

Docket: 2024-1119(GST)I

BETWEEN:

LUCAS PAGLIA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on October 2, 2025, at Toronto, Ontario

Before: The Honourable Justice Jenna Clark

Appearances:

Counsel for the Appellant: Matthew Boyd

Counsel for the Respondent: Michael Cheng
Andrew Laurence

JUDGMENT

The appeal is allowed, without costs, and the Assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to the GST/HST New Housing Rebate in respect of 1002-75 Oneida Crescent, Richmond Hill, Ontario.

Signed this 15th day of October 2025.

“Jenna Clark”

Clark J.

Citation: TCC 2025 148
Date: 20251015
Docket: 2024-1119(GST)I

BETWEEN:

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Appellant,

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REASONS FOR JUDGMENT

I. Introduction

[1] The Appellant, Lucas Paglia, and his friend, Jon Paul Labardo (“Labardo”), purchased a condominium at 85 Oneida Crescent, Richmond Hill (the “Property”) in April 2017. The Appellant claimed a new housing rebate in the amount of \$24,691.45 for GST/HST paid on a newly constructed condominium.

[2] The Minister of National Revenue (the “Minister”) denied the application. The Minister contends that the Appellant and Labardo did not intend to occupy the Property at the time they entered into the Agreement of Purchase and Sale as required by paragraph 254(2)(b) of the *Excise Tax Act* (“ETA”). Additionally, the Minister’s position is that the Appellant and Labardo were not the first to reside at the Property as required by paragraph 254(2)(g) of the *ETA*.

II. Background

[3] The Appellant and Labardo met in Bolton, Ontario when they were both elementary school children. They have been friends since that time and in 2017 they decided to co-purchase a condominium. On April 5, 2017, they signed an Agreement of Purchase and Sale to acquire the Property.¹ This is the relevant date for the paragraph 254(2)(b) inquiry.

[4] The Appellant and Labardo took legal ownership, as joint tenants, on January 13, 2021. They ultimately rented the Property to tenants on January 15, 2022. This is the relevant time period for the paragraph 254(2)(g) inquiry.

III. Legal Framework

[5] Subsection 254(2) of the *ETA* provides a rebate for GST/HST paid on a new home purchased from a builder by a particular individual. The rebate is a limited exception to the requirement to pay GST/HST on goods and services, and is designed to provide a construction and renovation incentive to owners of small dwellings.²

[6] Both the Appellant and Labardo had to satisfy the requirements of subsection 254 of the *ETA*.³

[7] In order to determine if paragraph 254(2)(b) of the *ETA* has been satisfied, I must consider whether the Appellant intended to acquire the Property for use as his primary place of residence on April 5, 2017. This is a question of fact.

[8] In order to determine if paragraph 254(2)(g) of the *ETA* has been satisfied, I must consider if the Appellant was the first to occupy the complex as a place of residence at any time after substantial completion of the Onieda property. I note that this criterion does not specify that the condominium be the primary place of residence.⁴

IV. Analysis

Witnesses and Credibility

[9] I heard from four witnesses. The Appellant testified on his own behalf, as did Labardo. I found both young men to be credible and straightforward. Counsel for the Respondent argued that the Appellant and Labardo gave conflicting testimony and therefore lacked credibility. I disagree. To the contrary, I found both co-owners' testimony to be consistent and corroborative.

[10] The instances offered to the Court as evidence of inconsistency were first, their recollections as to whether they considered other condominiums for purchase, and second, their recollections as to when a pull-out sofa was moved into the Property.

[11] The Appellant's testimony was that he did not consider purchasing any other units before the Property was brought to his attention. He may have looked at other condominiums after the Property was brought to his attention, but none were at the right price point. Labardo's testimony was that he did not recall looking at any other units. I do not find this to be a material inconsistency.

[12] The Appellant testified that he moved a pull-out sofa into the unit in January. He could not recall whether an email exchange with the Property manager in May of 2021 that referenced a delivery concerned furniture that was to be moved out of, or moved into, the Property⁵. His testimony was that if it was with respect to a delivery into the Property, it was probably a TV stand or a coffee table. Labardo's recollection was similarly indefinite, but he believed the delivery was for a TV stand and maybe for a pull-out sofa. I do not find this to be a material inconsistency.

[13] The Appellant's father, Frank Paglia, also testified. I found Frank Paglia's testimony to be at times vague and unclear. In instances where his testimony contradicted that of his son, I give more weight to the clear and straightforward evidence provided by the Appellant.

[14] Lacey May, Appeals Officer with the CRA, testified on behalf of the Respondent. I also found Ms. May's testimony to be credible and logical.

[15] Both the Appellant and Labardo work in the construction industry. The Appellant is an electrician. In 2017, the Appellant's sister learned about new condos being built near Yonge Street in downtown Richmond Hill. The Appellant and Labardo were in their mid-20s at the time they entered into the Agreement of Purchase and Sale. Both the Appellant and Labardo testified that their intention at the time they entered into the agreement was to live together in the Property.

[16] The Appellant stated that he was an apprentice electrician and as this was his first real estate purchase, living alone was not an option for him. The Appellant testified that the Property was small, at just over 600 square feet⁶, but it was all the men could afford and it represented an opportunity to break into the real estate market. I understood this to mean that once the Appellant owned some portion of real estate, he could build equity and eventually upgrade. The Appellant admitted that the plan to live with Labardo was not "forever" and they would probably eventually rent the Property out. However, he said the Property was attractive at the time as a residence, as it reduced his commute to his worksites in nearby York Region cities such as Markham and Vaughan/Woodbridge and downtown Toronto.

[17] The Property was close to the GO Train. The Appellant said he did not mind sleeping on a sofa in the living room. He was single both at the time he entered into the Agreement of Purchase and Sale and at the time he moved into the Property.

The move into the Property

[18] The Property sale closed in January of 2021 and the Appellant and Labardo testified that they both moved into the Property in February 2021. The Appellant produced elevator reservation agreements indicating he reserved an elevator in order to move furniture into the Property in January 2021, and out of the Property in January of 2022⁷. There was a notation “April 2021” on the bottom of the elevator forms. I did not receive a satisfactory explanation for the discrepancy between the January 2021 signature and the April 2021 notation. Ms. May of the CRA testified that she contacted the Property management office and they had no record of the elevator reservation.

[19] The Appellant insisted he did use the elevator in January 2021. He stated that the elevator form was provided to him in January 2021 with the April 2021 notation. I find that the notation is not enough to indicate that the elevator form was falsified. I also find that the Property management office’s lack of elevator reservation record does not establish that the elevator was not reserved. I have no evidence that the office ordinarily would have a reservation record for that time period, or at all. In any event, I was presented with additional corroborative evidence that furniture had been moved into the Property, including the aforementioned May email communication between the Appellant and Property management and photographs of the interior of the Property⁸. Further, I saw a March 2021 email exchange between the Appellant and the Property manager, whereby the Appellant advised the Property manager he was residing in the unit⁹.

[20] The Appellant testified that he and Labardo used their vehicles to move items into the Property, including a television, table, chairs, sofa, bed and personal items including clothing and toiletries. The substantial move in date was early February 2021.

[21] Labardo and the Appellant testified that they ate in the condo, usually warming prepared food provided to them by their parents. They occasionally went to nearby restaurants. Both men testified that they worked very long hours and often came home late, worked out in the Property gym, showered and went directly to bed. They each testified that they spent between 3-5 nights a week at the Property. On the weekends they usually went to their parents’ homes where they did some laundry

and got food for the week. They also did laundry about once a week at the Property in the ensuite washer/dryer.

[22] Wireless internet was not installed until May of 2021¹⁰. The Appellant testified that he primarily used his cell phone for internet and entertainment. This is reasonable given his age and how many hours he worked in a typical day.

[23] The internet bill and electricity bills were sent to the Appellant's parents' address.¹¹ The Appellant did not change his mailing address with the CRA. Ordinarily, this would be an indication that the Appellant did not reside in the Property, however in this case in the context of the Appellant's age and life circumstances, it is not surprising that he didn't change his mailing address. This is particularly so in the case of his income tax filings, as his father, an accountant, prepared the Appellant's returns on his behalf.

[24] Monthly electricity bills fluctuated between \$30 to \$55¹². The Respondent pointed to inconsistent energy usage as evidence of either no residence or that only one owner resided in the Property. Although that usage appears low, I was provided no comparison against which to determine if that energy usage was reasonable, for a unit of that size during that time period.

[25] The Property came with one parking spot¹³. Both owners testified that they had a "first come first serve" system, whereby whomever came home first would use the assigned underground parking spot. The second to arrive would either park in the visitor parking lot or on the street.

[26] The co-owners testified that they moved out in January 2022 and rented the Property. The Appellant and Labardo each testified that they decided to move out as their life circumstances were changing. At this time each co-owner had a girlfriend, and Labardo's relationship with his girlfriend was becoming serious. Labardo moved back to his parents' home for about a month before moving in with his then girlfriend, now wife. The Appellant moved back to his parents' home for a few months before moving to a condominium in North York.

Frank Paglia's communications with CRA

[27] The Appellant's father, Frank Paglia, represented the Appellant during the objection process. He is an accountant, although he testified that he does not have expertise in tax. He did not represent his son in his official capacity. In a telephone conversation with Ms. May in 2023, Frank Paglia informed the CRA Appeals

Officer Ms. May that his son and Labardo did not intend to live in the Property, and in fact never lived there at the same time¹⁴. I am cognizant of the fact that Frank Paglia's statement reveals an inconsistency with the evidence given by the Appellant and Labardo, but faced with the clear and credible evidence of the co-owners, I accept that the Appellant's father was incorrect.

[28] The Notice of Objection states that the Property was purchased with the intention of one of the individuals (Lucas Paglia/Jon Paul Labardo) taking occupancy¹⁵. I also note however that a second page appended to the Notice of Objection states, "The condominium was purchased with the clear intention of it being a primary residence and Lucas Paglia/Jon Paul Labardo taking occupancy." I find the two statements, written by Frank Paglia, sufficiently contradictory that I cannot find the first statement is an admission that only one of the owners lived in the Property.

[29] The Respondent rested much of their case on Frank Paglia's statements, made by telephone and in the Notice of Objection. I do not find these statements to be persuasive evidence in the face of reliable and credible testimony by the actual Appellant and co-owner Labardo. The Crown was given an opportunity to cross-examine Frank Paglia on his statements. The cross-examination simply bolstered Frank Paglia's explanation that he did not collaborate closely with his son when speaking with the CRA or preparing the Notice of Objection. I was left with the impression that Frank Paglia was not familiar with his son's living arrangements or future plans. I conclude that when he communicated with the CRA by telephone and when drafting the Notice of Objection, he was speaking of his own understanding rather than communicating with his son.

V. Conclusion

[30] Subjective statements of intention made by those with an interest in the outcome of a matter must be borne out by credible evidence. Facts to be considered when determining if the purchaser intended to occupy a property as a primary residence include changing addresses, moving sufficient personal effects to the rebate property, evidence of occupancy insurance, delivery of possessions. These indicia are not exhaustive and will expand and contract based on unique factual situations.¹⁶

[31] I find that based on the evidence presented to me and the credible testimony of the Appellant and Labardo, they intended in April 2017 to reside together in the condo as their primary residence. The men were childhood friends, and the Property

was their first home away from their parents. I saw evidence that the co-owners divided costs equally, which also supports a finding that they both lived in the Property. I find it unlikely that the co-owners would have closed the sale in January of 2021 and not rented it until January 2022 if they were not living in the Property. I am satisfied that the requirements of paragraph 254(2)(b) of the *ETA* were met.

[32] I find that both the Appellant and Labardo lived in the property between February 2021 to January 2022. They moved personal effects and furniture. The furniture moved was minimal, but reasonable given the size of the condo and that both owners were leaving their parents' homes for the first time. They set up internet, purchased blinds, and communicated with building management about moving furniture. Both men testified that they lived in the unit during the week while they worked. They did laundry at the Property, ate meals, used the gym and went to local restaurants. It is also clear that the owners also spent a great deal of time at their parents' homes during 2021.

[33] Paragraph 252(2)(g) of the *ETA* requires that the purchaser reside in the property. The scope of that requirement has been considered at length in this Court. Residence cannot be transient, fleeting or tentative. The rebate is not intended for a secondary residence or a pied-à-terre.¹⁷

[34] I find that the co-owners, two men in their 20s, having left their parents' homes for the first time and trying to start building equity in the real estate market, resided in the property in 2021. The Appellant and Paglia moved back to their parents' homes only briefly before moving onto separate lives, indicating that they had substantively already "left the nest". I conclude that the requirement in paragraph 254(2)(g) of the *ETA* have been satisfied.

[35] The appeal is allowed, without costs.

Signed this 15th day of October 2025.

"Jenna Clark"

Clark J.

CITATION: TCC 2025 148

COURT FILE NO.: 2024-1119(GST)I

STYLE OF CAUSE: LUCAS PAGLIA AND HIS MAJESTY
THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 2, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice Jenna Clark

DATE OF JUDGMENT: October 15, 2025

APPEARANCES:

Counsel for the Appellant: Matthew Boyd

Counsel for the Respondent: Michael Cheng

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¹ Exhibit R1, Agreement of Purchase and Sale, April 5, 2017

² *Canada v Sneyd*, 2000 CanLii 15708.

³ *Cheema v HMQ*, 2018 FCA 45.

⁴ *Jeyakody Parthiban v HMQ*, 2017 TCC 30 at para 20.

⁵ Exhibit A8, Email chain.

⁶ Exhibit A2, Floor plan.

⁷ Exhibit A1, Elevator Reservation Agreement January 20, 2021; Exhibit A12, Elevator Reservation Agreement January 6, 2022.

⁸ Exhibit A17, Photographs.

⁹ Exhibit A6, email chain.

¹⁰ Exhibit A4, bundle of Rogers receipts.

¹¹ Exhibit A3, bundle of Provident receipts detailing electricity charges.

¹² *Ibid.*

¹³ Exhibit A7, Resident Information Form.

¹⁴ Exhibit R3, T2020 Memo for file.

¹⁵ Exhibit R2, Faxed communications including copy of Notice of Objection.

¹⁶ *Sozio v The Queen*, 2018 TCC 258 at paras 15 and 16.

¹⁷ *Kniazev v HMQ*, 2019 TCC 58 at para 7, 8; *Gill v HMQ*, 2016 TCC 13 at para 29.