[ENGLISH TRANSLATION]

Docket: 2016-1167(GST)I

BETWEEN:

ELENI DIKTAKIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 23, 2016, at Québec, Quebec

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant:	G. Marc Henry
Counsel for the Respondent:	Bobbie Dion

JUDGMENT

The appeal from the assessment issued under Part IX of the *Excise Tax Act*, whose notice is dated August 12, 2015, for the 2013 taxation year, is dismissed without costs in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 17th day of November 2016.

"Guy Smith"

Smith J.

[ENGLISH TRANSLATION]

Citation: 2016 TCC 262
Date: 20161117
Docket: 2016-1167(GST)I

BETWEEN:

ELENI DIKTAKIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Smith J.

[1] Eleni Diktakis, the appellant in this case, is appealing a decision of the Minister of the Canada Revenue Agency (the "Minister") on August 12, 2015 denying her the goods and services tax (the "GST") rebate following the purchase of a new residence located at 355 MathieuDaCosta Street, apartment 353 in Québec.

[2] The appellant maintains that, following the purchase date, the property in question was occupied by her stepmother and her half-sister, both being her relations for the purposes of subsections 254(2)(*b*) and (*g*) of the *Excise Tax Act* (the "ETA").

[3] However, the Minister maintains that the appellant is not entitled to the GST rebate for new housing within the meaning of the above-mentioned provisions of the ETA.

Facts

[4] According to the appellant, she and her father, Constantin Diktakis, signed a purchase and sale agreement, for the purchase of a condominium identified as apartment 353 at 355 MathieuDaCosta Street in Québec. In particular, the contract

specified that apartment 353 is located "in building 315335 and 355" on Mathieu-DaCosta Street.

[5] Constantin Diktakis put down a deposit when the purchase and sale agreement was signed and, on August 6, 2013, a second deposit.

[6] The possession date, also described as "the building delivery date" was supposed to be on or about August 5, 2013 and, according to the purchase and sale agreement, the buyers had to pay the municipal and school taxes as well as common expenses starting on this date.

[7] The appellant explained that she never intended to inhabit the premises and never lived there. She confirmed that she had not advanced any funds for the purchase of the building and that she had not paid any fees, taxes or mortgage payments from the purchase date until now, and that it was her father, Constantin Diktakis, who paid these fees and expenses.

[8] The appellant also said her father had purchased the building with the intention that she could eventually live there. This is why the title of the condominium was registered in her name as the sole owner, when the notarized deed of sale was signed on September 13, 2013.

[9] I now turn to the second component of the appellant's evidence. According to her testimony, her mother and father were separated about eight years before the date of the hearing, around 2008.

[10] Subsequently, her father had an intimate relationship with Érika Lachance, a Beauceville resident, and two children were born from this relationship, NR in June 2011 and D in September 2014.

[11] The appellant describes these two children as being her half-sister and half-brother. Birth certificates were filed as evidence that they were in fact the children of her father, Constantin Diktakis.

[12] The appellant maintains that Érika Lachance, whom she described as her stepmother, moved into the new apartment with NR after the transaction was completed. It should be noted that only NR was born when the transaction was completed. D was born only in September of the following year.

[13] On cross-examination, the appellant admitted the following facts:

- That her father and Érika Lachance are not married;
- That her father and Érika Lachance slept in separate bedrooms and that, according to her, they are not common-law partners;
- That her father lived in another apartment in the same complex located at 315 MathieuDaCosta Street;
- She recognized Hydro-Québec invoices for the property in question for three periods from August 5, 2013, to January 15, 2014, all in the name of MarcAndré Lachance whom the appellant identified as Érika Lachance's father.
- She also acknowledged that the notarized deed of sale contained a declaration that she was going to occupy the property as her habitual residence, although she said she had not read the deed correctly and did not remember whether it had been brought to her attention.

[14] The Minister agrees that neither the appellant nor Constantin Diktakis occupied the premises and claims that an individual by the name of MarcAndré Lachance and his wife, i.e. Érika Lachance's parents, moved into the premises after the possession date.

[15] As indicated above, the Minister filed in evidence HydroQuébec invoices in the name of "MarcAndré Lachance" for 355 MathieuDaCosta Street, apartment 353, Québec, for three periods from August 5, 2013 to January 15, 2014.

[16] Fouzia Tabouch, who identified herself as a Canada Revenue Agency (the "CRA") tax audit technician, testified next.

[17] I note from her testimony that there was an investigation because the appellant's address as declared in her income tax return was not consistent with the address of the new housing unit and the address on the GST rebate application.

[18] Anais Pelletier, the CRA objection officer, also testified. She produced screenshots of their database.

[19] In light of these documents, it appears that in 2012 and 2013, Constantin Diktakis resided in apartment 103 of 315 Mathieu-Da-Costa Street and that in 2014, he resided in the same complex, but in apartment 502.

[20] These documents also suggest that in 2012 and 2013, Érika Lachance was living in Beauceville, located about 90 km from Québec, and that in 2014 and 2015, she was living in the new housing unit in question.

The appellant's legal arguments

[21] She maintains that she is entitled to the GST rebate because her relatives, her stepmother, her half-sister and eventually, her half-brother, moved into the new housing unit in question and thus meet the criteria set out in subsection 254(2)(*g*) of the ETA. According to her, they were the first occupants.

[22] More specifically, the appellant claims that she is related to NR within the meaning of subsection 126(1) of the ETA, which refers us to subsections 251(2) to (6) of the *Income Tax Act* (the "ITA").

[23] Paragraph 251(2)(*a*) of the ITA stipulates that "related persons" are "individuals connected by blood relationship" and paragraph 251(6)(*a*) specifies that persons are connected by blood relationship if, for example, "one is the brother or sister of the other." Therefore, according to the appellant, because she and NR have the same father, Constantin Diktatis, they are half-sisters and are therefore connected by blood relationship.

[24] To conclude, the appellant argues that the new residence was purchased by her father, Constantin Diktakis, as an investment for her, his daughter, and who in the meanwhile wanted to provide housing for Érika Lachance and the children born from this relationship.

The Minister's legal arguments

[25] The Minister maintains that since Constantin Diktakis and Érika Lachance were not married or common-law partners, Érika Lachance cannot be a person related to or a relation of the appellant.

[26] In other words, Érika Lachance is not really the appellant's stepmother.

[27] Secondly, the Minister maintains that the concepts of "individuals connected by blood relationship" and brother and sister must be interpreted in their traditional sense of persons who have the same parents. From this standpoint, NR would therefore not be a relation of the appellant.

Analysis and conclusions

[28] Because the appellant admits that she never occupied the premises and never intended to, the first issue is who occupied the property after the possession date. The issue is whether this person(s) was "a relation" who met the criteria listed in paragraphs 254(2)(*b*) and (*g*) of the ETA?

[29] I will start with the second question. Is it necessary to determine whether Érika Lachance was related to the appellant?

[30] Because she was not married to Constantin Diktakis and they did not have a conjugal relationship, I find that she could not be the appellant's stepmother and that they therefore were not related. I therefore find that Érika Lachance was not "a relation" of the appellant within the meaning of the ETA.

[31] Secondly, was NR "a relation" of the appellant?

[32] I note that only NR was born when the transaction was completed.

[33] If I had to rule on this issue, I would have preferred the modern definition of brother and sister, which includes the concept of half-brother and half-sister.

[34] Although none of the parties referred to a dictionary definition, it appears to be accepted that the definition of brother and sister includes half-sisters and half-brothers born of a common parent. This principle was recognized by this Court in *Huntley v. Minister of National Revenue*, 2010 TCC 625, at paragraph 17.

[35] That being said, even if I find that NR is the appellant's half-sister within the meaning of paragraph 251(6)(*a*) of the ITA, it remains that the practical application of this finding is problematic in the context of subsection 254(2) of the ETA and in particular subparagraph (*g*), which requires relocation and physical occupation.

[36] Does the ETA stipulate that a "relation" within the meaning of this provision can be a minor, in fact a very young child, because NR was only two years old at the time? I turn to the provisions of the *Civil Code of Québec* (the "C.C.Q."), which, incidentally, were not pleaded.

[37] In reviewing Section 157, I find that a young child cannot have the power of discernment to enter into contracts alone. However, Section 158, provides that "a minor is represented by his tutor for the exercise of his civil rights" and that "an act that may be performed by a minor alone may also be validly performed by his representative."

[38] In conclusion on this matter, I am of the view that NR is the appellant's half-sister and therefore her relation within the meaning of the ETA; and her representative, for the purposes of the provision of the C.C.Q. cited above, was Érika Lachance.

[39] This means that the act that NR had to perform in order to meet the requirements of paragraph 254(2)(*g*) of the ETA, i.e. moving into the new housing unit in question, could only be performed in practice by her mother.

[40] It remains to be determined whether NR and Érika Lachance were the first occupants. The answer to this question is more problematic.

[41] According to Revenue Canada records, Érika Lachance was a Beauceville resident in 2013, the year the residence was purchased, and she only indicated this address as her residence in 2014.

[42] It is clear that the only probative evidence before the Court as to the person who occupied the premises after the possession date, is the HydroQuébec invoice for services, which started on August 5, 2013. The name on these invoices is Marc-André Lachance, Érika Lachance's father.

[43] I will add that there are still two other important considerations.

[44] First, I note that the appellant's testimony was not corroborated and that the only people who could have testified in her favour, Constantin Diktakis, Érika Lachance or MarcAndré Lachance, were absent. The Court must draw a negative inference from their absence.

[45] Second, Section 2819 of the C.C.Q. provides that to be authentic, a notarial act makes proof against all persons of the juridical act which it sets forth.

[46] However, in the deed of sale in question, the appellant's address is indicated as the property in question. In addition, there is a declaration that she was to acquire the building "to use it as her usual residence, when taking possession on the delivery date."

[47] The builder relied on this representation. When the transaction was completed, the appellant received a credit for her part of the GST that was refundable and ceded the right to the rebate to the builder.

[48] The appellant now claims that she was not one who was to occupy the premises but a relation. However, the deed of sale does not provide for this option. At the very least, the statement should have been amended to indicate a relation.

[49] In the end, the appellant had the burden of proof and needed to refute the Minister's contentions. In my opinion, she did not succeed.

[50] Consequently, and based on the above reasons, the appeal must be dismissed.

Signed at Ottawa, Canada, this 17th day of November, 2016.

"Guy Smith"

Smith J.

CITATION:	2016 TCC 262
DOCKET:	2016-1167(GST)I
STYLE OF CAUSE:	ELENI DIKTAKIS v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Québec, Quebec
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APPEARANCES:

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