NOVA SCOTIA COURT OF APPEAL

Citation: Ingham v. West Hants District (Municipality), 2006 NSCA 37

Date: 20060329
Docket: CA 245515
Registry: Halifax

Between:

Patricia Ingham

Appellant
(Respondent to application)

v.

Municipality of the District of West Hants

Respondent
(Applicant)

Judge:	Cromwell, Oland and Fichaud, JJ.A.
Application Heard:	February 15, 2006, in Halifax, Nova Scotia
Held:	Application to quash the notice of appeal granted per reasons for judgment of Fichaud, J.A.; Cromwell and Oland, JJ.A. concurring.
Counsel:	Derrick J. Kimball, for the applicant Municipality Patricia Ingham, respondent to application, not appearing at hearing but filing submissions after hearing.

Reasons for judgment:

[1] The respondent applies under *Rule* 62.18 for an order quashing the notice of appeal.

Background

[2] On July 12, 2001 the appellant Ms. Ingham's property in Falmouth, Nova Scotia was substantially destroyed by fire. On October 24, 2001 an Administrative Committee of the respondent Municipality approved a motion that Ms. Ingham be ordered to demolish the structure and clean up the property. On November 1, 2001 the order was issued under s. 346 of the *Municipal Government Act*, S.N.S. 98, c. 18 ("*Act*"). Ms. Ingham was given 30 days to comply. She did not comply. On March 1, 2002 the Municipality demolished the property.

[3] The Municipality's demolition costs were billed to Ms. Ingham and added to her municipal taxes as permitted by the *Act*. Ms. Ingham's taxes fell into arrears. This culminated in a tax sale of her property to Char-Vale Charolais Limited ("Char-Vale") on October 29, 2003 for $82,000 plus HST. Ms. Ingham did not redeem the property within the statutory period after the tax sale.

[4] Ms. Ingham sought an *ex parte* interim injunction to prevent the transfer of the property. Justice Wright granted the order on April 30, 2004. This prevented the Municipality from delivering the deed to Char-Vale.

[5] Ms. Ingham also applied *inter partes* against the Municipality for *certiorari* to set aside the tax sale. Although the originating notice literally targets the tax sale, much of Ms. Ingham's submission challenges the demolition. Justice Robertson heard this application in chambers and dismissed the application: *Ingham v. District of West Hants (Municipality)*, 2005 NSSC 115. Her written decision is dated May 12, 2005. The chambers judge found that Ms. Ingham's taxes were in arrears, that she received ample notice of the intention to demolish and that the demolition complied with the *Act*. The chambers judge also determined that Ms. Ingham's application for *certiorari* was outside the six-month time limit under *Rule* 56.06 and that the Municipality complied with the applicable principles of procedural fairness.

[6] Ms. Ingham appealed. Both parties filed factums. The Municipality applied under *Rule* 62.18 to quash Ms. Ingham's appeal. Justice Saunders in chambers scheduled the Municipality's application to quash separately and before any hearing of Ms. Ingham's appeal.

[7] The hearing of the application to quash was scheduled initially for December 1, 2005. This hearing was adjourned at the request of Ms. Ingham, and rescheduled for February 15, 2006. Ms. Ingham requested another adjournment which was denied on conditions, according to separate reasons of this court. On February 15, 2006 Ms. Ingham did not appear. The panel heard the respondent's application to quash. The transcript of the hearing of February 15, 2006 was prepared and sent to Ms. Ingham. Ms. Ingham was given 30 days to file any additional submissions in response to the Municipality's motion to quash. Ms. Ingham has since filed supplementary material.

Issue

[8] The issue is whether the Municipality has satisfied the requirements of *Rule* 62.18 to quash the appeal

Analysis

[9] *Rule* 62.18 (1) permits the court to quash a notice of appeal that is "frivolous, vexatious or without merit".

[10] The test under *Rule* 62.18 is whether the appeal is, on its face, absolutely unsustainable, or whether it is clear beyond any doubt that the appeal cannot possibly succeed. The court has adopted the test which governs an application to strike a proceeding in the Supreme Court under *Rule* 14.25. *Curry v. Dargie* (1984), 62 N.S.R. (2d) 416 (C.A.), at ¶ 43; *Perry v. Perry*, [1987] N.S.J. No. 305 (C.A.), at ¶ 7; *Demone v. Saunders* (1999), 180 N.S.R. (2d) 317 (C.A.) at ¶ 8; *CIBC Mortgage Corp. v. Offume* (2002), 208 N.S.R. (2d) 185 (C.A.); *Tupper v. Wheeler*, 2005 NSCA 74 at ¶ 16.

[11] In my respectful view, Ms. Ingham's appeal is absolutely unsustainable. Ms. Ingham's *certiorari* application is limitation barred.

[12] *Rule* 56.06 states:

> An originating notice for an order in the nature of certiorari shall be filed and served within six (6) months after the judgment, order, warrant or inquiry to which it relates, ***and rule 3.03 does not apply hereto***. [emphasis added]

[13] *Rule* 3.03 permits the court to extend a time limit. Clearly the intent of the italicized words in *Rule* 56.06 is that the six-month time limit not be extendable. That was the ruling of this court in *Chipman v. Workers' Compensation Board (NS)* (1990), 99 N.S.R. (2d) 290 (A.D.) per Clarke, C.J.N.S. for the court. *Chipman* has been applied in later decisions: *Shephard v. Colchester Regional Hospital Commission* (1994), 131 N.S.R. (2d) 129 (S.C.) at ¶ 56; *Marvel Metal and Glass Products Ltd. v. Annapolis (County)*(2002), 202 N.S.R. (2d) 18 (S.C.), at ¶ 18-24.

[14] Section 3 of the *Limitations of Actions Act* R.S.N.S. 1989, c. 258 as amended permits a court to extend the time limitation of an "action", defined by s. 3(1)(a) to mean "an action of a type mentioned in ss. (1) of s. 2" of the *Limitation of Actions Act*. Ms. Ingham's application for *certiorari* is not an action of the type mentioned in s. 2(1) of the *Limitation of Actions Act*.

[15] Accordingly, Ms. Ingham's application for *certiorari* is barred unless it was both "filed and served within six months after the judgment, order, warrant or inquiry to which it relates".

[16] Ms. Ingham's claims relate substantially to the demolition of her property. The demolition on March 1, 2002 resulted from a meeting of the Municipality's Administrative Committee on October 24, 2001, followed by an order for demolition on November 1, 2001. The triggering event would be the order to demolish dated November 1, 2001. Ms. Ingham's application for *certiorari* was filed on April 23, 2004 and, as I will discuss, was served on May 7, 2004. Clearly her challenge to the demolition was outside the six month limitation under *Rule* 56.06.

[17] Ms. Ingham's originating notice for *certiorari* on its face challenges the tax sale. I note that the chambers judge's decision states:

> [6] Counsel have agreed that the applicant has no complaint regarding the conduct of the tax sale and acknowledge that all procedures related to the sheriff's sale comply with the *Statutes*, including proper service of the 60 day notice of sale.

I will nonetheless assume, without deciding, that the tax sale could be a triggering event under *Rule* 56.06. It is clear that Ms. Ingham's application for *certiorari* was outside the six months limitation from that event.

[18] The tax sale occurred on October 29, 2003. Under *Rule* 56.06 Ms. Ingham had until April 29, 2004 to file and serve the originating notice for *certiorari*. Ms. Ingham served the originating notice on May 7, 2004 by leaving a copy with the clerk of the Municipality.

[19] *Rule* 10.02(1) states that an originating notice shall be served personally on each defendant. *Rule* 10.03 defines personal service on a body corporate as:

> (b) . . . leaving a true copy of the document with the president, chairman, mayor, warden or other chief officer of the body corporate, or with the manager, secretary, city or town manager or clerk, cashier or other similar officer thereof ...

There was no service on any such person except the clerk. *Rule* 10.03(2) states that:

> (2) Where a solicitor indorses on a copy of a document that he accepts service on behalf of a person, the document shall be deemed to have been personally served on the person on the date on which the endorsement was made.

There was no such endorsement or acceptance of service by a municipal solicitor on behalf of the respondent Municipality. Section 510 of the *Municipal Government Act* states that service on the clerk serves the Municipality. Service on the clerk of the respondent Municipality occurred on May 7, 2004, beyond the six months provided by *Rule* 56.06 for a *certiorari* application.

[20] Ms. Ingham's *certiorari* application was barred by *Rule* 56.06. Her appeal is absolutely unsustainable.

Conclusion

[21] I would grant the Municipality's application to quash the notice of appeal with $1500 costs all inclusive payable by Ms. Ingham to the Municipality.

Fichaud, J.A.

Concurred in:

Cromwell, J.A.

Oland, J.A.