IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Gerrard, 2004 NSSC 27

Date: 20031217
Docket: SH No. 207459(A)
Registry: Halifax

Between:

Her Majesty The Queen

Appellant

v.

Peter Carl Gerrard

Respondent

Judge:	The Honourable Justice M. Heather Robertson
Heard:	December 17, 2003, in Halifax, Nova Scotia
Decision:	December 17, 2003 **(Orally)**
Written Decision:	February 4, 2004
Counsel:	Allen Murray, for the Crown/appellant William M. Leahey, for the respondent

Robertson, J. (Orally):

[1] The Crown appeals the decision of Judge John G. MacDougall following a prosecution pursuant to s. 39(4) of the *Crown Lands Act* "failing to remove an illegal structure from Crown lands." Judge MacDougall found that the legislation in question was public welfare legislation and created a strict liability offence. He found that the more appropriate way to frame the defence was that of mistake of fact, and that it was open to the respondent to establish a defendant, if he reasonably believed in a mistaken set of facts which if true would have rendered the act innocent. Judge MacDougall found on the balance of probabilities that the respondent had met the burden establishing upon reasonable grounds, that the respondent did have a belief in his ownership of the property in question and that he therefore found that he had established a defence to the charge and Judge MacDougall therefore found Mr. Gerrard not guilty.

[2] In *R. v. Sault Ste, Marie,* [1978] 2 S.C.R. 1299 the Supreme Court of Canada dealt with the issue of the possible available defences in a case of a strict liability offence. Dickson J. stated at p. 15:

> Offences in which there is no necessity for the prosecution to prove the existence of mens rea; the doing of the prohibited act prima facie imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability. Mr. Justice Estey so referred to them in Hickey's case.

FACTS

[3] This charge arose as the result of the respondent, Peter Gerrard, constructing a "lobster pound" on a parcel of land located in Pleasant Harbour, Nova Scotia. The particular parcel of land on which this lobster pound was constructed was deemed to be Crown land by the Department of Natural Resources (the "Department"). The land was used by the respondent, who is a fisherman, as a wharf.

[4] Peter Gerrard claimed ownership of these lands through adverse possession, by his own occupation and use that of his predecessor in title Ralph Beaver. Mr. Gerrard had also been conveyed by Mr. Beaver title to the "upland portion" of these lands by a quit claim deed in 1992.

[5] The Crown, through its officers, the Director of Land Administration for the Department and Conservation Officer, Roger Morash, took a difference view, and asserted that the lands in question were Crown lands. Notice was served on the respondent to remove the structure and he failed to do so in the required time. The Department demolished the structure and charged Mr. Gerrard.

[6] Mr. Gerrard chose not to apply for a lease or permit from the Department for the construction of this lobster pound nor did he initiate a claim under the *Quieting Titles Act* or apply for a Certificate of Release under the *Crown Lands Act* before the Department issued the notice to remove the structure. Rather, he treated the lands as his own and took this position in his dealings with the Department. Mr. Gerrard was apparently away when the structure was removed from the land.

[7] The Crown submits that any mistake by the respondent was one of law and not one of fact and that no defence is available to an accused where there is a mistake of law and in particular, they rely upon *R. v. Pontes,* [1995] 3 S.C.R. 44, 100 C.C.C. (3d) 353 and *R. v. Molis,* [1980] 2 S.C.R. 356, 55 C.C.C. (2d) 558 and *R. v. MacDougall,* [1982] 2 S.C.R. 605, 1 C.C.C. (3d) 65 relying on the principle that ignorance of the law is no defence.

[8] The Crown relies on s. 46(3) of the *Act* which provides that a plan or copy of a plan of land certified by the Minister or Registrar of Crown Lands, with a designation of land on that plan as Crown lands, is *prima facie* proof that the land so designated belongs to the Crown.

[9] The trial judge found that s.46(3) did not operate automatically to deprive an individual of his property rights but rather provided a vehicle for the Crown to prove ownership in a proceeding under the *Act.*

[10] I am in agreement with Judge MacDougall's findings. His decision is without error. His findings of fact are very clear and should not be disturbed by this court. In summary he found:

> Upon having assessed the Defendant on the witness stand and reviewing his testimony, I am satisfied that the Defendant does believe he has title to the subject property and the basis of the belief is upon reasonable grounds. His relationship with Ralph Beaver gives depth to the belief that Mr. Beaver was telling the truth. The investment in time and resources in the property confirms the strength of the Defendant's commitment to the belief he owns the wharf and, therefore, is not subject to the direction of the Crown. On the balance of probabilities, I am satisfied Mr. Gerrard has met his burden and, therefore, acquit him of the charge.

[11] I agree with Judge MacDougall that his mistake was not a mistake of law but was a mistake of fact reasonably held under the circumstances of the case and the evidence that was before him.

[12] The appeal is accordingly dismissed.

[13] I award costs in the amount of $1200 to the respondent.

Justice M. Heather Robertson