

Docket: 2019-1384(GST)I

BETWEEN:

BRIAN D. MASKELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 22, 2020, at Hamilton, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Counsel for the Appellant: Craig Burley

Counsel for the Respondent: Kevin Hong

JUDGMENT

The appeal from an assessment respecting the Appellant raised March 9, 2018 of a GST/HST New Housing Rebate made under Part IX of the federal *Excise Tax Act* is dismissed without costs.

Signed at Halifax, Nova Scotia, this 2nd day of March 2021.

“B. Russell”

Russell J.

Citation: 2021 TCC 18
Date: 20210302
Docket: 2019-1384(GST)I

BETWEEN:

BRIAN D. MASKELL,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Russell J.

[1] The Appellant, Brian D. Maskell, appeals an assessment raised March 9, 2018 pursuant to the federal *Excise Tax Act* (Act), by which the Minister of National Revenue (Minister) denied his GST/HST New Housing Rebate application in the amount of \$16,376. Subsection 256(2) of the Act permits a rebate in respect of GST/HST paid by an individual *inter alia* in reconstructing or substantially renovating a residential complex for use as a primary residence of that individual or a relation.

[2] The Appellant's rebate application was denied because the Minister took the view it had not been submitted within the time period provided by subparagraph 256(3)(a)(iii) of the Act, which provides in relevant part:

(3) Application for rebate - A rebate under this section in respect of a residential complex shall not be paid to an individual unless the individual files an application for the rebate on or before

(a) the day...that is two years after the earliest of

(i) the day that is two years after the day on which the complex is first occupied . . .

. . .

(ii) the day on which ownership is transferred . . . , and

(iii) the day on which construction or substantial renovation of the complex is substantially completed . . .

[3] In this matter the Minister considered that substantial renovation of the particular building was “substantially completed” no later than October 16, 2013 (Reply, para. 10(c)). However, the Appellant’s rebate application was not received within the ensuing two years. Rather, it was filed November 21, 2017, being more than four years after the Minister’s assumed substantial completion date. The Appellant’s position is that he reached the substantial completion stage of his building reno only in December of 2015, being just within the allowable two year period preceding the November 21, 2017 filing of his rebate application.

[4] The issue of course is whether for purposes of subsection 256(3) substantial completion of renovation of the subject building was achieved prior to November 21, 2015 (being precisely two years prior to the November 21, 2017 rebate application filing date), as the Respondent asserts; or alternatively was substantial completion achieved only after November 21, 2015, as asserted by the Appellant.

[5] The building being renovated was a good-sized albeit somewhat run-down looking residential structure in Fort Erie, Ontario that the Appellant acquired in October 2012. The location was attractive. The Appellant decided to extensively renovate the structure rather than tear it down and rebuild from scratch. The Appellant intended that he would use this structure for his residence. He testified that during the relevant period he was going through a divorce and that his parents living in a senior’s home were declining in health. He said these matters “dragged out” the reno job. He says he moved into the structure still being renovated in December 2015, although there is no corroborating evidence of this.

[6] In later completing the CRA form, “Construction Summary Worksheet” the Appellant described the renovation work as a complete rebuild, commencing August 15, 2012 with “construction end date” being December 15, 2015. The work was described as follows:

Completely rebuilt an old house. Entire house torn down to framing, dormers added, attached a detached garage, added approximately 170 ft.² one story additional, finished an attic area, changed entire interior, repaired footings and basement walls. House had little value at purchase. The entire house finished project is approximately 284 m² and additional is approximately 16 m².

[7] Virtually all of the invoice dates shown in the Construction Summary Worksheet are dated 2012 or 2013. In justifying a claimed December 15, 2015 substantial completion date, the Appellant stated that he purchased a lot of renovation materials two or three years earlier because prices were right and he would store the materials on site until utilization. The Appellant called no witnesses to corroborate his testimony as to storage of materials or as to when work actually was done.

[8] Also, the Appellant made reference to an interior wall or walls with sprayed-on insulation that needed to be completed, but were not, prior to December 2015. The probative value of this basically uncorroborated statement is slight. And, even if true, would it necessarily follow that the renovation project as a whole could not be viewed as having been substantially completed. I would suggest not necessarily.

[9] The Respondent called no witnesses but had three photo images entered into evidence. One photo image was a Google “street view” of the subject property dated August 2012. It shows the property as rather dilapidated and seemingly under reconstruction with new lumber laying in front of the building and also leaning against the building, and with a tired looking double garage to one side. The second photo image is also a Google “street view” of the same building dated July 2014. It shows the building as quite “spruced up” from the August 2012 view, with attractive architectural features and no signs of continuing construction. Also a type of motor pleasure craft mounted on a trailer is parked in front of the quite new looking, now attached garage – suggesting the house could be occupied. This is virtually a year and a half before the December 2015 substantial completion date claimed by the Appellant. It suggests that significant work was done, certainly at least to the exterior, during the almost two years since the August 2012 photo.

[10] The Respondent’s third photo is one taken of the Appellant’s bedroom suite at the front centre of the house, acknowledged by the Appellant as having been taken (by him I believe) on June 6, 2013. It shows the bedroom as under construction, with a fresh coat of paint on the walls and ceiling and two pot lights (at least one functioning) in the ceiling. The floor has not been finished, and windows are installed but the frames do not appear to have been re-finished. Notably two step-ladders are set up in the room, suggestive of work actively proceeding. The Respondent’s point regarding this picture is that it is dated two and a half years before the December 15, 2015 completion date asserted by the Appellant. Yet the photo depicts a partially completed and active reno situation, making it unlikely that it would take two and a half additional years before renovations could be said to be “substantially completed”.

[11] There is no definition in the Act of the phrase “substantially completed”. Administratively the Minister considers the term “substantially” as denoting at least 90%. There is jurisprudence suggesting it could mean somewhat less than 90%. Giving the Appellant the benefit of any doubt I will consider the term as indicating no less than 90%.

[12] I have weighed the evidence adduced in this matter on the basis of a balance of probabilities. Considering the three photos presented by the Respondent, it seems to me more likely than not that the renovation project was substantially completed prior to November 21, 2015. The August 2014 exterior Google photo shows a smart looking dwelling with no apparent signs of continuing construction. The bedroom suite photo shows renovation work well advanced at a date more than two years prior to November 21, 2015. And the construction invoices are basically all dated no later than 2013 – again well prior to November 21, 2015. That date of course is as noted above exactly two years prior to the November 21, 2017 date of the Appellant’s rebate application. Substantial completion (meaning 90% or more) of the renovation prior to November 21, 2015 does to me seem more likely, based on the evidence before me.

[13] Accordingly I find that the rebate application was submitted more than two years after substantial completion of the renovation project, thus rendering per subparagraph 256(3)(a)(iii) the rebate as not available. The appeal will be dismissed, albeit without costs.

Signed at Halifax, Nova Scotia, this 2nd day of March 2021.

“B. Russell”

Russell J.

CITATION: 2021 TCC 18

COURT FILE NO.: 2019-1384(GST)I

STYLE OF CAUSE: BRIAN D. MASKELL v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: October 22, 2020

REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell

DATE OF JUDGMENT: March 2, 2021

APPEARANCES:

Counsel for the Appellant: Craig Burley
Counsel for the Respondent: Kevin Hong

COUNSEL OF RECORD:

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