

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

176 ✓ HERITAGE HOMES OF NEBRASKA, INC.,

) Doc. 362

) Page 104

) Plaintiff,

) CLERK'S OFFICE, DISTRICT COURT
) LANCASTER COUNTY, NEBRASKA

v.

) FILED

) JUDGMENT AND ORDER

NEBRASKA DEPARTMENT OF REVENUE,)
) NOV - 7 1983

) Defendant.

Dist. District Court?
This matter came on for trial on November 7, 1983; present in court were the plaintiff, by its attorney, Robert C. Doyle, and the defendant, by its attorney, Ralph H. Gillan; evidence was adduced, consisting of the transcript of the proceeding held before the Department of Revenue, and the matter was submitted to the court on the pleadings and the evidence.

On consideration whereof, the court finds generally for the defendant and against the plaintiff. The dispute involves the liability of the plaintiff to collect and remit to the Tax Commissioner sales taxes on the sales of modular homes in the situation where such homes are delivered to the site upon which they will be placed, and are placed on the foundations and affixed to the real estate by someone other than the plaintiff-seller.

Plaintiff contends that Neb.Rev.Stat. §77-2702(3) (Supp. 1983) should apply, and that the seller should be treated as a contractor and considered the consumer of the personal property used in the construction of the modular home, and liable for the sales tax on such personal property, but that it should not be required to collect sales tax on the sale of the modular home to the purchaser. Defendant contends that the sale of the modular

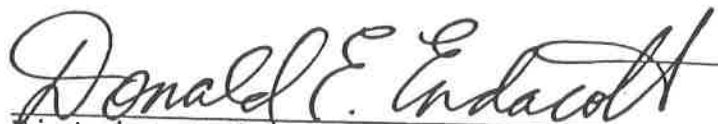
home, in that situation, is a simple sale of personal property, subject to liability for the Nebraska sales tax.

The court finds that the construction urged by the defendant is correct. In the situation involved in this litigation, a sale of tangible personal property has occurred before that property is incorporated into the real estate; the seller is not a contractor, as defined by §77-2702(3), because it has not performed any improvement upon real estate, nor incorporated tangible personal property belonging to it into real estate; at the time of sale, the modular home is tangible personal property, and its sale is subject to liability for sales tax.

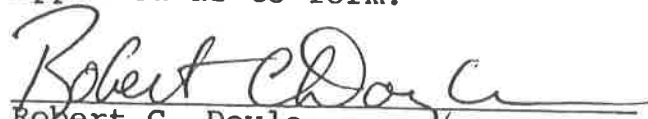
IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the Findings and Order of the State Tax Commissioner which is the subject of this action was correct, and should be affirmed; that the petition filed herein should be, and hereby is, denied and dismissed; and that the costs of this action be taxed against the plaintiff.

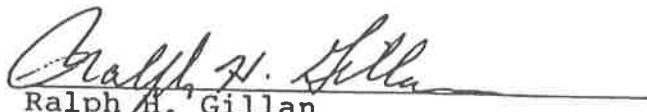
Dated this 7th day of November, 1983.

BY THE COURT:


District Judge

Approved as to form:


Robert C. Doyle
Attorney for Plaintiff


Ralph H. Gillan
Assistant Attorney General
Attorney for Defendant