SUPREME COURT OF NOVA SCOTIA

Citation: Parker Mountain Aggregates Ltd., v. Nova Scotia Environment), 2010 NSSC 277

Date: 20100709
Docket: Hfx. No. 324761
Registry: Halifax

Between:

Parker Mountain Aggregates Limited

Appellant

v.

Nova Scotia (Minister of Environment)

Respondent

Judge:	The Honourable Justice Kevin Coady.
Heard:	June 29, 2010, in Halifax, Nova Scotia
Written Decision:	July 9, 2010
Counsel:	Paul Thorne and Jason Cooke, for the Appellant Darlene Wilcott and Stephen McGrath, for the Respondent John Keith and Alison Bird, for the Respondent

By the Court:

[1] This is a motion by Angela Vroom, Kurt Daye, Rhonda Daye and Mark Akin for an Order adding them as Respondent parties to this appeal. The Respondent, Minister of Environment, supports the motion whereas the Appellant objects. This motion is brought pursuant to *Civil Procedure Rule* 35.01(e), 35.08 and 7.10(f). The present proceeding involves a quarry at Bloomington, Nova Scotia and the Applicants are residents of that area.

[2] In 1999 an approval was given to the Appellant to operate a quarry. At that time plans were submitted depicting the location of the quarry. Ten years later, in 2009, the Appellant applied for a renewal and also commenced it's quarry operations. In 2009, the Department of Environment suspended the Appellant's approval on the basis they were operating the quarry outside the area that had been approved in 1999. Following the suspension, the Appellant appealed the decision of the administrator pursuant to s. 187 of the *Environment Act*.

[3] When the Department of Environment received the s. 187 appeal, Glen Warner, the Acting District Manager, was asked to review the case. Following his review, he authored a report for the Minister which supported the suspension. The

Appellant has appealed that decision pursuant to s. 138 of the *Environment Act*. In support, the appellant argues that it has been denied procedural fairness in that it did not have an opportunity to respond to Glen Warner's report and that the Minister erred in concluding that the Appellant was operating outside of the 1999 approved area.

[4] Given the Appellant's submissions, it is helpful to review s. 138:

> 138 (1) Subject to subsection (2), a person aggrieved by
>
> (b) a decision of the Minister pursuant to Section 137;
>
> may, within thirty days of the decision or order, appeal on a question of law or on a question of fact, or on a question of law and fact, to a judge of the Supreme Court, and the decision of that court is final and binding on the Minister and the appellant, and the Minister and the appellant shall take such action as may be necessary to implement the decision.

[5] *Civil Procedure Rule* 35.01(e) provides:

> 35.01 The following persons may do the following things, in accordance with this Rule:
>
> (e) a person may make a motion to be added as a party, including as an intervenor.

[6] *Civil Procedure Rule* 35.04(1) and 35.08 provides clarification on who and how persons may be added as a party to an appeal:

> 35.04 (1) A party who starts a proceeding for judicial review or an appeal must, unless a judge orders otherwise, name as respondents the decision-making authority, each person who is a party to the process under review or appeal or the process that led to the decision under review or appeal, and any other person required by legislation [Emphasis Added].
>
> ...
>
> 35.08 (1) A judge may join a person as a party in a proceeding at any stage of the proceeding.
>
> > (2) It is presumed that the effective administration of justice requires each person who has an interest in the issues to be before the court in one hearing.
> >
> > (3) The presumption is rebutted if a judge is satisfied on each of the following:
> >
> > > (a) joining a person as a party would cause serious prejudice to that person, or a party;
> > >
> > > (b) the prejudice cannot be compensated in costs;

> (c) the prejudice would not have been suffered had the party been joined originally, or would have been suffered in any case.

[7] *Civil Procedure Rule* 7.10(f) states as follows:

> 7.10 A judge hearing a motion for directions may give any directions that are necessary to organize the judicial review, including a direction that does any of the following:
>
> > (f) directs whether there are interested persons who are not parties and, if necessary, adjourns the motion until an interested person is made a party or joins an interested person as a respondent;

[8] It should be noted that the Applicants were not consulted by the Minister of Environment when the decision was made to dismiss the s. 137 appeal.

[9] A Motion for Directions was held on March 25, 2010 without the participation of the Applicants. The Respondent Minister questioned whether there were "interested persons" under Rule 7.10(f) who lived near the quarry and should be provided with notice of the appeal. A hearing was scheduled for June 1, 2010 to resolve this issue. Prior to that hearing, the Applicants filed this motion to be added as respondents.

[10] Angela Vroom claims to be an interested person because she has lived on Bloomington Road since 1991. She claims that her residence is 1000 metres from the Quarry. She also owns a 25 acre parcel adjacent to the quarry. She reported excessive noise, dust, dirt and traffic when the Appellant started operations in 2009. She further reports that the 2009 blasting threw rocks on her property damaging her trees.

[11] Rhonda Daye is a resident of Bloomington Road. She claims that her personal residence is located within 800 metres of the quarry. She reports that she has a direct sight line from her living room window to the quarry. She indicates that the Appellants 2009 activity caused noise, dust and traffic increases. Ms. Daye worries that these activities, if approved on appeal, would negatively affect her property value.

[12] Mark Akin is also a resident of Bloomington Road. He owns a residence within 800 metres of the quarry. He purchased the property in 2005 because of it's pastoral attractiveness. In 2009, he experienced noise, dust and the operation of heavy equipment.

[13] Kurt Daye is the partner of Rhonda Daye and their home is located within 800 metres of the Appellant's quarry. He advanced the same concerns reported by Rhonda Daye.

[14] The applicants, Daye, Daye and Akin all live within 800 metres of the quarry. The Appellants quarry is subject to the pit and quarry guidelines which state at part IV(2)(c):

> (2) No person responsible for the operation of a quarry shall blast within:
>
> > (c) 800 m of the foundation or base of a structure located off site. Structure includes but is not limited to a private home, a cottage, an apartment building, a school, a church, a commercial building, or a treatment facility associated with the treatment of municipal sewage, industrial or landfill effluent, an industrial building or structure, a hospital, nursing home.*
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> NOTE:* The distance is measured from the working face and point of blast to the foundation or base of the structure. This distance can be reduced with written consent from all individuals owning structures within 800 m.

[15] There is a requirement upon the Appellant to determine and obtain consent from all residents owning structures within 800 metres from where blasting will occur. Given this requirement, Daye, Daye and Akin have a direct interest by virtue of their location.

[16] Angela Vroom does not have a structure within 800 metres of the quarry. However, that does not mean she is unaffected by virtue of living 1000 metres from the quarry. She will clearly be affected by blasting, dust, traffic as well as run-off and damage to her property. It is not just speculation that Ms. Vroom, as well as the other Applicants, will experience a decline in the value of their properties. Such a decline will be a direct result of the development and operation of the quarry.

[17] It is my determination that all four Applicants have an interest in the issues which form the subject of this appeal. Given this conclusion, Rule 35.08(2) creates a presumption in favour of joining them as parties. This presumption is rebutted if I am satisfied on each of the following:

- Joining a person as a party would cause serious prejudice to that person, or a party.
- The prejudice cannot be compensated in costs.
- The prejudice would not have been suffered had the party been joined originally, or would have been suffered in any case.

[18] I am satisfied that the Appellant has not rebutted this presumption,

[19] I cannot find any prejudice to the Appellant by adding the Applicants as Respondents. The only possible prejudice to the Appellant would be if the appeal was unduly delayed by granting this order. This is not the case as the appeal is still in the early stages of preparation. The record is not yet complete and the Motion for Directions is ongoing. There are outstanding motions to be heard later this year. These applicants are exactly the kind of individuals envisaged by Rule 7.10(f). They are clearly “interested persons who are not parties”. Their applications arose in the framework of a Motion for Directions on a statutory appeal.

[20] The Appellant argues that these interests can be addressed in this appeal without granting party status to the Applicants. They could be witnesses for the Respondent Minister and they could file affidavits if required. It is my view that there is a marked difference between being a party and being a witness for the Minister. It is too early to determine if their interests are the same. Even if there is an overlap of present interests, there is no guarantee that those interests will remain

the same throughout the appeal. I suspect that the position of the Minister reflects this reality.

[21] I am in agreement with the Respondent Minister that the *Environment Act* is all about protecting the environment. In granting approval for this type of facility, a balance must be struck between the public's concerns, economic development as well as the impact on the environment.

[22] In the context of an application to approve a quarry, Justice Duncan noted the following in *Elmsdale Landscaping v. Nova Scotia (Minister of Environment)* 2009 NSSC 358 at para. 28 and 29:

> 28 The Environment Act is a public interest statute which contains a discrete administrative regime. The words of Justice Couglan in Fairmount Developments Inc., v. Nova Scotia (Min of Environment) 2004 NSSC 126, at para. 45 are, in my view, pertinent:
>
> > The purpose of the Environment Act is to support and promote the protection, enhancement and prudent use of the environment, while recognizing certain specific goals. It is a polycentric issue involving a balancing of various contingencies and factors to achieve its purpose. It is more political than legal in nature. Thus, the appropriateness of the court's supervision diminishes suggesting great deference.
>
> 29 The Minister, in the context of this application, is provided all necessary powers to review applications and can approve or refuse approval, or vary, or set terms and conditions for approval. In doing so, he is charged with balancing a

> number of interests identified in the purposes of the Act. There is a large measure of policy that must enter into the decision making process.

[23] This expanse of objectives works in favour of granting the motion. The impact of a successful appeal would leave the Applicants living in an environment drastically altered by quarry activities. This could be somewhat avoided by placing conditions on any approval that address the concerns set forth in the Applicant's affidavits.

[24] Bloomington is a discreet rural community. This appeal could result in a disruption of the lifestyle enjoyed by the Applicants. They clearly have an interest in the outcome of this appeal.

[25] This motion is granted.

J.