

SUPREME COURT OF NOVA SCOTIA

Citation: Polycorp Properties Inc. v. Halifax (Regional Municipality),
2010 NSSC 283

Date: 20100629
Docket: Hfx. No. 327941
Registry: Halifax

Between:

Polycorp Properties Incorporated

Applicant

-and-

Halifax Regional Municipality

Respondent

Decision

Judge: The Honourable Justice Robert W. Wright

Heard: June 29, 2010 at Halifax, Nova Scotia

**Written
Decision:** July 22, 2010

Counsel: Counsel for the Applicant - Robert Grant, Q.C.
Counsel for the Respondent - Matthew Williams

Wright, J.

[1] This proceeding was commenced by Polycorp Properties Incorporated (“Polycorp”) on April 23, 2010 as an Application in Chambers, with the objective of getting the matter before the court as expeditiously as possible.

[2] Polycorp had recently purchased a vacant parcel of land adjacent to the existing Ocean Towers development between Barrington and Brunswick Streets in Halifax for the purpose of developing a condominium complex. Ultimately, however, its application to the respondent Halifax Regional Municipality (“HRM”) for a development permit was refused with the explanation, according to the supporting affidavit evidence, that the property had been previously dedicated as open space for the Barrington Street Housing Project, pursuant to an authorization made by Halifax City Council under s.538A of the former *Halifax City Charter*.

[3] Polycorp pleads that it had not been made aware of any such development restriction in its earlier communications with HRM when it should have been. It has therefore commenced this proceeding seeking a declaration that its development rights with respect to the property are not affected by any purported development agreements or authorizations as asserted by HRM, and that any decision in respect to the development permit application shall be governed solely by the terms of the applicable land use by-law.

[4] On May 7, 2010 HRM filed a Notice of Contest maintaining that the subject property remains restricted from development under its current designation. That was followed by the filing of a Notice of Motion on May 19, 2010 in which HRM sought an order to convert the Application in Chambers to an Action in order to be able to avail itself of the more expansive pre-trial procedures afforded by that mode of proceeding. Polycorp was not agreeable to that conversion because of time considerations in getting the matter to trial.

[5] Shortly thereafter, counsel for HRM wrote to the Court suggesting a conference for some procedural guidance in expediting the matter. The Court was informed that HRM was prepared to withdraw its motion to convert this proceeding to an Action if the matter could instead be converted to an Application in Court. The perceived difficulty was that Civil Procedure Rule 6.02 pertains only to the conversion of an action to an application or, conversely, the conversion of an application to an action. The rule does not expressly provide for the conversion of an Application in Chambers to an Application in Court.

[6] Counsel for Polycorp was prepared to consent to a conversion of this proceeding to an Application in Court so long as an early hearing date could be obtained coupled with expeditious filing dates.

[7] Although the Civil Procedure Rules do not expressly provide for the conversion of an Application in Chambers to an Application in Court (or vice versa), I am of the view that a judge has the discretion to order such a conversion under the broad authority of Rule 2.03. Under that rule, discretion is conferred on

the judges of this court to give directions for the conduct of a proceeding before the trial or hearing (having regard, of course, to the considerations set out in the rules as to the choice of proceeding). I have accordingly granted an order, consented to by counsel for Polycorp, converting this proceeding from an Application in Chambers to an Application in Court, where those considerations have been satisfied.

[8] As a consequence of this conversion, a Motion for Directions is required to be held pursuant to Civil Procedure Rule 5.07(2) and the motion return date of June 29th has now been utilized for that purpose. The Application in Court will now be heard on its merits on the scheduled date of September 9, 2010.

[9] Although done by consent, the purpose of releasing this decision is to remove any uncertainty over the ability to convert an Application in Chambers to an Application in Court (and vice versa) in a proper case under the new *Civil Procedure Rules*.

J.