

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190614

Docket: A-181-17

Citation: 2019 FCA 181

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

YIN YI NGAI

Respondent

Heard at Toronto, Ontario, on May 21, 2019.

Judgment delivered at Ottawa, Ontario, on June 14, 2019.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
RIVOALEN J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190614

Docket: A-181-17

Citation: 2019 FCA 181

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

YIN YI NGAI

Respondent

REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an appeal from a judgment of Justice Russell of the Tax Court of Canada (2017 TCC 79) who determined that Yin Yi Ngai was entitled to the new housing rebate under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA) and the *New Harmonized Value-added Tax System Regulations, No. 2*, SOR/2010-151 (the Regulations). In this appeal, the primary issue is whether Yin Yi Ngai is entitled to claim this rebate when she never had any intention of occupying the property in issue.

[2] For the reasons that follow, I would allow this appeal.

[3] The full text of the relevant provisions of the ETA, the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, and the Regulations is set out in the Appendix attached to these reasons.

I. Background

[4] Ms. Ngai was a real estate agent. In March 2012, she signed an agreement to purchase a condominium that was to be constructed by a developer. She signed as a co-purchaser solely to preserve the rights of one of her clients. However, shortly after the agreement was signed, Ms. Ngai's client decided to not complete the purchase and she arranged to have the client's name replaced with her nephew, Jonathon Ng, who intended to buy the condo as his place of residence.

[5] Around April 2012, Mr. Ng was approved for a mortgage to allow him to purchase the condo when it was constructed. The closing was scheduled for early December of that year but, sometime prior to the closing, Scotiabank notified Mr. Ng that he no longer qualified for the mortgage. In order to reinstate the approval for the mortgage, Ms. Ngai and her husband, Gerald Kennedy (who was also a real estate agent), had to sign the mortgage.

[6] The closing was held on December 6, 2012 and title to the property was acquired as follows:

- Jonathon Ng – 50%
- Yin Yi Ngai – 49%

- Gerald Kennedy – 1%

[7] Although Ms. Ngai stated that she informed her lawyer that she and her husband were only involved to assist her nephew in acquiring the property, no declaration of trust was prepared at that time. The developer for the condominium project prepared the application for the new housing rebate. Ms. Ngai is identified in this form as the claimant and her nephew and her husband are shown as other owners. Ms. Ngai signed this form and there is no indication that she raised any concerns about the identification of her as the claimant. It also appears that her nephew and her husband may also have signed this form. There is nothing in the record to suggest that Mr. Ng purported to assign any interest that he may have had in the rebate to Ms. Ngai. She was simply claiming the rebate as one of the owners of the property.

[8] Mr. Ng moved into the condo on December 8 or 9, 2012 and soon realized that he did not want to live there. He first tried to lease the condo without success and then sold it. The agreement for the sale of the condo was signed January 11, 2013 and the closing was February 15, 2013.

[9] The Minister of National Revenue (Minister) issued an assessment on March 10, 2014 denying the new housing rebate that Ms. Ngai had claimed. Following this assessment, in June 2014, a trust declaration was prepared which provided that Ms. Ngai and her husband were holding their interest in the property in trust for Mr. Ng.

[10] Ms. Ngai filed an objection to the assessment and the assessment was confirmed by the Minister.

II. Decision of the Tax Court

[11] The Tax Court Judge noted, at the conclusion of the hearing, that the Minister's reply did not plead that Ms. Ngai's nephew was not a relation of Ms. Ngai for the purposes of the ETA. The parties did, however, provide written submissions on this point following the hearing.

[12] The Tax Court Judge concluded that the evidence supported a finding that Ms. Ngai and her husband were acting as agents for Mr. Ng and that they held their interest in the property in trust for him. As a result, only Mr. Ng had to satisfy the occupancy requirements in paragraph 254(2)(g) of the ETA. It should be noted that this case was decided by the Tax Court before the decision of this Court in *Canada v. Cheema*, 2018 FCA 45.

[13] The Tax Court Judge also concluded that, even though the application form indicated that Ms. Ngai was claiming the rebate, she was doing this as agent and bare trustee for Mr. Ng. He found that Mr. Ng satisfied the occupancy requirements of subsection 254(2) of the ETA. He therefore allowed Ms. Ngai's appeal and referred the matter back to the Minister for reconsideration and reassessment on the basis that the new housing rebate should be granted.

III. Issues and Standard of Review

[14] The Crown identified four issues in this appeal:

1. Whether the trial judge erred in law or made a palpable and overriding error in fact in determining that there was an agency or bare trust relationship between Ms. Ngai and her nephew, Mr. Ng?
2. Whether the trial judge erred in law in determining that the particular individual requirements of paragraph 254(2)(b) of the Act did not apply to Ms. Ngai as she was acting as an agent or bare trustee for Mr. Ng?
3. Whether the trial judge erred in law in determining that Ms. Ngai was entitled to claim the rebate on the basis of her nephew's entitlement?
4. Whether the trial judge erred in law in failing to find that Ms. Ngai's nephew was not a qualifying relation?

[15] Although the Crown identified these four issues, the issues that pertain to the implications arising from a trust or agency relationship with respect to a claim for the new housing rebate have been addressed by this Court in *Cheema*. In my view, these issues would arise if Mr. Ng was the individual who had applied for the rebate and was the party in this proceeding. However, since Ms. Ngai is the individual who applied for the rebate, the only issue that needs to be addressed in this appeal is whether Ms. Ngai is eligible to claim the rebate.

[16] The standard of review for any question of law is correctness and for any finding of fact (or question of mixed fact and law without an extricable legal question) is palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

IV. Analysis

[17] Under the ETA, tax is generally payable when a person acquires a new house. The ETA also provides that, subject to certain conditions, the purchaser of a new house is entitled to a rebate of a portion of the tax paid. The general rebate conditions in subsection 254(2) of the ETA

provide for a rebate of a portion of the tax paid under subsection 165(1) of the ETA. This rebate will only be paid if the total consideration payable for the house is less than \$450,000 (para. 254(2)(c) of the ETA). In determining the total consideration payable for the house, any GST or HST that is payable is not included (paragraph 154(2)(a) of the ETA).

[18] For a new house acquired in Ontario, the Regulations provide for a separate rebate of a portion of the tax paid under subsection 165(2) of the ETA. For this rebate, there is no restriction on the amount of the consideration payable for the house but the rebate amount is limited to the lesser of \$24,000 and 75% of the tax paid under subsection 165(2) of the ETA (subsection 41(2) of the Regulations). The tax rate imposed under subsection 165(2) of the ETA for Ontario is 8% (Schedule VIII of the ETA). Therefore, the maximum rebate of \$24,000 for Ontario, in relation to tax paid under subsection 165(2) of the ETA, is payable for houses that cost \$400,000 or more. This is the rebate that is in issue in this appeal.

[19] Subsection 41(2) of the Regulations incorporates the requirements of subsection 254(2) of the ETA (except the total consideration) that must be satisfied in order for an individual (who is described in subsection 254(2) of the ETA as a “particular individual”) to be eligible to receive a new housing rebate.

[20] In paragraph 40 of his reasons, the Tax Court Judge concluded that Ms. Ngai was not a “particular individual” for the purposes of section 254 of the ETA. However, there is no explanation of why, having made this finding, she would be entitled to claim the new housing rebate, other than the brief statement in paragraph 40 that “Ms. Ngai acted throughout as agent

and bare trustee for Mr. Ng, including in making the application for the rebate”. In my view, only an individual who is a “particular individual” for the purposes of section 254 is eligible to apply for the new housing rebate. It was an error of law to find that a person who is not a “particular individual” is still eligible to claim the new housing rebate, as the eligibility of a person to claim the rebate is determined by interpreting the relevant provisions of the ETA and the Regulations.

[21] The rebate available under the Regulations is not payable under subsection 254(2) of the ETA but rather under subsection 256.21(1) of the ETA. This subsection provides that the rebate as set out in the Regulations is to be paid to a “prescribed person”. As provided in subsection 41(2) of the Regulations, a “prescribed person” is an individual who would be entitled to claim a rebate under subsection 254(2) of the ETA (if the total consideration was less than \$450,000). Therefore, a “prescribed person” is the “particular individual” to whom reference is made throughout subsection 254(2) of the ETA. As a result, only an individual who is a “particular individual” for the purposes of subsection 254(2) of the ETA may apply for and be paid the rebate. A rebate will only be paid if that person satisfies the applicable conditions.

[22] With respect to whether Ms. Ngai is a “particular individual” in relation to the condo, the Regulations incorporate the occupancy requirements contained in paragraphs 254(2)(b) and (g) of the ETA that must be satisfied by a particular individual. Paragraph 254(2)(b) of the ETA provides that, when a particular individual becomes liable under the agreement of purchase and sale made with the builder, such individual must be acquiring the residential complex as his or her primary place of residence or as the primary place of residence of a relation of that

individual. Paragraph 254(2)(g) of the ETA provides that, subject to certain exceptions, the particular individual (or a relation of that individual) must be the first person to occupy the residential complex as a place of residence after it is substantially completed.

[23] As a result, the occupancy requirements must be satisfied by either the particular individual or a relation of that individual. There is no dispute that Ms. Ngai did not intend to occupy the condo as her place of residence (let alone as her primary place of residence) nor did she actually occupy the condo as her place of residence.

[24] The Tax Court Judge, at paragraph 20 of his reasons, stated that:

[20] At conclusion of oral submissions I questioned whether the Respondent could validly now raise the argument that Mr. Ng was not a relative for purposes of subsection 254(2) of the *Act*, as this had not been pleaded in the Reply, thus providing no notice to the self-represented and non-legally trained Appellant, in this informal procedure appeal. Written submissions on this point were filed.

[25] The next 20 paragraphs of his reasons address the issue of whether Ms. Ngai and her husband were acting as agents and bare trustees for Mr. Ng. If Ms. Ngai and Mr. Ng are related for the purposes of the ETA, there would have been no need for any of this analysis. The occupancy requirements would have been satisfied as the property would have been acquired as a primary residence of a relation of Ms. Ngai and it would have been actually occupied as a place of residence by a relation of Ms. Ngai. The Crown did not challenge any of the findings related to Mr. Ng's intention or occupancy of the residence.

[26] In my view, the question of whether Mr. Ng is a relation of Ms. Ngai is critical. If Mr. Ng is a relation of Ms. Ngai and her husband, then the occupancy requirements of paragraph 254(2)(b) and (g) of the ETA will be satisfied. If Mr. Ng is not a relation then Ms. Ngai will not be entitled to claim the rebate. She will not be a “particular individual” because she did not have the intention to occupy the condo as her primary place of residence (para. 254(2)(b)) nor did she actually occupy the condo as her residence (para. 254(2)(g)). The provisions of subparagraph 254(2)(g)(ii) do not apply because the condo was occupied as a residence before it was sold.

[27] In this case, in paragraph 5 of the reply filed by the Minister to Ms. Ngai’s brief notice of appeal to the Tax Court set out several facts on which that the Minister was relying. Included in these facts is the statement that Mr. Ng was Ms. Ngai’s nephew and that he replaced her client as a party to the purchase agreement for the condo. The facts also included the statements that Mr. Ng “took up residence in the Property” and that Ms. Ngai “never took up residence in the Property and never intended to”.

[28] The grounds that the Minister relied on are set out in only one sentence:

8. [Ms. Ngai] is not entitled to receive the NHR [new housing rebate] with respect to the purchase of the Property pursuant to subsection 254(2) and 262(3) of the Act.

[29] This paragraph provided no guidance to Ms. Ngai with respect to why she failed to satisfy the requirements for the new housing rebate. Rule 6(1)(h) of the *Tax Court of Canada Rules of Procedure Respecting the Excise Tax Act (Informal Procedure)*, SOR/92-42, provides that the reply “shall contain a statement of ... the reasons the respondent intends to rely on”.

Simply stating that Ms. Ngai is not entitled to the new housing rebate pursuant to certain provisions of the ETA is not a statement of the reasons that the respondent intends to rely on. In particular, it fails to identify the significant issue of whether Mr. Ng is a relation of Ms. Ngai. The consequence that arises if Mr. Ng is not a relation of Ms. Ngai is that if Ms. Ngai does not personally satisfy the requirements of a “particular individual” , she is not eligible to claim the new housing rebate.

[30] Any procedural unfairness arising from this failure to identify the issue of whether Mr. Ng is a relation of Ms. Ngai, in this particular case, has been cured by the opportunity granted to the parties to make additional written submissions. It is a question of law whether Mr. Ng is a relation of Ms. Ngai. No additional evidence is required once it is established or admitted that he is her nephew.

[31] Subsection 254(1) of the ETA provides that an individual will be a relation of another individual if they are related to each other. Subsection 126(2) of the ETA provides that individuals will be related to each other for the purposes of the ETA if they are related to each other for the purposes of the *Income Tax Act*, as provided in subsections 251(2) to (6) thereof. Subsection 251(2) of the *Income Tax Act* states that “persons related to each other, are (a) individuals connected by blood relationship, marriage or common-law partnership or adoption...”. Under subsection 251(6) of the *Income Tax Act*, “persons are connected by (a) blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other...”. As a result of these provisions, a nephew is not related to his aunt or uncle and therefore, Mr. Ng is not a relation of Ms. Ngai.

[32] Since, as noted above, Ms. Ngai never intended to occupy the condo nor did she actually occupy the condo as her place of residence, she is not a “particular individual” for the purposes of subsection 254(2) of the ETA and, therefore, is not a “prescribed person” for the purposes of subsection 41(2) of the Regulations and subsection 256.21(1) of the ETA. She was not entitled to claim the new housing rebate.

[33] As a result I would allow the appeal, without costs, and set aside the amended judgment issued by the Tax Court on May 2, 2018. Rendering the judgment that the Tax Court should have issued, I would dismiss Ms. Ngai’s appeal from the assessment of the Minister dated March 10, 2014, without costs. As noted by the Crown, since the amount in issue under the ETA exceeds \$7,000, section 18.3008 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, is not applicable in this appeal.

“Wyman W. Webb”

J.A.

“I agree
Johanne Gauthier J.A.”

“I agree
Marianne Rivoalen J.A.”

APPENDIX

Excerpts from the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA); the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 and the *New Harmonized Value-added Tax System Regulations*, No. 2, SOR/2010-151

Excise Tax Act

126 (2) Persons are related to each other for the purposes of this Part if, by reason of subsections 251(2) to (6) of the *Income Tax Act*, they are related to each other for the purposes of that Act.

...

254 (1) In this section,

relation of a particular individual means another individual who is related to the particular individual or who is a former spouse or common-law partner of the particular individual;

...

(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

126 (2) Les paragraphes 251(2) à (6) de la *Loi de l'impôt sur le revenu* s'appliquent aux fins de déterminer si des personnes sont liées pour l'application de la présente partie.

[...]

254 (1) Les définitions qui suivent s'appliquent au présent article.

[...]

proche L'ex-époux ou ancien conjoint de fait d'un particulier ou un autre particulier lié à ce particulier.

(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

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 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

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 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) 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

(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

(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 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

or lodging,

résidentiel ou d'hébergement.

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

Le remboursement est égal au montant suivant :

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

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

i) si la contrepartie totale est supérieure à 350 000 \$ mais inférieure à 450 000 \$, le montant calculé selon la formule suivante :

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

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

where

où :

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

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

B is the total consideration.

B la contrepartie totale.

...

[...]

256.21 (1) If a sales tax harmonization agreement with the government of a participating province allows for rebates in respect of residential property relating to the new harmonized value-added tax system in respect of that participating province, the Minister shall pay in prescribed circumstances a rebate in respect of prescribed property to a prescribed person, or a person of a prescribed class, equal to an amount determined in prescribed manner.

256.21 (1) Si un accord d'harmonisation de la taxe de vente conclu avec le gouvernement d'une province participante prévoit des remboursements au titre d'immeubles résidentiels dans le cadre du nouveau régime de la taxe à valeur ajoutée harmonisée applicable à cette province, le ministre verse, dans les circonstances prévues par règlement, un remboursement au titre d'un bien visé par règlement à une personne visée par règlement ou faisant partie d'une catégorie réglementaire. Le montant du remboursement est égal au montant déterminé selon les modalités réglementaires.

Income Tax Act

251 (2) For the purpose of this Act, related persons, or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

...

(6) For the purposes of this Act, persons are connected by

(a) blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;

251 (2) Pour l'application de la présente loi, sont des personnes liées ou des personnes liées entre elles :

a) des particuliers unis par les liens du sang, du mariage, de l'union de fait ou de l'adoption;

[...]

(6) Pour l'application de la présente loi :

a) des personnes sont unies par les liens du sang si l'une est l'enfant ou un autre descendant de l'autre ou si l'une est le frère ou la soeur de l'autre;

New Harmonized Value-added Tax System Regulations, No. 2

40 If a supply of a residential complex or a share of the capital stock of a cooperative housing corporation is made to two or more individuals, or two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a residential complex, the references in sections 41, 43, 45 and 46 and the references in section 256.21 of the Act to an individual are to be read as references to all of those individuals as a group, but only one of those individuals may apply for a rebate under subsection 256.21(1) of the Act in respect of the complex or share, the amount of which is determined under section 41, 43, 45 or 46.

40 Si la fourniture d'un immeuble d'habitation ou d'une part du capital social d'une coopérative d'habitation est effectuée au profit de plusieurs particuliers ou que plusieurs particuliers construisent ou font construire un immeuble d'habitation ou y font ou y font faire des rénovations majeures, la mention d'un particulier aux articles 41, 43, 45 et 46 ainsi qu'à l'article 256.21 de la Loi vaut mention de l'ensemble de ces particuliers en tant que groupe. Toutefois, seulement l'un d'entre eux peut demander un remboursement en application du paragraphe 256.21(1) de la Loi relativement à l'immeuble ou à la part, dont le montant est déterminé selon les articles 41, 43, 45 ou 46.

41(1) In this section, relation and single unit residential complex have the same meanings as in subsection 254(1) of the Act.

(2) If an individual is entitled to claim a rebate under subsection 254(2) of the Act in respect of a residential complex that is a single unit residential complex, or a residential condominium unit, acquired for use in Ontario as the primary place of residence of the individual or of a relation of the individual, or the individual would be so entitled if the total consideration (within the meaning of paragraph 254(2)(c) of the Act) in respect of the complex were less than \$450,000, for the purposes of subsection 256.21(1) of the Act, the individual is a prescribed person and the amount of a rebate in respect of the complex under that subsection is equal to the lesser of \$24,000 and the amount determined by the formula

$$A \times B$$

Where

A is 75%; and

B is the total of all tax under subsection 165(2) of the Act paid in respect of the supply of the complex to the individual or in respect of any other supply to the individual of an interest in the complex.

41(1) Au présent article, immeuble d'habitation à logement unique et proche s'entendent au sens du paragraphe 254(1) de la Loi.

(2) Dans le cas où un particulier a droit au remboursement prévu au paragraphe 254(2) de la Loi au titre d'un immeuble d'habitation qui est un immeuble d'habitation à logement unique ou un logement en copropriété acquis en vue de servir en Ontario de résidence habituelle du particulier ou de son proche ou aurait droit à ce remboursement si la contrepartie totale, au sens de l'alinéa 254(2)c) de la Loi, relative à l'immeuble était inférieure à 450 000 \$, pour l'application du paragraphe 256.21(1) de la Loi, le particulier est une personne visée et le montant du remboursement versé au titre de l'immeuble selon ce paragraphe est égal au montant obtenu par la formule suivante, jusqu'à concurrence de 24 000 \$:

$$A \times B$$

où :

A représente 75 %;

B le total de la taxe payée en vertu du paragraphe 165(2) de la Loi relativement à la fourniture de l'immeuble au profit du particulier ou relativement à toute autre fourniture, effectuée au profit de celui-ci, d'un droit sur l'immeuble.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
MAY 8, 2017 (AMENDED MAY 2, 2018), CITATION NUMBER 2017 TCC 79
(DOCKET NUMBER 2016-1154(GST)I)**

DOCKET: A-181-17

STYLE OF CAUSE: HER MAJESTY THE QUEEN v.
YIN YI NGAI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 21, 2019

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: GAUTHIER J.A.
RIVOALEN J.A.

DATED: JUNE 14, 2019

APPEARANCES:

Isida Ranxi FOR THE APPELLANT
Marilyn Vardy

Yin Yi Ngai ON HER OWN BEHALF

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE APPELLANT
Deputy Attorney General of Canada