NOVA SCOTIA COURT OF APPEAL

Citation: ***Nova Scotia (Assessment) v. Fitz's Realty Ltd.***, 2004 NSCA 13

Date: 20040130
Docket: CA 207621
Registry: Halifax

Between:

The Director of Assessment holding
office as such pursuant to the provisions of the
Assessment Act, R.S.N.S. 1989, c. 23

Appellant

v.

Fitz's Realty Limited and the
Halifax Regional Municipality

Respondents

Judges:	Roscoe, Chipman and Oland, JJ.A.
Appeal Heard:	January 28, 2004, in Halifax, Nova Scotia
Held:	**Appeal dismissed with costs to the respondent in the amount of $500.00, plus disbursements, per reasons for judgment of Roscoe, J.A.; Chipman and Oland, JJ.A. concurring.**
Counsel:	Randall R. Duplak, Q.C., for the appellant James D. MacNeil, for the respondent Fitz's Realty Ltd. No one appearing for the other respondent

Reasons for judgment:

[1] Following argument by appellant's counsel, the panel recessed for consideration and then advised that the appeal was dismissed with reasons to follow. These are those reasons.

[2] This appeal raises the issue of the sufficiency of detail that must be contained in a notice of appeal to the Utility and Review Board pursuant to the **Assessment Act**, R.S.N.S., 1989 c.23, s. 86:

> 86 (1) Notwithstanding any enactment, any person entitled to appeal a decision of the regional assessment appeal court may appeal by filing a notice of appeal with the clerk of the Nova Scotia Utility and Review Board within thirty days from the date the decision was mailed by the recorder and not otherwise.
>
> (2) A notice of appeal referred to in subsection (1) shall set out specifically
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> (a) the assessment or failure to assess complained of and the affected property by civic address, property identification number or assessment account number;
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> (b) the specific matters that are the subject of the appeal;
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> (c) which component of the assessment is being appealed; and
>
> (d) the specific reason for the appeal,
>
> and shall give a name and address where notices may be served upon the appellant. ...

[3] The Board described the notice of appeal as follows:

> ¶ 3 ... The notice identifies the assessment account number, states the address of the property in question, and says that the notice relates to the R.A.A.C. decision, a copy of which was attached to the notice of appeal, and which related to the 2001 assessment. It states that the appellant is appealing the decision confirming "the real property assessed value of $510,100 (and the associated business occupancy assessment)," the grounds of appeal being:

> "The assessment is excessive, unfair, not consistent with the 1998 sale price, not uniform with other assessments and any other grounds that may appear."

[4] The Board determined that in this case the notice of appeal was sufficient. See: [2003] N.S.U.R.B.D. No. 94 (QL), 2003 NSUARB 106. The analysis of the issue concludes at ¶ 41:

> 41 As the Board has noted, the notice of appeal in the present case says the assessment is "excessive," i.e., that the valuation is too high. As has just been discussed, valuation is an item referred to in s. 62(1). The notice of appeal also asserts that the assessment is "not consistent with the 1998 sale price," i.e., with the amount paid for the property in 1998. In the view of the Board, this language identifies market value, a concept in s. 42(1), as an issue, as well as identifying an item of evidence (the 1998 sale) purportedly supporting the appellant's view of market value. The notice further asserts that the assessment is "not uniform with other assessments," which identifies uniformity (another concept in s. 42(1)) as an issue, although it does not provide any additional detail in relation to it. Taking into account: the importance of market value and uniformity in s. 42(1) of the Act, and the well-developed case law from the Court of Appeal to guide the Board on the meaning of these two concepts; the items listed in s. 62(1) as the subjects of appeals to the R.A.A.C., which specifically refer to valuation as one of the subjects; the lack of definitions in the Act of the terms used in s. 86(2) (b), (c), and (d); the lack of definitions of these terms in the case law; and, finally, the lack of common professional usage for these terms, the Board does not accept that the level of detail advocated by the Director must be present for a notice of appeal to be sufficient under s. 86(2). More particularly, the Board finds that the appellant has met the standard required in s. 86(2). In reaching this conclusion, the Board does not wish to imply that the level of detail provided in the notice submitted by the appellant is the minimum needed to satisfy s. 86(2): the Board is merely finding that the level of detail in the notice is sufficient to satisfy s. 86(2), not that all of it was necessary.
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> ...
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> 44 Third, the Board finds that the appellant's notice of appeal meets the requirements of s. 86(2). In the Board's view, it is open to the appellant to later, if it so desires, seek amendments to its notice of appeal to add to, or delete, issues which are actually to be the subject of the hearing on the merits.

[5] Section 26 of the **Utility and Review Board Act**, S.N.S. 1992, c.11 provides that the finding or determination of the Board upon a question of fact

within its jurisdiction is binding and conclusive. Pursuant to s. 30 an appeal lies to this court from an order of the Board on any question as to its jurisdiction or upon any question of law.

[6] In **Sutherland v. Nova Scotia (Director of Victims Services)** [1998] N.S.J. No. 287; (1998), 170 N.S.R. (2d) 73, Cromwell, J.A. said:

> 12 ... The Board must be correct on questions of law or jurisdiction, but the role of this Court in relation to its factual findings is limited to errors of fact that are "... so egregious as to amount to errors of law": **Nova Scotia v. Research Island AG** (1994), 132 N.S.R. (2d) 156 at 158.
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> 13 Frequently, questions decided by the Board will involve a mixture of law and fact. Such questions, to use the words of Iacobucci, J. in **Director of Investigation and Research v. Southam Inc**., [1997] 1 S.C.R. 748 at 767, concern "...whether the facts satisfy the legal tests." The more the question approaches one of pure application of facts to the relevant legal principles, the more nearly the question is rightly characterized as one of mixed law and fact: ibid at 768. This Court on appeal should approach the Board's resolution of these sorts of mixed questions with a measure of deference: see **Southam** at p. 771; see also to much the same effect the judgment of this Court in **Nova Scotia (Attorney General) v. Williams** (1996), 152 N.S.R. (2d) 291 at 296-301.

[7] In this appeal, the appellant Director of Assessment submits that the Board erred in law in determining that the respondent's notice of appeal met the requirements of s. 86(2) of the **Assessment Act** and in determining that the respondent could amend the notice of appeal at a later date.

[8] Assuming without deciding that the first ground of appeal raises a question of law or jurisdiction, we are not persuaded that it should prevail. Indisputably the Board with its extensive experience in assessment matters is in the best position to know whether a notice of appeal provides sufficient particulars to permit the issues to be thoroughly and properly canvassed in the hearing before it. As indicated previously by this court, it should be hesitant to interfere with the Board's exercise of its discretion in preliminary or procedural matters. For example, in **Certain Ratepayers of Chester (District) v. Chester (District)** [2000] N.S.J. No. 29, 2000 NSCA 19, Justice Freeman for the court stated:

> 16 [The Utility and Review Board] enjoys a discretionary jurisdiction to manage its process subject to the governing statutes so as to ensure a full and fair

> hearing on the ultimate issue. In interlocutory matters such as this, that do not determine the outcome of the main proceeding, this court should follow the non-interventionist approach which governs in civil appeals. This was expressed by Justice Chipman in **Saulnier v. Dartmouth Fuels Ltd.** (1991), 106 N.S.R. (2d) 425 (N.S.C.A.) as follows, at p. 427:
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> > The principles which govern us on an appeal from a discretionary order are well-settled. We will not interfere with such an order unless wrong principles of law have been applied or a patent injustice would result. The burden of proof upon the appellant is heavy. **Exco Corporation Limited v. Nova Scotia Savings and Loan et al.** (1983), 59 N.S.R. (2d) 331; 125 A.P.R. 331, at 333, and **Nova Scotia (Attorney General) v. Morgentaler** (1990), 96 N.S.R. (2d) 54; 253 A.P.R. 54, at 57.

[9] The second ground of appeal is premature since the respondent has not made an application to amend its notice of appeal. It is therefore not necessary for us to either deal with the issue as raised in the notice of appeal, or the appellant's contention during oral argument that the Board exceeded its jurisdiction in proclaiming the **Assessment Appeal Rules** made under Section 12 of the **Utility and Review Board Act** (N.S. Reg. 287/92 (December 23, 1992) as amended by 97/2003 (April 16, 2003)), which provide:

> 7 (1) Subject to subsection (2), a notice of appeal may be amended at any time with leave of the Board.
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> (2) A notice of appeal may not be amended for the purpose of adding appellants.

[10] The appeal is accordingly dismissed, with costs to the respondent Fitz's Realty Limited in the amount of $500.00 plus disbursements.

Roscoe,

J.A.

Concurring:

Chipman, J.A.

Oland, J.A.