IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia Farm Loan Board v. Annapolis (Municipality), 2005 NSSC 218

Date: 20050811
Docket: SAR 227432
Registry: Annapolis Royal

Between:

The Nova Scotia Farm Loan Board, a body corporate
under Chapter 7 of the Revised Statutes of Nova Scotia, 1989,
the Agriculture and Rural Credit Act

APPLICANT

v.

The Municipality of the County of Annapolis

RESPONDENT

-and-

Kerwin B. Delong and Karen L. Delong

RESPONDENTS

(SECOND)

Judge:	The Honourable Justice Charles E. Haliburton
Heard:	June 21, 2005, in Annapolis Royal, Nova Scotia
Written Decision:	August 11, 2005
Counsel:	Stephen T. McGrath, for the Applicant W. Bruce Gillis, Q.C., for the Respondent Craig G. Sawler, for the Respondents

By the Court:

[1] On October 13, 2004, I rendered a decision which determined that the property transaction in question was exempt from the deed transfer tax for the reasons therein set forth. In the course of that decision I said:

> Paragraph 12 - It is I think commonly understood that the agricultural industry is exempted from paying certain fuel and sales taxes. As noted above it is specifically provided by statute that deeds transfering property from the Farm Loan Board are not subject to this particular tax. It is just possible that the legislators who approved the ***"MGA"*** authorizing the collection of a deed transfer tax understood that it would exempt conveyances to the Farm Loan Board. The effect is to make farm purchases effected through the Board, free of this tax.
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> Paragraph 13 - . . . If it had not intended to give this preference to certain farmers it would be a very simple matter for the legislature to alter one or other of the two governing statutes.

[2] In reaching the conclusions reached at that time I specifically referred to the following sections of the ***Municipal Government Act***, Chapter 18 of the ***Statutes of Nova Scotia*** which had been sited by counsel. They were sections 3(t), 102(2), 104, section 108(2) and section 109(3). Other relevant sections of the ***Agricultural and Rural Credit Act*** and the ***Assessment Act*** as well as section 116 of the ***MGA*** were mentioned by counsel in argument, if not thoroughly discussed.

[3] My decision reached two conclusions. First that the Nova Scotia Farm Loan Board is an "arm of Government" and is therefore generally exempt from taxation. And second that the Board had not "waived" this exemption by registering the deed in question which conveyed this farm property to it, as grantee.

[4] Subsequent to that decision the County of Annapolis has filed a further Interlocutory Notice "Application Inter Partes", seeking to present further argument on the basis that section 3(bz) of the ***Municipal Government Act*** had not been drawn to the attention of the court on the earlier application; and that when that section is read in conjunction with sections 108 and 116 of the ***Act*** it should become clear that no exemption from the tax was intended by the legislation.

ISSUES:

[5] Three issues were raised with respect to this Interlocutory Application. Firstly, a decision having been rendered but no final order for judgment having been issued, is this one of those rare cases where the court should hear further argument and contemplate a change in the decision? Secondly, the Municipality has, since the earlier decision released any claim to deed transfer tax on this particular transaction. Thus, any decision made would

be moot. And thirdly, the impact of these additional sections of the ***MGA***. Was the Municipality of Annapolis County entitled to levy and collect a deed transfer tax on this transaction?

[6] The short cut, is to answer the substantive question first. I have concluded that a consideration of these further sections does not affect the outcome. The transaction deeding the property from Kerwin B. Delong and Karen L. Delong to the Nova Scotia Farm Loan Board was not subject to the Municipality's deed transfer tax regulations.

DISCUSSION:

[7] Taking the view of the matter which I do, it is unnecessary to seriously consider whether as a trial judge I can review and alter my earlier decision. Counsel have referred to a number of cases which allude to procedural and substantive fairness, and to the fact that it is an unusual step for a court to review and alter its own conclusions; but that in certain circumstances it is appropriate. I accept that it is appropriate as argued by counsel for Annapolis that where applicable statutory provisions have been overlooked then reconsideration would be appropriate if it changed the result. Similarly where another court of binding authority has made a decision directly bearing on the matters in issue, and where the decision was not brought to

the attention of the trial judge nor considered in the decision, then review would be appropriate. Neither circumstance exists here. I accept the position advanced on behalf of the Nova Scotia Farm Loan Board that while there may be an issue of statutory interpretation the application of any of the sections or their application in conjunction with each other will not alter the outcome.

[8] For ease of reference the sections in question are set out in full hereunder:

> Section 3(bz) - "taxes includes municipal rates, area rates, change in use tax, forest property tax, recreational property tax, capital charges, one-time charges, local improvement charges and any rates, charges or debts prescribed, by the enactment authorizing them, to be a lien on the property;
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> Section 108(1) - The deed transfer tax, with interest and penalty, is a lien upon the property transferred.
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> Section 108(2) - The lien attaches on the date when the deed transfer tax is due and may be collected in the same manner as taxes.
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> Section 108(3) - The tax is a first lien on the real property and may be collected in the same manner as taxes.
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> Section 116 - Where property is
>
> (a) vested in Her Majesty or any person for Imperial, Dominion or Provincial purpose; and
>
> (b) occupied by a person other than in an official capacity
>
> the occupant shall be taxed in respect of the property, but the property may not be sold for taxes.

[9] These sections of course are to be considered in the context of the fact that a deed transferring property to the Farm Loan Board, as an agency for the Crown, is exempt from taxation. And the specific provision:

> Section 109(3) - a deed from the Nova Scotia Farm Loan Board to a borrower under the ***Agriculture and Rural Credit Act*** is not subject to deed transfer tax.

[10] The difference of opinion between the parties is simply an issue of statutory interpretation. What does it appear that the legislature intended to accomplish and was it intended that farmers who finance a purchase of farm property through the Farm Loan Board should be treated differently from the general population who become entitled to the ownership of lands? Who is to pay this "tax"? While the term tax is used in naming the fee it does not have the attributes of a real property tax as we understand that term. It is rather a tax on a transaction. This "transaction tax" is incurred pursuant to section 104 of the ***MGA*** only on the transfer property by **deed**. In this transaction there is no deed to anyone other than the Farm Loan Board to which no such fee can apply. Furthermore section 109(3) which expressly exempts the farmer from paying any such fee would be

meaningless since the fee would have already been paid when the property was transferred to the board.

[11] The Board has pointed out how difficult it would be to identify the person who is to pay the fee if one were payable. The County's position is that the occupant ought to pay. At the time of the transaction, it is submitted, there is no occupant. I think it is not speculative to suggest that after the Board has acquired a property there may be more than one occupant as successors to agreements of sale with the Board. This might occur with no further "deeds". Would those successors then be exempt from paying the fee?

[12] As noted in the earlier decision the Board is mandated to encourage the agricultural use of land. To minimize the cost of acquiring property by exempting the prospective farm purchaser from fees is consistent with that objective. A similar objective results from the provisions of the income tax with respect to capital gains exemptions. Applying this monetary fee would have the curious impact of imposing a charge on the transfer of property from father to son whether via loan board financing or not, while the ***Income Tax Act*** would exempt the transaction. One doesn't generally think of the ***Income Tax Act*** as being benign.

[13] The "exemption" exists as a measure to encourage agricultural enterprise.

[14] Responding to another point; I accept the proposition that the "deed transfer tax" is not one of those taxes described by the definition at section 3(bz) all of which relate to the use and occupation of real property. It is those taxes on which the municipal budget is based and it is those taxes from which the county anticipates receiving its budgeted revenues. The deed transfer tax is a fee of an entirely different character. The volume of fees generated by such transactions are unknown and unknowable and become due only when two people conclude a transaction which conveys property by deed. I accept the proposition that if this fee were a tax like other taxes then section 108 of the ***Act*** would be redundant. There would have been no need to state that the fee is a "lien" on the property and that it "may be collected in the same manner as taxes".

[15] In this case there was apparently some difficulty in recording the deed because, I presume, the Municipal Treasurer failed or declined to sign the certificate required under section 101(1)(a) at the ***Registry Act***. In fact, it seems to me that the Treasurer could not have any discretion in the matter. The section provides that the Registrar will not record the deed unless the Treasurer has signed the certificate "stating that the deed transfer tax has been paid in full or that no deed transfer tax is payable". Having

determined that the Loan Board is an agency of the Crown, there is "no deed transfer tax payable".

COSTS:

[16] In their submissions the Board has asked that I deal with costs with relation to these matters. Apparently the issues raised have not been previously determined by the court and accordingly I do not think that the County of Annapolis was unjustified in bringing forward its concerns and pursuing a definitive answer. In the circumstances I think it appropriate to allow costs to the Board in the amount of $500.00 on the original application and a similar amount with respect to this further Interlocutory Application, both of which were fairly extensively argued in chambers. Costs in the total amount of $1,000.00 will be ordered against the County of Annapolis.

Haliburton J.