Docket: 2020-2148(GST)I

BETWEEN:

ADNAN AL-BONDOKJI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on August 18, 2022, at Toronto, Ontario

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Azhar Sohail
Counsel for the Respondent:	Christopher Bartlett Lalitha Ramachandran

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JUDGMENT

The appeal from the assessment dated August 20, 2019 concerning the Appellant's Goods and Services Tax/ Harmonized Sales Tax ("GST/HST") New Housing Rebate Application is dismissed in accordance with the attached reasons for judgment.

Signed at Montreal, Quebec, this 19th day of December 2022.

"Réal Favreau"

Favreau J.

Citation: 2022 TCC 166
Date: 20221219
Docket: 2020-2148(GST)I

BETWEEN:

ADNAN AL-BONDOKJI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from an assessment the notice of which is dated August 20, 2019 issued under Part IX of the *Excise Tax Act*, R.S.C., 1985, c.E-15, as amended ("the Act").

[2] On or around July 6, 2018, the Appellant filed an application for a *Goods and Services Tax/ Harmonized Sales Tax* ("GST/HST") New Housing Rebate (the "Rebate") for a property located at 23 Jemima Road, Brampton, Ontario, L7A 4T2 (the "Property").

[3] By the assessment dated August 20, 2019, the Minister of National Revenue (the "Minister") denied the Rebate application and assessed a Rebate adjustment amount of $24,000 and arrears interest of $2,319.05.

[4] In denying the Appellant's Rebate application, the Minister made the following assumptions of fact:

a) on September 21, 2015, the Appellant and Hazel Meryem Bondokji signed an agreement of purchase and sale (the "Agreement of Purchase and Sale") with a builder to acquire the Property;

b) the purchase price of the Property was $624,100.22;

c) the Appellant and Hazel Meryem Bondokji took possession of the Property on January 25, 2018;

d) the Appellant did not occupy the Property;

e) the Appellant's wife, Filiz H. Al-Bondokji (the "Wife"), did not occupy the Property;

f) the Appellant sold the Property in July 2018 for a purchase price of $880,000;

g) at all relevant times, the Appellant and his Wife resided at 3265 Bruzan Crescent, Mississauga, Ontario;

h) the Appellant and his Wife both had a history of medical issues which predated signing the Agreement of Purchase and Sale for the property;

i) the Wife did not experience a change in her medical condition after the Appellant signed the Agreement of Purchase and Sale for the Property;

j) the Appellant did not acquire the Property with the intention of using it as a primary place of residence for himself or his Wife;

k) the Property was not used as a primary place of residence for the Appellant or his Wife.

[5] The Appellant testified at the hearing and he denied the facts referred to in the above sub-paragraphs 4 d), e), g), i), j) and k). In essence, he denied the statements that he and his spouse did not occupy the Property and that he did not acquire the Property with the intention of using it as a primary place of residence for himself and his Wife.

[6] The Appellant stated, during his testimony, that he and his spouse moved into the Property on March 1, 2018. In support of that statement, the Appellant filed documentary evidence showing that the Property was occupied by them. The documents introduced in evidence consisted in bills for natural gas, hydro, water and insurance representing expenses incurred in respect of the Property in the period starting in January and ending on July, when the Property has been sold.

[7] The Appellant explained that his daughter co-signed the Agreement of Purchase and Sale of the Property simply to help him to obtain a mortgage on the Property and that she never moved into it.

[8] The Appellant further explained that he and his Wife have decided to buy the Property to avoid the stress and fatigue that would have resulted if the older property located in Mississauga had been renovated. However, the Mississauga property has not been sold because their daughter was living there.

[9] The Appellant said that he sold the Property in July only 5 months after he and his Wife moved in because of increasing health concerns. The Appellant has been diagnosed with high blood pressure and high glycemia (high blood sugar) and his Wife has had open heart surgery and continues to have health issues due to aging.

[10] The Appellant and his Wife moved back to their Mississauga property to be closer to their family doctor and specialists who were all located in Mississauga.

[11] During his testimony, the Appellant agreed with the following additional facts on which the AGC relied on:

a) on March 23, 2019, the Appellant, his Wife and Hazel Meryem Bondokji signed an agreement of purchase and sale to acquire a property located at 119 Threshing Mill Blvd, Oakville, Ontario, L6H 0V5 (the "New Property");

b) the Appellant, his Wife and (*sic*) Bondokji took possession of the New Property on August 6, 2020;

c) the Appellant applied for a New Housing Rebate in relation to the purchase of the New Property; and

d) the Minister allowed the Appellant's application for a New Housing Rebate for the purchase of the New Property.

[12] During his cross-examination, the Appellant recognized that the Property has been listed for sale on February 10, 2018 as a brand new, never been lived in property at a sale price of $880,000. The Appellant explained that the said listing has been removed on May 11, 2018 and that the Property has been put on the market again on May 22, 2018 by a second real estate listing.

[13] To qualify for this Rebate, it is necessary for the Appellant to meet the requirements of section 254 of the Act, which reads:

> **New housing rebate**
>
> **(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 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

> **(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 or lodging.

[14] The only issue here is whether, at the time the Appellant and his daughter entered into the Agreement of Purchase and Sale with a builder to acquire the Property on September 21, 2015, they were acquiring the Property for use as the primary place of residence for the Appellant and his Wife?

[15] The onus is on the Appellant to convince me on the balance of probabilities that, on September 21, 2015, he had the intent to use the Property as his family's primary place of residence.

[16] As Former Chief Justice Bowman stated in *Coburn Realty Limited v. R.* 2006 TCC 245 at paragraph 10 "statements by a taxpayer of his or her subjective purpose and intent are not necessarily in every case the most reliable basis upon which such a question can be determined. The actual use is frequently the best evidence of the purpose of the acquisition".

[17] Given certain inconsistencies in the Appellant's story and some incongruity in his rationale for certain decisions. I give little weight to the Appellant's stated intention and I find it necessary to explore the surrounding circumstances and behaviour. As suggested by Former Chief Justice Bowman, I prefer to look at the actual use of the Property when the Appellant was able to take possession of the Property on January 25, 2018. At that time, I do not think that the Property was the family's primary place of residence.

[18] In my view, the Appellant occupied the Property but not as his primary place of residence. The Appellant provided no evidence concerning the exact date on which he and his Wife moved in the Property, the belongings and furnishings that were brought into the Property, the time spent at the Property, eating arrangements

or any of their comings and goings, the change of his mailing address and the change of his telephone number.

[19] Furthermore, the Appellant did not provide any documentation to support a change in his Wife's medical condition between September 21, 2015 and January 28, 2018 and his Wife's frequent medical appointments at the Mississauga medical clinics or hospitals.

[20] The real estate listing of the Property on February 10, 2018, only 17 days after the Appellant took possession of the Property, which described the Property as brand new, never been lived in, clearly shows that the Property was not the primary place of residence of the Appellant and his Wife on January 28, 2018 and therefore until May 11, 2018 when that listing has been removed. The second real estate listing on May 11, 2018 also supports the conclusion that the Property has never been used by the Appellant and his Wife as their primary place of residence.

[21] For these reasons, I would dismiss the Appellant's appeal.

Signed at Montreal, Quebec, this 19th day of December 2022.

"Réal Favreau"

Favreau J.

CITATION:	2022 TCC 166
COURT FILE NO.:	2020-2148(GST)I
STYLE OF CAUSE:	ADNAN AL-BONDOKJI AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	August 18, 2022
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATE OF JUDGMENT:	December 19, 2022

APPEARANCES:

Counsel for the Appellant:	Azhar Sohail
Counsel for the Respondent:	Christopher Bartlett Lalitha Ramachandran

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