

Date: 2002/01/14
Docket: S. H. No. 174122

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as **Mitchell v. Halifax (Regional Municipality), 2002 NSSC 84**]

BETWEEN:

WAYNE MITCHELL

Plaintiff

- and -

HALIFAX REGIONAL MUNICIPALITY

Defendant

D E C I S I O N

HEARD: Before the Honourable Justice John D. Murphy, Supreme Court
of Nova Scotia, at Halifax, Nova Scotia, on October 1st, 2001

WRITTEN
RELEASE
OF ORAL:

March 27, 2002

COUNSEL:

Mary Ellen Donovan (Daniel W. Ingersoll)

Wayne Mitchell, personally

MURPHY, J.

- [1] This Court must decide whether to continue a temporary Order prohibiting the Halifax Regional Municipality (“HRM”) from removing or destroying a structure on Maitland Street in Halifax, Nova Scotia. Making that decision requires determination of the scope of the work authorized by HRM Demolition Permits Number 026986 DEM and 344W, issued August 16th, 2001 and September 26th, 2001 respectively (collectively the “Demolition Permit”).
- [2] The history of this matter has been thoroughly canvassed during submissions by the parties, and need not be repeated in detail. The difficulties arise from the collapse of the roof over structures on Gottingen and Maitland Streets on February 6th, 2001. The affected area involves three contiguous buildings, which have sometimes been considered as one unit, on lots designated by three different PID, or property identification of numbers, one on Maitland Street, PID Number 154385, (the “Maitland Property”) and two fronting on Gottingen Street, PID Numbers 154393 and 154583 (collectively the “Gottingen Property”). Documentation in evidence describes extensive dealings between the parties since the roof collapse, with the issues currently relevant first coming before the Court September 21st, when Mr. Mitchell, as

owner of the properties, made an ex-parte application seeking an Order to stop demolition activity which was being undertaken by HRM. Following a hearing that day, Justice Scanlan granted a temporary injunction which prohibited HRM from removing or destroying the Maitland Property. That Order directed the parties to return to Court September 27th, and the matter was subsequently adjourned until October 1st, 2001, when HRM applied to have the temporary injunction lifted, and Mr. Mitchell sought its continuation.

- [3] After reviewing the documents which were before Justice Scanlan and the additional materials filed subsequently and hearing oral submissions from the parties, it appears to be common ground that the Demolition Permit relates to the Maitland Property. HRM claims that it applies to the entire Maitland Property, while Mr. Mitchell's position is that only part of that property is subject to demolition.
- [4] HRM raised a preliminary argument that the owner of the relevant property is a corporation and not the Applicant, Mr. Mitchell, and that he personally does not have standing to make the Application. I will not make any finding based upon that argument. I consider that it was appropriate that Mr. Mitchell, who operates businesses on the premises and would appear to

control any corporate owner, bring this matter before the Court on an emergency basis without addressing the subtleties related to identity of the registered landowner; in view of the other conclusions which I will set out, it is not necessary for me to further address that issue.

[5] The record of the proceedings when Justice Scanlan issued the temporary injunction suggests that he was led to believe that any permit authorizing demolition related to the Gottingen Property, and on that basis he directed that the demolition of the Maitland Property cease. That misunderstanding appears to have arisen from an error in the Originating Notice which was filed for the September 21st hearing, which referred to staying an Order for demolition of the Gottingen Property. Now that more complete documentation is before the Court, it is apparent that the Demolition Permit does not apply to the Gottingen Property, and that it is only the Maitland Property which HRM wants demolished.

[6] HRM issued an Order on June 22nd, 2001 to Remedy Dangerous and Unsightly Conditions by Demolition, which was filed as Exhibit "M" to the Affidavit of Peter James, HRM's regional coordinator of By-law Enforcement. That Order refers to both the Gottingen Property and the Maitland Property. However, when the dangerous or unsightly condition

was not remedied and demolition by the owner did not take place, HRM issued the August 16th Demolition Permit, which appears as Exhibit “P” to Mr. James’ Affidavit. That document refers to demolition and removal of two levels of the damaged Maitland Property, and then continues to refer to incidental reinstatement of abutting walls.

- [7] A subsequent Demolition Permit was issued September 26th, 2001, as the original was time expired; the description in the September 26th permit is the same as in the permit issued earlier, and clearly refers to the Maitland Property. A copy of the Permit issued September 26, which was Exhibit 4 at the October 1st hearing, is attached as Schedule “A” to these reasons.
- [8] Accordingly, I find that there is a Demolition Permit with respect to the Maitland Property, and I am satisfied based on the evidence contained in Mr. James’ Affidavit that HRM followed all the procedural steps and pre-requisites necessary to issue that Demolition Permit.
- [9] HRM’s understanding of what the Demolition Permit authorizes differs substantially from what the Applicant, Mr. Mitchell, and his associate, Mr. Bryant, (who appeared in Court and assisted Mr. Mitchell in making submissions) believe the permit to authorize. It is easy to understand how the confusion arose. The parties are dealing with three different lots and the

structure or structures which cover a large portion of the three lots. There has been reference from time to time to demolishing “a third of the structure”, “part of the structure” and also to demolishing the “Maitland Street portion”.

- [10] The Court must determine whether the Demolition Permit authorizes demolition of all or only one- third of the Maitland Property - whether it applies to the Maitland Property third of the whole structure, or to one-third of the Maitland structure. Some of the documents in evidence are helpful: Exhibit “M” to Mr. James’ Affidavit, the Order to Remedy issued by HRM June 22nd, 2001, clearly refers to both the Maitland Property and the Gottingen Property, the entire building structure. Correspondence from HRM to Mr. Bryant, dated July 26th, 2001, part of Exhibit “R” to Mr. James’ Affidavit, contains the reference line “Remedy of Dangerous or Unsightly Conditions of Enviroscape Limited property, 2183-89 Gottingen Street and 2250-64 Maitland Street, Halifax, Nova Scotia” and begins:

This letter is to confirm the content of our discussion of July 24th, 2001 respecting the conditions of the Enviroscape Property located on Gottingen and Maitland Street in Halifax, N.S.

- [11] I conclude that correspondence was intended to refer to the entire structure, the three PID numbered properties comprising the Maitland Property and the

Gottingen Property. However Paragraphs A and C of that letter specifically addresses the demolition of the Maitland property and state:

- a) the Halifax Regional Municipality (HRM) has tendered the work to Remedy the Dangerous or Unsightly Conditions, of the Envirocape Property on Maitland Street, through Demolition;
...
- c) the scope of the tendered work is to remove the one-third of the structure located on Maitland Street, and to remediate the abutting exterior walls.[underlining added]

[12] Mr. Mitchell interpreted the words in Paragraph (c) to refer to one-third of the structure on the Maitland Property, rather than one-third of the entire structure. I respectfully disagree. Placing the word “the” before “one-third” implies that the reference is to one-third of the whole structure which is described in the heading of the letter, which is the entire structure located on the Maitland Property. That conclusion is consistent with the wording in Exhibit 1, another Order to Remedy Dangerous or Unsightly Conditions issued by HRM, introduced at the Hearing on September 21st, before Justice Scanlan, which reads as follows:

“ORDER TO REMEDY

DANGEROUS OR UNSIGHTLY CONDITIONS

Enviroscape Limited - 2183-2189 Gottingen Street

Work to be completed

- Demolish and removal of 1/3 of building. Structure on property listed as PID 00154385 (property identification number) to be demolished and removed.
- The walls of the identified structure which are shared with the other walls (PID 00154583 & 00154393) of the Enviro Treasures building are to be rebuilt.”

[13] In the context of the July 26th letter from HRM and the prior documents authorizing demolition, I am satisfied that the word “building” in Exhibit 1 refers to the entire structure on the three lots with one-third being all the building on the Maitland Property.

I interpret the directive “structure on property listed as PID number 00154385 to be removed and demolished” to be an instruction to demolish the entire structure on the Maitland Property.

[14] I therefore find that the Demolition Permit refers to the complete building on the Maitland Property as submitted by HRM, not to one-third of that building as suggested by the Applicant.

[15] There is no substantial arguable issue with respect to the propriety of the issuance of the Demolition Permit which warrants continuation of the temporary Order staying demolition of the Maitland Property. I am cognizant of the balance of convenience issues relevant in considering injunction applications: the premises in this case are unsafe, dangerous, and a risk to the public, and it is in the best interest of all parties that the matter be dealt with promptly. The safety issue is important. Any losses which Mr.

Mitchell or any corporation which is the registered owner of the premises may incur if HRM operates outside the scope of the Demolition Permit (which applies to the entire Maitland Property) could be dealt with at a later time by way of a claim for damages, and are not a basis upon which the stay of the demolition should continue.

[16] The Temporary Injunction Order issued by Justice Scanlan on September 21st is lifted, the Demolition Permit has been validly and properly issued and is in effect, and HRM is authorized to proceed thereunder with demolition and removal of two levels of the entire damaged structure on the Maitland Property, PID 00154385, and reinstatement of the abutting exterior walls on the Gottingen Property.

[17] There will be no costs award.

J.