

Docket: 2007-1560(GST)I

BETWEEN:

FRANCE CAMIRÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 17, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Maryse Nadeau Poissant

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated August 11, 2006, and bears the number 0605800212396001, is dismissed.

Signed at Ottawa, Canada, this 8th day of February 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 19th day of March 2008.

Brian McCordick, Translator

Citation: 2008TCC82
Date: 20080208
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FRANCE CAMIRÉ,

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REASONS FOR JUDGMENT

Lamarre J.

[1] The Appellant is appealing from a decision made by Revenu Québec as part of its mandate to administer the Goods and Services Tax (GST). The decision denied the Appellant a GST rebate claim in the amount of \$1,157.98 in respect of a new or substantially renovated home. According to Revenu Québec, the condition contemplated in paragraph 256(2)(a) of the *Excise Tax Act*, R.S.C. 1985, c. E-15, ("the ETA") was not met.

[2] Paragraph 256(2)(a) of the ETA reads:

Rebate for owner-built homes

(2) 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,

Remboursement —habitation construite par soi-même

(2) Le ministre verse un remboursement à un particulier dans le cas où, à la fois :

a) le particulier, lui-même ou par un intermédiaire, construit un immeuble d'habitation — immeuble d'habitation à logement unique ou logement en copropriété — ou y fait des rénovations majeures, pour qu'il lui serve de résidence habituelle ou serve ainsi à son proche;

[3] The phrase "substantial renovations" is defined in subsection 123(1) of the ETA as follows:

"substantial renovation" of a residential complex means the renovation or alteration of a building to such an extent that all or substantially all of the building that existed immediately before the renovation or alteration was begun, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced where, after completion of the renovation or alteration, the building is, or forms part of, a residential complex;

« **rénovations majeures** »
Fait l'objet de rénovations majeures le bâtiment qui est rénové ou transformé au point où la totalité, ou presque, du bâtiment qui existait immédiatement avant les travaux, exception faite des fondations, des murs extérieurs, des murs intérieurs de soutien, des planchers, du toit et des escaliers, a été enlevée ou remplacée, dans le cas où, après l'achèvement des travaux, le bâtiment constitue un immeuble d'habitation ou fait partie d'un tel immeuble;

[4] A residential complex is also defined in subsection 123(1) of the ETA. The definition reads, in relevant part:

"residential complex" means

« immeuble d'habitation »

(a) that part of a building in which one or more residential units are located, together with

a) La partie constitutive d'un bâtiment qui comporte au moins une habitation, y compris :

(i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and

(i) la fraction des parties communes et des dépendances et du fonds contigu au bâtiment qui est raisonnablement nécessaire à l'usage résidentiel du bâtiment,

(ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,

(ii) la proportion du fonds sous-jacent au bâtiment correspondant au rapport entre cette partie constitutive et l'ensemble du bâtiment;

...

...

(c) the whole of a building described in paragraph (a), or the whole of a premises described in subparagraph (b)(i), that is owned by or has been supplied by way of sale to an individual and that is used primarily as a place of residence of the individual, an individual related to the individual or a former spouse or common-law partner of the individual, together with

c) la totalité du bâtiment visé à l'alinéa a) ou du local visé au sous-alinéa b)(i), qui est la propriété d'un particulier, ou qui lui a été fourni par vente, et qui sert principalement de résidence au particulier, à son ex-époux ou ancien conjoint de fait ou à un particulier lié à ce particulier, y compris :

(i) in the case of a building described in paragraph (a), any appurtenances to the building, the land subjacent to the building and that part of the land immediately contiguous to the building,

(i) dans le cas d'un bâtiment visé à l'alinéa a), les dépendances, le fonds sous-jacent et la partie du fonds contigu qui sont raisonnablement nécessaires à l'usage du bâtiment,

(ii) dans le cas d'un local visé au sous-alinéa b)(i), la

that are reasonably necessary for the use and enjoyment of the building, and

(ii) in the case of a premises described in subparagraph (b)(i), that part of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for the use and enjoyment of the unit;

fraction des parties communes et des dépendances du bâtiment, et du fonds sous-jacent ou contigu à celui-ci, qui est attribuable à l'immeuble et raisonnablement nécessaire à son usage;

[5] According to Revenu Québec, the residential complex in respect of which the Appellant claimed a rebate did not undergo substantial renovations within the meaning of the ETA. That is the crux of this dispute. In her Notice of Objection (Exhibit I-1), the Appellant stated that she did several kinds of work on the house in order to be able to live in it. In her submission, the work was not done on a whim; rather, it was truly needed. For example, the work included a 12' x 30' extension (including a roof) in which she added two bedrooms; and an uncovered 12' x 30' patio. Based on the extension and the patio, she is of the opinion that there was a 24' x 30' addition to the house, doubling the initial size of the house. She says that the walls of the old part were either demolished or redone. The existing doorways had to be enlarged in order to install [TRANSLATION] "solid pine doors". Closets were added.

[5] In her Notice of Appeal, she added that she re-covered the roof using shingles. She testified that she purchased this lakeside cottage for \$84,000 following a separation. She obtained \$100,000 in financing, and spent \$80,000 of it on renovations. She transformed a summer cottage into a winter home. For example, she brought in a 240-volt service line to replace the existing 120-volt line. The bathroom was totally redone with new plumbing fixtures.

[6] In addition to the electrical wiring for the bathroom and the two new bedrooms, she had a 1250-watt baseboard heater and three other electrical outlets installed, and made a few modifications to the existing wiring. The flooring was completely redone. The kitchen cabinets were resurfaced. All the windows were changed. She put thermostats everywhere in order to control the temperature in every room.

[7] She also claims to have redone all the plumbing. However, the plumbing bill shows an addition of 14 feet of pipe, which would only represent the piping for the bathroom. The documentary evidence does not establish that plumbing in any other room was modified. The Appellant was unable to confirm this point. The insulation was completely redone from the outside. The wall covering was also redone. The house prior to the addition of the extension was 24' x 30' according to the plan.

[8] The Appellant can qualify for the tax rebate for substantial renovations if she shows that all or substantially all of the building that existed immediately before the renovation or alteration was begun has been removed or replaced. An addition to the house is not part of the building that existed and cannot be considered unless the addition is so large in relation to the existing building that the existing building effectively becomes the "add-on" (see *Erickson v. The Queen*, 2001 GTC 309). In such situations, the resulting structure is considered a new residential complex (see Bulletin B-092, *Substantial Renovations and the GST/HST New Housing Rebate*, dated January 6, 2005, and corrected January 31, 2007, under "Major additions" ("Bulletin B-092")).

[9] Here, the extension housing the two bedrooms is 12' x 30'. The pre-existing building was 24' x 30'. In my opinion, the patio cannot be taken into account for the additions because it is not part of what is reasonable necessary to the residential use of the building within the definition of "residential complex" in subsection 123(1) of the ETA. Bulletin B-092 states, under "Eric L.": "To be considered a newly constructed residential complex, the addition must at least double the size of the habitable area of the existing residence." The Bulletin states that an added garage does not count because it is not considered a "habitable" area. Similarly, I would say that a patio is not a habitable area. In my opinion, the Bulletin is not mistaken on this point, considering the definition of "residential complex", which refers specifically to the residential use of the building.

[10] Thus, excluding the patio, the addition did not double the habitable area; rather, it was accessory to the pre-existing building. Thus, this was not a newly constructed residential complex.

[11] As for whether there were "substantial renovations", the definition strangely excludes work on the foundation, external walls, interior bearing walls, floors, roof and staircases. One must consider whether the other work done on the pre-existing building was sufficient for one to say that the building was renovated or transformed to such an extent that all or substantially all of the building has been removed or replaced. Here, only the bathroom was completely redone. The kitchen was not redone; only the cabinets were resurfaced, and they were not actually replaced. The electrical amperage was changed, but only a few modifications were made to the existing wiring. The plumbing was redone only in the bathroom. The doors and windows were replaced, and closets were added. In my opinion, this is still not sufficient for it to be considered that all or substantially all of the building was renovated or replaced. Indeed, the pre-existing portion was not largely removed or replaced. The rebate sought is very restrictive. The terms used in the ETA prove this, because they exclude work which, in theory, would be considered major. The cost of the work is not the deciding factor (see *McLean v. The Queen*, 98 GTC 2137). Unfortunately, the Appellant's claim cannot be allowed.

[12] The appeal is dismissed.

Signed at Ottawa, Canada, this 8th day of February 2008.

"Lucie Lamarre"

Lamarre J.

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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 17, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: February 8, 2008

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Maryse Nadeau Poissant

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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