Docket: 2019-1337(GST)I

BETWEEN:

GAY-ANN REEVES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 13, 2021 at Toronto, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant:	Asad Yakob
Counsel for the Respondent:	John MacLaughlan Alexandra Humphrey

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JUDGMENT

In accordance with the attached Reasons for Judgment:

The appeal from the assessment raised October 13, 2018 under the *Excise Tax Act*, in respect of the Appellant's GST/HST New Housing Rebate application is dismissed, without costs.

Signed at Ottawa, Canada, this 3rd day of November 2021.

"B. Russell"

Russell J.

Citation: 2021 TCC 74
Date: 20211102
Docket: 2019-1337(GST)I

BETWEEN:

GAY-ANN REEVES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

I. INTRODUCTION

[1] The appellant, Gay-Ann Reeves, appeals the denial by the Minister of National Revenue (Minister) of Ms. Reeves' application for a GST/HST New Housing Rebate (NHRebate) per the *Excise Tax Act* (Act).

II. FACTS

[2] Two witnesses testified - Ms. Reeves and her aunt, J. Reid. Summarized, their essentially uncontested evidence was that in 2015 Ms. Reeves and her now husband M. Grant (Reeves/Grant) wished to purchase, for their primary residence, a lot in Brampton, Ontario with a house constructed thereon by contractor Mattamy (Mount Pleasant North) Limited (Mattamy). Because of her distant work location Ms. Reeves was unable to attend in timely fashion to sign a purchase sale agreement when Mattamy lots were put up for sale. She requested Ms. Reid, her aunt who resided close to the Mattamy office, to attend and sign for her. On August 18, 2015 Ms. Reid attended at the Mattamy office and signed a purchase and sale agreement for the lot sought by Reeves/Grant.

[3] On August 31, 2015 Reeves/Grant had that agreement amended, by addition of their names as purchasers and deletion of Ms. Reid's name as purchaser.

[4] However, on April 29, 2017, following advice that Ms. Reid's name should be re-added as a purchaser, so as to better assure that Reeves/Grant qualified for desired mortgage financing, Reeves/Grant had the purchase and sale agreement further amended accordingly.

[5] Upon completion of construction of the house on the selected lot, the real estate transaction closed on May 24, 2017 with Reeves/Grant and Ms. Reid all included as the purchasers. Reeves/Grant took title as joint tenants to a 99% share of the property, while Ms. Reid took title as tenant in common to a 1% share. Soon after, it was determined that Ms. Reid's name on title was not required after all to assure mortgage financing. Thus, her name was removed from title.

[6] Ms. Reid never intended to use the subject property as a residence, primary or otherwise, and she never occupied the property. As well, there was no evidence that any one other than Ms. Reid's niece Ms. Reeves and her husband intended to use the subject property as their primary residence.

[7] Ms. Reeves filed her NHRebate application with the Minister on August 8, 2017, seeking a $24,000 NHRebate amount.

[8] Initially the NHRebate application was accepted, with the $24,000 NHRebate amount paid to Mattamy, and Reeves/Grant being credited accordingly. However, by assessment raised October 13, 2018 the Minister denied the NHRebate application, assessing Ms. Reeves the $24,000, plus interest of $1,941. On February 18, 2019 the Minister confirmed the October 13, 2018 assessment, herein appealed.

III. **ISSUE**

[9] The issue is whether Ms. Reeves is entitled to the NHRebate she had applied for.

IV. **APPELLANT'S POSITION**

[10] Ms. Reeves' position is that she is entitled to the subject NHRebate. She submits that the inclusion on title of her aunt, Ms. Reid, at time of closing, was done

solely to assist with mortgage financing and that this should not affect entitlement to the NHRebate.

V. **RESPONDENT'S POSITION**

[11] The respondent Crown's position is that the law requires that all purchasers of a property that is the subject of a NHRebate application, thus in this case including Ms. Reid, must qualify for the NHRebate, notwithstanding that only one purchaser may obtain the NHRebate. The respondent Crown asserts further that Ms. Reid did not so qualify because neither she nor any relation of hers intended to acquire the said property for use as a principal residence. Lastly, the respondent asserts that in this legal context a niece of Ms. Reid's, as was Ms. Reeves, is not a relation of hers.

VI. **STATUTORY FRAMEWORK**

[12] The eligibility criteria for the NHRebate is set out in subsection 254(2) of the Act. Paragraphs 254(2)(a) and (b) provide as follows:

> 254(2) Where
>
> (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 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* . . .
>
> the Minister shall, subject to subsection (3), *pay a rebate to the particular individual* . . .
>
> (Underlining added for emphasis.)

[13] Paragraph 254(2)(b) requires "the particular individual" to intend to use the property either as a primary residence of his/her own, or as a primary residence of his/her relation. The term "relation" is defined by statute as noted below.

VII. **ANALYSIS**

[14] The Federal Court of Appeal (FCA) decision of *R. v. Cheema*, 2018 FCA 45, SCC leave denied 2019 CarswellNat 358, applies to the first issue in this matter – must a purchaser who is only on title to assist in financing by the other purchaser(s) also have to fully meet the statutory qualifications for receiving an NHRebate? The taxpayer in *Cheema* required the assistance of an un-related friend, Dr. Akbari, to secure financing for a property the taxpayer was purchasing. For financing assistance only, and without any intention to reside in the housing to be purchased, Dr. Akbari signed the purchase agreement as purchaser, as did the taxpayer.

[15] The Minister denied the taxpayer's GST/HST NHRebate application. The taxpayer appealed successfully to this Court. The Crown then appealed to the FCA, which appeal was allowed by majority decision of Stratas, JA.

[16] Justice Stratas in *Cheema* stated as follows (para. 91):

> Section 40 of *New Harmonized Value-added Tax System Regulations, No. 2*, SOR/2010-151, which applies in this case (see section 256.21 of the Act), provides that if supply of the complex is made to two or more individuals, the references to "a particular individual" are to be read as references to all of those individuals as a group. Under the agreement of purchase and sale, the supply of the complex was made to both Dr. Akbari and Mr. Cheema. Thus, the second prerequisite - use of the complex as the primary place of residence - must be satisfied by both Dr. Akbari and Mr. Cheema.
>
> (Underlining added for emphasis.)

[17] The rationale of this majority decision is that per section 40 of *New Harmonized Value-added Tax System Regulations, No. 2*, SOR/2010-151 (and likewise subsection 262(3) of the Act), all purchasers of the subject property must meet the NHRebate requirements; not simply the purchaser who makes the actual NHRebate application. And, all purchasers include any purchasers that were on title at closing merely to assist in financing. Thus, Ms. Reeve's aunt, Ms. Reid, had to as well meet the NHRebate requirements, including the so-called intention-to-occupy requirement.

[18] In *Omapas Duyo* v. *The Queen*, 2018 TCC 70, Justice Hogan of this Court had for consideration a NHRebate application. Following *Cheema*, he denied the application, writing (para. 21):

> The FCA found [in *Cheema*] that all signatories to an agreement of purchase and sale for a newly constructed home are required to fulfill the intention-to-occupy requirement with regard to qualifying for the NHR.

[19] As set out above, paragraph 254(2)(b) specifies as a requirement for qualifying for an NHRebate that a particular individual must acquire the property for use as that individual's primary residence or as the primary residence of a relation of that individual.

[20] The evidence is clear that Ms. Reid did not intend to use the property herself as a primary residence. But, she did intend that it would be so used by her niece, Ms. Reeves.

[21] Thus, the question becomes, is a niece a "relation" for purposes of subsection 254(2)(b)? In subsection 254(1) of the Act, "relation" of a particular individual is defined as, "another individual who is related to the particular individual . . .". And, subsection 126(2) provides that, "[p]ersons are related to each other for the purposes of this Part [IX, which includes section 254] 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."

[22] Correspondingly, paragraph 251(2)(a) of the *Income Tax Act* provides that, ". . . persons related to each other are…individuals connected by blood relationship, marriage or common-law partnership or adoption".

[23] Of these several types of connection, the only potentially relevant one vis-à-vis Ms. Reeves and her aunt Ms. Reid is the "blood relationship". Paragraph 251(6)(a) of the *Income Tax Act* provides that "[f]or the purposes of this Act, persons are connected by . . . blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other".

[24] In *R.* v. *Yin Yi Ngai*, 2019 FCA 181 at para. 31, Webb, J.A. of the FCA wrote:

> Subsection 254(1) of the ETA [*Excise Tax Act*] 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 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 . . .". <u>As a result of these provisions, a nephew is not related to his aunt or uncle . . .".</u>
>
> (Underlining added for emphasis.)

[25] Accordingly, following *Ngai*, I must conclude that for purposes of paragraph 254(2)(b) of the Act a niece is not a relation of her aunt. Thus, Ms. Reeves cannot be considered a relation of her aunt, Ms. Reid. As such Ms. Reid, as a purchaser of the subject property, cannot be said to have intended to acquire the property for use as a relation's primary place of residence.

[26] Therefore not all purchasers of the subject property met the NHRebate application criteria, resulting in the NHRebate not being available to any of the purchasers (including Ms. Reeves) who individually would meet the NHRebate eligibility criteria.

VIII. **CONCLUSION**

[27] In accordance with the FCA decisions of *Cheema* and *Ngai*, this appeal will be dismissed. Per section 9 of the *Tax Court of Canada Rules of Procedure Respecting the Excise Tax Act (Informal Procedure),* the dismissal will be without costs.

Signed at Ottawa, Canada, this 3rd day of November 2021.

"B. Russell"

Russell J.

CITATION:	2021 TCC 74
COURT FILE NO.:	2019-1337(GST)I
STYLE OF CAUSE:	GAY-ANN REEVES v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
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REASONS FOR JUDGMENT BY:	The Honourable Justice B. Russell
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APPEARANCES:

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