasing to use the real property in commercial activities, applies where a registrant begins, *at a particular time*, to use the real property exclusively for non-commercial purposes. Subsection 206(5), which deals with reduction in the use of real property in commercial activities, applies where the registrant reduces, *at a particular time*, the use of the real property in commercial activities.

[65] In summary, the change-in-use rules look to a change in use that occurs at a specific point in time and, on the basis of the extent of the change in use that occurs at that point in time, deem a supply to have been made or received. It is the extent and nature of the change in use that occurs at a particular point in time that determine which of the various subsections of section 206 apply.

[66] Section 206 applies each time a change in use occurs. For example, if on day 1 a registrant acquires real property for use exclusively in exempt activities and then, on day 10, changes the use of the real property to 30% usage in commercial activities, subsection 206(2) applies on the date of the change in use. If on day 20, the registrant increases the use in commercial activities to 50%, then subsection 206(3) will apply on day 20. If on day 50, the use of the real property in commercial activities is reduced to 15%, subsection 206(5) will apply to the registrant on day 50.

[67] Section 197 works with section 206 to limit the application of section 206 to individual changes in use that cumulatively are at least 10%. This saves the registrant the administrative costs of having to account for insignificant changes in use.

[68] When determining whether, for the purposes of subsections 206(2), (3) and (5), a change in use of 10% or more has occurred at a particular point in time, section 197 looks at the changes in use that occurred during the period beginning on the later of the day the registrant last acquired the real property and the day subsection 206(3) or (5) applied and ending at any time after that date.

[69] If, as is the case in this appeal, subsections 206(3) and (5) have never applied, the relevant period begins on the day that the registrant last acquired the real property and ends at any time after this date.

[70] Section 197 refers to all the changes in use that occurred during this period. It accumulates the changes in use until such time as the total of the changes in use that have occurred since the time the real property was acquired is 10% or higher. This

means that section 197 will only apply if the cumulative change in use of the real property beginning on the day the registrant last acquired the real property is less than 10%. Section 197 ceases to apply on the day that the cumulative change in use is 10% or higher. At this point in time, section 206 will apply to the change in use.

[71] In the current appeal, the issue is whether section 197 applied to the change in use of the Condominium that occurred on February 25, 2017, when the Appellant began to use the Condominium 100% in commercial activities.

[72] Clearly, section 197 did not apply. During the period beginning on the day that the Appellant acquired the Condominium (February 29, 2008) and ending on the date of the change in use (February 25, 2017), the cumulative change in use was 100%.

[73] The Appellant asks the Court to only consider a period beginning on the day that the Appellant acquired the Condominium and ending on the day that it sold the property. This position ignores the very specific wording of section 197. Further, such an interpretation would defeat the purpose of section 206 by ignoring all changes in use that occurred while a registrant owned real property.

[74] Since section 197 did not apply to the change in use of the Condominium that occurred on February 25, 2017, then, as discussed previously, the change-in-use rules in subsection 206(2) applied to the Condominium on February 25, 2017, the particular time that the Appellant began to use the Condominium 100% in commercial activities. As a result, the Appellant was deemed under paragraph 206(2)(a) to have received a supply of the Condominium on February 25, 2017 by way of sale.

Application of Exempting Provision

[75] The primary issue before the Court is whether the sale of the Condominium on April 11, 2018 was a taxable supply or an exempt supply. The answer to this question will depend on whether the Condominium was, at the time of the sale, a residential complex.

[76] As noted previously, since the Condominium was a residential unit at the time of sale, it was also a residential complex, unless the general exclusion in the definition of residential complex applied to the Condominium.

[77] The Respondent argued that the exclusion applied to the Condominium at the time of sale. The Appellant argued that the exclusion did not apply since the Condominium was not part of premises that were similar to a hotel or motel and the all or substantially all test included in the definition was not satisfied.

[78] I will first address the Appellant's argument that the Condominium was not similar premises to a hotel or motel.

[79] The Respondent correctly noted that when determining whether the exclusion applies, one must consider all of the words in the definition of *residential complex*. The exclusion refers to premises that are a hotel, a motel, an inn, a boarding house, a lodging house and other similar premises.

[80] The question before the Court is whether the Condominium, at the time that it was sold, was similar premises to a hotel, a motel, an inn, a boarding house and a lodging house. The answer to that question is yes.

[81] At the time of sale, the Appellant was offering the Condominium for short-term lease on the Airbnb platform and was in fact leasing it for periods as short as one night. The Condominium was leased on a furnished basis with the Appellant paying all heating, air conditioning and electricity costs. Since the Court was not provided with the Airbnb listing, it is not clear what other amenities were provided to the lessee. However, the evidence before me was that the Appellant did provide Wi-Fi access as part of the short-term lease.

[82] In my view, a Condominium being leased in such a manner is similar premises to a hotel, motel, an inn, a boarding house, or a lodging house.

[83] Collectively, hotels, motels, inns, boarding houses and lodging houses are premises that are regularly supplied as accommodations to third parties on a short-term basis for a fee.

[84] The short-term accommodations provided in a hotel, motel, inn, boarding house and lodging house are normally furnished accommodations. Rooms and suites in a hotel, motel or inn are supplied with heat, electricity and, in many instances, air conditioning.

[85] The definition refers to a wide range of accommodations. A hotel or a motel may be a single room or a suite. The *Canadian Oxford Dictionary* defines a lodging house as being equal to a rooming house and defines a rooming house as a house or

building divided into furnished rooms or apartments. When one considers all of the types of physical accommodations provided in a hotel, motel, inn, boarding house or lodging house, it is clear that similar premises include a furnished condominium that is leased on a short-term (or even long-term) basis.

[86] The Appellant argued that the Condominium was not similar to a hotel or a motel since it did not have a restaurant or otherwise provide food to the lessee. This argument assumes that all hotels and motels have restaurants. I have no evidence before me to support such a conclusion. Further, the fee charged by most hotels or motels for a room or a suite only covers the cost of the room or suite; it is not a fee for food. It is the guest's decision whether they want to purchase food from the hotel/motel.[5]

[87] Having found that the Condominium was similar premises to a hotel, motel, inn, boarding house and lodging house, I must now address the all or substantially all test that is set out in the exclusion. Specifically, I must determine whether, at the point in time that the Appellant sold the Condominium, all or substantially all of the leases, under which the Condominium was supplied, provided, or were expected to provide, for periods of continuous possession or use of less than 60 days.

[88] The Appellant argues that the all or substantially all test does not refer to a specific period when the test should be applied. Counsel for the Appellant argued that there is no "timestamp" that says that the all or substantially all test applies to leases in a specific period such as a reporting period, the last year of ownership or the last month of ownership. The Appellant argues that the test should be applied over the entire ownership period.

[89] The Appellant argues that the test is not met since, between February 29, 2008 (the date the Appellant acquired the Condominium) and April 11, 2018 (the date the Appellant sold the Condominium), all or substantially all of the leases of the Condominium provided for periods of continuous possession of at least 60 days. This is because the Condominium was leased 100% on a long-term basis between February 29, 2008 and February 25, 2017.

[90] I do not accept the Appellant's argument. The definition of *residential complex* contains no *time stamp* because the definition does not require a time stamp. The determination is not made over a period of time. The determination of whether

[5] I have taken judicial notice of the fact that the fee charged by most hotels and motels only covers the cost of the room or suite.

the all or substantially all test applies is made based on the use of the Condominium at the time that the Condominium was sold.

[91] When determining, under the GST Act, whether a taxable or exempt supply has been made, it is important to recognize that the tax levied under the GST Act is a value-added tax that is levied on individual supplies. The application of the tax must be determined for each individual supply. This determination is made at the time that the supply is made. Specifically, it is at the time that the supply is made that one determines the recipient of the supply, whether the specific supply is a taxable supply or an exempt supply, whether the supply is made in Canada, whether the supply is made in a participating province, and the consideration for the supply.

[92] As a result, the Court must determine whether, at the time of the sale of the Condominium, the Appellant made an exempt supply or a taxable supply.

[93] This determination is dependent on the exempting provision in section 2 of Part I of Schedule V to the GST Act. The application of this provision is dependent on whether, at the moment that the Appellant sold the Condominium, namely, on April 11, 2018, the Condominium was a residential complex as that term is defined in subsection 123(1) of the GST Act.

[94] This requires the Court to determine whether, at the time that the Appellant sold the Condominium, all or substantially all of the leases under which the Condominium was being supplied **at that point in time** provided or were expected to provide for periods of continuous possession or use of less than 60 days.

[95] The answer is clearly yes. At the time of sale, the Condominium was only being leased under short-term leases. All such leases were for less than 60 days; most were for only a few days. Therefore, on the day that the Appellant sold the Condominium, all or substantially all of the leases, under which the Condominium was supplied, provided, or were expected to provide, for periods of continuous possession of less than 60 days.

[96] At the time that the Appellant supplied the Condominium by way of sale, the Condominium was not a residential complex since it was similar premises to a hotel, motel, inn, boarding house or lodging house and, at the time of sale, all or substantially all of the leases, under which the Condominium was supplied, provided, or were expected to provide, for periods of continuous possession of less than 60 days.

[97] Even if I were to accept the Appellant's argument, it would lead to the same result.

[98] The Appellant was deemed under subsection 206(2) to have acquired the Condominium on February 25, 2017. Therefore, between the last time that the Appellant, for purposes of the GST Act, acquired the Condominium (February 25, 2017) and the date that it sold the property (April 11, 2018), the Appellant only used the property to make short-term taxable supplies by way of leases for periods of less than 60 days. At no point in time during this period was the Condominium a residential complex as defined in subsection 123(1) since all or substantially all of the leases, under which the Condominium was supplied during this period, provided, or were expected to provide, for periods of continuous possession of less than 60 days.

[99] Since the Condominium was not, at the time that it was supplied by way of sale, a residential complex, the supply by way of sale was not an exempt supply under section 2 of Part I of Schedule V to the GST Act. It was a taxable supply of real property.

[100] For the foregoing reasons, the appeal is dismissed with costs.

Signed at Halifax, Nova Scotia, this 15th day of March 2024.

"S. D'Arcy"

D'Arcy J.

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