Docket: 2016-5218(GST)I

BETWEEN:

LAZAROS GAITANIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard virtually on July 16 and 17, 2025 and November 7, 2025 at Ottawa, Ontario

Before: The Honourable Justice J. Scott Bodie

Appearances:

For the Appellant:	The Appellant himself and Lucia Silhanova, as agent for the Appellant
Counsel for the Respondent:	Sean Karmali

JUDGMENT

UPON hearing from the parties:

The appeal from a Notice of Assessment dated November 23, 2015 and confirmed by Notice dated September 8, 2016, made under the *Excise Tax Act*, in respect of the Appellant's Good and Services Tax/Harmonized Sales Tax (GST/HST) New Housing Rebate Application is dismissed, without costs.

Signed this 10th day of December 2025.

"J. Scott Bodie"

Bodie J.

Citation: 2025 TCC 186
Date: 20251210
Docket: 2016-5218(GST)I

BETWEEN:

LAZAROS GAITANIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Bodie J.

INTRODUCTION

[1] Mr. Gaitanis, who prefers to be called by his first name, Lazaros, appeals by way of the informal procedure, an assessment (the "Assessment") by the Minister of National Revenue (the "Minister"), denying him the Goods and Services Tax/Harmonized Sales Tax ("GST/HST") New Housing Rebate (the "Rebate") available under Part IX of the *Excise Tax Act* (the "Act"). The amount of the Rebate adjustment at issue is $24,000. The appeal arises from the purchase of a new single unit residential complex, located at 59 Greti Drive, Hamilton Ontario (the "Rebate Property") by Lazaros and his niece, Lucia Silhanova in 2014. The evidence shows that Lazaros, alone applied for the Rebate. Unless stated otherwise, all statutory references herein are to the Act.

[2] It is the Minister's position that Lazaros is not entitled to the Rebate because he does not meet each of the requirements under subsection 254(2). In particular:

1. at the time that he became liable under the Agreement of Purchase and Sale in respect of the Rebate Property (the "Agreement of Purchase and Sale"), Lazaros and Ms. Silhanova did not intend to use the Rebate Property as a

primary place of residence for each of themselves or a relation of each of them, as required by paragraph 254(2)(b); and

2. neither Lazaros and Ms. Silhanova, nor a relation of each of them were the first to occupy the Rebate Property as a place of residence after substantial completion of its construction, as required by paragraph 254(2)(g).

[3] On the other hand, it is Lazaros' position that because he and Ms. Silhanova are related, and they each had the clear intention when they entered into the Agreement of Purchase and Sale, that Ms. Silhanova and her children would occupy the Rebate Property as their primary residence, the requirements of paragraph 254(2)(b) have been met. Further, it is Lazaros' position that such intention was frustrated because he and Ms. Silhanova were unable to finance the purchase of the Rebate Property on reasonable terms and therefore were required to sell the Rebate Property before they were able to occupy it.

ISSUES

[4] Accordingly, the issues in this appeal are as follows:

1. Are the requirements set out in paragraphs 254(2)(b) and (g) met, such that Lazaros is entitled to the Rebate provided for in subsection 254(2)?

2. If one or both of such requirements are not met, did a frustrating event occur such that it is unnecessary to satisfy such requirements?

FACTS

[5] Lazaros appeared as the sole witness at the hearing of this appeal. The Respondent did not call any witnesses.

[6] Lazaros testified that he and his niece, Ms. Silhanova signed the Agreement of Purchase and Sale for the Rebate Property with the builder on August 16, 2014. The purchase price for the Rebate Property was $465,085.82. Lazaros' involvement with the Rebate Property arose because Ms. Silhanova was not able to secure financing to purchase the Rebate Property on her own. Therefore, Lazaros offered to assist his niece by in his words, acting as a "guarantor" or "co-signer" for the purchase. The purchase was originally financed with a short-term mortgage granted by a private mortgage provider as financing could not be obtained through a major

bank. They expected that they would be able to refinance the Rebate Property with more conventional financing after the purchase of the Rebate Property closed.

[7] The purchase of the Rebate Property closed on December 31, 2014. In January 2015, Lazaros filed an application for the Rebate and was credited the Rebate by the builder. Shortly thereafter, despite engaging the services of a local mortgage broker, Lazaros and Ms. Silhanova realized that they would not be able to obtain long- term mortgage financing on acceptable terms and that therefore they could not retain the Rebate Property. A second short- term mortgage was obtained to allow Lazaros and Ms. Silhanova to meet their initial mortgage obligations.

[8] The Rebate Property was sold in or around July 2015 before either Lazaros or Ms. Silhanova moved into the Rebate Property.

ISSUE 1 – ARE THE REQUIREMENTS SET OUT IN PARAGRAPHS 254(2)(b) and (g) MET?

A. Statutory Framework

[9] When an individual buys a new home, there are two potential partial GST/HST rebates available, depending upon the province in which the new home is purchased. Subsection 254(2) provides for the federal portion and sets out seven conditions, each of which must be satisfied to qualify for the Rebate. The maximum federal rebate is available for new homes priced under $350,000. Such portion is phased out for more expensive homes and disappears entirely where the price exceeds $450,000. By virtue of subsection 256.21(1) the Minister shall pay an additional rebate amount where a new home is purchased in a province that has signed a sales tax harmonization agreement with the Federal Government, such as is the case with Ontario.

[10] Subsection 41(2) of the New Harmonized Value-Added Tax System Regulations, No. 2 governs the Ontario portion of the Rebate. It allows for a partial rebate even in cases where the price of the new home exceeds $450,000, to a maximum rebate amount of $24,000. To qualify for this additional Ontario portion of the Rebate, an individual must meet the remaining conditions set out in subsection 254(2).

[11] In this appeal, only the conditions set out in paragraphs 254(2)(b) and (g) are at issue. These paragraphs provide as follows:

254(2) Where

…

b) at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the complex or unit entered into between the builder and the particular individual, the particular individual is acquiring the complex or unit for use as a primary place of residence of the particular individual or a relation of the particular individual,

…

(g) either

(i) the first individual to occupy the complex or unit as a place of residence at any time after substantial completion of the construction or renovation is

(A) in the case of a single unit residential complex, the particular individual or a relation of the particular individual

…,or

(ii) the particular individual makes an exempt supply by way of sale of the complex or unit and ownership thereof is transferred to the recipient of the supply before the complex or unit is occupied by any individual as a place of residence or lodging,

the Minister shall, subject to subsection (3) pay a rebate to the particular individual…

[12] Both of these conditions must be met in order to qualify for the Rebate. The taxpayer, or the "particular individual" in the parlance of the provision, must first demonstrate that the taxpayer had the initial intention, at the time that the agreement of purchase and sale was signed, that either the taxpayer himself or herself, would occupy the property as a primary place of residence or that a qualifying relation of the taxpayer would so occupy the property, as required by paragraph 254(2)(b). Secondly, the taxpayer must demonstrate that the taxpayer or a qualifying relation was actually the first individual to occupy the property as a place of residence, or that the property was sold in an exempt sale before anyone occupied the property as a place of residence, as required by paragraph 254(2)(g).

[13] Although paragraph 254(2) does not expressly refer to intention, in *Coburn Realty v The Queen*, 2006 TCC 245 at paragraph 11, Chief Justice Bowman

held that the words "for use" establishes a purpose or intention test. This decision has been followed in numerous subsequent decisions of this Court.

(i) Whose Intention should be Considered where there are Multiple Purchasers?

[14] Because both Lazaros and Ms. Silhanova entered into the Agreement of Purchase and Sale in August 2014 and both subsequently purchased the Rebate Property, it is necessary to consider who must have the requisite intention. To answer this question, it is necessary to consider subsection 262(3). Prior to certain amendments which were made to the Act in 2021, the provision read as follows:

> (3) If
>
> (a) a supply of a residential complex or a share of the capital stock of a cooperative housing corporation is made to two or more individuals, or
>
> (b) two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a residential complex,
>
> the references in sections 254 to 256 to a particular individual shall be read as references to all of those individuals as a group, but only one of those individuals may apply for the rebate under section 254, 254.1, 255 or 256, as the case may be, in respect of the complex or share.

[15] The leading case on the interpretation of the pre-amendment version of subsection 262(3) is *Canada v. Cheema* 2018 FCA 45. In that case, the Federal Court of Appeal held that all signatories to an agreement of purchase and sale are required to have the necessary intention in order to qualify for the Rebate.

[16] The consequence of this decision prior to the 2021 amendment and the effect of that amendment on subsequent cases was summarized by Justice Sorensen in *Mvemba v. His Majesty the King* 2025 TCC 140 at paragraph 2 as follows:

> Before April 20, 2021, when two or more individuals purchased a residence together, they each had to acquire it for use as their primary residence or as the primary place of residence of a relation, as required by s. 254(2)(b) and 262(3) of the *Excise Tax Act* (the "Act"). An amendment, effective after April 19, 2021, made the GST/HST New Housing Rebate available where a new home was acquired as the primary place of residence of any one of the purchasers or a relation. The amendment does not assist the appellant in this case, because the purchase and sale agreement was signed in October 2019.

[17] Similarly, the Agreement of Purchase and Sale in this case was signed by Lazaros and Ms. Silhanova in 2014. Therefore, they each had to acquire the Rebate Property for use as their primary place of residence or as the primary place of residence of a relation.

[18] When determining a person's intentions, courts will of course, consider the person's statements given in oral testimony. However, the weight given to such statements will depend upon the court's assessment of credibility. That assessment will generally involve an examination of the surrounding facts with the goal of determining whether they objectively support the person's stated intentions.

[19] In *Charlebois v. The King*, 2025 TCC 76, at paragraph 12, Justice Derksen wrote:

> In considering a person's intention or purpose, a person's conduct is generally more revealing than "ex post facto declarations" (see generally *MacDonald v. Canada*, 2020 SCC 6, at paragraph 22). Courts are therefore, not guided only by a person's subjective statements of purpose and instead will look for objective manifestations of purpose (see *Symes v. Canada* [1993] 4 SCR 695 at p. 736) and examine the surrounding factual circumstances.

[20] In his testimony, Lazaros was clear that at the time that he and Ms. Silhanova entered into the Agreement of Purchase and Sale, they each intended that the Rebate Property would be used as the primary place of residence of Ms. Silhanova and her three children. However, he was not clear on the issue of whether he also intended to use the Rebate Property as his primary place of residence. His stance on this issue seemed to change throughout both his direct testimony and his testimony on cross-examination. At times he suggested that he only signed the Agreement of Purchase and Sale as a "co-signor" so that Ms. Silhanova and her children would have a home. At other times he opined that intentions change and that he may have moved into the Rebate Property but for the problems that he and Ms. Silhanova encountered in finding acceptable financing. Generally, I found Lazaros' testimony on this question to be inconsistent, and on cross-examination, evasive. There was no other evidence introduced at trial which would indicate that at the time the Agreement of Purchase and Sale was signed, Lazaros had the requisite intention. Accordingly, in my view, on a balance of probabilities, Lazaros has not successfully discharged his burden to show that he had the necessary intention at the applicable time.

[21] While I am not prepared to accept, on a balance of probabilities that at the time Lazaros and Ms. Silhanova signed the Agreement of Purchase and Sale, they

were acquiring the Rebate Property for use as the primary place of residence for Lazaros, I do accept Lazaros' testimony that they were each acquiring the Rebate Property for use as the primary place of residence of Ms. Silhanova and her children.

[22] As discussed above, pursuant to subsection 262(3), as it read at the time the Agreement of Purchase and Sale was signed, to qualify for the Rebate, each of Lazaros and Ms. Silhanova had to acquire the Rebate Property for use as their primary place of residence or that of a relation. As there is insufficient evidence to enable me to find, on a balance of probabilities that there was an intention to acquire the Rebate Property for use as Lazaros' primary place of residence, it is necessary to consider whether Ms. Silhanova is a relation of Lazaros for purposes of subsection 254(2). If she is, then the requirement in paragraph 254(2)(b) would be met as she would have had the requisite intention with respect to herself and Lazaros would have had such intention with respect to a relation. If, however, she is not a relation of Lazaros, then he would not have had the requisite intent and he would therefore not be entitled to the Rebate.

(ii) Are Ms. Silhanova and Lazaros related?

[23] Ms. Silhanova and Lazaros are not related for purposes of subsection 254(2).

[24] Subsection 254(1) provides that in section 254 a "relation" of a particular individual is "another individual who is related to the particular individual or who is a former spouse or common- law partner of the particular individual".

[25] Subsection 126(2) provides that "Persons are related to each other for purposes of this Part if, by reason of subsections 251(2) to (6) of the *Income Tax Act*, they are related to each other for purposes of that Act". Accordingly, it is necessary to refer to the provisions of the *Income Tax Act* when determining whether persons are related for purposes of the Act.

[26] Paragraph 251(2)(a) of the *Income Tax Act* provides that related persons are "individuals connected by blood relationship, marriage or common-law partnership or adoption."

[27] There was no indication at trial that Lazaros and Ms. Silhanova were related by marriage, common law partnership or adoption, which leaves only a "blood relationship" by which they may be related. Paragraph 251(6)(a) defines a blood relationship for purposes of the *Income Tax Act.* It provides that persons are

connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other.

[28] In *The Queen v. Ngai*, 2019 FCA 181, the Federal Court of Appeal held that the taxpayer was not entitled to the Rebate as her nephew did not qualify as a relation. The taxpayer and her husband signed the mortgage for the newly built condominium after her nephew was notified that he no longer qualified for the mortgage. The taxpayer, her husband, and her nephew were all on title, with the nephew holding the largest interest. At paragraph 31 of that decision, the Court held that "a nephew is not related to his aunt or uncle" for the purposes of subsection 126(2) of the Act and subsection 251(6) of the *Income Tax Act.*

[29] Prior to the decision in *The Queen v. Ngai*, Justice Russell stated in *Zheng v. The Queen*, 2017 TCC 132 at paragraph 23 that a niece was not included in the defined term of "relation" according to subsection 126(2) of the Act. However, it should be noted, that Justice Russell went on to hold that the taxpayer's aunt in that case was acting as an implied agent on behalf of her niece's parents and therefore he allowed the appeal on the basis that both parents qualified as "particular individuals".

[30] In *Reeves v. The Queen*, 2021 TCC 74 at paragraph 25, Justice Russell followed *Ngai v. The Queen* and held that for the purposes of paragraph 254(2)(b) of the Act, a niece is not a relation of her aunt.

[31] Accordingly, Lazaros and Ms. Silhanova are not related for the purposes of the Act.

[32] Therefore, the requirement set out in paragraph 254(2)(b) cannot be met in this case. Pursuant to subsection 262(3) as it read and applied at the time that the Agreement of Purchase and Sale was entered into, both Ms. Silhanova and Lazaros had to have had the requisite intent. Ms. Silhanova met this requirement as I have accepted, based on the evidence presented at trial, that on a balance of probabilities she intended to acquire the Rebate Property for use as her primary place of residence. However, Lazaros did not meet the requirement. He did not acquire the Rebate Property for use as his primary place of residence. Further, based on the definition of "relation", he did not acquire the Rebate Property for use as a relation's primary place of residence.

[33] As is evident by the analysis of Justice D'Arcy in *Ho v. Her Majesty the Queen*, 2015 TCC 10, in order to qualify for the Rebate all seven requirements of subsection

254(2) must be met. This is indicated by the word “and” in the listing of such requirements. A party who does not meet all of those requirements will not be entitled to the Rebate. As the requirement set out in paragraph 254(2)(b) is not met, this appeal cannot be allowed. There is no need to examine whether the requirement in paragraph 254(2)(g) is met in order to decide this appeal.

ISSUE 2 – IS SATISFACTION OF THE REQUIRMENTS OF PARAGRAPHS 254(2)(b) and (g) UNNECESSARY BECAUSE OF A FRUSTRATING EVENT?

[34] At trial, Lazaros argued he and Ms. Silhanova were unable to arrange for financing on terms which they considered economically viable, as they had expected when they signed the Agreement of Purchase and Sale, and were therefore forced to sell the Rebate Property before they could occupy it. Although he did not use the term, he was effectively arguing that a frustrating event occurred which should excuse his failure to comply with the requirements in paragraphs 254(2)(b) and (g).

[35] Since, frustration was argued vigorously by Lazaros, I will briefly address this position. I have two observations.

[36] First, it is unnecessary in this case to resort to frustration with respect to the issue of whether the requirement in paragraph 254(2)(g) has been met. The requirement in that paragraph can be met in either of the following two circumstances:

1. The particular individual, or a relation was actually the first individual to occupy the property as a place of residence; or

2. The particular individual makes an exempt supply by way of sale of the property before anyone occupies it.

[37] Although the evidence on the second circumstance is not as strong as it might have been, counsel for the Respondent conceded that by way of the second circumstance listed above, the requirement set out in paragraph 245(2)(g) was actually met.

[38] My second observation is that the issue of frustration has been considered in past cases in either of two circumstances. First, it has been considered when determining whether a party’s statement of intention is credible. Whether a person

actually moves into a property is a factor which is often considered to determine whether a person's actions meet the person's stated intention. Accordingly, frustration may be considered in determining how much weight should be given to whether a person moved into the property when considering whether a person's statement of intention is credible. If it can be shown that after an agreement of purchase and sale was signed, a frustrating event occurred which prevented the taxpayer from moving into the rebate property, then the fact that the taxpayer was not the first to occupy the property, should generally not be viewed negatively when determining the credibility of a taxpayer's statement that the requisite intention was present when the agreement was signed.

[39] Secondly, frustration has been considered where the Court has found that the taxpayer had the requisite intention at the time that a purchase and sale agreement was signed but an intervening event occurred before the taxpayer could occupy the property and fulfill the requirement in subparagraph 254(2)(g)(i).

[40] In this case, I found that even before the potential occurrence of any intervening event, being the inability to find acceptable permanent financing after the Agreement of Purchase and Sale had been signed, and regardless of whether or not he ultimately occupied the Rebate Property, Lazaros did not have the requisite intent necessary to fulfill the requirement in paragraph 254(2)(b). In my view, there was not a clear, credible and reliable statement of his intention at the time he entered into the Agreement of Purchase and Sale, given by Lazaros during either his direct testimony or during his cross examination. Therefore, it is not necessary to consider frustration for the purpose of assessing the credibility of a taxpayer's statement of intention with respect to a qualifying use of the property. If a taxpayer does not have such intent at the time of signing an agreement of purchase and sale, the occurrence of a subsequent intervening event is not a relevant consideration for the purpose of determining a taxpayer's entitlement to the Rebate. At minimum, a taxpayer must have the requisite intent at the moment in time that the agreement of purchase and sale is signed in order to comply with the requirement in paragraph 254(2)(b). If the taxpayer does not fulfill the requirement in paragraph 254(2)(b), the taxpayer is not entitled to the Rebate. Frustration cannot be raised to assist a taxpayer in such circumstances.

[41] For these reasons, the appeal is dismissed without costs.

Signed this 10th day of December 2025.

"J. Scott Bodie"

Bodie J.

CITATION:	2025 TCC 186
COURT FILE NO.:	2016-5218(GST)I
STYLE OF CAUSE:	LAZAROS GAITANIS AND HIS MAJESTY THE KING
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	Virtually on July 16 and 17, 2025 and November 7, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice Scott Bodie
DATE OF JUDGMENT:	December 10, 2025

APPEARANCES:

For the Appellant:	The Appellant himself and Lucia Silhanova, as agent for the Appellant
Counsel for the Respondent:	Sean Karmali

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	n/a

For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada