

Federal Court of Appeal



Cour d'appel fédérale

Date: 20101206

Docket: A-260-09

Citation: 2010 FCA 332

**CORAM: SEXTON J.A.
EVANS J.A.
PELLETIER J.A.**

BETWEEN:

1096288 ONTARIO LIMITED

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 6, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on December 6, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 6, 2010)

EVANS J.A.

[1] This is an appeal by 1096288 Ontario Limited from a decision by the Tax Court of Canada (2009 TCC 292), in which Justice Paris (Judge) held that the Appellant, a builder, was required to collect GST on the sale of houses which it had moved from one lot to another.

[2] GST is payable on the sale of a “residential complex” by the builder: section 2, Part 1 of Schedule V of the *Excise Tax Act*, RSC 1985, c. E-15 (Act). A “builder” is defined in subsection 123(1) of the Act as a person who carries on the “construction or substantial renovation” of a residential complex. “Residential complex” is defined in the same subsection as that part of the building in which one or more residential units are located, “together with ... the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence”.

[3] The word “construction” is not defined in the Act and the Judge gave it its ordinary meaning: in particular, the act of forming something by putting together parts. He reasoned that, since “residential complex” comprises the building and the land on which it stands, when the Appellant moved a house from its original lot, it ceased to be part of the previous “residential complex”. By preparing the foundation on the new lot, installing the necessary services, and attaching the relocated house, the builder had thereby constructed a new “residential complex”.

[4] Counsel says that unless there has been a change to the frame of a residence there has been no “construction” of it. We disagree. The term “construction” in its ordinary sense is not this narrow, but can include, as the Judge found, forming the residential complex by putting the house and the land together.

[5] We see no error by the Judge in his formulation of the applicable legal test, and no palpable and overriding error in his application of the law to the facts.

[6] For these reasons, the appeal will be dismissed with costs.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-260-09

(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA, DECISION OF JUSTICE B. PARIS DATED MAY 29, 2009, IN DOCKET NO. 2006-1882 (GST) I)

STYLE OF CAUSE: 1096288 ONTARIO LIMITED
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 6, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (SEXTON, EVANS & PELLETIER
J.J.A.)

DELIVERED FROM THE BENCH BY: EVANS J.A.

APPEARANCES:

A. Wilford FOR THE APPELLANT

Anne Paré FOR THE RESPONDENT

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