2007 S.C. Am. 289623

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Stiles v. Springhill (Town), 2008 NSSM 84

BETWEEN:

ALISSA STILES and KENNETH MATTHEWS

CLAIMANTS

-and-

THE TOWN OF SPRINGHILL

DEFENDANT

DECISION AND ORDER

Date of Hearing: October 15, 2008

Heard Before: Gavin Giles, Q.C., Chief Adjudicator

Counsel: For the Claimants:
The Claimants appeared personally

For the Defendant:
William (Bill) Fairbanks, Q.C.

Date of Decision: December 14, 2008

INTRODUCTION:

[1] This matter was heard before the Small Claims Court of Nova Scotia, at Amherst, on October 15th, 2008.

[2] Both of the Claimants were present and represented themselves.

[3] The Defendant was present through a number of its senior employees. It was represented by its counsel, William (Bill) Fairbanks, Q.C.

[4] The Claimants have claimed from the Defendant the sum of $4,999.99. Despite a careful review of the Claimants' Claim and Amended Claim, its basis is difficult to fathom.

[5] According to the Claimants, they were the owners of certain lands and premises within the Defendant's geographical municipal limits. Also according to the Claimants, their lands were illegally sold by the Defendant at a "tax sale".

[6] The Claimants alleged, first, that the Defendant's tax sale of their lands was illegal in that it was motivated by malice. The Claimants alleged, second, and alternatively, that the Defendant's tax sale of their lands was illegal because it had been conducted negligently in that there were: (a) no outstanding taxes due to the Defendant on the lands; and (b) even if such taxes were due, the Defendant had failed to give appropriate and accurate notice that a tax sale of the lands was pending.

BACKGROUND:

[7] The Claimants are a young couple. Not in evidence was whether they were married or not. At the time of the hearing, the Claimants were about to become new parents. The Claimant, Alissa Stiles, was expecting and was well along in her pregnancy. In fact, there were instances in which Ms. Stiles thought that she might be compromised in her ability to proceed with the hearing because of her condition.

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[8] The Claimant, Kenneth Matthews, is a young man. His education and training was not in evidence. His occupation (or occupations) was/were similarly not in evidence.

[9] Mr. Matthews is an excitable and extremely talkative young man. Persistent efforts in the course of the hearing to re-focus his attention and comments to the matters in issue failed all but miserably. Additionally, persistent attempts to prevent the Mr. Matthews from interrupting virtually every other participant in the hearing, be it witness, Mr. Fairbanks, or me, also failed miserably. Mr. Matthews had a story to tell and his attitude was that he would tell it, come what may.

[10] There can be little doubt that the effectiveness and style of the advocacy by Mr. Matthews badly compromised the Claimants' claim. In many respects, his attitude combined aggression, ignorance, bad manners and arrogance so as to produce a toxic hearing environment. So combative was Mr. Matthews that his evidence was difficult to glean from his other wide-ranging representations and comments.

[11] As noted, efforts by me and, on occasion, by the Sheriff present, to re-focus Mr. Matthews were virtually a dismal failure.

[12] I refer to my Pre-Hearing Conference Memorandum in the matter dated September 29th, 2008. It was in the course of that Pre-Hearing Conference that the Claimants expanded on the nature of their claim against the Defendant:

> Mr. Matthews has outlined the nature of his Claim against the Town of Springhill. He said that the Town of Springhill was in breach of its legal obligations to him by conducting a tax sale of his property notwithstanding the fact that a substantial of the portion of the amount outstanding had been paid. According to Mr. Matthews, the Town of Springhill conducted the sale of his property notwithstanding the fact that he gave notice to it that he was attempting to work out difficulties with respect to his property's tax account. Also, according to Mr. Matthews, he and Ms. Stiles purchased their property through a Royal LePage real estate agency and in circumstances wherein they thought at closing that all outstanding taxes on the property had been paid.

> In essence, Mr. Matthews and Ms. Stiles said that they were misled by a combination of Royal LePage, the vendor of the property and [via] their lawyer, Mr. Ellis. They say that the Town of Springhill knew that they had been misled by one, some or all of the parties just mentioned. They say that the Town of Springhill should not, therefore, have taken tax sale proceedings against them.
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> Mr. Fairbanks responded, on behalf of the Town of Springhill, that it did what it was required to do pursuant to the provisions of the *Municipal Government Act*. According to Mr. Fairbanks, all of the Town of Springhill's proceedings with respect to the tax sale of Mr. Matthews' and Ms. Stiles' property were procedurally correct and taken on notice. Mr. Fairbanks said that the Town of Springhill did nothing wrong with respect to the tax sale of which Mr. Matthews' and Ms. Stiles' and is therefore not liable for any losses which Mr. Matthews and Ms. Stiles say they had incurred.
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> I asked specifically about the pleadings. Mr. Matthews indicated that his and Ms. Stiles' pleadings [were] complete. Mr. Fairbanks indicated that the Town of Springhill had had the opportunity to plead in defence to the most recent version of Mr. Matthews' and Ms. Stiles' claim form.
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> I asked Mr. Matthews specifically what remedy he was seeking from the court. He responded that he was seeking damages generally. He said that he was relying on the Adjudicator to quantify what those damages were. I made it clear to Mr. Matthews that it was incumbent upon him and upon Ms. Stiles to leave sufficient evidence to quantify whatever damages they were seeking. I told him that no adjudicator would be able to fashion damages (other than general damages) out of a collection of evidence.
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> Mr. Matthews also asked me about the nature of the evidence he would be required to leave. I responded that he would have to decide that issue for himself. I reiterated that neither the court, nor the court's staff nor Mr. Fairbanks were able to assist him. Mr. Matthews then advised that he would likely retain counsel. I asked him if he required time to obtain counsel. He told me that time was not required.

[13] At the outset of the hearing, Mr. Matthews reiterated that the Claimants' claims were limited to $5,000. Though Mr. Matthews responded to my observation that the court's monetary jurisdiction had increased to $25,000, he demurred from any opportunity to further

amend his pleadings. His comment, and I quote, was that: "we'll stick with the five and see how it goes".

FACTS:

[14] The Claimants' first witness was Corporal Richard (Rick) Stonehouse of the Springhill Town Police Service.

[15] According to Corporal Stonehouse's recollections, he was called by Mr. Matthews sometime in the Spring of 2008. Mr. Matthews told him that he had purchased the lands but had then lost it in a tax sale. He then told Corporal Stonehouse that he was in the process of "getting the property back". He thus wanted to ensure that its tax sale purchaser would not undertake any demolition to the structures on the lands.

[16] Corporal Stonehouse went to meet with the property's tax sale purchaser. Corporal Stonehouse told him of Mr. Matthews' s position. Corporal Stonehouse asked the tax sale purchaser not to do anything with the property. The tax sale purchaser told Corporal Stonehouse that he was not planning any demolitions anyway, at least until the time that the snow was gone.

[17] The Claimants' next witness was Catherine (Cathy) Coon. She was employed with the Defendant. Her precise position was not in evidence.

[18] Ms. Coon's evidence was largely hearsay. That said, it met the tests set out by the Supreme Court of Canada in cases such as *R. v. Starr* and *R. v. Starratt*. Though Ms. Coon testified that she only knew what she was told and had only very limited dealings with the Claimants, she was employed with the Defendant and was in a position to receive information from the Defendant's tax collector.

[19] According to Ms. Coon, the Claimants had purchased the said property at a time that municipal property taxes were outstanding on it. According to Ms. Coon, she was told by Mr. Matthews that the outstanding taxes were or where to have been paid off on closing.

[20] In one conversation between Ms. Coon and Mr. Matthews, the former advised the latter that the subject taxes had not been paid. Though some amount had been paid against the subject taxes, the outstanding account had not been cleared.

[21] Ms. Coon recalled often suggesting to Mr. Matthews that he should call his lawyer. She told him that he should take up with his lawyer the fact that on closing, only a partial past due tax payment had been made.

[22] Beyond Corporal Stonehouse and Ms. Coon, the Claimants did not "call" any other witnesses. According to Mr. Matthews, he did not understand that he was required to call additional witnesses to prove his case. In response to my reminder about the contents of the Pre-Hearing Conference Memo, Mr. Matthews took the position that the Defendant ought to have the burden of demonstrating the basis for its tax sale proceedings.

[23] Mr. Fairbanks was opposed to that notion. He took the position that it was not up to the Defendant to prove anything until such time as the Claimants had established at least a *prima facie* case. I agreed with Mr. Fairbanks. I then asked the Claimants to consider carefully whether they were going to call any additional evidence. I offered them the opportunity for an adjournment to call any such additional evidence.

[24] Mr. Matthews then testified. The thrust of his evidence was that if any money was owed to the Defendant with respect to the lands, it was not owed by him or by the Claimant, Alissa Stiles.

[25] Mr. Matthews further testified that he was only "trying to square it" and that he "just wanted the property for the baby coming".

[26] Though it was more by way of argument than evidence, Mr. Matthews took the position that the "Town should have put the sale aside until it was all figured out". He then testified that at the time of the tax sale, he was away in Toronto, knew nothing about it, was not advised of it by Ms. Stiles, and only found out about it upon his return.

[27] On cross-examination by Mr. Fairbanks, Mr. Matthews testified that he had paid the full purchase price with respect to the subject property on closing. Despite that, he had no

explanation for why the outstanding taxes had not been paid. All he could suggest was that the taxes were outstanding because his lawyer, Mr. Charles Ellis, had not paid them. He agreed with Mr. Fairbanks' suggestion that that was not the fault of the Defendant.

[28] After making that admission in the course of cross-examination, Mr. Matthews, allowed that he should perhaps have retained counsel for the hearing. Though I reminded him that his retention of counsel had been discussed during the Pre-Hearing Conference, I nevertheless gave him another opportunity to seek an adjournment so that counsel could be consulted and retained. Once again, Mr. Matthews demurred. He wanted the hearing to continue notwithstanding his own exculpatory evidence on behalf of the Defendant.

[29] Don Tabor, the Defendant's Chief Operating Officer, testified on its behalf.

[30] Mr. Tabor described the Defendant's tax sale procedure. He referred to the identification of properties which would be subject to tax sale proceedings and to the notices provided by the Defendant to the owners of such properties.

[31] Mr. Tabor testified to the Defendant's obligations pursuant to the provisions of the *Municipal Government Act*. In short, the *Act* obliges a Municipality to sell property on which taxes are owing for more than one tax year. According to Mr. Tabor, taxes on the subject property were owing for both 2006 and 2007 when Notice of Tax Sale was given (in September of the latter year).

[32] The Defendant's Notice of Tax Sale of the subject property was sent to the Claimants at their last known address; that is, the property's address. That was the address showing for the Claimants, as owners, on the land registry system. Though Mr. Tabor allowed that owners of property oftentimes do not reside at it, he also testified that in such circumstances, owners are very careful to accurately record their actual addresses with the Municipality to ensure that any notices to be sent regarding their properties are sent to the correct addresses. According to Mr. Tabor, it appeared that the Claimants failed to do that.

[33] The Defendant's final witness was its Director of Building and Property Services, Patrick Boyce.

[34] According to Mr. Boyce, the structures on the lands were wide open to the public well prior to its tax sale. Mr. Boyce was aware of the condition of the property because of complaints which he had received over its unsightliness. Though Mr. Matthews interrupted Mr. Boyce continually and called his veracity into question using very aggressive and uncomplimentary terms, Mr. Boyce was adamant that prior to its tax sale, the structures on the lands had fallen into disrepair and were far from habitable.

[35] Tendered into evidence by Mr. Boyce were a variety of colour photographs. They were conceded by the Claimants to be of the lands. The photos depicted a property which was terribly rundown and badly in need of maintenance.

[36] Mr. Boyce also testified that Mr. Matthews had taken out a demolition permit from the Defendant on June 12th, 2007. At some times over the following 11 months, Mr. Matthews had made some progress on the demolition. By May 12th, 2008, a building on the lands had been substantially demolished and construction debris was everywhere.

[37] Mr. Boyce followed up with Mr. Matthews, serving on him a Notice of Unsightly Premises. Though Mr. Matthews blurted out that “it’s a lie”, Mr. Boyce demurred. He said that it couldn’t be a lie. The Notice was served on Mr. Matthew. The fact that he must have received it was reflected in the fact that he appealed from it. The appeal did not proceed.

DECISION:

[38] The Claimants’ claim is dismissed. They failed to adduce any evidence, any evidence whatsoever, in support of their contentions that the Defendant did something illegally or negligently in the course of the subject tax sale.

[39] At all of the material times, the Claimants had control over the subject property. They either knew or ought to have known what taxes were owing on it and for what periods of time. They either knew or ought to have known how much money was required by the Defendant to liquidate those tax account balances to ensure that the property was not sold at tax sale.

[40] For whatever reason, the Claimants failed in their obligations to determine the tax status of their property at all of the material times. They compounded that failure by failing to take reasonable steps to clear up tax sale issues despite their stated intentions to do so.

[41] there may have been a number of reasons for the Claimants' failures. They may have misunderstood the process. They certainly ignored advice. Mr. Matthews was away. It appears that as between Ms. Stiles and Mr. Matthews, it was the latter to attended to the couples' business.

[41] In the end, all the Defendant did was sell a single piece of property at tax sale. It did so with the proper statutory authority and having followed standard procedures.

[42] Though the Claimants were able, at all of the material times, to have "redeemed" the subject property, they have chosen not to do so. They have commenced their claim instead. They say that the property is now worth less to them than it was before because of the actions of the Defendant. None of that has been proved. In summary, the Claimants have not proved how the subject property diminished in value as a result of anything the Defendant did or failed to do. They have similarly failed to prove that the Defendant owed any legal obligation to them at all, which obligation was not fulfilled.

[43] Accordingly, the Claimants' claim is dismissed with costs. I will receive a written submission from Mr. Fairbanks as to costs if any are sought. Upon receipt of Mr. Fairbanks's written submission on costs, the Claimants will have ten (10) days within which to respond in writing. My decision on costs will be rendered in writing thereafter.

DATED at Halifax, Nova Scotia, this 14th day of December, 2008.

Gavin Giles, Q.C., Chief Adjudicator,
Small Claims Court of Nova Scotia

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