Docket: 2015-831(GST)I

BETWEEN:

SHERYL CROOKS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 15, 2015 and Judgment delivered orally from the Bench on February 24, 2016 at Toronto, Ontario.

Before: The Honourable Justice J.E. Hershfield

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Alisa Apostle

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, with respect to Notice of Assessment dated November 27, 2013, is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment edited without substantive change from the Reasons delivered orally.

Signed at Ottawa, Canada, this 2nd day of March 2016.

"J.E. Hershfield"

Hershfield J.

Citation: 2016 TCC 52
Date: 20160302
Docket: 2015-831(GST)I

BETWEEN:

SHERYL CROOKS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

As delivered orally from the Bench on February 24, 2016

Hershfield J.

I. Issue

[1] The Appellant was assessed a rebate adjustment amount of $24,000, having had her application for a New Housing Rebate denied. Subsection 254(2) of the *Excise Tax Act* (the "*Act*") sets out the requirements for the rebate. The rebate in this case is for GST/HST payable for the supply of a newly-constructed residential unit acquired by the Appellant as evidenced in a purchase and sale agreement entered into with the builder.[1]

[2] While the requirements for the rebate are lengthy, the issue in this case is the proper construction and application of two provisions of the *Act*, namely paragraph

[1] Subsection 41(2) of the *New Harmonized Value-added Tax System Regulations, No. 2* SOR/2010-151 (the "Ontario HST Regulations") provides the requirements for the related Ontario rebate set out under section 256.21 of the *Act*. In this particular case, the entire $24,000 appears to be the Ontario rebate, as the home purchase price exceeded $450,000, the limit for a federal rebate under subsection 254(2) of the *Act*.

254(2)(a) and subsection 262(3).[2] Both these provisions speak of the rebate being available to a "particular individual" or group of particular individuals.

[3] The first reference to a particular individual is in paragraph 254(2)(a). That paragraph reads as follows:

> **254. (2) New housing rebate [purchased home]** – 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,

[4] In the case at bar there is a question of whether there is more than one particular individual to whom the builder has made a taxable supply of the subject residential unit. If so, the subject provisions of the *Act* must be examined in respect of each particular individual to ensure that each one of them meets the requirements for a rebate. This is made clear by subsection 262(3). I will set that provision out later in these Reasons.

[5] It is not in dispute that the Appellant would satisfy the requirements for the rebate if she were the only particular individual who received a taxable supply of the subject unit.

[6] However, in the case at bar, it is not disputed that a second person, a Ms. Richards, at the closing of the purchase and sale of the subject unit, appeared on title as a 1% owner. She was first introduced as a purchaser in an amended purchase and sale agreement executed shortly before closing.

[7] That is the basis for the Crown arguing that Ms. Richards is a particular individual. The Crown then asserts that Ms. Richards fails to meet certain other requirements for a rebate which vitiates the rebate to the Appellant, the 99% owner of the acquired unit. For example, Ms. Richards was not a relation of the Appellant and never occupied, nor intended to occupy, the subject unit as required in paragraph 254(2)(b) which reads as follows:

> **254. (2) New housing rebate [purchased home]** – Where
>
> […]

---

[2] For the Ontario portion of the rebate, the parallel provision to subsection 262(3) is section 40 of Ontario HST Regulations.

> (b) at the time the particular 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,

[8] I note here that in addition to this latter provision being a rebate requirement that Ms. Richards does not meet, it clearly envisions that a particular individual be a person liable to pay the builder that makes the supply. This underlines a difficult issue that lingers on the sidelines: if an individual goes on title on the transfer from the builder but incurs no liability to the builder, does that person disentitle another particular individual, who is liable and meets all other requirements, from the rebate? I will find that the appropriate answer is "no" because that individual without liability is not, in such circumstances, a particular individual. While this conclusion supports my finding that Ms. Richards is not a particular individual, there are additional and material reasons for coming to this conclusion. As elaborated on in these Reasons, I have found that the builder acted as the agent of the Appellant under the amended agreement, that in any event the amended agreement has no force and effect and that she, Ms. Richards, was not a recipient of a supply.

II. Facts

[9] Both the Appellant and Ms. Richards testified at the hearing. There is no doubt in my mind that their evidence was forthright and honest. Neither is sophisticated. Both, in my view, are not only of a character not to manipulate facts or disguise intentions but are incapable of any such guile. This was simply a case where they would do what was said was required of them to allow the Appellant to close her purchase of the subject unit as she was legally committed to do. However, it was their mutual intent that they would do so without altering the understanding between them; namely, that the unit was being acquired by, and solely for, the Appellant.

[10] Although the copy of the original agreement of purchase and sale submitted by the Appellant as an exhibit was not fully executed, it is not in dispute that it was entered into by the Appellant with the builder with the intention of her acquiring the unit as the sole purchaser and owner. That agreement was made in 2010 when the unit had not yet been built. There is no evidence to suggest that it was not a binding agreement between the Appellant alone and the builder. Indeed, the Appellant acknowledged that the down payment shown on the original agreement

of purchase and sale ($40,000) was made by her and that she was personally committed to the balance, which was to be financed by an institutional mortgagee. She said she would lose her down payment if she failed to pay the balance, financed or otherwise.

[11] The Crown also tendered as an exhibit an agreement entered into to amend the agreement of purchase and sale. The amended agreement was made on June 9, 2012, roughly one month before possession and title transfer. The title transfer document was also tendered by the Crown. The amended agreement adds Ms. Richards as a purchaser without stating the nature or extent of the interest in the subject property purportedly acquired by her. The title transfer document shows the Appellant as owning a 99% interest in the subject unit and Ms. Richards as owning a 1% interest.

[12] The Appellant testified that as the closing drew closer, the Credit Union that was providing the mortgage financing required another party to be liable on the mortgage. While her credit rating was sufficient in 2010 not to require such a guarantor, it had declined by mid-2012; due to personal circumstances, she had no choice but to ask Ms. Richards to co-sign on the mortgage liability. The Credit Union also required Ms. Richards to be on title as a party to the mortgage instrument.[3]

[13] Both the Appellant and Ms. Richards testified that there was never an intention as between the two of them that Ms. Richards ever acquire an interest in the subject unit. Offering her credit rating to the Appellant was a gesture by Ms. Richards reflective of her trust in, and friendship with, the Appellant. They were like sisters. While Ms. Richards felt personally in debt to the Appellant - not financially, but in every other way - her trust and faith in the Appellant made her willing to be liable on the mortgage, feeling confident that she would not ultimately be liable. Accordingly, she did what she was told she was required to do. She went on title to qualify the Appellant for a mortgage. That was her understanding of what she did. It was an understanding shared by the Appellant. She did not want anything back from the Appellant.

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[3] If Ms. Richards was only a guarantor, as the evidence leads me to believe, Ontario law would not require her to go on title to perfect the guarantee. Such a requirement is most likely a belt-and-suspenders precaution by mortgagees to help ensure collection of amounts owed under the guarantee in the event of a default on the mortgage.

[14] Indeed, Ms. Richards testified that she asked the Appellant to document that there was no monetary obligation arising from the Appellant giving her (Ms. Richards) this purported 1% interest. She wanted this to be made certain in their Last Wills and Testaments in the event of a death.

[15] The mortgage is due in 2017. I am satisfied on the evidence that Ms. Richards will not be required to co-sign on a new mortgage and that she will, without consideration, transfer back the 1% interest registered in her name in 2012. That is, the expectations and understandings between them will be realized.

III. Paragraph 254(2)(a)

[16] This paragraph requires the builder to make a supply by sale to Ms. Richards in order for her to be a particular individual.

[17] I am satisfied that Ms. Richards not only believed that she had acquired no interest in the subject unit, but I am also satisfied that, at law, she had no beneficial interest. That is, I find this to be a clear case of the Appellant acquiring a 100% beneficial ownership. More importantly however I find this to be a clear case of the Appellant *allowing* a 1% legal interest to be registered in Ms. Richards' name as a financing requirement imposed by the Credit Union.

[18] This raises the question as to whether this *allowance* (of a 1% interest transfer) is a supply made by the Appellant to Ms. Richards, rather than a supply made by the builder.

[19] In my view the subject supply *was* made by the Appellant. The execution of the amended agreement, if it constituted a binding or relevant agreement at all, was done at the direction and for the benefit of the Appellant and thereby constituted a supply by the Appellant made to Ms. Richards. That is, I am not satisfied on the evidence that the builder was, in fact, a party to that agreement for its own account. I have no reason to believe that the original agreement did not give the Appellant the right of alienation or assignment of her interest in the subject unit that was acquired by her under that original agreement as exercised by her when title was registered. She was never in default of the original agreement and had never lost this right. The builder had no standing to enter into that second agreement as a vendor or to make the purported supply, except as *allowed* by the Appellant. The builder was, at best, her agent. That is, the only supply made by the builder was the supply made pursuant to the original agreement. The supply of the 1% interest was made by the Appellant. She received consideration for this supply in the form of a

guarantee made by Ms. Richards to the Credit Union. From Ms. Richards' point of view, giving the guarantee was a gratuitous act offered out of trust and love and affection.

[20] This finding should, by itself, result in the only "particular individual" being the Appellant. As such, the Appellant is entitled to the New Housing Rebate and her appeal must be allowed.

[21] Having said that, I have no intention of letting the matter stand there. There seems to me to be much more to say to support my conclusion that the Appellant was the only particular individual in this case. For example, as noted near the outset of these Reasons, there is my finding that the amended agreement has no force or effect and cannot be given any weight.[4]

[22] In making that particular finding, it is important to note that the amended agreement was not complied with by the Appellant and it seems highly unlikely that the builder intended that it needed to be complied with. The extent and nature of the interest being purported to be transferred is not set out in the amended agreement. It just adds Ms. Richards as a purchaser. At law, she might be entitled to be an owner-in-common having an undivided interest in the entire property. How then could her title be registered as a 1% owner if the amended agreement was meant to be a binding contract? The title registration bore no resemblance to the amended agreement. The percentage and nature of the transfer was left entirely up to the Appellant pursuant to her acquired right under the original agreement.

[23] Further, I do not see that Ms. Richards paid any consideration to the builder when she was added as a purchaser. Seen as a whole, not only did the builder give nothing under the amended agreement that was recognized or given effect in the title registration, but it received nothing under it. The amended agreement does not expressly provide for any consideration being the responsibility of Ms. Richards. The builder had already received a promise for the full purchase price from the Appellant in the original agreement which had not been breached. There was no fresh consideration paid or payable to it under the amended agreement. The amended agreement did nothing of substance. Indeed, if such an agreement had been entered into to gain an unintended tax advantage, it might be seen as a wholly

[4] Further, it arguably would have no relevance even if it were a binding agreement given that section 133 of the *Act* says the builder's supply was made when the original agreement of purchase and sale was entered into. Arguably the supply cannot be made twice where there is no evidence that the builder intended to make a fresh supply. I will deal with the question of the intentions of the parties later in these Reasons.

artificial transaction – a sham. That it should stand in the way of allowing an intended incentive, would be to allow for a re-characterization of the true legal relationships, entitlements and obligations that exist in this case.

[24] I have made mention of the builder's intentions. There is no direct evidence from the builder as to its intentions in regard to entering into the amended agreement.

[25] It is trite law that the express language in a contract is not always the paramount factor in construing its effect. Rather, it is the intentions of the parties that might, and often do, prevail.

[26] Ms. Richards had a singular intention, which was to give the Credit Union a guarantee of the Appellant's mortgage obligation. The only party, other than the Appellant, that benefited directly from the guarantee and the title registration change was the Credit Union.

[27] On a *prima facie* basis at least, all the evidence here points to the likelihood that the builder did not intend to enter into a binding agreement to sell a 1% interest in the subject unit to Ms. Richards. Indeed, as stated, the evidence supports the view that the builder had no intention to tie the Appellant's hands in any way.

[28] While it is not necessary to do so, I would like to say a few more words about the operation of paragraph 254(2)(a) in the context of this appeal.

[29] I would like to suggest that a possible reading of paragraph 254(2)(a) requires that a supply made by the builder to Ms. Richards be a supply for consideration in order for her to be a particular individual. The phrase used in that paragraph is that there be a supply "by sale". It is curious that that paragraph refers to a "supply by sale" when reference to a "supply" alone would have sufficed. Further, the rebate provisions themselves not only contemplate sales for consideration, but expressly set a limit based on the dollar value of the consideration. Further still, paragraph 254(2)(b) clearly and expressly contemplates that the particular individual become liable to the builder for the supply. Having concluded that Ms. Richards should not be seen as having incurred any liability to the builder, it strikes me that, arguably at least (even if I had found that the builder

had made a supply to Ms. Richards), there has not been the type of supply made here that would include her as a particular individual.[5]

[30] I should not omit from these reasons that the Crown relied on *Al-Hossain v The Queen*,[6] a decision of this Court. It was cited by the Crown as one factually closest to the one at bar. In many respects, counsel for the Crown was correct. In that case, a second buyer, Mr. K., was added prior to closing to ensure that a mortgage could be obtained. The interest of Mr. K. was evidenced by a declaration made by him at the time that the application for the rebate was signed. It declared that Mr. K. held a .01% interest in trust for Mr. Al-Hossain who was the beneficial owner of 100% of the subject property. This Court found that the addition of Mr. K. as a buyer disentitled the 100% beneficial owner from receiving the rebate.

[31] While I am not required to follow that case and am not inclined to do so, I do note that there are distinguishing factors such as there being no issue in that case as to the effectiveness of the sale to Mr. K., including the related issue of the builder's intentions. Unlike the case at bar, the lawyer for the taxpayer in that case testified at the hearing. His testimony was that the builder (rather than the mortgagee) took the initiative to suggest that Mr. K. be added as a purchaser.[7] His testimony dictates that the parties knew that the builder was not acting as a mere agent of the taxpayer in that case. In the instant case, I have no evidence from the builder and the facts indicate that the two cases are not at on all fours.

[32] In any event, the judge in that case found as a fact that the taxpayer was attempting to re-characterize the legal relationship that was established by the parties at the relevant time.

[33] I make no such factual finding in the case at bar.

[34] While it may be repetitive, I wish to emphasize my initial finding that the Credit Union's requirement that Ms. Richards be on title was effected by the

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[5] On the other hand, as I will point out later in these Reasons, subsection 262(3), referring only to a "supply" as opposed to a "supply by sale" might dictate a different conclusion. As well, the definition of "sale" including any transfer of ownership might dictate a different conclusion. Still, I raise this potentially contentious *obiter dictum* to avoid the harsh and unintended result of a strict statutory construction approach. Employing a purposive construction of the phrase "supply by sale", as a means of giving an intended legislated benefit full force and effect is justified if not essential.

[6] 2014 TCC 379, [2014] TCJ No. 295 [*Al-Hassain*].

[7] *Al-Hossain*, last line of para 6.

Appellant when Ms. Richards' 1% interest was registered on title. The amended agreement did nothing to change that. That removes Ms. Richards as a particular individual as described in paragraph 254(2)(a).

IV. Subsection 262(3)

[35] Subsection 262(3) ensures that all buyers of a new home must meet the requirements of subsection 254(2). However, a good case can be made that it does more if it serves to identify the particular individual referred to in subsection 254(2). While I will address that question, it is not one that dissuades me from suggesting that the following analysis should stand alone in support of my finding that the Appellant must succeed in her appeal.

[36] This subsection, 262(3), clearly comes into play where there is, as argued by the Crown, more than one purchaser of a property to which the rebate provisions apply. It might even be said that it is the operative provision that would require Ms. Richards to satisfy the rebate requirements. It reads as follows:

> **262. (3) Group of individuals** – If
>
> (a) 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
>
> (b) two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a residential complex,
>
> the references in sections 254 to 256 to a particular individual shall be read as references to all of those individuals as a group, by only one of those individuals may apply for the rebate under section 254, 254.1, 255 or 256, as the case may be, in respect of the complex or share.

[37] The effect of subsection 262(3) is that Ms. Richards will be required to satisfy the rebate requirements in subsection 254(2) if either a supply of a residential complex was made to her (per paragraph 262(3)(a)), or if she and the Appellant engaged the builder to construct a residential complex (per paragraph 262(3)(b)).

[38] As noted by Justice Woods in *Javaid v The Queen*[8], the question of whether a supply has been made brings into play the definition of "recipient" in subsection 123(1) of the *Act* because it is the recipient, as defined, to whom a supply has been made. That provision reads:

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[8] 2015 TCC 94, [2015] TCJ No. 82.

> **123. (1) Definitions** – In section 121, this Part and Schedules V to X
>
> […]
>
> **"recipient"** of a supply of property or a service means
>
> (a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,
>
> (b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and
>
> (c) where no consideration is payable for the supply,
>
> (i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available,
>
> (ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and
>
> (iii) in the case of a supply of a service, the person to whom the service is rendered,
>
> and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply;[9]

[39] The effect of the underlined portion above is that, in order for a supply to have been made to Ms. Richards, she must be a "recipient".

[40] According to paragraph (a) of the definition, the question is whether Ms. Richards was liable under that contract to pay consideration for the residential complex. This assumes that the amended agreement was a *bona fide* enforceable contract whereby the builder, on its own account, had sold a 1% interest to Ms. Richards. While I rejected that proposition, I will proceed on the basis that I had not made that finding.

[41] Although the courts have had opportunities to interpret liability in the definition of "recipient", as far as I am aware they have never done so in the context of a New Housing Rebate. While I will refer briefly to case law, there is no doubt in my mind that the question of whether Ms. Richards was liable to pay consideration within the meaning of the definition must take into account the intent

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[9] Paragraph (c) of the definition of "recipient" would not apply since Ms. Richards never enjoyed any of the benefits listed, namely she never took delivery of, never had the possession or use of, and never had available to her the subject property.

of the parties to the amended contract, and the purpose behind subsection 262(3) and the rebate provisions.

[42] In *Bondfield Construction Co (1983) Ltd v The Queen,*[10] Justice Campbell held that liability to pay under the definition of "recipient" required determining who was ultimately liable to pay for the supply. In this case, Bondfield had paid a new subcontractor to remedy the deficient work of the original subcontractor. Though Bondfield paid the new subcontractor, it recovered this cost by reducing the amounts paid to the original subcontractor. The question was whether Bondfield was the entity that paid consideration to the new subcontractor, and therefore a "recipient" of the supplies made by the new subcontractor. This Court found that although Bondfield's name appeared on the new subcontractor's invoices, it was the original subcontractor who accepted ultimate liability for paying them.

[43] Justice Campbell clarified this notion of ultimate liability in *General Motors of Canada Ltd v The Queen* [11], where she explained that her "reference to 'ultimately liable' in the *Bondfield* decision should not be taken to mean that the definition of recipient requires a determination of the person who ultimately receives the supply but rather to a determination of the person who is ultimately liable under the agreements, to pay consideration."

[44] Turning back to the present case, it is abundantly clear to me that the ultimate liability to the builder (regardless of which agreement we consider) was borne only by the Appellant. Ms. Richard's only liability was to the Credit Union. That was the intent of the parties (the Appellant, Ms. Richards and the Credit Union). As noted above, no evidence was presented to me regarding the builder's intent. On the evidence, I am satisfied that the Appellant would relieve Ms. Richards of any liability for going on title to satisfy the demands of the Credit Union. The Appellant accepted ultimate liability for payment to the builder in the unlikely event the builder was able to make a case against Ms. Richards. The Appellant was bound to repay Ms. Richards for any such costs incurred. In the same way that Bondfield was not found to be a recipient, despite the fact that the new subcontractor could sue Bondfield rather than the old subcontractor for payment, I find that Ms. Richards is not a recipient and therefore not captured by paragraph 262(3)(a).

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[10] 2005 TCC 78, [2005] TCJ No. 239.

[11] 2008 TCC 117 at para 55, aff'd 2009 FCA 114 without discussion.

[45] While, in my findings under the previous heading, I made it clear that the amended agreement was not sufficient to support a finding that Ms. Richards had any liability to the builder, the test in my view need not be that rigid. I agree with the reasoning of Justice Campbell that it would be sufficient to only find that Ms. Richards was not ultimately liable to pay any consideration to the builder.

[46] In more general terms, I am satisfied that a party to a contract of purchase and sale whose sole intent and purpose throughout the entire series of transactions is to help the original purchaser obtain financing and who ultimately has no liability to the builder is not a "recipient" and not a "particular individual" under subsection 262(3) or paragraph 254(2)(a). This conclusion only helps ensure that the purpose behind the rebate provision is given life. There is no mischief here that needs to be addressed. The Appellant is exactly the kind of party who was intended to benefit from the subsection 254(2) rebate.

[47] As to whether paragraph 262(3)(b) might apply to Ms. Richards, there is no evidence or any assumption in the Crown's Reply that supports a finding that the conditions in that paragraph exist in the case at bar. Indeed, the Respondent made no such argument.

[48] That means that under paragraph 262(3)(a), there was no group of particular individuals. As such, the Appellant stands alone as the only particular individual who meets all the conditions for the rebate.

IV. Conclusion

[49] Based on the cases that Respondent's counsel presented to me, and relied on, it is apparent that my analysis and findings diverge from the path taken by my colleagues, although I am not the first to employ a purposive approach to the construction and application of the subject provisions.[12] While some might argue that the language of the subject provisions is sufficiently clear so as not to give way to a purposive analysis, that is not my view. My view is that Parliament surely did not intend to block this economic incentive in factual situations like the one at bar. These situations beg for findings that support the allowance of the incentive. While I do not believe my findings of fact and law in this case are overly generous, if they were, it would not be inappropriate if the result is to give effect to benefit-conferring legislation.

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[12] See Justice C. Miller's decision in *Rochefort v. The Queen*, 2014 TCC 34, at para 21.

[50] In *Rizzo & Rizzo Shoes Ltd. (Re)*,[13] the Supreme Court of Canada said:

> Finally, with regard to the scheme of the legislation, since the ESA [*Employment Standards Act*] is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant (see, e.g., *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, at p. 10; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 537). It seems to me that, by limiting its analysis to the plain meaning of ss. 40 and 40a of the ESA, the Court of Appeal adopted an overly restrictive approach that is inconsistent with the scheme of the Act.

[51] While that case speaks of difficulties in interpreting statutory language, the sentiment applies where there are difficulties in making factual findings. The benefit of any doubt must be given to ensure the conferring of intended benefits.[14]

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[13] [1998] 1 SCR 27 at para 36, [1998] SCJ No. 2.

[14] It is worth noting that the denial of the rebate has become extremely harsh since the introduction of the HST in Ontario in 2010. GST case commentator David Sherman has provided a good synopsis of why this has resulted in an increasing number of new housing rebate appeals. In his comments on *Javaid,* he wrote: "The maximum GST rebate has never exceeded $8,750 and is currently $6,300, and reaches that figure only if the new home costs exactly $350,000. Under the Ontario HST, however, the provincial rebate under s. 256.21 for any new home costing over $400,000 is $24,000 — if the purchaser qualifies. Thus, there is much more at stake to appeal." Speaking of cases where the appeals were denied, he goes to say: "To the extent the Court refuses to grant relief, these situations are unfair. There appears to be no practical solution other than the non-purchaser going on title. ----- As I have noted previously, the Dept. of Finance should consider drafting amendments to the legislation to stop the rebate from being disallowed where a third party goes on title solely for financing purposes ---- The result in most of these cases is harsh, especially given the amount of rebate that is now at stake in Ontario, and goes against the intended policy of the rebate." (see David M. Sherman, "New Housing Rebates Where Someone Comes on Title to Help with Financing: CRA 2, Homebuyers 1", Case Comment on *Javaid v R,* GST & HST Case Notes No. 225 – July 2015). Since Finance has been slow to react I encourage the CRA to review its assessing practices and the DOJ, in approaching its response to these rebate denial cases, to follow the lead of cases such as those of Justice Woods and Justice Campbell, if not my own. Lastly, I have alluded in these Reasons to a practical solution to the non-purchaser going on title. Financing institutions should find the contractual means to invoke sequential title registrations. Causing their clients to lose tens of thousands of dollars is not in their best interests.

[52] There is no possible policy reason to come to a different conclusion. That adding a person to title to meet the requirements of a mortgagee should not result in the loss of the rebate can be demonstrated by considering what the result would be if Ms Richards were added sequentially to title by the Appellant immediately after title was registered solely in the Appellant's name. In that case, the rebate would not be disallowed as there would be but one buyer – one particular individual. The foregoing findings that hold that Ms. Richards is not a particular individual do little more than assure the same result – a result consistent with the objects of the Act.

[53] Thus, in my view, the facts of this case allow for a result that ensures the attainment of the objects of the legislation.

[54] For all these reasons I am allowing the appeal without costs.

Signed at Ottawa, Canada, this 2nd day of March 2016.

"J.E. Hershfield"

Hershfield J.

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