

SUPREME COURT OF NOVA SCOTIA

Citation: Dataville Farms Ltd. v. Colchester County (Municipality), 2013 NSSC 355

Date: 20131114

Docket: Hfx No. 416566

Registry: Halifax

Between:

Dataville Farms Ltd.

Applicant

v.

Municipality of the County of Colchester

Respondent

Jonathan Baha'i (aka Jonathan Tranter
dba Server Balance Data Solutions)

Respondent

- and -

Docket: Hfx No. 417390

Registry: Halifax

Between:

Jonathan Baha'i

Applicant

v.

Municipality of the County of Colchester

Respondent

Judge: The Honourable Justice Michael J. Wood

Heard: October 17, 2013, in Halifax, Nova Scotia

Written Decision: November 14, 2013

Counsel: David T. S. Fraser, for the Applicant, Dataville Farms Ltd.
Jeffrey R. Hunt and Dennis James, for the Respondent, Municipality of the County of Colchester
Charles Thompson and Amy Thomas (articled clerk), for the Applicant, Jonathan Baha'i

By the Court:

OVERVIEW

[1] In 2009, the Colchester Regional Development Agency sold two properties in Debert to Dataville Farms Ltd. (“Dataville”). The president of Dataville is Mr. Anton Self. The properties which were purchased by Dataville included underground structures built by the Department of National Defence, which have been known colloquially as the “Diefenbunker”.

[2] By 2012, Dataville had fallen behind in payment of the municipal taxes owing on the properties to the Municipality of the County of Colchester (“Colchester”). As a result of the tax arrears, Colchester initiated the process to sell the properties by public auction in accordance with the tax provisions of the *Municipal Government Act*. The tax sale was held on November 21, 2012.

[3] The purchaser of the properties at the tax sale was Mr. Jonathan Baha’i. His bid was \$35,450.00. Following the sale, Mr. Baha’i took possession of the properties and incurred various expenses in relation to operation and maintenance of the bunker. During the time of his possession, he allowed the properties to be used for purposes of a movie and a paint ball event, both of which generated some revenue.

[4] In early May, 2013, counsel for Dataville notified counsel for Colchester that the company wished to redeem the properties. Counsel for Colchester advised that the six month redemption period expired on May 21, 2013.

[5] Between May 3 and 21, 2013, the lawyers for Dataville and Colchester exchanged e-mails and had discussions on a number of topics, including the amount required to be paid for redemption, the form of payment, as well as the place and deadline for payment.

[6] The Municipal Tax Office for Colchester closed at 4:30 p.m. on May 21. Mr. Self arrived in Truro early that evening with a bank draft payable to Colchester in the amount of \$40,058.45, which was the agreed redemption amount. He spent that evening attempting to find the home address for the Deputy

Treasurer of Colchester in order to deliver the bank draft to her. He was not successful.

[7] On May 22, 2013, Mr. Self went to Colchester's offices during business hours and attempted to hand the bank draft to the Municipal Treasurer, who refused to accept it.

[8] Dataville initiated proceedings to enforce its alleged right of redemption. Mr. Baha'i started a parallel judicial review proceeding to force Colchester to give him a deed for the properties.

DESCRIPTION OF THE PROCEEDINGS

The Dataville Farms Ltd. Application in Court

[9] The notice of application in court filed by Dataville described the order which it was seeking, as follows:

The Applicant is applying to the Court for an Order (i) setting out the appropriate payment to be made for the redemption of the properties at issue and (ii) directing that the Respondent issue to the Applicant a certificate of discharge pursuant to the *Municipal Government Act* upon payment of such amount. The Applicant brings its Application pursuant to the provisions of the *Municipal Government Act*.

[10] The notice described the dealings with Colchester in relation to the properties and, in particular, the discussions and communications between counsel in May, 2013 and the attempts by Mr. Self to make payment on May 21 and 22, 2013. The grounds for the order set out in the notice include the following paragraphs:

48. The Applicant says that the Applicant or any other person entitled to redeem the Properties following the auction of the Properties by the Municipality on November 21, 2012, were entitled to redeem the Properties at any time prior to midnight on May 21, 2013 and tender was refused.

49. In the alternative, the Applicant says that the Applicant or any other person entitled to redeem the Properties were entitled to redeem the Properties at any time prior to midnight on May 22, 2013.
50. The Applicant attempted to tender payment on the Municipality's solicitor for the redemption on May 21, 2013 and was effectively refused.
51. The Applicant attempted to tender payment on the Municipality for the redemption on May 21, 2013 and was effectively refused.
52. The Applicant attempted to tender payment on the Municipality for the redemption on May 22, 2013 and was actually refused.
53. The Municipality failed to act reasonably and acted in bad faith in its dealings with respect to the Applicant.

The Baha'i Judicial Review

[11] The notice for judicial review filed by Mr. Baha'i alleges that Colchester has refused or failed to deliver a tax deed for the properties which he purchased at the tax sale. He seeks an order requiring Colchester to deliver the tax deed in accordance with s. 155 of the *Municipal Government Act*.

LEGISLATION

[12] The applicable provisions of the *Municipal Government Act* are as follows:

Payment of purchase money

148 (1) Payment at a tax sale shall be by cash, certified cheque, money order, bank draft, irrevocable letter of credit or lawyer's trust cheque and not otherwise.

(2) The purchase at a tax sale shall immediately pay the purchase price or deposit a small amount equal to the taxes, interest and expenses for which the land was sold, failing which the treasurer shall forthwith put the land up for sale again.

(3) Where the balance of the purchase money is not paid within three business days, the land shall again be advertised and put up for sale.

(4) The expenses of the resale shall be deducted from the deposit and the balance shall be refunded after the resale is held.

Tenders

149 (1) Where a municipality calls tenders for land to be sold for taxes, the municipality may reject all tenders if

- (a) the price tendered is less than the taxes, interest and expenses; and
- (b) the council considers that the best price offered is inadequate,

and may again put the land up for sale, by tender or by public auction.

(2) Where a municipality calls tenders for land to be sold for taxes, the person whose tender is accepted shall pay the tender price within three business days after being notified of the acceptance.

(3) Where the balance of the purchase money is not paid within three business days, the land shall again be advertised and put up for sale.

(4) The expenses of the resale shall be deducted from the deposit and the balance shall be refunded after the resale is held.

Sale certificate

150 (1) After land is sold for taxes, upon payment of the purchase money the treasurer shall give the purchaser a certificate of sale, in Form C in Schedule A or to like effect, describing the land sold and stating the sum for which it was sold.

(2) The certificate shall state that a deed conveying the land to the purchaser, or as directed by the purchaser, shall be provided upon payment of the prescribed fee at any time after six months from the date of the sale, if the property is not redeemed.

(3) The treasurer shall register a copy of the certificate of sale in the registry.

(4) A copy of the certificate of sale shall be served on each owner of the land sold and, if the land may be redeemed, a notice that the land may be redeemed shall be included with the copy of the certificate of sale.

Purchaser rights

151 On receipt of the certificate of sale, the purchaser

(a) has all the rights of action and powers of an owner needed to protect the land and may collect rents due, or to grow due, and use the land without diminishing its value, but shall not cut down any trees on the land, injure the premises or knowingly allow any other person to do so;

(b) is not liable for damage done to the land without the purchaser's knowledge; and

(c) shall insure any buildings on the land, if the buildings are insurable, and is deemed to have an insurable interest in the land.

Redemption of tax sale property

152 (1) Land sold for non-payment of taxes may be redeemed by the owner, a person with a mortgage, lien or other charge on the land or a person having an interest in the land within six months after the date of the sale, but where, at the time of sale, taxes on the land are in arrears for more than six years, no right of redemption exists.

(2) To redeem the land the person redeeming shall pay

(a) the sum paid by the purchaser,

(b) interest at the rate of ten per cent per annum on the total sum paid by the purchaser from the date of the sale to the date of redemption;

(ba) the full amount of any outstanding taxes arising before the tax sale where the purchaser paid less than the amount of the outstanding taxes on the land;

- (c) taxes levied on the land after the sale and any interest;
- (d) the fee to record the certificate of discharge;
- (e) all sums paid by the purchaser for fire insurance premiums to insure buildings on the land; and
- (f) all amounts paid by the purchaser for necessary repairs made, with the written approval of the treasurer, to buildings on the land,

less any balance remaining in the tax sale surplus account with respect to the property and any rent or other income earned by the purchaser from the land.

(3) Where the municipality buys the land, the taxes payable by a person redeeming are the amount that would be payable if the municipality did not own the land.

(4) Where redemption takes place before the tax rate is set, the taxes payable by a person redeeming are those payable for the preceding year and after the tax rate is set, any surplus shall be refunded to the person redeeming and the land is liable for any deficiency.

(5) Where property has been redeemed, a certificate of discharge in Form D in Schedule A, or to like effect, shall be prepared and registered in the registry.

(6) The registrar of deeds shall make a marginal note referring to the registry of the certificate of discharge on the recorded copy of the certificate of sale.

Repayment to purchaser

153 (1) Where redemption of land is to take place, the purchaser shall, within fourteen days of being requested to do so, provide a statement of amounts spent for fire insurance premiums and repairs made, with the written approval of the treasurer, to buildings on the land.

(2) After delivery of the statement of amounts spent, the purchaser shall receive the

- (a) sum paid upon the purchase of the land;
- (b) interest on the purchase price; and
- (c) sums paid with respect to fire insurance premiums and repairs,

less any rent or other income earned by the purchaser from the property.

(3) A dispute concerning the amount to be paid for redemption or to be repaid to the purchaser upon redemption may be referred to the Supreme Court of Nova Scotia.

Purchaser rights cease

154 From the time of the payment to the treasurer of the full amount for redemption, the purchaser of the land ceases to have a right to it.

Deed to purchaser

155 (1) At the request of the purchaser at a tax sale and upon payment of the fee determined by the council, by resolution, the municipality shall deliver a deed to the land in Form E in Schedule A, or to like effect, to the purchaser, or as directed by the purchaser, at any time after the

- (a) sale, if, at the time of the sale, taxes on the land were unpaid for more than six years before the sale; or
- (b) expiration of six months from the sale, if the land has not been redeemed.

(2) The deed shall

- (a) fully describe the land conveyed;
- (b) be signed by the mayor or warden and the clerk; and
- (c) be under the seal of the municipality.

THE REDEMPTION PROCESS

[13] All parties filed extensive affidavit evidence. No deponents were cross-examined. The essential facts are not in dispute, although Dataville and Colchester take very different views with respect to the reasonableness of each other's conduct. The sequence of events leading up to the attempted redemption by Dataville was as follows:

- May 3, 2013 - Dataville gives formal notice to Colchester that it wishes to redeem the properties.
- May 15, 2013 - Colchester provides the redemption amount, including the sum to be repaid to Mr. Baha'i pursuant to s. 153(1) of the *Municipal Government Act*. Counsel for Colchester also stated that, "We require certified funds in our hands by 4:30 p.m. on Tuesday, May 21, 2013".
- May 20, 2013 - at 9:46 p.m. counsel for Dataville sends an e-mail to counsel for Colchester requesting confirmation that funds could be delivered to the Patterson Law Office in Halifax.
- May 21, 2013 - at 10:20 a.m. counsel for Colchester advises by e-mail that funds must be delivered to the Municipal Treasurer prior to the deadline. At 11:59 a.m., in response to a question from counsel for Dataville, counsel for Colchester advises that payment must be made to the Municipal Tax Office by way of certified funds/banker's draft or solicitor's trust cheque. This information first comes to the attention of Mr. Self after 1:00 p.m. on this date. By mid-afternoon he has obtained the necessary bank draft payable to Colchester. At approximately 4:21 p.m., Mr. Self calls the Municipal Tax Office to discuss whether he could pay by credit card or wire transfer, and is told that this is not possible. The tax office closes at 4:30 p.m. and Mr. Self arrives in Truro early that evening. He is unable to find anyone prepared to accept the bank draft on behalf of Colchester.

- May 22, 2013 - Mr. Self goes to the office of Colchester and attempts to provide the draft to the treasurer who refuses to accept it.

[14] In his affidavit, Mr. Self described the events of the evening of May 21, 2013 in some detail. He says that he attempted to contact the deputy treasurer for Colchester through the Police Department. Although he did not speak to her, the message he received back through the police was that the office closed at 4:30 p.m. and the Municipality would not accept payment after that time. Just before 11:00 p.m. that evening, he contacted counsel for Colchester at home to ask if he would accept payment of the redemption amount. The request was refused.

POSITIONS OF THE PARTIES

Dataville

[15] Dataville argues that Colchester thwarted the efforts to redeem the property by refusing to permit payment to its lawyer's office, despite earlier e-mails which suggested this as a possibility. The late notice that payment had to be made to the Municipal office in Truro was unreasonable and prevented Mr. Self from having the bank draft delivered before the 4:30 deadline, which Colchester had imposed.

[16] Dataville argues that the six month redemption period did not expire until midnight on May 21 and, therefore, it was entitled to redeem any time that day. Colchester was not entitled to impose a 4:30 deadline and unreasonably refused to accommodate the efforts for payment after that time.

[17] As an alternative argument, Dataville suggests that the tax sale was not complete until November 22, 2012, and so that the six month redemption period expired on May 22. Mr. Self tendered payment on that date.

Colchester

[18] Colchester argues that Dataville is the author of its own misfortune by waiting until the last minute to pursue redemption. They say it was not reasonable for Dataville to assume that payment could be made to Colchester's law firm, rather than the treasurer's office in Truro.

[19] The position of Colchester is that the six month redemption period expired on May 21, 2013, and there is no discretion to extend that period regardless of the circumstances. The deadline for payment passed when the Municipal Tax Office closed at 4:30 and there was no right to make payment after that time. In any event, no such payment was made by Dataville.

Jonathan Baha'i

[20] Mr. Baha'i describes himself as a innocent party who purchased the property at tax sale. He supports the position of Colchester that the six month redemption period expired at 4:30 p.m. on May 21, 2013. During the redemption period, Mr. Baha'i says that he was the legal owner of the properties subject only to the right of redemption of Dataville. Once the period passed without redemption, his interest was perfected and he was entitled to a deed from Colchester as of right.

ISSUES

[21] Most of the evidence filed by Dataville was focussed on the dealings between the parties and whether its attempts to redeem the properties were frustrated by the actions of Colchester and its lawyers. It is not clear how the equities of the situation or the reasonableness of Colchester's actions are relevant to the legal position being advanced by Dataville. Mr. Fraser, on behalf of Dataville, repeatedly said that it was not seeking an extension of the redemption period.

[22] Dataville did not provide any authorities to suggest that the Court had jurisdiction to extend the statutory time period and did not argue that the Court should do so. As a result, the real question is whether Dataville has redeemed the property within the meaning of the *Municipal Government Act*.

[23] Based upon the submissions of counsel, I believe the issues requiring determination in these proceedings are as follows:

- 1) When did the redemption period expire?

- 2) Did Dataville redeem the property in accordance with the *Municipal Government Act* within the redemption period?
- 3) Is Mr. Baha'i entitled to a tax deed from Colchester for the properties?

ANALYSIS

Issue One: When did the redemption period expire?

[24] Section 152(1) of the *Municipal Government Act* permits redemption of a property sold at tax sale within six months after the date of the sale. In this case, the sale took place on November 21, 2012. Colchester says that the six month period expired at 4:30 p.m. on May 21, 2013 because that was the time its administrative offices closed for the day. They argued that it would be unreasonable to require a municipality to keep their office open until midnight in order to accept redemption payments.

[25] In my view, the position of Colchester confuses the issue of the statutory expiry of the redemption period and the practical question as to how such redemption can be completed. Colchester provided no authority for the suggestion that the redemption period is determined by the business practices of a particular municipality. Their position makes no legal or practical sense. A municipality cannot redefine terms used in provincial legislation unless that authority is delegated to them.

[26] The calculation of a time period which is expressed in months is addressed in the *Time Definition Act*, R.S.N.S. c. 469. In s. 3 of that legislation, month is stated to mean a calendar month. This suggests that a month ends at midnight on the last day of the calendar month and not at some other time partway through that day.

[27] As an analogy, I would refer to the Nova Scotia *Civil Procedure Rules*. Although they are made by the judges of the Court, they are considered to have the force of law by virtue of the provisions of s. 47 of the *Judicature Act* (see *Central Halifax Community Association v. Halifax (Regional Municipality)*, 2007 NSCA 39). There are many time periods set out in the *Civil Procedure Rules*, some of

which are expressed in days and others in months. Some of the steps described in the *Rules* require filing documents with the prothonotary. Fax filing is permitted by *Rule 82.11*. Faxing a document can obviously be done at any time of the day or night, and is not limited to the prothonotary's normal business hours. *Rule 82.11(4)* deals with the treatment of documents sent outside of normal business hours. It provides as follows:

(4) The prothonotary may accept the faxed document when it is received during the court's business hours or on the next business day after the document is received outside business hours.

[28] Presumably this was included in the *Rules* to deal with the possibility that documents might be faxed at nighttime and would otherwise be treated as filed on the day received even though the office was closed.

[29] Documents can be delivered to parties at any time. *Rule 94.02(3)* states as follows:

94.02 (3) A document delivered after four-thirty on an afternoon is considered to be delivered on the next weekday when the office of the prothonotary is open.

[30] The effect of this provision is that a document delivered in the evening of a particular day is deemed to have been delivered the following day if the prothonotary's office is open. This would suggest that in the absence of such a provision, delivery in the evening would be effective as of that date.

[31] I am satisfied that the interpretation of the six month period for redemption in the *Municipal Government Act* should be done in accordance with the *Time Definition Act* and the common definition of a calendar month. This means that it expires at midnight on the last day of the sixth calendar month following the tax sale. In this case, if the sale took place on November 21, 2012, the redemption period expires at midnight May 21, 2013.

[32] Counsel for Dataville argued that the tax sale did not take place until November 22, 2012 and, therefore, the redemption period continued until May 22, 2013. This submission was based upon the assertion that the balance of the

purchase price was not paid until November 22, at which time the certificate of tax sale was issued to Mr. Baha'i.

[33] The certificate of tax sale is actually dated November 21, 2012, and there is no evidence in any of the affidavits to establish that it was not issued on that date, nor is there any evidence indicating that Mr. Baha'i paid the balance of the purchase price on November 22. Even if such evidence had been provided, I do not believe that this changes the date of the sale from November 21, which was when the public auction took place.

[34] Section 148(2) of the *Municipal Government Act* permits a purchaser to pay the outstanding taxes, interest and expenses on the sale date. Subsection 3 permits the balance of the purchase money to be paid within three business days, failing which, the property would be advertised and resold. I am satisfied that for purposes of calculating redemption, the starting point is the date of the public auction and payment of the deposit, and not the payment of the remaining balance which might take a day or two.

[35] In this case, the redemption period within which Dataville needed to act expired at midnight on May 21, 2013.

Issue Two: Did Dataville redeem the property in accordance with the *Municipal Government Act* within the redemption period?

[36] The requirements for redemption are set out in s. 152 of the *Municipal Government Act*. Subsection (2) says that in order to redeem the property, the person is required to pay certain specified amounts, with credit for any balance remaining in the tax sale surplus account and any rent or other income earned by the purchaser in the interim. In this case, Dataville did not make any such payment prior to expiry of the redemption period and I believe that this is fatal to the claim for relief set out in its notice of application in court.

[37] Mr. Self's affidavits described how he tried to get the bank draft to Colchester on May 21, 2013. Despite these efforts, he was not successful in doing so. In argument, counsel for Dataville said the conduct of Colchester was unreasonable and an attempt to thwart Dataville's redemption efforts. There was an implication that Colchester's staff did not like dealing with Mr. Self and were

more favourably disposed to Mr. Baha'i. Whether Colchester was fair, reasonable or accommodating in its dealings with Dataville is irrelevant to the question of whether redemption took place. As a result, I make no finding on these allegations.

[38] This is not a situation where Dataville delivered the bank draft through a mail slot in the door to the municipal offices, or made an electronic payment to its tax account after the office had closed for the day. If either of these had taken place, Dataville may have had a stronger argument that it had successfully redeemed the property given my conclusion that the redemption period did not expire until midnight. Since that did not happen I need not consider the merits of that argument.

[39] In considering whether redemption occurred I am mindful of the position of Mr. Baha'i as the third party purchaser at the tax sale. Once that sale was completed, s. 151 of the *Municipal Government Act* gave him all of the rights and powers of the owner of the property, provided that his use did not diminish its value. His interest was only subject to the potential redemption by Dataville. Section 155(1)(b) of the *Municipal Government Act* gives Mr. Baha'i the right to a deed if there has been no redemption within six months from the date of the sale. Any equities between the Municipality and Dataville should not affect the rights of Mr. Baha'i.

Issue Three: Is Mr. Baha'i entitled to a tax deed from Colchester for the properties?

[40] Having concluded that there was no redemption within the six month period following the date of the tax sale, s. 155 of the *Municipal Government Act* entitles Mr. Baha'i to a deed from Colchester upon request. Colchester does not dispute Mr. Baha'i's right to the deed in the event that I determine that Dataville has not redeemed the property.

[41] In light of my decision that there has been no redemption, I believe that Mr. Baha'i has established his entitlement to a deed to the properties and his judicial review requesting an order directing Colchester to delivery such a deed is granted.

CONCLUSION

[42] There was significant affidavit evidence filed on this application concerning the relationship between Dataville and Colchester. There is no doubt that the relationship has been complex and difficult at times. Mr. Self feels aggrieved by the manner in which Colchester and its counsel dealt with his attempts to redeem the properties in May, 2013. Even if his allegations are all true, he has not shown any legal basis on which I can conclude that redemption took place in accordance with the *Municipal Government Act*. He has not suggested that I have any discretion to waive compliance with these legislative requirements.

[43] This application is primarily a matter of statutory interpretation concerning the calculation of the redemption period. I agree with Dataville that redemption was available up until midnight on May 21, 2013. Unfortunately for Dataville, the amount required to effect redemption was never paid to Colchester prior to the expiry of that deadline. Once the clock struck midnight, the purchaser, Mr. Baha'i, became entitled to receive a deed from Colchester for the properties and Dataville's interest in the land was extinguished.

[44] Dataville's application is dismissed. I will allow Mr. Baha'i's application for judicial review and order that Colchester provide him with a deed to the properties.

[45] In the event that the parties cannot agree on costs, I will receive written submissions from them. Such submissions must be provided within thirty days of the date of this decision.

Wood, J.