

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Corey v. Cumberland County (Municipality), 2014 NSSC 222

**Date:** 20140616

**Docket:** S. T. No. 415926

**Registry:** Truro

**Between:**

**Sterling D. Corey**

Applicant

- and -

**The Municipality of the County of Cumberland, Peter Seidl and  
Margaret Seidl**

Respondents

- and -

**The Municipality of the County of Colchester**

Intervenor

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**DECISION**

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**Judge:** The Honourable Justice E. Van den Eynden

**Heard:** December 16, 2013, in Truro, Nova Scotia

**Written:** June 16, 2014

**Counsel:** Ian Breneman, Solicitor for the Applicant, Sterling D. Corey  
David McNairn, Solicitor for the Respondent, The  
Municipality of the County of Cumberland  
Gregory Auld, Solicitor for the Respondents, Peter Seidl and  
Margaret Seidl  
Dennis James, Solicitor for the Intervenor, The Municipality

of the County of Colchester

**By the Court:**

**Introduction:**

[1] The Applicant, Sterling D. Corey, applied to the Court seeking an order nullifying the certificate of discharge, reinstating a certificate of sale, and compelling the Respondent Municipality to convey the subject property to the Applicant.

[2] The facts are not controversial. The application turns on the interpretation and application of the right to redeem property sold at a tax sale under section 152 of the *Municipal Government Act* (herein the “*MGA*”). The Applicant asserts the right of redemption was lost. The Respondents assert the contrary. The Municipality of the County of Colchester was granted intervenor status and supports the position of the Respondents.

[3] The key issue for determination is whether the taxes on the subject property were, at the time of sale, in arrears for more than six years, as contemplated by the provisions of the *MGA*. If so, the right of redemption is lost.

[4] The parties disagree on the interpretation of section 152(1) of the *MGA*; which section does not appear to have been the subject of direct judicial interpretation. Section 152 (1) of the *MGA* provides as follows:

**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.

**Overview of the facts:**

[5] On November 15, 2012, the Respondent Municipality held a tax sale in respect of land assessed to the Respondents Peter and Margaret Seidl. The land is located at 95 Water Street, Pugwash, Nova Scotia, otherwise known as PID 25157173, herein "*the property*." At the tax sale the property was sold to the Applicant for the sum of \$5,129.73. That sum represented the amount of outstanding taxes and expenses associated with the tax sale.

[6] Following the tax sale, the Municipality executed and recorded a Certificate of Tax Sale. The Notice of Tax Sale and the Certificate of Sale for Taxes noted the property was subject to redemption.

[7] On November 26, 2012 the Municipality wrote to the Applicant providing him with the Certificate of Tax Sale and advising him of the right of redemption by the assessed owners of the property.

[8] The Applicant wrote to the Municipality and took the position the property was not redeemable, as he believed the taxes had been outstanding for more than six years. The Municipality advised the Applicant that the taxes in relation to the property at the date of the tax sale had not been outstanding for more than six years and, therefore, the right of redemption was available to the Seitls.

[9] On May 15, 2013 the Seitls provided payment to the Municipality of \$5,469.19 to redeem the property. The Municipality then filed a Certificate of Discharge with the Land Registration Office for Cumberland County.

[10] The Tax Roll Transaction Journal shows the following payments were made by the Seitls:

<b>Date</b>	<b>Payment</b>
July 31, 2007	\$596.98
August 13, 2007	\$300.00
August 14, 2007	\$679.95
September 13, 2007	\$300.00
July 23, 2008	\$500.00

October 6, 2008	\$500.00
October 7, 2009	\$900.00
October 22, 2009	\$500.00
August 30, 2012	\$500.00
September 24, 2012	\$500.00

[11] Section 131 of the *MGA* provides how partial payments are to be applied and credited by the Municipality. Applying section 131(1)(c) to the forgoing payments means that each payment made by the Seitls was first applied to the accumulated interest, and then the taxes longest in arrears, as follows:

<b>Date</b>	<b>Amount of Payment</b>	<b>Interest</b>	<b>Amount to be applied to Arrears</b>	<b>Amount Remaining of Taxes</b>
July 31, 2007	\$596.98	\$187.70	\$409.28	\$658.44 (2006)
August 13, 2007	\$300.00	\$21.21	\$278.79	\$379.65 (2006)
August 14, 2007	\$679.65	\$0.00	\$679.65	\$0.00 (2006) \$832.50 (2007)
September 13, 2007	\$300.00	\$10.41	\$289.59	\$542.91 (2007)
July 23, 2008	\$500.00	\$82.99	\$417.01	\$125.90 (2007)
October 6, 2008	\$500.00	\$46.68	\$453.32	\$0.00 (2007) 847.52 (2008)
October 7, 2009	\$900.00	\$141.57	\$758.43	\$89.09 (2008)

October 22, 2009	\$500.00	\$0.00	\$500.00	\$0.00 (2008) \$822.16 (2009)
August 30, 2012	\$500.00	\$1179.18 *includes tax sale expenses	\$0.00	\$822.16 (2009)
September 24, 2012	\$500.00	\$54.68 +\$679.18= \$733.86	\$0.00	\$822.16 (2009)

As a result of the above application of payments the Seitts:

- paid their 2006 taxes in full as of August 14, 2007;
- paid their 2007 taxes in full as of October 6, 2009; and
- paid their 2008 taxes in full as of October 22, 2009.

[12] At the date of the tax sale on November 15, 2012, taxes were in arrears for 2009, 2010, 2011, and 2012. The amount owing by the Seitts for this period, including interest and tax sale expenses, was \$5,129.73.

[13] The Applicant brings this application for an interpretation of Section 152(1) of the *MGA* and for an Order setting aside the Certificate of Discharge.

**Issue:**

[14] Were the Seitts entitled to redeem their property under the provisions of the *MGA*? In particular, were the taxes on their property in arrears for more than six

years at the date of sale as per section 152(1) of the *MGA*? The answer hinges upon the statutory interpretation of section 152(1).

**Decision:**

[15] For the reasons set out herein, I find that the Respondents (Peter Seidl and Margaret Seidl) were not in arrears for more than six years and had a right of redemption, which they exercised pursuant to the relevant provisions of the *MGA*. I find that for the purposes of section 152(1) reference to “*arrears*” is specific to the year in which they accrued. I find that the Respondent Municipality correctly interpreted and applied the provisions of section 152(1). Accordingly, the application is dismissed.

**Position of the parties:**

[16] The Applicant argues that notwithstanding their payment history and the provisions of section 131 (1) of the *MGA*, the Seidls had past due taxes owing to the Municipality from June 2006 through to November 2012. In each consecutive year between 2006 and 2012 the Seidls owed past due taxes and therefore “taxes on the land were in arrears for more than six years”.



[17] The Applicant argues it is logical to track the duration in which a property is in arrears of required payments together as a single outstanding debt. In other words, do not look at the debt (arrears) owing as distinct debts related to individual years.

[18] The application turns on the meaning of “*taxes on the land are in arrears for more than six years*”. The term “arrears” is not defined in the **MGA**. Under the Applicant’s preferred interpretation of section 152 (1), the Seitts would be deprived of their right of redemption notwithstanding that at the time of the tax sale the \$5,129.73 owing was only attributable to a four year period. The Applicant argues that in accordance with the theory of looking at the debt as continuous, as opposed to discrete years, the Seitts were continuously “in arrears” each year since 2006. Their payment history does not change the fact that in each year they owed tax arrears. They paid tax arrears; however, because they were in arrears each and every consecutive year for greater than six years they lost their right of redemption.

[19] The Applicant argues:

- (1) That applying the appropriate framework of statutory interpretation leads to the conclusion that arrears are to be looked at as a continuous

debt and section 152(1) does not support an interpretation of identification of tax arrears to a specific year or years;

- (2) The legislature is presumed to avoid superfluous and meaningless words and the plain and ordinary meaning of section 152(1), its context in the statutory scheme of the *MGA*, and the legislative purpose are to be considered in turn;
- (3) Specifically the term “arrears” in the ordinary and grammatical sense of that term, means simply that one party has an outstanding debt that is past due to another party. It is a broad term and there is nothing in section 152(1) to link the concept of arrears with any particular taxation year being paid in full. The only inquiry under section 152(1) is whether there was any point in the six years preceding the tax sale in which the Seitls were not behind in their required payments to the Municipality. It matters not that in the course of those six years sufficient payments were made and applied to satisfy arrears for several of the earlier years in the six year window. Put another way, section 152(1) does not mean that a property owner must still be indebted for amounts levied in each of the six years preceding the tax sale in order to be considered in arrears; rather the inquiry is whether the property was continuously in a state of arrears for the six years pre-tax sale;
- (4) The *MGA* employs language in other sections; in particular section 134(1) and section 152(2), which demonstrate there is more than one way for the legislature to make a purposive reference to the tax debt from a specific year if it so desires. It elected not to use specific language in section 152(1), therefore, the broader interpretation of “arrears” as put forward by the Applicant was intended.
- (5) From a policy perspective, the Applicant’s approach better ensures the payment of taxes owing to the Municipality, which accords with the statutory context of the *MGA*; and
- (6) Alternatively, if there is ambiguity, any presumption in favour of a tax payer is to be used as a last resort and, any such statutory interpretation that might be applicable between a taxpayer and taxing authority alone cannot apply in this case. In this case the ordinary taxpayer –

government relationship does not exist and, in any event, both the Seitls and the Applicant are taxpayers under the *MGA*.

[20] The Respondents and Intervenor argue that at the time of the tax sale, taxes were only in arrears for 2009, 2010, 2011 and 2012. At the time of the tax sale, taxes and interest for the previous years had been paid. Accordingly, the Municipality allowed the Seitls to exercise their right of redemption set out in section 152 (1) of the *MGA* as they were not “in arrears” for more than six years.

[21] The Respondents and Intervenor argue:

- (1) The overall purpose of section 152(1) of the *MGA* is to provide a mechanism by which land owners or those with an interest in land may nullify the results of a tax sale and thereby retain their interest in land;
- (2) The principles of statutory interpretation require section 152(1) to be interpreted harmoniously with the scheme and objectives of the *Act*. Specifically, in order for section 152(1) to be interpreted harmoniously with the rest of the *Act*, and in particular section 131(1), I must consider the effect of partial payments made by the Seitls in determining whether, at the date of the tax sale, the taxes were in arrears for more than six years;
- (3) Although the *MGA* does not define arrears, the principles of statutory interpretation support the only meaning of arrears the legislature could have intended, which is the meaning advanced and applied by the Municipality of the County of Cumberland. In particular, tax arrears as stated in section 152(1) apply specifically to the year in which they accrue and the ordinary meaning of section 152(1) does not extinguish the Seitls right of redemption because there have been arrears owing of some amount on the subject property for six years continuous;
- (4) Section 131(1) supports the interpretation that the status of arrears is to be assessed in relation to the specific tax years to which they

pertain. Section 131(1) specifically contemplates that taxes may be in arrears for different lengths of time, that taxes may be paid at different points in time, and that as payments are made, the taxes which are outstanding the longest are paid first. By placing a priority on paying taxes in this order, the *MGA* implicitly preserves a property owners rights against sale of their land;

- (5) The *MGA* also contains other provisions which reference the identification of tax arrears to specific years including section 137(1) and section 140(3). It is argued this demonstrates that the interpretation that arrears are specific to the year in which they are accrued is consistent with the treatment of tax arrears throughout the *MGA*;
- (6) In the alternative, should I determine that the wording of section 152(1) is ambiguous then the principle of strict construction should apply. Under that doctrine, statutes that impose a tax burden should be strictly construed in favour of the tax payer. The basic concept being that if the taxing statute is not explicit, reasonable uncertainty or factual ambiguity resulting from a lack of explicitness in the statute should be resolved in favour of the taxpayer. In this fact scenario the “tax payer” should be the Seitls not the Applicant tax sale purchaser. In support of this argument the Respondents point to the protection a purchaser at a tax sale is afforded under section 152(2) and 153 of the *MGA* which, in effect, attempt to make the purchaser financially whole upon redemption.

### **Overview and analysis:**

[22] Under the *MGA* Municipalities have the authority to tax and to collect taxes through a sale of land. The *MGA* also affords some protection to a property owner by way of the right of redemption. The right is limited by section 152(1). The right must be exercised within six months after the date of sale providing the taxes on the land are not in arrears for more than six years.

[23] For convenience, I refer again to the section 152 (1) which is the principle section under review. Section 152(1) provides:

**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.

[24] As noted earlier, this application turns on the meaning of “*taxes on the land are in arrears for more than six years*”. “Fiscal years” and “taxes” are defined in section 3(ai) and 3(bz) of the *MGA*; neither of which are informative to determination of the issue. As noted earlier, “arrears” is not a defined term in the *MGA*.

[25] I am mindful of the principles of statutory interpretation and the broad and purposeful approach to the interpretation of statutes empowering municipalities. I specifically refer to the following legal principles:

- (1)The words of an **Act** are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the **Act**, the object of the **Act** and the intention of the legislature: (see **Cohen v Nova Scotia (Workers’ Compensation Board)**, 2007 NSCA 118 at paragraph 18);
- (2)Every provision/word of a statute is supposed to have a meaning and function. Courts should avoid, as much as possible, adopting

interpretations that would render any portion of a statute meaningless, pointless, or redundant (see **Mime’j Seafood’s Ltd v Nova Scotia Workers Compensation Appeals Tribunal**), 2007 NSCA 115 at paragraph 41);

- (3) In the absence of a reason to reject it, the ordinary meaning prevails. Even if ordinary meaning is clear; still must consider the purpose and scheme of the legislation. The court may adopt an interpretation which modifies or rejects the ordinary meaning; however, the interpretation must be plausible and one which the words can bear. (see **Driedger on the Construction of Statutes**, 3<sup>rd</sup> ed (Toronto and Butterworths, 1994 page 7);
- (4) Generally speaking respecting ambiguity, if there are two interpretations, the more reasonable one should prevail. If one cannot be said to be more reasonable than the other, the choice should then be resolved in favour of the taxpayer. (see **Ontario Cancer Institute v Ontario (Minister of Revenue)** 150 D.L.R. (4<sup>th</sup>) 371 at paragraph 60; and **Recycling v Inverness (county of)** 2006 NCSC 93 at paragraph 19). Although the case before me is not a true taxing matter, this principle has relevance.

[26] Nova Scotia's **Interpretation Act**, (1989) R.S.N.S., c. 235, deems all legislation to be remedial and to be interpreted so that its objects are attained:

9 (5) *Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters:*

- (a) *The occasion and necessity for the enactment;*
- (b) *The circumstances existing at the time it was passed;*
- (c) *The mischief to be remedied;*
- (d) *The object to be attained;*
- (e) *The former law, including other enactments upon the same or similar subjects;*

*(f) The consequences of a particular interpretation; and*

*(g) The history of legislation on the subject.*

[27] Although the language in section 152(1) could have been clearer, I find the interpretation identified by the Respondents and Intervenor to be in keeping with the grammatical and ordinary meaning, harmonious with the **MGA** as a whole, accords with the objectives of the **MGA** and intention of the legislature. Accordingly, I find that for the purposes of section 152(1) reference to the words “*taxes on the land are **in arrears** for more than **six years**” is intended and does mean to establish that arrears are specific to the year in which they accrued. Accordingly, since the Seitls paid the taxes longest outstanding in years 2006, 2007 and 2008, taxes were not in arrears for more than six years. The right of redemption was available to the Seitls; which they exercised in compliance with the **MGA**.*

[28] The purpose of the **MGA** is set out in section 2 which provides as follows:

2 The purpose of this Act is to:

- (a) give broad authority to councils, including broad authority to pass by-laws, and to respect their right to govern municipalities in whatever ways the councils consider appropriate within the jurisdiction given to them;
- (b) enhance the ability of councils to respond to present and future issues in their municipalities; and

(c) recognize that the functions of the municipality are to:

- (i) provide good government;
- (ii) provide services, facilities and other things that, in the opinion of the council, are necessary or desirable for all or part of the municipality, and
- (iii) develop and maintain safe and viable communities.

[29] The collection of taxes is set out in section VI of the *MGA*. The collection of taxes and enforcement provisions should an owner be in default are important mechanisms under the *MGA*. The objective is not to unfairly strip landowners of their ownership interests. Nor can taxes remain unpaid indefinitely. Hence a balancing of interests is accomplished under section 152(1). There is a right of redemption but that right is not unlimited.

[30] If I were to adopt the Applicant's proposed interpretation, being arrears are a continuous debt and not attached to distinct years, the result could be severe and potentially perverse. For example, the amount of continuous arrears over the six years could be very nominal. If the legislature intended to deprive owners of their interest in property as proposed by the Applicants, surely one would expect far clearer language. As well, if an owner elects to redeem, protection at least from a basic save harmless perspective, is provided to the purchaser at a tax sale under section 153(2) and (3) of the *MGA*.



[31] Furthermore, in support of the Respondents interpretation being consistent or harmonious with the overall *MGA*, reference was made to Section 131(1) which contemplates taxes may be in arrears for different lengths of time; paid at different times; and provides for a priority of paying taxes that are longest in arrears. Also, section 137 speaks to the requirement to identify the years in which arrears are levied when preparing a list of properties to be sold for taxes. I agree with the Respondents and Intervenor that these provisions, are complimentary to the contextual and harmonious argument they advanced.

[32] Even if the ordinary and plain meaning to be afforded the words “*taxes on the land in arrears for more than six years*” were other than as I have determined, I would still find against the Applicant. First, at a minimum, the interpretation put forward by the Respondents and Intervenor is plausible and one which the words are capable of bearing. Second, for the reasons outlined above, the position of the Respondents and Intervenor is more reasonable. I find it strikes the appropriate intended balance. I find the Applicant’s proposed interpretation, if accepted, would unreasonably skew the intended balance and could result in unfair and unintended consequences. Third, even if it could not be said to be more reasonable, I would resolve any ambiguity in favour of the Seitls who I determine to be the true taxpayers. Although the Applicant acquired the property under a tax

sale and therefore, subject to any right of redemption, he too is technically a taxpayer respecting the property; his interests are remedied under section 152 (2) and (3).

[33] Accordingly, the Application is dismissed. I retain jurisdiction to address costs in the event costs are not resolved between the parties by consent.

**Justice E. Van den Eynden**