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THE CORPORATION OF THE DISTRICT OF MAPLE RIDGE

v.

ASSESSOR OF AREA 13 - DEWDNEY/ALOUETTE AND MUSSALLEM REALTY LTD.

British Columbia Court of Appeal (CA012381) Vancouver Registry

Before the HONOURABLE MR. JUSTICE LAMBERT,
the HONOURABLE MR. JUSTICE LOCKE
the HONOURABLE MR JUSTICE GIBBS

Vancouver, September 19, 1991

A.W. Carpenter for the Appellant
J.R. Lakes for the Respondent, Mussallem Realty Ltd.
J. Savage for the Respondent, Assessor of Area 13 Dewdney/Alouette

Reasons for Judgment (Oral) September 19, 1991

What might be regarded as a preliminary question was raised in the course of argument in this appeal. It arose from the fact that the appeal book contained no form of order and counsel told us that the form of order was still awaiting a decision by the Trial Judge on the question of costs, but that the form of order had been agreed by the parties in relation to the issues raised by this appeal.

The appeal is from the order of the Trial Judge and not from his reasons, of course, but time for appeal runs from the date of pronouncement and in my opinion the proper course is to regard the appeal as being from the order that is pronounced. However, if there are questions about the content of the order then of course, if those questions relate to the issues in the appeal the appeal ought not properly to go ahead until the Trial Judge had had an opportunity to settle the true content of the order.

Also, in my opinion, as I understand the practice in the Court, if the order that is made on an appeal which goes ahead where no formal order has been entered in the Trial Court the order of this Court should be subject to the condition that it not be entered until the order of the Trial Judge has been entered. If the order of the Trial Judge is entered on any different terms than those that have been agreed by the parties to be the order that is appealed from, then the parties must bring that to the notice of the Court of Appeal before the Court of Appeal order is entered.

The question raised by the appeal itself arises from an assessment in the 1988 Assessment Roll and the 1989 Assessment Roll about the farm classification of land owned by the Respondent Mussallem Realty Ltd. in the District of Maple Ridge. After hearings by the Board of Review and the Assessment Appeal Board, the Assessment Appeal Board decided that farm classification should be extended to the property in question notwithstanding that it was said by the District of Maple Ridge that the zoning of the property did not include farming as permitted use.

The Corporation of the District of Maple Ridge was unhappy with that decision and on the initiative of the senior administrator a request was made for a case to be stated by the

Assessment Appeal Board. The relevant statutory provision is s. 74(2) of the *Assessment Act* R.S.B.C. 1979, c. 21:

74. (2) A person affected by a decision of the board on appeal, including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only by

> (a) delivering to the board, within 21 days after his receipt of the decision, a written request to state a case; and
>
> (b) delivering, within 21 days after his receipt of the decision, to all persons affected by the decision, a written notice of his request to the board to state a case to the Supreme Court.

I have emphasized the phrase directly in issue in this appeal.

When the administrator made the request he had in his records a form of resolution that had been passed in these terms:

THAT APPEAL BE MADE TO THE ASSESSMENT AUTHORITY FOR THE 1989/1990 ASSESSMENT VALUES AND FARM CLASS DESIGNATION IN FOLIO 20793-0200-0 AT 11871 203RD STREET;

AND FURTHER THAT SHOULD THE APPEAL BE UNSUCCESSFUL AT THE COURT OF REVISION, THAT STAFF BE AUTHORIZED TO APPEAL TO THE APPEAL BOARD.

Counsel for Mussallem Realty Ltd. questioned counsel for the District about whether the request for a Stated Case was properly made, having regard to the resolution of Council. Because of concerns arising from that argument, at the next regular meeting of the Municipal Council held on 18 December, 1989 this resolution was passed:

THAT THE DECISION OF THE ASSESSMENT APPEAL BOARD DATED NOVEMBER 1, 1989 IN THE MATTER OF THE CORPORATION OF THE DISTRICT OF MAPLE RIDGE VERSUS MUSSALLEM REALTY LTD. BE APPEALED TO THE SUPREME COURT OF B.C. BY WAY OF STATED CASE AND THAT ANY ACTIONS PREVIOUSLY TAKEN BY STAFF TO THIS EFFECT ARE HEREBY RATIFIED.

The questions that the administrator had hoped to raise in his request for a Stated Case were stated in the case, but, by agreement, a further question was added to the Stated Case and that question is in these terms:

Does the Court have jurisdiction to hear and determine the issues in the within Stated Case in the circumstance of this appeal?

When the Stated Case came on, by agreement of the parties the only question that was argued was the question about jurisdiction because that question was being asked, quite properly, as a preliminary question. The Chambers Judge considered an argument about whether the request had been made within time and decided that it had. There is no cross appeal about that question. The Chambers Judge also considered whether the request had been authorized by resolution and the effect if it had not been authorized at the appropriate time. On those issues he decided that the Court did not have jurisdiction to hear and determine the other questions in the Stated Case.

This appeal is brought by the District of Maple Ridge from that decision. The Assessor of Area 13 and Mussallem Realty Ltd., the owner of the property, are Respondents and seek to uphold the decision of the Chambers Judge that the Supreme Court did not have jurisdiction.

Three issues were raised by counsel for the Appellant:

1. It is respectfully submitted that the Learned Chambers Judge erred in holding that the resolution of the Council of Maple Ridge dated October 31, 1988 was inadequate to authorize the Request to State a Case.

2. Alternatively, it is respectfully submitted that the Learned Chambers Judge erred in holding that the resolution of the Council of Maple Ridge dated December 18, 1989 was inadequate to authorize the Request to State a Case.

3. Alternatively, it is respectfully submitted that the Learned Chambers Judge erred in not applying the standard test used by the Courts for determining if a procedural irregularity can be cured.

I propose to deal with those issues in the order that they are stated.

The resolution of 31 October, 1988 was the resolution that authorized the appeal and in its terms it authorizes the appeal to the Court of Revision, and if that appeal is unsuccessful, to the Appeal Board. The resolution is explicit in relation to the appeal to the Appeal Board. There is no doubt and indeed, the point was conceded, that proceedings by way of Stated Case in the Supreme Court constitute an appeal from the Assessment Appeal Board. The resolution is not a general resolution in the terms in which it was passed on the 31 October, 1988, but a pointed resolution dealing with two specific proceedings. In my opinion, it cannot be taken to have authorized the request for the Stated Case and I would not accede to the first ground of appeal.

The second ground of appeal relates to the resolution of December 18th. That ground of appeal depends upon the view that a resolution is indeed required but as long as one is made and passed, the section is complied with and there is jurisdiction in Supreme Court. The essence of that submission is that there can be a ratification of prior action and that as soon as there is the ratification the action is to be deemed to have been authorized from its inception, so that, in this case, the ratifying resolution would meet the requirements of the statute.

In my opinion, the concept of ratification is one that is not a concept of universal application. The actual act undertaken by the agent or employee must be analyzed and the terms of reference of both the employee and the person on whose behalf he acts, in other words the principal, must be considered to decide whether the case is an appropriate case for ratification.

We were referred to Lytton Gold Mines Ltd. v. Munro (1933), 49 B.C.R. 18 at 21, and to Re Passmore and Town of St. Mary's (1984), 47 O.R. (2d) 262 at 264.

With respect to the Lytton case, it is clear from the passage referred to that ratification is something that must be considered on the facts of each particular case and is not a universally applicable principle by which corporations can validate prior acts.

In the case of Passmore, the relevant passage is at p. 264 and it refers to the power of a municipality to pass a ratifying by-law. The Passmore case itself and the cases there referred to are none of them cases where the by-law was seeking to ratify an act done in compliance with a statutory condition. Within the terms of the Passmore case and the other cases there is nothing objectionable in the propositions there stated but they do not seem to me to extend to ratification

of an action required to fulfil an unfulfilled statutory pre-condition. I do not think that an unfulfilled statutory condition can be fulfilled by ratification of an earlier unauthorized act.

The third ground of appeal rested on the suggestion that there was a standard basis for determining whether the irregularities in court proceedings could be cured or not. The passage specifically referred to and most heavily relied on is from the judgment in Re Edwards (1977), 82 D.L.R. (3d) 515 at p. 520, a judgment of Mr. Justice Andrews (in chambers). It is in these terms:

It seems then the Harkness case is authority for the proposition that: 1. Any proceeding or application to the Court that can fairly be said to be an honest attempt to properly claim relief before the Court, cannot be held to be a nullity, and any error in practice or procedure should be corrected as long as it can be done without injustice. 2. Proposition (1) is true for practice and procedure wherever it is to be found, whether in the Rules of Court or in any statute under which the relief is claimed, if it can be applied without clearly contradicting express language of the statute.

It is particularly noteworthy that the second test derived by Mr. Justice Andrews from the Harkness case concludes with the words:

... if it can be applied without clearly contradicting express language of the statute.

The summary made by Mr. Justice Andrews of the authorities is a helpful one but should not be considered to be applicable in every case. It sets out the considerations which a judge should have in mind in deciding about irregularities and nullities, but other considerations arise in every case. It provides only a useful starting point. Specifically, in this case, it does not refer to a case such as this where there is express language in the statute which has not been met.

We were referred also to the decision in Genstar Limited v. District of Mission (B.C. Manual of Stated Cases - Stated Case No. 171), a decision of Chief Justice McEachern sitting in the Supreme Court. In that case Chief Justice McEachern was considering the time limits imposed by s. 74(2) (b). The Chief Justice decided that the time limits were not absolute and that failure to give the notice in time could in appropriate circumstances be cured by order of the Court provided that the balancing of the interests of justice with respect to the parties could be made. What was said there by the Chief Justice was of course, directed to the situation in that case. He was not considering a case where the resolution of a Municipal Council was involved.

In this case it is not necessary to reach any decision about whether a failure of strict compliance with paragraph (a) and paragraph (b) of s. 74(2) makes the requirement of a Stated Case, the request, and the notice, nullities or mere irregularities, and if irregularities, it is not necessary for us to determine the terms on which they were curable. That was what was being dealt with in Genstar and Genstar is not before us.

This case is different from those cases because the requirement of a resolution of the Municipal Council is set out in the very words that describe the persons who are entitled to make the requirement to the Board to state a case. The municipal corporation which can state a case is only a municipal corporation on the resolution of its Council. In my opinion, that is an indication right in the body of the section that a resolution is required in order to give status to the municipal corporation to take any steps whatsoever in relation to an appeal under s. 74(2).

I believe that my opinion is fortified by a consideration of the practical aspects of the operation of the section, because if the resolution could be passed after the requirement had been made and the notice given, perhaps quite a long time after, then all the other parties to the case and the Assessment Appeal Board and their counsel would be required to work and undertake expense all while leaving the municipal Council with the option either to pass the resolution or not to pass

the resolution. No one would know whether there was ever going to be a valid appeal and yet they would have to meet and deal with close time limits while in that state of uncertainty.

So for those two reasons, both with respect to the interpretation of the statute, but one depending on the way the subsection has been expressly constructed and the other depending on the understanding of the practicalities, it is my opinion that the resolution of the Council is a condition precedent which has to be fulfilled before the municipal corporation obtains the status to appeal and must, therefore antecede the requirement contemplated by that subsection.

For those reasons I would dismiss the appeal.

LOCKE, J.A.: I agree.

GIBBS, J.A.: I agree with the disposition made by Mr. Justice Lambert on the issues on the appeal.

I agree also that in this case it is appropriate to order that the judgment of this Court will not be entered until after the order of the Court appealed from has been entered. What is or is not appropriate as a matter of general practice when parties come before this Court before the order of the Court below has been entered, is a subject upon which I prefer not to comment at this time. It is not necessary to do so in order to dispose of this appeal and so I refrain.

I agree that on the merits the appeal should be dismissed for the reasons given.

LAMBERT, J.A.: The appeal is dismissed.

The order dismissing the appeal should not be entered until after the order of the Chambers Judge in the Court below is entered and should not be entered without reference back to this Court if the order of the Chambers Judge is not entered on the terms of the draft order submitted to this Court this morning