

Docket: 2013-2913(GST)I

BETWEEN:

MESFIN G. HAGOS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard and judgment pronounced orally from the bench
on January 27, 2014, at Toronto, Ontario.

Before: The Honourable Gerald J. Rip, Chief Justice

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Lindsay Beelen

JUDGMENT

The appeal from the assessment of a GST/HST New Housing Rebate made under Part IX of the *Excise Tax Act*, notice of which is dated July 30, 2012, is dismissed.

Signed at Ottawa, Canada, this 3rd day of March 2014.

"Gerald J. Rip"

Rip C.J.

Citation: 2014 TCC 65
Date: 20140303
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BETWEEN:

MESFIN G. HAGOS,

Appellant,

and

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REASONS FOR JUDGMENT

Rip C.J.

[1] At the culmination of Mr. Hagos' hearing of his appeal from an assessment denying him a New Housing Rebate under Part IX of the *Excise Tax Act* ("Act"), I informed him that I would be dismissing his appeal and give reasons for judgment later. These are the reasons.

[2] On or about March 7, 2010 Mr. Hagos signed an Agreement to Purchase ("Agreement") a residential property in Brampton, Ontario for \$499,634. The property is part of a development of "36 All-Brick Detached Homes". The price of the model home purchased by Mr. Hagos was advertised at \$454,990 with a note that "development charges, levies and HST are included in the Purchase Price". The purchase price excess of the advertised price was in consideration of a premium lot and upgrades. According to Mr. Hagos' calculation the purchase price of the property was \$499,633.59 plus closing costs of \$2,799.55 for a total of \$502,433.14. The closing price of \$526,433.14 was an "artificial cost"; there is a discrepancy of \$24,000. It is this \$24,000 that he wants returned to him.

[3] The closing of the transaction of purchase and sales was July 7, 2011. At time of execution of the Agreement, Mr. and Mrs. Hagos intended to reside on the property.

[4] Sometime before the closing date, Mr. and Mrs. Hagos changed their minds. The property would be purchased for an investment purpose, that is, to rent.

[5] Nevertheless, on closing Mr. and Mrs. Hagos assigned to the Vendor the HST rebate and executed a Declaration that they were eligible "to apply for a GST/HST New Housing Rebate (for Homes Purchased from a Builder), in accordance with the provisions and requirements of the *Act*, as amended in respect of the purchase" of the property and "have assigned all of our right and entitlement to receive payment of such GST/HST New Housing Rebate to" the vendor.

[6] The Statement of Adjustments with respect to the transaction was prepared by Mr. and Mrs. Hagos' solicitor. He credited Mr. and Mrs. Hagos with a HST rebate assigned to the Vendor of \$24,000, a deposit of \$30,000 and a balance at closing of \$526,433.14 after various adjustments. Mr. Hagos does not agree with the fact his solicitor was correct in crediting the \$24,000 to him and Mrs. Hagos. He insists the lawyer erred. He did not, as far as I am aware, bring this error, if it is an error, to his solicitor's attention.

[7] A "GST" article was included in the Agreement:

- (a) The parties acknowledge and agree that the Purchase Price stipulated in the within Agreement is inclusive of the Federal Goods and Services Tax ("GST") payable pursuant to the *Excise Tax Act* (Canada) (the "GST Legislation") and that the actual consideration for the Dwelling Unit exclusive of any extras, requested changes or adjustments as herein provided, is the amount derived by subtracting the GST payable with respect to the within transaction of Purchase and Sale (less all refunds, credits and rebates available to the Purchaser pursuant to the GST Legislation) from the Purchase Price (the "Consideration"). The Purchaser acknowledges and agrees that the Vendor shall insert the Consideration in the Transfer of the Property that the Vendor delivers to the Purchaser on the date of Closing. The Purchaser covenants and agrees to pay the GST as required by the GST Legislation.
- (b) In consideration of the Purchase Price being inclusive of GST, the Purchaser hereby irrevocably assigns to and in favour of the Vendor any and all rights he may have on the date of Closing or thereafter to any refunds, credits, rebates (the "Rebates") available with respect to the within transaction of Purchase and Sale pursuant to the GST Legislation. Subject to subparagraph (d) below, the Purchaser covenants, warrants and represents that the Purchaser is an individual and that he shall forthwith following the date of Closing personally occupy the Dwelling Unit or cause one or more of his relations (as defined in the GST Legislation) to occupy the Dwelling Unit as

his or their primary place of residence (as defined in the GST Legislation) for such period of time as shall then be required in order to entitle the Purchaser to the GST New Housing Rebate pursuant to the GST Legislation.

- (c) Subject to subparagraph (d) below, the Purchaser covenants and agrees to deliver to the Vendor, on the date of Closing or anytime thereafter, any and all assignments, directions, applications, consents, declarations, undertakings and other documents required by the Vendor to enable the Vendor to apply for and receive the GST New Housing Rebate pursuant to the GST Legislation. The Purchaser hereby irrevocably nominates, constitutes and appoints any officer of the Vendor with full power of substitution, as the Purchaser's true and lawful attorney and agent pursuant to the provisions of the *Powers of Attorney Act*, R.S.O. 1990, with full power and authority in the Purchaser's name, place and stead, to execute, swear to and record any and all documents that may be required in order to have the GST New Housing Rebate paid and/or credited to the Vendor. The Power of Attorney hereby granted is granted in accordance with the *Powers of Attorney Act* of Ontario and is irrevocable, shall survive the date of Closing, and will extend to and be binding upon the heirs, executors, administrators, successors and assigns of the Purchaser.
- (d) In the event that the purchaser shall for any reason, fail to qualify for the GST New Housing Rebate, the Purchaser shall indemnify the Vendor in the amount that the Purchaser would have been entitled to had the Purchaser so qualified for the said rebate, and in the event that such failure to qualify is known on or before the date of Closing, the Vendor shall be credited in the Statement of Adjustments with the amount of GST New Housing Rebate.

[8] A completed "GST/HST New Housing Rebate Application for Houses Purchased from a Builder" (Form GST190 E (10)) form was signed by both Mr. Hagos and an authorized official of the builder on July 7, 2011 and was sent to the Canada Revenue Agency ("CRA"). Mr. Hagos remarked that the closing date was almost a year after he signed the Agreement to purchase the property and, at closing, he had "no choice" but to sign New Housing Rebate Application for Houses Purchased from a Builder and the Declaration of his and Mrs. Hagos' eligibility to apply for the New Housing Rebate. Otherwise, he said, the sale would not close and he would forfeit the \$30,000 deposit. Nevertheless he knew what he was signing when he executed these documents at closing.

[9] After crediting Mr. and Mrs. Hagos with the amount of the New Housing Rebate, the builder filed the New Housing Rebate application on August 24, 2011 with its GST/HST return and claimed the rebate amount as an adjustment to its net tax. The Minister of National Revenue ("Minister") allowed the rebate and credited the builder in the amount of the rebate.

[10] Later, on April 10, 2012, Mr. Hagos filed a GST/HST New Residential Rental Property Rebate ("NRRP") with respect to the Property. The Minister approved the NRRP rebate and sent a notice of assessment dated July 30, 2012 to the appellant showing a refund in the amount of \$24,159.11.

[11] Upon review of the appellant's application for a New Housing Rebate for Homes Purchased from a Builder, the Minister determined that the rebate ought not to have been allowed and ought not to have been credited to the builder. As a result the Minister denied the New Housing Rebate to the appellant because he did not acquire the Property as his or a relation's primary place of residence, and neither the appellant nor a relation were first occupants of the Property. A notice of assessment claiming the overpayment of the rebate was sent to the appellant on July 30, 2012; ss. 254(2) and (2.1), s. 264 and ss. 297(2.1) of the *Act*.

[12] The appellant denied the Minister's assumptions that he assigned the New Housing Rebate to the builder, notwithstanding documentation to the contrary that the builder credited him in the amount of \$24,000 for the New Housing Rebate and notwithstanding his own solicitor's statement of adjustments crediting him with this amount.

[13] It appears to me that if Mr. Hagos feels he has been overcharged for the Property, his claim is not against the Minister.

[14] Clearly, the appellant has applied for two new housing rebates with respect to the same property, one a New Housing Rebate for Home Purchased from a Builder and a second rebate, a New Residential Rental Property Rebate. Subsection 262(2) of the *Act* is found in Division VI of the *Act*. It provides that:

Only one application may be made under this Division for a rebate with respect to any matter.	L'objet d'un remboursement ne peut être visé par plus d'une demande selon la présente section.
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[15] The applications for the New Housing and NRRP rebates were made under Division VI of the *Act*. He had already received a rebate when applying for the NRRP rebate.

[16] The appeal is dismissed.

Signed at Ottawa, Canada, this 3rd day of March 2014.

"Gerald J. Rip"

Rip C.J.

CITATION: 2014 TCC 65

COURT FILE NO.: 2013-2913(GST)I

STYLE OF CAUSE: MESFIN G. HAGOS v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 27, 2014

REASONS FOR JUDGMENT BY: The Honourable Gerald J. Rip, Chief Justice

DATE OF JUDGMENT: March 3, 2014

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lindsay Beelen

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada