

Docket: 2013-149(GST)I

BETWEEN:

GAMDUR SINGH BRAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 28, 2014, at Edmonton, Alberta

Before: The Honourable Justice B. Paris

Appearances:

Agent for the Appellant: Satvir Kaur Brar
Counsel for the Respondent: Paige MacPherson

JUDGMENT

The appeal from the assessment of a GST/HST New Housing Rebate made under Part IX of the *Excise Tax Act* dated January 19, 2012 is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 17th day of March 2014.

“B.Paris”

Paris J.

Citation: 2014 TCC 76
Date: 20140317
Docket: 2013-149(GST)I

BETWEEN:

GAMDUR SINGH BRAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] The appellant is appealing the disallowance of a GST/HST new housing rebate claim in respect of the purchase of a newly constructed house in Edmonton. He was represented at the hearing by his spouse.

[2] The Minister of National Revenue disallowed the appellant's rebate claim on the basis that he did not apply for it within the time limit set out in subsection 254(3) of the *Excise Tax Act*. (“ETA”)

[3] That section reads:

A rebate under this section in respect of a residential complex or residential condominium unit shall not be paid to an individual unless the individual files an application for the rebate within two years after the day ownership of the complex or unit is transferred to the individual.

[My emphasis]

[4] The facts in this case are undisputed.

[5] On September 4, 2004 the appellant and his spouse entered into an agreement with Landview Homes Ltd. (“Landview”) to purchase property consisting of a house

that was to be constructed on a lot at 1408-69 Street in Edmonton (the “Property”). The Property was a “residential complex” as defined in subsection 123(1) of the *Act*. The agreement with Landview required that the appellant assign the new housing rebate to Landview as part of the consideration for the Property.

[6] The title to the Property was transferred by Landview to the appellant and his spouse on January 24, 2005 and they took possession and moved into the house on May 5, 2005. Shortly thereafter, the appellant and his spouse became aware of deficiencies in the construction of the house. It appears that, because of the dispute, the appellant and his spouse did not take the steps necessary to assign the new housing rebate to Landview. Eventually, the appellant and his spouse sued Landview and Landview counter-sued.

[7] The matter was finally resolved by a Judgment issued by the Alberta Court of Queen’s Bench in 2011. The Court found Landview liable to the appellant and his spouse for certain construction deficiencies, and found the appellant and his spouse liable to Landview for the amount of the rebate.

[8] On October 31, 2011, the appellant submitted his GST/HST new housing rebate application for a house purchased from a builder.

[9] The question that was put before me was whether the appellant’s application for the new housing rebate was made beyond the 2-year time limit set out in subsection 254(3) of the *Act*.

[10] Before dealing with that question, one preliminary matter should be addressed. Pursuant to paragraph 254(2)(e) of the *Act*, one of the conditions for obtaining a new housing rebate for a house purchased from a builder is that ownership of the property be transferred *after* the construction is substantially completed. In this case, the Property was transferred to the appellant and his spouse on January 24, 2005 but they did not take possession and move in until May 5, 2005. According to the appellant’s spouse, the house was not completed until some time after they moved in. She produced an inspection report for the house that showed a number of deficiencies in the construction, as well as a list of work that was incomplete as of May 16, 2005. The sidewalk, driveway and front stairs and the final exterior stucco coat and exterior grading still remained to be done. From this evidence, it might be possible to infer that the house was not substantially completed at the time of transfer on January 24, 2005. However, neither party addressed the legal consequences that would flow from such a finding, and after considering this matter, it appears to me that it would not assist the appellant even if I were to accept that the house was not substantially

completed at that date. This is because paragraph 254(2)(e) would bar any claim under section 254 and, while it might be arguable that section 256 of the *Act* (which provides for rebates in respect of owner-built houses) could apply on the basis that the appellant and his spouse engaged Landview to finish construction of the house after the date of transfer¹, a claim under that section would nonetheless be statute-barred. Subsection 256(3) sets out that the deadline for making a rebate application for owner-built homes is the earliest of the day that is:

- two years after the day that is two years after the house is occupied; or
- two years after the day the house is sold before being occupied; or
- two years after the day the house is substantially completed or renovated.

In this case, since the appellant and his spouse moved into the house on May 5, 2005, a rebate application under section 256 would have had to have been made no later than May 5, 2009.

[11] Returning now to subsection 254(3), the appellant's spouse did not deny that the claim was not made within 2 years of the date the Property was transferred to them but she maintained that it was necessary to wait until the court case against Landview was resolved to file the rebate claim. It does not appear to me, though, that the appellant was prevented by the lawsuit from making the rebate claim and no evidence to this effect was led. Although Landview claimed that the appellant had agreed to assign the rebate to it, it was still open to the appellant to file a claim for the rebate before the matter was decided by the Court. While it is understandable that the appellant and his spouse may have been confused as to whether a new housing rebate could be made while the lawsuit was ongoing, the fact remains that the claim was not made within 2 years of the transfer of the Property to them.

[12] Unfortunately, once the statutory deadline has expired, no new housing rebate can be obtained. In *Cairns v. The Queen*, 2001 GSTC 52, this Court stated:

. . . The intention of Parliament to limit the time period for the filing of a rebate application has been set out in clear and unambiguous language. When the meaning is clear, the Court has no jurisdiction to mitigate a harsh consequence. . .

[13] Regretfully, I must dismiss the appeal.

¹ See *David Sherman's Analysis* Re: section 254(2) of the *Act*.

Signed at Ottawa, Canada, this 17th day of March 2014.

“B.Paris”

Paris J.

CITATION: 2014 TCC 76

COURT FILE NO.: 2013-149(GST)I

STYLE OF CAUSE: Gamdur Singh Brar and Her Majesty the Queen

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: February 28, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris

DATE OF JUDGMENT: March 17, 2014

APPEARANCES:

Agent for the Appellant: Satvir Kaur Brar
Counsel for the Respondent: Paige MacPherson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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