

Docket: 2006-1001(GST)I

BETWEEN:

WILLIAM N. SLOVACK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 1, 2006 at Nanaimo, British Columbia

Before: The Honourable Justice T. O'Connor

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Sara Fairbridge

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act* which bears number 04114512112370009 and is dated May 18, 2004, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of December, 2006.

"T. O'Connor"

O'Connor, J.

Citation: 2006TCC687
Date: 20061218
Docket: 2006-1001(GST)I

BETWEEN:

WILLIAM N. SLOVACK,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

O'Connor, J.

[1] The issue in this appeal is whether the Appellant, William N. Slovack and his wife Pierrette Cecile Slovack are entitled to the New Housing Rebate ("rebate") in respect of their new home in Courtenay, British Columbia (more fully described below) which they purchased on April 30, 2001. The rebate in question is contemplated in section 254 of the *Excise Tax Act* ("*ETA*"). The amount of the rebate is based on a formula and in the present case amounts to \$6,318.90. The Appellant's Notice of Appeal refers to section 256 of the *ETA* however, this provision relates to owner built homes. The applicable provision of the *ETA* is section 254 which relates to a residential complex purchased by an individual from a builder.

Facts

[2] The basic facts are as follows:

- a) The Appellant and his wife purchased a new home having a civic address of 110-3399 Crown Isle Drive, Courtenay, British Columbia ("Crown Isle") from KCM 2000 Development Ltd. on April 30, 2001. The Appellant took possession of Crown Isle on May 1, 2001. The Appellant paid the full 7% GST on the purchase.
- b) The Appellant and his wife during 2001, 2002 and 2003 commuted between Crown Isle and their home in Calgary. For various medical

reasons they were not convinced that Crown Isle should be their principal residence and they only declared it as such in 2003.

- c) On April 13, 2004 they applied for the New Housing Rebate in the amount of \$6,318.90.
- d) On May 18, 2004 their application was denied because it had not been filed within two years of the purchase of Crown Isle, as required under subsection 254(3) of the *ETA*.
- e) On June 15, 2004 they filed a Notice of Objection; on February 17, 2006 the Minister confirmed the disallowance of the rebate.
- f) The Appellant acknowledges that the application for the rebate was filed more than two years after the date of purchase of Crown Isle. He claims however that it is unfair to disallow the rebate because he was given incorrect information from his realtor, builder and notary public who indicated he had four years to file an application rather than merely two. Also in his Notice of Appeal, the Appellant mentions that he has been held to a very strict standard, yet the Minister took 18 months to respond – presumably referring to the period between the Notice of Objection (June 15, 2004) and the Minister's confirmation (February 17, 2006).

Analysis and Discussion

[3] I am not aware of any cases to date specifically dealing with the limitation period in subsection 254(3). This is likely due to the fact that, under subsection 254(4), the builder may credit the individual for the amount of the rebate at the time of purchase. Generally, those that qualify for the rebate obtain it at the point of sale; those that do not qualify simply do not apply. Therefore, the risk of qualifying buyers not applying for the rebate within the limitation period is extremely small.

[4] However, there is significant jurisprudence under the general rebate provision in section 261 and the rebate for owner-built homes in section 256, both of which

have limitation periods¹ comparable to subsection 254(3). Given the similarities, that jurisprudence is applicable to the limitation period in subsection 254(3).

[5] The jurisprudence under these related provisions clearly shows that once the statutory deadline has passed, no claim for the rebate can be made.

"The intention of Parliament to limit the time period for the filing of a rebate application has been set out in clear and unambiguous language... When the meaning is clear, this Court has no jurisdiction to mitigate a harsh consequence. While this Court may be entitled to construe the language of an Act of Parliament, it may not distort it to make it accord with what the Court may think to be reasonable."²

[6] The logic for this approach is that the *ETA* provides a "complete code" for rebate claims.

"I start from the premise that the right of a taxpayer to obtain a refund of GST must, at least so far as this Court's jurisdiction is concerned, be found within the confines of the *ETA* which contains a complete code."³

[7] What does it mean that the *ETA* provides a "complete code"?

[8] Section 312 of the *ETA* states that recovery rights exist only by statute. It reads:

"Except as specifically provided for in this Part, the *Customs Act* or the *Financial Administration Act*, no person has a right to recover any money paid to Her Majesty as or on account of, or that has been taken into account by Her Majesty as, tax, net tax, penalty, interest or any other amount under this Part."

[9] Further, the *ETA* uses "clear and unambiguous language"⁴, to lay out the rebate requirements, time limits and procedures for appeal.

"The use of the words 'shall not' deprives both the Minister and this Court of any discretion to extend the time for filing, even where the circumstances ... call out for such an extension to be granted"⁵.

[10] As a "complete code", the rebate can be understood and administered without recourse to any outside statute or laws of general application. Therefore, just as with

¹ Subsections 261(3) and 256(3).

² *Cairns v. R.*, [2001] G.S.T.C. 52, 2001 G.T.C. 414 (T.C.C.) at paragraph 11 [re: s.261(3)].

³ *McDonnell v. R.*, 2005TCC301, [2005] G.S.T.C. 134 (T.C.C.) at paragraph 20 [re: s.261(3)].

⁴ *Supra* note 2.

⁵ *Zubic v. R.*, 2004TCC533, [2004] G.S.T.C. 132 (T.C.C.) at paragraph 7 [re: s. 256(3)].

subsections 261(3) and 256(3), the Court would have no discretion to waive or disregard the limitation period in subsection 254(3), based on equity or compassion for special circumstances.

Conclusion

[11] The Appellant admits that the application was filed more than two years after the date he purchased the home. However, he claims that it is unfair to disallow the rebate because he was given incorrect information from his realtor, builder and notary public. This was precisely the issue in *Pickering*⁶ where new homeowners received erroneous information from their builder. The Court held that "it is indeed an unfortunate set of facts ... [but] the Court does not have remedial legislative or inherent powers to assist the Appellants".

[12] In conclusion for the above reasons the appeal is dismissed.

[13] There is little doubt that in the special circumstances of this case – the wrong advice given to the Appellant by the realtor, builder and notary public, the medical conditions of the Appellant and his wife delaying their decision on declaring Crown Isle their principal residence and the considerable delays of the Minister – that there appears to be an unfairness. In analogous circumstances this Court has recommended that the taxpayer seek a Remission Order under the *Financial Administration Act* and I make the same recommendation to the Appellant in this case.

Signed at Ottawa, Canada, this 18th day of December, 2006.

"T. O'Connor"

O'Connor, J.

⁶ *Pickering v. R.*, [2001] G.S.T.C. 73, 2001 G.T.C. 463 (T.C.C.) [re: s.256(3)].

CITATION: 2006TCC687

COURT FILE NO.: 2006-1001(GST)I

STYLE OF CAUSE: WILLIAM N. SLOVACK AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Nanaimo, British Columbia

DATE OF HEARING: December 1, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice T. O'Connor

DATE OF JUDGMENT: December 18, 2006

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Sara Fairbridge

COUNSEL OF RECORD:

For the :

Name:

Firm:

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