

Docket: 2011-2923(GST)I

BETWEEN:

BEVERLEY D. BLADES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 19, 2012, at Calgary, Alberta

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Robert A. Neilson

JUDGMENT

The appeal from the assessment under the *Excise Tax Act*, notice of which is dated June 8, 2010, is dismissed and the decision of the Minister of National Revenue is confirmed.

Signed at Ottawa, Canada, this 21st day of June 2012.

“V.A. Miller”

V.A. Miller J.

Citation: 2012TCC227
Date: 20120621
Docket: 2011-2923(GST)I

BETWEEN:

BEVERLEY D. BLADES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] Beverley Blades appeals the denial of her application for a GST/HST New Housing Rebate of \$6,300 filed with the Minister of National Revenue (the “Minister”) on March 31, 2010 with respect to her home in Red Deer, Alberta.

[2] At the beginning of the hearing, the Appellant informed the Court that she had miscalculated the amount of the rebate in her application and the correct rebate is \$780.20 as was calculated by the Minister.

[3] The Minister denied the application for a rebate on the basis that the Appellant’s house was not substantially renovated. This is the only issue which remains in the appeal.

[4] Subsection 256(2) of the *Excise Tax Act* (the “Act”) provides that where an individual constructs or substantially renovates a residential complex which is used as their primary residence, the Minister shall pay a rebate to that individual. The term “substantial renovation” is defined in subsection 123(1) of the *Act* 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;

[5] The Appellant, her husband and son completed most of the renovations to the house and they resided in the house while the work was being done.

[6] The Appellant's home is located in downtown Red Deer. It is a bungalow with a basement. On the main floor, there are a living room, a kitchen, a bathroom, two bedrooms and a hallway. Prior to the renovation, the area of the main floor was 890 square feet and after the renovation, it measured 1090 square feet due to a 200 square foot addition to the living room. A deck was also added to the front of the house.

[7] The Appellant submitted photographs and sketches which showed the house prior to and after the renovations and she described the work completed in each of the rooms.

[8] The plumbing and electrical systems were upgraded. All windows were replaced and insulation was placed around them. In the bathroom, wainscoting was installed on the walls; and, the tiles, flooring, fixtures, lights, baseboards and cabinets were replaced. In the kitchen, the pantry was rebuilt; an island was built between the kitchen and dining area; and the cabinets, sinks, tiles, and flooring were replaced. The wall in the kitchen was replaced prior to installing the new tiles. In order to build the new addition to the living room, the flooring, ceilings and walls in the living room were replaced. A fireplace was built in the living room. In the bedrooms, the hardwood floors, baseboards and trim were refinished; the ceilings and walls were sanded and painted; the lights were replaced and closets were built or redesigned.

[9] It was the Appellant's evidence that the interior central wall of her home which separated the two bedrooms was load-bearing and she could not have gutted her home. I have accepted this evidence as the Appellant has designed homes for eight years. She has the expertise to determine which walls in her home were load-bearing. The Respondent brought no evidence to refute the Appellant's testimony.

[10] Although there were no details in the pleadings with respect to the basement in the home, in cross examination, the Appellant stated that it measured 890 square feet and that prior to the renovations, the basement had been divided into two bedrooms, a bathroom and an open living space. She renovated the basement into a suite for her son. The existing interior walls in the basement were not moved but she replaced all of the windows, the flooring, the electrical fixtures, the toilet, the furnace and built a kitchen in the basement.

[11] In the Reply to Notice of Appeal, the Minister has conceded that the renovations which the Appellant made to her kitchen, bathroom and living room were substantial. The question remains whether the renovations to her bedrooms and basement meet the definition of “substantial renovations”. It is my view that the renovations in the basement must be considered in my determination because both prior to and after the renovations, it was habitable.

[12] It is clear that the renovations were considerable but in order for the renovations to qualify as substantial, they must satisfy the definition in the *Act*. That is, all or almost all of the house must be removed or replaced except the foundation, external walls, interior supporting walls, floors, staircases and roof.

[13] I agree with O’Connor J.’s comments in *McLean v. Canada*, [1998] G.S.T.C. 57 that the definition of substantial renovation in the *Act* is very restrictive. He stated:

6 The definition of substantial renovation is restrictive. Firstly, it has no reference to the total costs of the renovation in relation to the value of the home. Secondly, renovations or alterations to the foundation, external walls, interior supporting walls, floors, roof and staircases are not taken into account. Thirdly, it appears that additions are not to be considered. The only items that are considered are the renovations or alterations of “the building that existed immediately before the renovation or alteration was begun”. This leads to the conclusion that what is being referred to is the interior structure of the residential complex excluding interior items mentioned above.

[14] It is my view that the renovations in the bedrooms and the basement do not satisfy the requirements of the definition. I realize that the wall between the bedrooms was a supporting wall and could not be removed. However, building closets, painting walls, and refinishing the floors are cosmetic in nature. The walls in the bedrooms were not taken down to the studs; they were neither replastered nor drywalled. They were only sanded and painted. Likewise, the renovations to the basement were not substantial and the basement represented 50% of the area of the house.

[15] All or substantially all of the house was not removed or replaced. Except for the living room, the kitchen and the bathroom, the renovations to the rest of the home were esthetic changes.

[16] The appeal is dismissed.

Signed at Ottawa, Canada, this 21st day of June 2012.

“V.A. Miller”

V.A. Miller J.

CITATION: 2012TCC227

COURT FILE NO.: 2011-2923(GST)I

STYLE OF CAUSE: BEVERLEY D. BLADES AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: April 19, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: June 21, 2012

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Robert A. Neilson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada