Court of Queen's Bench of Alberta

Citation: Alberta Treasury Branches v Cogi Limited Partnership, 2019 ABQB 94

Date:
Docket: 1501 12220
Registry: Calgary

Between:

Alberta Treasury Branches

Plaintiff

- and -

Cogi Limited Partnership, Canadian Oil & Gas International Inc., Conserve Oil Group Inc. and Conserve Oil First Corporation

Defendants

- and -

Decision
of the
Honourable Madam Justice B.E. Romaine

---

[1] Del Canada GP Ltd purchased property from the Receiver of Cogi Limited Partnership, Canadian Oil & Gas International Inc, Conserve Oil Group Inc and Conserve Oil First Corporation (collectively, the Debtor). The sale was approved by an Approval and Vesting Order of this Court dated June 6, 2018. Del Canada brought this application to determine the scope of the Municipal Taxes Fund established by paragraph 8 of the Order.

[2] The Fund was established to pay municipal claims that have super-priority by way of "special lien" pursuant to section 348 of the *Municipal Government Act,* RSA 2000, c M-26. It was set at up to $3 million, an amount considered sufficient to satisfy all proven claims against

the Debtor by municipalities that had responded to the Receiver's letters dated June 6, 2018 asking the municipalities to quantify their claims. The establishment of the Fund was without prejudice to a determination of the validity or priority of the claims asserted by the municipalities.

[3] The issue in this application was whether the special lien under section 348 of the *MGA* is restricted to lands and improvements located within the geographical boundaries of the municipality. I decided that it is, and these are my reasons.

[4] Del Canada relies on *Re Regent Resources Ltd,* 2018 ABQB 669, a decision of Horner, J, which decided the same issue and involved similar material facts. In that application, the Receiver had disclaimed the debtor's property that was located in the respondent municipality and sold the remaining property. It sought to distribute the proceeds of sale to the first-ranking secured creditor. The respondent municipality claimed a special lien over all the debtor's property in Alberta for municipal tax arrears. The Court agreed with the Receiver that the phrase "land and any improvements to the land", in section 318(d)(i) of the *MGA* refers specifically to the land in respect of which the property tax was levied, or alternatively, land within the geographical boundaries of the municipality. The respondent municipality did not appeal the decision.

[5] In this case, the respondent municipalities make the same claim, even though the property sold to Del Canada is located outside their municipal boundaries. The municipalities submit that the decision in *Regent* is incorrect. Although the municipalities in this case are different, it appears from reading that case that many of the arguments made by the municipality in *Regent* have been made again in this application.

[6] I agree with the reasoning of Horner, J in *Regent* and come to the same conclusion: the special lien set out in section 348(d)(i) of the *MGA* is restricted to, at a minimum, land owned by the debtor, or in this case, its assignee, in the municipality that makes the claim. It is not necessary that I decide whether the lien is restricted to the specific taxed land, and I do not do so.

[7] There were certain submissions made by the municipalities in this case that may not have been addressed in *Regent,* and certain criticisms of the *Regent* decision. I respond to these as follows:

a) The municipalities submit that Horner, J failed to look to the appropriate principles of statutory interpretation when giving her reasons. They support this submission by reference to a comment made by the Court in paragraph 15 of *Regent* in response to the argument that there must be consistency in interpretation between section 348(d)(i) of the *MGA*, which deals with land and particular types of tax, and section 348(d)(ii), which deals with property and a somewhat different set of tax categories. That comment is as follows:

> Cardston submits that ... if "land" in s. 348(d)(i) is restricted to land on which tax is owing, then "goods" in s. 348(d)(ii) must be similarly restricted. Cardston points out that, if this is correct, there would be situations in which no special lien would be available. This, in its submission, creates a "gap" that cannot have been intended by the Legislature.

> I do not find this argument persuasive. The interpretation of s. 348(d)(ii) is not before me and I do not agree that I am so constrained in interpreting s. 348 (d)(i).

I disagree that this comment, in context, indicates that the Court interpreted section 348 (d)(i) in a vacuum, as alleged by the municipalities. It appears that section 348 (d)(ii) has not been the subject of interpretation by a court, and therefore, whether it is unrestricted or restricted on the same basis as it was argued that section 348(d)(i) is restricted – to the property or goods within the municipality's boundaries – has not been decided. Thus submissions about inconsistency are speculative to the extent that they assume that section 348(d)(ii) is unrestricted. Horner, J appears to be indicating that she did not find it necessary to interpret section 348(d)(ii) for the purpose of her decision, and therefore found the municipality's arguments about inconsistency unpersuasive.

b) There is no indication in the decision that the Court in *Regent* "refused" to look at the "whole statute book" in interpreting section 348 (d)(i). While it is not clear whether the Court was referred to the definitions of "land" in the *Land Titles Act*, the *Civil Enforcement Act* and in common law, as has been done in this application, it is the specific statute in question that is key to interpretation. Horner, J quite properly referred to the *MGA* and the *Interpretation Act,* RSA 2000, c I-8, in *Regent.* While other legislature may sometimes be helpful in interpreting certain words and phrases, the Supreme Court in *Re Rizzo & Rizzo Shoes Ltd,* [1998] 1 SCR 27 at para 21sets out the basic rule of statutory interpretation as follows:

> Today there is only one principle or approach; namely, 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 Parliament.

c) While the municipalities in this application purport to look at the *MGA* as a whole in making submissions with respect to interpretation, there are a number of relevant provisions that they did not refer to in their brief:

(i) section 12 of the *MGA* states that a bylaw of a municipality applies only inside its boundaries, except in circumstances that do not apply here. The tax debts referenced in section 348 are authorized by by-law, which in accordance with section 12 is only applicable within the boundaries of the municipality;

(ii) section 72(i) indicates that a municipality may acquire "an estate or interest in land" outside of its boundaries only in certain limited circumstances that do not apply in this case;

(iii) section 90 (i) stipulates that if a parcel of land is located in more than one municipality, a tax assessor must prepare an assessment for the part of the parcel that is located in the municipality as if that parcel was a separate parcel of land; and

(iv) section 353(I) of the *MGA* authorizes council to impose a tax "in respect of property in the municipality".

Thus, it is reasonable to assume that section 348(d)(i) does not include the phrase "in the municipality" because it is unnecessary in the context of the statutory powers of the municipality. Counsel for the municipalities submits that the difference is that section 348 creates a debt and an unlimited mechanism to enforce that debt. While it is true that section 348(a) through (c) characterize tax liabilities as debt and gives them priority, the special lien created by section 348(d) is not unlimited but specific as to types of property and types of tax.

d) The municipalities submit that the Court in *Regent* failed to look to the totality of the *MGA* to determine its scheme and object and that the "object of the [*MGA*] is to empower the municipalities to assess tax and to provide a mechanism to collect that tax". In *Shell Canada Products Ltd v Vancouver (City)*, [1994] 1 SCR 231, the Court noted as follows:

> In most cases, as here, the problem arises with respect to the exercise of a power that is not expressly conferred but is sought to be implied or the loss of a general grant of power. It is in these cases that the purposes of the enabling statute assume great importance. The approach in each circumstance is set out in the following excerpt in Rogers, *The Law of Canadian Municipal Corporations*, [citation eliminated], with which I agree:
>
> In approaching a problem of construing a municipal enactment a court should endeavour firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. The provision at hand should be construed with reference to the object of the municipality...
>
> Any ambiguity or doubt is to be resolved in favour of the citizen especially when the grant of power contended for is out of the "usual range".

Justice L'Heureux'Dube noted at paras 18-20 of 114957 Canada Ltee v Hudson (Town), 2001 SCC40 that:

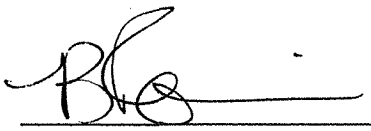
> In *R v Sharma*, [citation omitted], this Court recognized "the principle that, as statutory bodies, municipalities 'may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation'"...While the enabling provisions that allow municipalities to regulate for the "general welfare" within their territory authorize the enactment of bylaws genuinely aimed at furthering goals such as public health and safety, it is important to

keep in mind that such open-ended provisions do not confer an unlimited power.

Thus, while the interpretation of section 348(d)(i) should be "in consonance" with the general purpose of the *MGA*, such general purposes do not confer unlimited power, particularly when the interpretation sought is out of the usual range of municipal powers.

e) The municipalities note that anyone can determine if there is tax owing in a municipality by calling up the municipality and getting information about a particular property, and that secured creditors with knowledge of the debtor's affairs are in a good position to do so. If I am wrong, and the special lien afforded municipalities has no geographical limit, secured creditors would have to perform that diligence, not just at the time of lending but from time to time during the life of the loan, and at numerous registries in the Province and perhaps elsewhere, as there is no other way to determine whether municipal taxes have a priority. These are the "invisible superpriority charges" that Horner, J referred to in *Regent,* and I agree with her comments on that issue.

Heard on the 21st day of January, 2019.
Dated at the City of Calgary, Alberta this 12th day of February, 2019.



B.E. Romaine
J.C.Q.B.A.

Appearances:

C. Richard Jones
for Del Canada GP Ltd.

Shauna N. Finlay
for the Municipalities of Kneehill County, the M.D. of Bonnyville No. 87, the M.D. of Taber and the M.D. of Greenview No. 16

Gregory Plester
for the County of Stettler

Ryan Algar
for the Receiver