

Docket: 2006-3665(GST)I

BETWEEN:

MICHEL SCHOEB,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on November 26, 2007, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Agent for the Appellant:	Denise Vézina
Agent for the Respondent:	Maryse Nadeau Poissant (student-at-law)

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**JUDGMENT**

The appeal from the assessment under Part IX of the *Excise Tax Act* (Act), bearing the number 051860065239G0002 and dated January 12, 2006, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant was entitled to a goods and services tax rebate for substantial renovations under subsections 256(2) and 256(3) of the Act.

Signed at Ottawa, Canada, this 7th day of December 2007.

“Lucie Lamarre”

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Lamarre, J.

Translation certified true  
On this 9th day of January 2008.  
Monica F. Chamberlain, Translator

Citation: 2007TCC739  
Date: 20071207  
Docket: 2006-3665(GST)I

BETWEEN:

MICHEL SCHOEB,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Lamarre, J.

[1] The Appellant requests a goods and services tax (GST) rebate for substantial renovations pursuant to paragraph 256(2)(a) and subsection 256(3) of the *Excise Tax Act* (Act). These legislative provisions read as follows:

256(2) Rebate for owner-built homes

Where

(a) a particular individual constructs or substantially renovates, or engages another person to construct or substantially renovate for the particular individual, a residential complex that is a single unit residential complex or a residential condominium unit for use as the primary place of residence of the particular individual or a relation of the particular individual;

...

256(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 (in this subsection referred to as the “due date”) 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 as described in subparagraph (2)(d)(i),

(ii) the day on which ownership is transferred as described in subparagraph (2)(d)(ii), and

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

(b) any day after the due date that the Minister may allow.

[Emphasis added]

[2] The Respondent does not contest that the Appellant performed substantial renovations. Accordingly, *Colosimo v. The Queen*, 2005 GTC 999-121, cited by the Respondent does not apply.

[3] The Respondent contests the rebate for two reasons. Firstly, she says that the building that underwent the substantial renovations did not serve as the Appellant's primary place of residence.

[4] Secondly, she considers the rebate application of June 22, 2005, late, as it was submitted over two years after the substantial renovations were substantially completed.

[5] Concerning the first point, Denise Vézina, spouse of the Appellant and co-owner of the building in question, retired on June 30, 2003. She moved to the St-Donat residence, where many substantial renovations were carried out. At that time, she and her husband had purchased a small one-bedroom condominium in Montréal, as a pied-à-terre and investment. She spent five days of every week in St-Donat. Her husband retired later in 2005, but took a sabbatical of six months starting in June 2003. They spent almost all of their time in St-Donat. In 2004, and until his retirement, the Appellant spent all of his weekends, public holidays and vacations in St-Donat, if he and his wife were not travelling.

[6] For subsection 256(2) to apply, the St-Donat residence in question here must serve as a primary place of residence for the Appellant, who requested a rebate, or for a relation of the Appellant. It is clear from the evidence that since her retirement, Ms. Vézina, who is a relation of the Appellant as defined in the Act, has used this building as her primary place of residence.

[7] The Respondent argued, to support the contrary, that their mail had been addressed to their place in Montréal. In my opinion, this argument is not relevant. A lot of people have their mail sent to an address other than their primary place of residence, for many reasons (practical reasons as in this case, security reasons or other). No such criterion is required by the Act so this argument cannot be held against the Appellant. Not only did the Appellant and his wife intend to make this residence their primary one, but they also made it a reality starting in June 2003 for Ms. Vézina, while the Appellant stayed in Montréal to work, and only during working days.

[8] As regards the second point, to determine when the substantial renovations on the building were mainly completed, the auditor representing the Minister of Revenue of Quebec, Marie-Paule Lefoll, based her decision on the date of the invoices and on the fact that the kitchen cupboards and painting were completed in 2002. The last invoice that she apparently saw dated back to November 2002. However, she acknowledged that she did not go to the premises.

[9] Ms. Vézina explained during her testimony that the work performed on the exterior of the house was entrusted to a contractor, who completed the work in February 2002. Following that, the Appellant, Ms. Vézina, their children and Ms. Vézina's father undertook a large part of the work on the interior of the house to save money. Ms. Vézina explained that they moved from room to room, starting with the kitchen and their bedroom. They completed the work themselves during the weekends. Window insulation and coverings were installed gradually. Work on the stairs and floor of the family room were the last tasks to be completed, just before Ms. Vézina moved in in June 2003.

[10] As regards the invoices, Ms. Vézina brought others to the hearing, dated after November 2002. However, she acknowledged that most of the invoices reflected payments for the contractor and for materials that they stored and used while completing the work.

[11] In my opinion, the criteria used by the auditor, based on certain guidelines from the Ministère du Revenu of Quebec, to determine the date when work was substantially completed are very discretionary. Each case is different. It is possible that had the majority of the work been entrusted to a contractor, he would have finished by installing kitchen cupboards. But here, we are dealing with persons who did a large portion of the work themselves.

[12] Therefore, we must analyze the situation differently. As this Court stated in *Jean-Claude Bissonnet v. The Queen*, 2004 TCC 310, the invoices are not an absolute criterion. This case indicated that the test is to determine when the building was used for the purposes intended by the construction or substantial renovations. Common sense must be used. The expansion permit was requested for August 1, 2001, and the length of the job was estimated at two years. This is not unreasonable considering the circumstances.

[13] In my opinion, the Appellant demonstrated, on a balance of probabilities, that the substantial renovations were performed on the St-Donat residence so that it could serve as a primary place of residence for him or one of his relations, and that these substantial renovations were substantially completed in June 2003, when Ms. Vézina moved there following her retirement.

[14] The rebate application was completed within the time period specified in subsection 256(3) of the Act.

[15] Accordingly, the appeal is allowed.

Signed at Ottawa, Canada, this 7th day of December 2007.

“Lucie Lamarre”

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Lamarre, J.

Translation certified true  
On this 9th day of January 2008.  
Monica F. Chamberlain, Reviser

CITATION: 2007TCC739

COURT FILE NO.: 2006-3665(GST)I

STYLE OF CAUSE: MICHEL SCHOEB and HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 26, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: December 7, 2007

APPEARANCES:

Agent for the Appellant: Denise Vézina  
Agent for the Respondent: Maryse Nadeau Poissant  
(student-at-law)

COUNSEL OF RECORD:

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