

Docket: 2023-1454(GST)I

BETWEEN:

FATHIA ALI OSMAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on March 6, 2025, at Toronto, Ontario

Before: The Honourable Justice Guy R. Smith

Appearances:

| | |
|-----------------------------|-----------------------|
| For the Appellant: | The Appellant herself |
| Counsel for the Respondent: | Melanie Da Costa |

JUDGMENT

UPON hearing the evidence and submissions of the Appellant and counsel for the Respondent;

AND IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessment made under Part IX of the *Excise Tax Act*, notice of which is dated February 10, 2022, for the Goods and Services Tax/Harmonized Sales Tax New Housing Rebate is hereby dismissed. There shall be no order as to costs.

Signed this 30th day of April 2025.

“Guy R. Smith”

Smith J.

Citation: 2025 TCC 65
Date: 20250430
Docket: 2023-1454(GST)I

BETWEEN:

FATHIA ALI OSMAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Smith J.

I. Overview

[1] Fathia Ali Osman appeals from a reassessment dated February 10, 2022, wherein the Minister of National Revenue (the “Minister”) denied her claim for the Goods and Services Tax / Harmonized Sales Tax (“GST/HST”) New Housing Rebate (the “New Housing Rebate”) in relation to her purchase of 47 Crows Nest Lane, Bowmansville, Ontario. I will refer to that property as the “Rebate Property” and to Ms. Osman as the “Appellant”.

[2] The New Housing Rebate is described in subsection 254(2) of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the “Act”) and set out in Annex A. To qualify for the rebate, all conditions set out in that provision must be satisfied.

[3] Only two conditions are at issue in this appeal. Paragraph 254(2)(b) provides that an individual must be acquiring the residential complex from a builder for use as a “primary place of residence” and paragraph 254(2)(g) requires that the individual (or a relation) must be the first to occupy the residential complex.

[4] The issues in this appeal can be summarized as follows:

1. Did the Appellant intend to occupy the Rebate Property as her primary place of residence when she signed the Agreement of Purchase and Sale with the builder on October 16, 2016 (the “Agreement”)?
2. Was the Appellant the first person to occupy the Rebate Property?

[5] For reasons set out below, the appeal must be dismissed.

II. Background

[6] The Appellant testified on her own behalf. There were no other witnesses.

[7] When she signed the Agreement, the Rebate Property was in a pre-construction phase with an anticipated closing date of August 2019. In the meantime, she resided with her seven-year-old son and her mother at 103 Pringdale Gardens Circle, Scarborough, Ontario, a property acquired by her in March 2016 (the “Scarborough Property”). This was her primary residence.

[8] She intended that her son would continue to reside with his grandmother in the Scarborough Property while he attended school. She also anticipated that her brother would relocate from Montreal to live with them and contribute to expenses.

[9] The Appellant was employed by American Express and was not required to physically attend the office as most of her work was done remotely. She was also a licensed real estate agent and visited prospective clients as needed.

[10] She described the Rebate Property as her dream home. It had three bedrooms on the main floor and an unfinished basement. It was near Lake Ontario. One of her close friends had also acquired a property in the same development. She wanted to renovate the basement to rent it to tenants. She anticipated that those renovations would take place as she lived upstairs in one of the three bedrooms.

[11] As the closing date approached, she realized she would have difficulty obtaining the necessary financing. Her brother agreed to help. An agreement was signed with the builder to include him as a co-purchaser. The closing took place on August 21, 2019, and she officially took possession of the Rebate Property.

[12] She received a credit of \$24,000 on closing, being the amount of the New Housing Rebate. The rebate application form signed by her on closing confirmed that she was purchasing the property as her primary place of residence. It was received by the Canada Revenue Agency (“CRA”) on October 30, 2019.

[13] From the date of possession to the end of November 2019, the Appellant claims that she lived in one of the three bedrooms. She had an air mattress and some clothing as well as a table and chairs kept in the master bedroom. She moved these items using her vehicle and had not rented a moving van.

[14] She retained the services of a contractor to finish the basement and add a powder room and shower. These renovations were to be completed by December 1, 2019. In mid-November, she placed an advertisement to rent two of the three bedrooms and showed the premises to prospective tenants, including a couple with a teenage daughter. They needed more space and were not prepared to share the kitchen with the Appellant. They also did not want the Appellant to live in the basement.

[15] The Appellant eventually agreed to rent all three bedrooms to these tenants and raised the rent from \$1,600 to \$1,900 per month. The basement was not included in the rent.

[16] The tenants moved in on December 1, 2019, but conflict soon erupted as the basement renovations were ongoing. They were concerned that the contractor was living in the basement and his only means of egress was through a shared door on the main level of the premises.

[17] The tenants were not comfortable with these arrangements given the presence of their teenage daughter.

[18] As appears from Tab 8 of the Respondent’s Book of Documents, the tenants eventually filed a complaint with the Landlord and Tenant Board. The complaint was reviewed by an adjudicator and an order was delivered on January 21, 2022. The complaint focused on the physical presence of the contractor and his ready access to the main floor as he exited the home. Other concerns were addressed but no mention was made of the Appellant as an occupant.

[19] Turning to the documents produced at the hearing, the Appellant testified that she arranged for an internet connection at the Rebate Property but was unable to produce a receipt.

[20] She produced invoices for construction materials to be delivered to the Rebate Property as well as confirmation of property insurance and electricity bills, all showing the address of the Rebate Property.

[21] A washer and dryer were delivered in mid-November 2019.

[22] She also produced a screen shot of a bank account with CIBC showing the address of the Rebate Property. It was dated August 14, 2019.

[23] In cross-examination, she indicated that the Rebate Property was between 45 minutes and 1.5 hours away from the Scarborough Property.

[24] She acknowledged that her son was a dependent and that she was the primary caregiver. She suggested that her mother was there to care for him and that he would continue to take the bus to school.

[25] When questioned about her physical presence in the Rebate Property, she explained that it was necessary to supervise the contractor. She stayed there but also spent a lot of time at her friend's place and ordered takeout food, returning to Scarborough Property on weekends.

[26] She admitted that she had not informed the CRA of her change of address and had not changed her address on her driver's licence or Ontario health card. Her only explanation was that she had not found the time to do so.

[27] She indicated that many things changed with the start of COVID-19. She lost her job and decided to sell the property. It was eventually sold with a closing date of September 15, 2020. She acted as the listing agent.

III. **The Issues**

A. *First Issue* – The Appellant's Intention

[28] As noted above, paragraph 254(2)(b) states that when an individual becomes liable under an agreement to acquire a new home from a builder, it must be acquired for use as a primary place of residence of that individual or a relation.

[29] When the issue of intention arises, the Supreme Court of Canada explains that it is necessary to go beyond the taxpayer's stated intention. As stated in *Symes v. Canada*, [1993] 4 SCR 695, "(...) where purpose or intention behind

actions is to be ascertained, it must not be supposed that in responding to this question, courts will be guided only by a taxpayer's statement, *ex post facto* or otherwise (...) Courts will, instead, look for objective manifestations of purpose, and purpose is ultimately a question of fact to be decided with due regard for all the circumstances" (page 736).

[30] In *Coburn Realty Ltd. v. The Queen*, 2006 TCC 245, Bowman C.J. added that "[s]tatements by a taxpayer of his or her subjective purpose and intent are not necessarily and in every case the most reliable basis upon which such a question can be determined (...)" (para 10).

[31] In *Kniazev v. The Queen*, 2019 TCC 58, I indicated that "[i]n the end, there are numerous decisions, each turning on their own facts, on the issue of a purchaser's intention to acquire a residence as a "primary place of residence" for the purposes of the rebate. What is required is a clear and settled intention to occupy the premises as a "primary place of residence", considered in the context of an individual's personal, family and work related circumstances (...)" (para 7).

[32] I also added that "Parliament's use of the word "primary" also suggests that the purchaser must have a settled intention to centre or arrange his personal and family affairs around that property (...)" (para 8).

[33] The Minister has assumed that the Appellant did not intend to occupy the Rebate Property as her primary place of residence. The nature of tax litigation is such that the taxpayer has the onus of demolishing the Minister's assumptions and satisfying the Court on a balance of probabilities that the assumptions are incorrect: *Hickman Motors Ltd. v. Canada*, [1997] 2 SCR 336.

[34] In *House v. Canada*, 2011 FCA 234, the Federal Court of Appeal explained that a taxpayer will have met this onus when a *prima facie* case is established, that is one supported by evidence that raises such a degree of probability in its favour that it must be accepted, assuming it is credible. The Court must ask itself if the taxpayer has adduced sufficient credible testimonial and documentary evidence to establish on a balance of probabilities that the assumptions in question are incorrect.

[35] In this instance, I find that the Appellant has not successfully met that onus.

[36] To begin with, her testimony is entirely uncorroborated. Neither her mother nor her brother nor her close friend were called as witnesses. No explanation was provided for their absence or failure to testify.

[37] The Court was not provided with the name of the contractor or his connection with the Appellant. Apart from stating that he was without a vehicle, the Appellant provided no credible explanation as to why he resided in the basement until the renovations were completed. The Court was not provided with any information as to when he vacated the basement or any explanation as to who occupied it. There appears to be a gap in the evidence.

[38] In any event, I am not satisfied and find it is highly improbable that the Appellant would have moved into the Scarborough Property in March 2016 and made it her primary place of residence and then, five months later, signed an agreement to acquire another, yet to be constructed property, residence.

[39] I am also not satisfied that the Appellant seriously intended that the Rebate Property would be her primary place of residence while her seven-year-old son and her mother (who had recently arrived in Canada) would continue to live in the Scarborough Property. I find that this is simply not credible and is contradicted by her admission that she returned to the Scarborough Property on weekends.

[40] The Appellant must have understood from the beginning that she would have to carry two properties with her personal income. Her brother was asked to assist with the financing but only at the final hour and almost as an afterthought. The suggestion that he would relocate from Montreal to the Scarborough Property is entirely uncorroborated. These facts suggest that she was in fact speculating.

[41] I agree with the Respondent and find that it is more likely that the Appellant undertook the renovations to increase the value of the Rebate Property for resale purposes. I conclude that this is the best evidence of her actual intention.

[42] In the end, I find there is insufficient evidence to demonstrate that the Appellant had a settled intention to centre or arrange her personal and family life around the Rebate Property. I find that it was not her primary place of residence.

[43] All things considered, I find that the Appellant has not successfully established on a balance of probabilities that she intended to occupy the Rebate Property as her primary place of residence when she signed the Agreement.

B. Second Issue – The First Occupant

[44] Although it is not necessary to do so, I now turn to the requirement in paragraph 254(2)(g) that the Appellant be the first to occupy the Rebate Property.

[45] As indicated in *Kniazhev* described above, “[i]t is necessary to interpret this provision, and in particular the word ‘occupy’, in the context of someone who presumptively intends to acquire a property as a “primary place of residence” (...) There must be an element of permanence in the occupation of the premises. It must be more than sporadic, transitory or temporary. Acquiring title, taking possession of the keys and moving in a few items of furniture does not suffice” (para 9).

[46] In *Kandiah v. The Queen*, 2014 TCC 276, Justice Miller questioned whether the taxpayer had truly occupied the rebate property (para 21):

Taking a few belongings (mattresses and towel for example), leaving behind virtually all of your other belongings and furnishings in the family home, does not constitute actual use [of the property] as the primary place of residence for the family. At best, I would describe [the taxpayer’s] and his daughter’s arrangement as camping, not residing – certainly not residing as a primary place of residence.

[47] In this instance, the Appellant admitted that she did not move all of her personal belongings. She only moved a few items of clothing and slept on an air mattress. This hardly reflects a settled intention to establish a primary residence.

[48] I am not convinced that the Appellant spent more than a few nights alone at the Rebate Property between the date of closing and the end of November 2019.

[49] I also have difficulty believing that the Appellant occupied the master bedroom while the contractor was living in the basement. The evidence on this issue is simply not credible and is once again totally uncorroborated.

[50] In any event, what is admitted is that the Appellant slept on an air mattress and returned to the Scarborough Property on weekends. This again suggests that her occupancy was at best temporary or transitory and that the first occupants were the tenants who moved into the Rebate Property on December 1, 2019. They are the only individuals who truly centred their lives around the Rebate Property and occupied it as their primary place of residence.

[51] I attach little weight to the invoice(s) or receipt(s) tendered as evidence as most relate to the renovations or the acquisition of the property. I would view the other invoice(s) or receipt(s) as questionable and of limited probative value.

[52] To conclude on the second issue, I find that the Appellant has not successfully established on a balance of probabilities that she was the first individual to occupy the Rebate Property as her primary place of residence.

IV. Conclusion

[53] The appeal is dismissed. There shall be no order as to costs.

Signed this 30th day of April 2025.

“Guy R. Smith”

Smith J.

ANNEX A

New housing rebate

254(2) Where

(a) a builder of a single unit residential complex or a residential condominium unit makes a taxable supply by way of sale of the complex or unit to a particular individual,

(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,

(c) the total (in this subsection referred to as the “total consideration”) of all amounts, each of which is the consideration payable for the supply to the particular individual of the complex or unit or for any other taxable supply to the particular individual of an interest in the complex or unit, is less than \$450,000,

(d) the particular individual has paid all of the tax under Division II payable in respect of the supply of the complex or unit and in respect of any other supply to the individual of an

Remboursement — habitation neuve

254(2) Le ministre verse un remboursement à un particulier dans le cas où, à la fois :

a) le constructeur d’un immeuble d’habitation à logement unique ou d’un logement en copropriété en effectue, par vente, la fourniture taxable au profit du particulier;

b) au moment où le particulier devient responsable ou assume une responsabilité aux termes du contrat de vente de l’immeuble ou du logement conclu entre le constructeur et le particulier, celui-ci acquiert l’immeuble ou le logement pour qu’il lui serve de lieu de résidence habituelle ou serve ainsi à son proche;

c) le total des montants — appelé « contrepartie totale » au présent paragraphe — dont chacun représente la contrepartie payable pour la fourniture de l’immeuble ou du logement et pour toute autre fourniture taxable, effectuée au profit du particulier, d’un droit sur l’immeuble ou le logement est inférieur à 450 000 \$;

d) le particulier a payé la totalité de la taxe prévue à la

interest in the complex or unit (the total of which tax under subsection 165(1) is referred to in this subsection as the “total tax paid by the particular individual”),

(e) ownership of the complex or unit is transferred to the particular individual after the construction or substantial renovation thereof is substantially completed,

(f) after the construction or substantial renovation is substantially completed and before possession of the complex or unit is given to the particular individual under the agreement of purchase and sale of the complex or unit

(i) in the case of a single unit residential complex, the complex was not occupied by any individual as a place of residence or lodging, and

(ii) in the case of a residential condominium unit, the unit was not occupied by an individual as a place of residence or lodging unless, throughout the time the complex or unit was so occupied, it was occupied as a place of residence by an individual, or a relation of an individual, who was at the time of that occupancy a purchaser of the unit under an agreement of purchase and sale of the unit, and

section II relativement à la fourniture et à toute autre fourniture, effectuée à son profit, d’un droit sur l’immeuble ou le logement (le total de cette taxe prévue au paragraphe 165(1) étant appelé « total de la taxe payée par le particulier » au présent paragraphe);

e) la propriété de l’immeuble ou du logement est transférée au particulier une fois la construction ou les rénovations majeures de ceux-ci achevées en grande partie;

f) entre le moment où les travaux sont achevés en grande partie et celui où la possession de l’immeuble ou du logement est transférée au particulier en vertu du contrat de vente :

(i) l’immeuble n’a pas été occupé à titre résidentiel ou d’hébergement,

(ii) le logement n’a pas été occupé à titre résidentiel ou d’hébergement, sauf s’il a été occupé à titre résidentiel par le particulier, ou son proche, qui était alors l’acheteur du logement aux termes d’un contrat de vente;

g) selon le cas :

(i) le premier particulier à occuper l’immeuble ou le logement à titre

(g) either

(i) the first individual to occupy the complex or unit as a place of residence at any time after substantial completion of the construction or renovation is

(A) in the case of a single unit residential complex, the particular individual or a relation of the particular individual, and

(B) in the case of a residential condominium unit, an individual, or a relation of an individual, who was at that time a purchaser of the unit under an agreement of purchase and sale of the unit, or

(ii) the particular individual makes an exempt supply by way of sale of the complex or unit and ownership thereof is transferred to the recipient of the supply before the complex or unit is occupied by any individual as a place of residence or lodging,

the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to

(h) where the total consideration is not more than \$350,000, an amount equal to the lesser of \$6,300 and 36% of

résidentiel, à un moment après que les travaux sont achevés en grande partie, est :

(A) dans le cas de l'immeuble, le particulier ou son proche,

(B) dans le cas du logement, le particulier, ou son proche, qui, à ce moment, en était l'acheteur aux termes d'un contrat de vente,

(ii) le particulier effectue par vente une fourniture exonérée de l'immeuble ou du logement, et la propriété de l'un ou l'autre est transférée à l'acquéreur de cette fourniture avant que l'immeuble ou le logement n'ait été occupé à titre résidentiel ou d'hébergement.

Le remboursement est égal au montant suivant :

h) si la contrepartie totale est de 350 000 \$ ou moins, un montant égal à 6 300 \$ ou, s'il est inférieur, le montant représentant 36 % du total de la taxe payée par le particulier;

i) si la contrepartie totale est supérieure à 350 000 \$ mais inférieure à 450 000 \$, le

the total tax paid by the particular individual, and

montant calculé selon la formule suivante :

(i) where the total consideration is more than \$350,000 but less than \$450,000, the amount determined by the formula

$$A \times [(450\,000 \$ - B)/100\,000 \$]$$

où :

A représente 6 300 \$ ou, s'il est moins élevé, 36 % du total de la taxe payée par le particulier;

$$A \times [(\$450,000 - B)/\$100,000]$$

where

B la contrepartie totale.

A is the lesser of \$6,300 and 36% of the total tax paid by the particular individual, and

B is the total consideration.

CITATION: 2025 TCC 65

COURT FILE NO.: 2023-1454(GST)I

STYLE OF CAUSE: FATHIA ALI OSMAN AND HIS
MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 6, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice Guy R. Smith

DATE OF JUDGMENT: April 30, 2025

APPEARANCES:

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Counsel for the Respondent: Melanie Da Costa

COUNSEL OF RECORD:

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Name:

Firm:

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