Docket: 2024-1562(GST)I

BETWEEN:

SEBASTIAO MVEMBA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on May 21, 2025 and September 11, 2025, at Toronto, Ontario

Before: The Honourable Justice John A. Sorensen

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Carol MacLellan

JUDGMENT

The appeal is dismissed with costs payable to the respondent in the amount of $375.

Signed this 3rd day of October 2025.

"J. A. Sorensen"

Sorensen J.

Citation: 2025 TCC 140
Date: 20251003
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BETWEEN:

SEBASTIAO MVEMBA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Sorensen J.

I. Introduction

[1] This goods and services tax/harmonized sales tax ("GST/HST") New Housing Rebate appeal concerns a newly built residential property in Stouffville, Ontario (the "Property") co-purchased by the appellant and Mateus Beco Nogueira.

[2] Before April 20, 2021, when two or more individuals purchased a residence together, they each had to acquire it for use as their primary place of residence or as the primary place of residence of a relation, as required by s. 254(2)(b) and 262(3) of the *Excise Tax Act* (the "Act").[1] An amendment, effective after April 19, 2021, made the GST/HST New Housing Rebate available where a new home was acquired as the primary place of residence of any one of the purchasers or a relation. The amendment does not assist the appellant in this case, because the purchase and sale agreement was signed in October 2019.

[3] This matter came on for a half-day hearing on May 21, 2025. The appellant did not bring all of his documents, and during the hearing his co-purchaser Mr. Nogueira went to move his car and did not return. The matter was adjourned and

[1] *Excise Tax Act*, RSC, 1985, c. E-15 (all statutory references are to the *Excise Tax Act* unless otherwise noted).

resumed on September 11, 2025, to allow the appellant to locate any relevant documents and to allow the Court to hear from Mr. Nogueira.[2]

II. Issue

[4] According to the reply, the issue is whether the appellant is entitled to the GST/HST New Housing Rebate. Informal Procedure replies often feature this style of issue statement. Obviously, in a GST/HST New Housing Rebate case the dispute concerns eligibility for the GST/HST New Housing Rebate. To be helpful, any statement of issues should go further.

[5] The reasons section of the reply argued that Mr. Nogueira did not enter into the purchase and sale agreement with the intention of using the Property as his primary place of residence. This was the issue, although the assumptions were curiously deficient.

III. Factual Elements of Pleadings

[6] The Minister's factual assumptions were not contentious other than paragraph 7(i):

- At all material times, the Property was not the residence of Mateus Noguiera Beco or any of Mateus Noguiera Beco's qualified relations.

[7] The issue with paragraph 7(i) is that it refers only to occupancy and *not* whether, when Mr. Nogueira became liable under the agreement of purchase and sale, he was acquiring the Property for use as his primary place of residence.

[8] Although s. 254(2)(b) does not refer to an individual's intention with respect to a property, it refers to an acquisition "for use" in some capacity and thus establishes a purpose or intention test.[3] In this case, the reasons section of the reply asserted that Mr. Nogueira did not become liable under the purchase and sale agreement with the intention of acquiring the Property for use as his primary place of residence. However, that is an argument, not a factual assumption. Therefore, the

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[2] The appellant was advised at the September 11, 2025, hearing that there would be no opportunity to file further documents and that the hearing would not be resumed after the completion of the evidence phase and closing arguments. Nonetheless, he submitted documents to the Registry the following week, which were not accepted. Taxpayers are entitled to their day in Court, but he was already given a second chance to make his case.

[3] *Coburn Realty Ltd. v R*, 2006 TCC 245, at paragraph 11.

appellant did not need to demolish any assumption regarding Mr. Nogueira's intention at the time he became liable under the purchase and sale agreement.

[9] The appellant's initial filing did not accord with s. 18.15(1) of the *Tax Court of Canada Act*.[4] The Registry prompted him to file a better notice of appeal, and in his next attempt the appellant stated "I never mentioned or confirmed that the co-purchaser, Mateus Beco Nogueira, had no intention to move at the rebate property, however, what I said Mateus is retired now and he wasn't in the city at the time I move at the rebate property. Now is back and living at the property."

[10] The reply stated that allegations in the notice of appeal were advanced primarily by way of argument, and the respondent denied any incidental allegations of fact. The notice of appeal was primarily composed of the appellant's clarifications of what he may have said to a Canada Revenue Agency ("CRA") officer at some point, which were not allegations of material facts.

[11] Pleadings are important, including in the Informal Procedure,[5] although the principles governing pleadings in the Informal Procedure are relaxed compared to the General Procedure.[6] The tendency for Informal Procedure notices of appeal to lack detail, and the concurrent expectations for replies, were described in *Eisbrenner*:

> Rule 4 of the *Tax Court of Canada Rules (Informal Procedure)* ... does not require the taxpayer to use the form that is set out in Schedule 4: "[a]n appeal referred to in section 3 shall be instituted by filing a notice of appeal, which *may* be in the form set out in Schedule 4" (emphasis added). Given the informal nature of such proceedings, in many informal procedure cases the only place where any indication of what facts are in dispute can be found is in the reply filed by the Crown.[7]
>
> [emphasis added]

[12] Here, the appellant filed a notice of appeal that substantially lacked material facts. Ordinarily, that would not matter because the appellant would be obligated to demolish the Minister's assumptions. However, no assumption was pled that concerned Mr. Nogueira's intentions at the time the purchase and sale agreement

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[4] *Tax Court of Canada Act*, RSC 1985, c. T-2 ("TCCA").
[5] *Tax Court of Canada Rules (Informal Procedure)*, SOR/90-688b ("Informal Procedure").
[6] *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a ("General Procedure").
[7] *Eisbrenner v Canada*, 2020 FCA 93 ("*Eisbrenner*"), at paragraph 35.

was signed. Therefore, to the extent that the respondent proposed to rely on any argument concerning Mr. Nogueira's intentions, the respondent had the onus.[8]

IV. Evaluating Intention

[13] A conclusion regarding a person's intentions rests on an objective determination, considering all of the surrounding circumstances. A statement of subjective intention may be relevant, but cannot be determinative, since there is risk that it may be self-serving. Further, as a liminal matter, for subjective statements to carry weight, the witness must be credible.

[14] In *Charlebois*[9] this Court stated:

> [12] In considering a person's intention or purpose, a person's conduct is generally more revealing than "ex post facto declarations" (see generally *MacDonald v. Canada*, 2020 SCC 6, at para. 22). Courts are, therefore, not guided only by a person's subjective statements of purpose and instead will look for objective manifestations of purpose (see *Symes v. Canada*, [1993] 4 SCR 695, at p. 736) and examine the surrounding factual circumstances.[10]

[15] I will consider the address(es) used by Mr. Nogueira, his purported relocation of personal effects, the status of his previous residence, responsibility for expenditures, and any other evidence concerning his intention to make the Property a primary place of residence. The time frames included in the documents will be considered, together with prior inconsistent statements by the appellant.

V. Facts

[16] The following facts were clear:

- The appellant is a business office co-ordinator for Canadian Imperial Bank of Commerce and has worked in the banking sector for 25 years.

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[8] See *Eisbrenner*, relying on *Sarmadi v Canada*, 2017 FCA 131 and *Loewen v R*, 2004 FCA 146.
[9] *Charlebois v. The King,* 2025 TCC 76.
[10] See also *D'Arcy v The King,* 2025 TCC 128, at paragraph 46.

- Mr. Nogueira is a custodian for a winemaker, a position he has held for 24 years.[11]

- The appellant and Mr. Nogueira have known each other for 35 years and they are "like family", although they are not actually related.

- By agreement dated October 26, 2019, the appellant and Mr. Nogueira purchased the Property, and they closed on July 20, 2021.

- The builder submitted the GST/HST New Housing Rebate claim on the appellant's behalf.

- The appellant and Mr. Nogueira took ownership as tenants-in-common.

- The appellant and Mr. Nogueira equally contributed to the purchase of the Property.

- The CRA audit of the appellant's claim began in or around January 2023. As of June 23, 2023, the GST/HST New Housing Rebate was denied, and the appellant filed a notice of objection on August 21, 2023.

[17] My review of the evidence concerning Mr. Nogueira's intention with respect to the Property is organized under the sub-headings referenced above.

Change of Address

[18] The appellant testified that both he and Mr. Nogueira were slow to change their mailing addresses. That said, some documents confirmed that the appellant had been using the Property address going back to 2021.

[19] The appellant testified that for the most part Mr. Nogueira did not change his address to the Property. The Property address was included on TD statements for the joint account the appellant shared with Mr. Nogueira, which was said to have been opened strictly to process mortgage payments. No bank statements pre-dating 2024 were offered as evidence.

[11] Mr. Nogueira's evidence conveyed the impression that he was currently employed, which is not consistent with the appellant's statement in the notice of appeal.

[20] The appellant's dispute with the CRA over the GST/HST New Housing Rebate started in 2023. Documents associating Mr. Nogueira with the Property address pre-dating the audit would have been more compelling than the later documents provided at the hearings.

Relocation of Personal Effects

[21] Each of the appellant and Mr. Nogueira testified that Mr. Nogueira did not move any furniture into the Property and that he left everything behind with his estranged spouse. Apparently, Mr. Nogueira moved some clothing and limited personal effects in his car, so there was no receipt for moving expenses.

[22] The appellant testified that he owned all of the furniture in the Property, since his prior home was furnished.

Sale/Transfer of Previous Primary Residence to Someone Else

[23] Mr. Nogueira testified that he still co-owns the home in which his estranged spouse lives, and that he continues to pay expenses for that home.

Responsibility for Expenses

[24] The appellant testified that they pay equally towards the mortgage, from the joint account with TD. That assertion was borne out by the various bank statements that were entered into evidence, although again the statements that were provided to the Court did not pre-date 2024. When asked why no earlier bank statements were submitted, the appellant testified that the online banking portal did not allow access to earlier documents, and he did not make a request of the bank for further information. The reasons that this matter was adjourned in May 2025 included the appellant's failure to bring copies of all relevant documents. He had four months to obtain copies of all bank statements.

[25] The appellant and Mr. Nogueira both testified that Mr. Nogueira paid a portion of the Property insurance in 2024, and also that Mr. Nogueira paid for part of a new fence in 2024. Interestingly, the receipt from the fence builder was issued to the appellant as homeowner, and the cheques that Mr. Nogueira signed were drawn on a joint account he still has with his estranged spouse. The address on those cheques was in Scarborough, Ontario. When asked why he wrote cheques on a joint account with his spouse, he testified that he does not always have enough money in his own account. There was no explanation regarding why a person with their own money

would fund a joint account with their estranged spouse and not keep enough of their own money in their own personal bank account to pay their bills. That seemed odd.

[26] The appellant testified he and Mr. Nogueira share utility costs, but Mr. Nogueira pays his share in cash. The appellant did not provide copies of any documents to establish that Mr. Nogueira made contributions or received or paid bills sent to the Property in his name. In fact, the appellant's evidence disclosed that bills for services/utilities were in his name. Their agreement to share costs was not documented and operated as a so-called "gentleman's agreement".

Intention at purchase date

[27] The appellant testified that his and Mr. Nogueira's intention when they signed the purchase and sale agreement was that they would live together at the Property. His evidence was echoed by Mr. Nogueira. As noted, subjective statements of intention are not determinative, and intention must be objectively considered in light of all of the circumstances.

[28] The evidence was that Mr. Nogueira had marital issues leading up to the purchase. He testified that he was separated but not divorced from his spouse. No separation agreement was submitted and the spouse was not called as a witness by either side.[12]

[29] Mr. Nogueira testified he considered moving out of the matrimonial home and purchasing a condominium, but the appellant was looking for a place too. According to Mr. Nogueira, a house is a better investment than a condominium, so he and the appellant pooled their resources to purchase the Property. Thus, rather than purchase a condominium in 2019, he supposedly waited and lived with his estranged spouse for two years until the Property was completed.

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[12] At the initial hearing of this matter on May 21, 2025, it was alleged that Mr. Nogueira became a co-owner of the Property so that he could leave the home he shared with his spouse. The appellant did not call her at the September 11, 2025, resumption of the appeal to corroborate this evidence. Between the hearing dates, the appellant provided the respondent with copies of the documents he should have brought with him to the May 21, 2025, hearing. Those new documents included contact information for Mr. Nogueira's spouse (on a copy of a cheque drawn from Mr. Nogueira's joint account with her). Therefore, the respondent also could have contacted her and arranged for her to appear as a witness. It is not possible to draw an adverse inference from the failure to call Mr. Nogueira's spouse as a witness, since each side should have called her, but her attendance would have been helpful.

[30] A copy of a facsimile transmission from the appellant to a CRA officer was entered in evidence by the respondent and marked as exhibit R6. The appellant sent the facsimile to the CRA to provide some requested information. The narrative set out on the cover sheet prepared by the appellant stated: "I am the main owner for the house. Mateus Beco is just a co-signer when I was getting the mortgage. I don't understand why you are giving me a hard time." When cross-examined, the appellant testified that by June 2023, he was getting upset with the CRA and his tone was becoming abrupt as a result. The cross-examination on the letter marked as exhibit R6 undermined the appellant's position in the dispute and eroded his credibility.

[31] Exhibit R6 appears to be hearsay, thus presumptively excluded. Hearsay is well understood as an out of court statement introduced to prove the truth of its contents, without the ability of the other party to contemporaneously cross-examine the declarant.[13] Hearsay tends to be excluded because it may be unreliable, cannot be tested by cross-examination, and might not be the best available evidence.[14] However, the statements in exhibit R6 are admissible under the "party admission" exception, which is relied upon in this Court from time-to-time.[15] Party admissions include acts or words of a party used in evidence against that party.[16]

[32] The statements in exhibit R6 are relevant. They are not statements by Mr. Nogueira, and it is his intention with respect to the Property that is in issue, however, exhibit R6 is part of the factual matrix. More importantly, the statements are admissions by the appellant concerning the main issue in his appeal.

VI. Analysis

[33] *Cheema*[17] is a leading case for the "old" version of the primary residence rule that existed before April 2021. In that case, the taxpayer needed a co-purchaser to obtain a mortgage. His friend signed the purchase and sale agreement, took a 1% interest in the house, and signed a bare trust agreement confirming that he held the 1% for Cheema. The friend had no beneficial interest in the property. The Federal Court of Appeal held that each person who signs onto a purchase and sale agreement must intend to and actually live in the home as their primary place of residence. The same outcome occurred in numerous other cases before this Court and the Federal

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[13] *R v Schneider*, 2022 SCC 34, at paragraph 47.
[14] *Ibid* at paragraph 48.
[15] *Angus v The King*, 2025 TCC 121 citing to *Greer v The King*, 2023 TCC 100.
[16] *Schneider* at paragraph 56, citing Paciocco, David M., Palma Paciocco and Lee Stuesser. *The Law of Evidence*, 8th ed. Toronto: Irwin Law, 2020, at p. 191.
[17] *Canada v Cheema*, 2018 FCA 45 ("*Cheema*").

Court of Appeal. It is clear that under the pre-April 2021 version of the rule, eligibility for the rebate would be poisoned if another party joined the purchase and sale agreement as a co-signer with no intention to make the property their primary residence.

[34] Although I have referred to the legislation and amendments, this is a fact-driven case that substantially depends on the evidence, including findings of credibility. My assessment of credibility can consider inconsistencies in the evidence, including prior inconsistent statements. I can also form an overall view of the evidence, assessed against common sense and ordinary human experience.

[35] The appellant and Mr. Nogueira both testified that when they signed the agreement of purchase and sale for the Property, they both intended to move into it and treat it as their primary residence, and that they both did in fact move in and live there after the sale closed. Those assertions were substantially undermined by the content of exhibit R6.

[36] While exhibit R6 was not a sworn statement, the appellant identified it as a submission he made to the CRA: they were his own clear and express words, even if he attempted to explain them by saying he was mad and frustrated. Anger and frustration may be demonstrated by an impolite tone or brusque language, but these statements “I am the main owner for the house. Mateus Beco [Mr. Nogueira] is just a co-signer when I was getting the mortgage” are plain and forthright.

[37] The statements in exhibit R6 are highly problematic. First, if truthful they are fatal, and the appellant may not have realized at the time that they prejudiced his entitlement to the GST/HST New Housing Rebate. Second, if untrue, then the prior statements demonstrate that the appellant is willing to be untruthful to obtain the GST/HST New Housing Rebate. In this regard, the appellant is trapped in a paradox of his own making.

[38] The respondent had the burden of proving on a balance of probabilities that when Mr. Nogueira signed the agreement of purchase and sale for the Property, he did not intend to use it as his primary place of residence. The respondent met that burden, because of exhibit R6, interpreted in the totality of the circumstances, including the paucity of evidence pre-dating the audit and connecting Mr. Nogueira to the Property.

[39] For the appellant to succeed, despite exhibit R6, I would have to view the evidence in its totality and agree that on balance, Mr. Nogueira’s intention at all

material times was to treat the Property as his primary place of residence, and that the appellant only told a little fib. However, the totality of the evidence does not overcome the impact of exhibit R6.

[40] To be persuaded to overlook the appellant's prior inconsistent statement, I would have to consider Mr. Nogueira's failure to change his address and consider him lackadaisical and also overlook the lack of any evidence dated prior to 2024, after the audit started. I would have to consider the fact that Mr. Nogueira still uses a joint account with his spouse and that his own personal bank account balance is sometimes insufficient, and accept that this arrangement is normal, although it seems odd.

[41] To be persuaded to overlook the appellant's prior inconsistent statement, I would have to consider the lack of TD bank statements prior to 2024 for the joint account and accept that the appellant did not think to contact the bank, while ignoring that he has worked for a bank for 25 years. I would have to consider the facts that Mr. Nogueira supposedly left his furniture at his Scarborough home with his estranged spouse and that he continued to own and pay expenses in relation to that house and not wonder if he really moved out.

[42] To be persuaded to overlook the appellant's prior inconsistent statement, I would have to consider and accept the fact that Mr. Nogueira supposedly often pays the appellant in cash for his share of household costs billed to the appellant, such that there is limited documentation connecting Mr. Nogueira to the Property.

[43] Ultimately, the evidence as a whole does not make it more likely than not that Mr. Nogueira intended to acquire his interest in the Property to use it as his primary place of residence. If it were possible to reach a different outcome, and I do not think it is, then that would require blindness to the prior inconsistent statement, and significant benefit of the doubt to the appellant. However, benefit of the doubt does not accrue to a party whose credibility is in doubt. The appellant wove a tangled web, from which the evidence in this case did not free him.

VII. Costs

[44] The respondent's counsel asked for costs of $375 in respect of the second half day hearing that was conducted on September 11, 2025. Costs are awarded because the matter should have been completed in May 2025, and the appellant's failure to bring all relevant documents and the absence of Mr. Nogueira caused undue delay.

Signed this 3rd day of October 2025.

"J. A. Sorensen"

Sorensen J.

CITATION:	2025 TCC 140
COURT FILE NO.:	2024-1562(GST)I
STYLE OF CAUSE:	SEBASTIAO MVEMBA AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 11, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice John A. Sorensen
DATE OF JUDGMENT:	October 3, 2025

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Carol MacLellan

COUNSEL OF RECORD:

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Firm:	

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