Cite as: Lockeport (Town) v. Bebb, 1982 NSCO 2

1981 S.S.B. No. 162

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

THE TOWN OF LOCKEPORT

PLAINTIFF

- and -

TREVOR BEBB and SELWYN CHATEE

DEFENDANTS

HEARD: At Shelburne, Nova Scotia, on the 29th day of January, A.D. 1982 , by agreement of Counsel.

BEFORE: His Honour Judge Peter Nicholson, L.J.S.C.

DECISION: The 15th day of April, A.D. 1982

COUNSEL: R. Malcolm MacLeod, Esq., for the Plaintiff

S. Ford Clements, Esq., for the Defendants

NICHOLSON, L.J.S.C.

This is an application by the Town of Lockeport for an Order pursuant to the Planning Act, S.N.S. 1969, Chapter 16, Section 57, directing the Defendant, Trevor Bebb, the owner of a structure, alleged to be a tourist or travel trailer to remove the same from lands of the Defendant, Selwyn Chatee. The application alleges that the said structure is in contravention of the Planning Act and the Zoning By-Laws enacted by the Town of Lockeport under the provisions of the Act. The Town also seeks a provision in the Order restraining the continuance or repetition of such contravention by the Defendants or either of them.

It appears that after lengthy consideration the Town of Lockeport adopted in October, 1977, a Municipal Development Plan under the provison of Part III of the Planning Act. That Plan sets out its purpose and goals which basically were to provide for the orderly development of the Town in the context of a continued satisfactory living environment. The Plan included a generalized future land use map which was a graphic presentation of the land use districts in the Town to be developed in accordance with the policies of the Plan. In order to give effect to the Plan the Town in October, 1977, also passed zoning by-laws which, among other things, define by Section 80, a mobile home, as follows:

> "Mobile Home means a single family detached dwelling designed for transportation after fabrication on streets and highways on its own wheels or on a flatbed or other trailer, arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy (except for minor and incidental unpacking and assembling operations), located on wheels, jacks or permanent foundations, and which may be connected to utilities and sanitary services."

Section 122 defines tourist trailer as follows:

> "Tourist Trailer means a trailer that is used or intended to be used for short term or seasonal occupancy and is or is intended to be located or parked on a site for a temporary or seasonal period."

Section 16 of the Zoning By-Law restricts the type of structure that may be used as human habitation within the Town of Lockeport as follows:

> "No trucks, bus, coach or streetcar body, or structure of any kind other than a mobile home or dwelling unit erected and used in accordance with this and all other by-laws of the Town shall be used for human habitation within the Town of Lockeport, whether or not same is mounted on wheels."

Section 18 contains a provision, whereby in the particular residential zone where Mr. Chatee's land is located, that no person shall erect more than one main building on a lot. Part 8, defining zone R-1 uses, provides that no development permit shall be used for a residential premises (R-1) zone except for designated uses which include "mobile Homes".

The Defendant, Chatee, was the owner of a parcel of land in the Town of Lockeport designated R-1 on the Town Plan, being Schedule "A" to the Lockeport zoning regulations. The Chatee lot was identified by "x" on the Plan which was an attachment to the Lockeport Zoning By-Law, Exhibit # 9.

The Defendant, Bebb, approached Chatee and asked permission to put on his dwelling house lot a structure which the Defendant, Bebb, claims is a mobile home. The two parties went to see Mr. A. Hilton Chymist, the Town Clerk of Lockeport. They told him of the intentions of the parties. He advised Chatee that because of the provision of zoning by-laws that he would have to divide his lot in two, so that only one structure would be on each separate lot. The Town Clerk thereupon prepared a Deed whereby Chatee conveyed to himself and his wife the portion of the lot on which his dwelling house was located, and another Deed conveying the remainder of the property to Chatee and his wife. That remainder was the parcel upon which Bebb was being given permission by Chatee to place his "mobile home".

On the 18th of September, 1981, Chatee completed an application for a permit to install a mobile home on the lot in question. The application was to the Municipal Development Officer. On the 18th day of September, 1980, a permit, Exhibit # 14, was granted to Selwyn Chatee to install a mobile home in

accordance with the Zoning By-Law of the Town of Lockeport. This permit was signed by Leonard Stuart, the Development Officer. Armed with the permit issued to Chatee, Bebb made arrangements to complete the purchase of the structure he alleges to be a mobile home. The structure at that time was located at East Jordan, Shelburne County, where it had been used as a dwelling for some years. Prior to that Bebb had arranged with Mr. Aubrey Harding to move the structure to the Chatee lot as soon as the permit was granted.

The evidence of Aubrey Harding, which I consider to be important and credible, was that he went to the location at East Jordan with a three-ton truck and a float on the 18th of September. Apparently there was a porch attached to the structure which Harding thought was to be moved, and for this purpose he had taken the float with him. He found out from the owner that the porch was not part of the deal, so he then proceeded to make the structure ready for the move, and towed it with a three-ton truck to the Chatee lot in Lockeport. When he arrived at the site he noticed that there was very little overburden on the location where he was told to put the structure. In fact it was bed rock and very near the surface.

He did not proceed further, but telephoned the Town Clerk and got his assurance that the structure could be moved to a more suitable location within the lot lines. On the

21st of September he went on the site, blocked the structure up and wedged it, whereupon the Development Officer arrived on the scene and approved the location of the structure on the lot. At that time Harding was digging a trench for the sewer line. It appears that the Development Officer told him that he would have to make some other arrangements about the sewer line and eventually that was done.

An issue in the case is, of course, whether or not the structure placed on the lot was a "mobile home" within the meaning of the By-Laws. On the 22nd of September, 1981, the Development Officer visited the Defendant, Bebb, at the school where he was teaching. He told Mr. Bebb that he had reviewed the situation and had come to the conclusion that the structure that he had placed on the lot on the 18th of September was a tourist or travel trailer, and not a mobile home, and that he would have to remove it from the lot. Bebb then asked the Development Officer what steps he could take to make the structure conform with the By-Laws and he alleges that the Officer told him that there were no such steps that he could perform, and that in effect, once a travel trailer, always a travel trailer.

Bebb then attended a committee meeting of the Town council later that day, and produced a letter from Havill Brothers Mobile Homes Sales, Exhibit # 4, which said in part as follows:

> "It is my opinion that a 30 foot unit can be classified as a mobile home if it is set up on blocks and hooked up to water, sewer, and lighting connection and being lived in on a steady basis for intention thereof for reasonable length of time."

No other decision was forthcoming as a result of that committee meeting, but it appears that the Development Officer planned to discuss the case with some colleagues of his at a development officers meeting to be held in the near future.

On the 28th of September, the Development Officer came again to Bebb and told him that he "had the green light and that he could go ahead" with the hooking up the utilities to the structure. On the 8th of October, the Development Officer came again to Bebb and said that the structure did not conform with the by-laws and that he should not move into it.

At this point Bebb told Mr. Stuart that he had better get in touch with Bebb's lawyer, Mr. Clements. Between the 11th and 22nd of September, apart from paying for the structure, Bebb did the following things: (1) Dug a sewer trench with the intention of hooking into Chatee's sewer as approved by the Development Officer; (2) Moved a large propane gas storage tank onto the lot and (3) Moved the structure on to the lot and had it blocked up and wedged. On the 22nd of September he stopped any further work on the lot because of what the Development Officer told him. Between the 5th of October when the Development Officer gave him the "green light" to the

8th of October when he was told not to proceed further he had installed skirting around the perimeter of the structure, had completed electrical connections and had instructed workmen to do what was necessary to make the structure ready to move into.

The structure itself is described as being 30 feet in length and 8 feet in width, aluminum clad with fibreglass insulation, with a vapour barrier and interior plywood finish. It is equipped with a full bathroom set including tub, shower, toilet and sink. There are two doors, living room, bedroom, kitchen space and bath. The structure sits on creosoted blocks, is equipped with copper water piping, electric hot water tank, two chromalox electric heaters, 220 volt electrical entrance, triple glazed windows, a large refrigerator, a domestic size propane tank to serve the kitchen range and exhaust fan in the kitchen. It is not equipped with a sewer holding tank or a water storage tank, which I understand tourist and travel trailers are.

For the structure Bebb paid $4,000.00 and testified that he planned to use it as his permanent home.

Turning back to the evidence of Aubrey Harding, I now observe that he was very experienced in the mobile home and trailer business. He owns 43 mobile homes which he rents. He has moved upwards to 2,000 mobile homes in his lifetime, and he used the same technique to move Bebb's structure as he would a 70 foot by 14 foot mobile home. He testified that very

recently he had purchased a new mobile home, classified as such, which had an exterior dimension of 28 feet by 8 feet. He described it as being set up like Bebb's structure and very much like it. Evidence had been given that Bebb's structure was equipped with running lights, clearance lights and parking lights. Harding testified that the motor vehicle act required such lighting fixtures to be on any mobile home that was to be moved on a public highway, and his evidence was that the mere existence of running lights was not material to the classification to the mobile unit to a tourist trailer or mobile home. When asked whether Bebb's structure could be towed on the highway by an automobile, Harding replied, "not with any automobile of mine, it would not". He expressed the view that it was much too heavy for towing by automobile. It was also his opinion that Bebb's structure was a mobile home.

The ambivalence of Mr. Stuart, the Development Officer, may be explained in part by an incident which occurred between the 18th and 21st of September, 1981. Mr. Chymist, the Town Clerk, testified that a complaint had been received by the Development Officer from one Mrs. Joan Williams who had been refused a development permit with respect to her 17 foot long travel trailer. She, of course, was complaining that if she could not get a permit for her unit, Bebb should not get one for his. The daughter of Mrs. Joan Williams is the secretary to the Town Clerk, and it seems clear that Joan Williams did have

a conversation with the Development Officer most likely on the 21st of September, the day before permission was first withdrawn from Bebb.

Before reaching conclusions about the questions arising in this case, I should point out that, in my view, the Development Plan and the By-Laws under consideration are valid in all respects, having been properly framed, passed and approved as required by statute.

The issues in this case are as follows:

(1) Were the Defendants entitled to plead that the Town of Lockeport was estopped from denying that its Development Officer had issued a valid permit to the Defendants for the location of the structure owned by Bebb on the lands of the Defendant, Chatee;

(2) If the answer to issue number one is in the negative, then was the permit issued by the Development Officer a valid one in that the structure owned by Bebb was in fact one which came within the description contained in Section 80 of the Municipal Development Plan, and thereby removed from the restrictions in Section 16 of the By-Laws. In short, was it a "mobile home";

(3) In the event that the permit was validly issued in accordance with the terms of the Plan and Municipal By-Law, was there any power in the Town of Lockeport under its by-laws, or by statute, to revoke a permit validly issued.

As to issue number one, there appears to be considerable authority in support of the proposition that an employee of a municipal unit, such as Leonard Stuart, the Development Officer, cannot bind a municipal unit if he acts in contravention to a valid municipal by-law. The theory of course is that the actions of an individual when taken in error, or in some other unsupported way, cannot produce the result of having that by-law operate in a way contrary to its objective. If, for example, Stuart had issued a permit under the terms of the By-Law in circumstances where the physical characteristics of that which was licensed did not conform to the By-Law then the mere fact that the Development Officer issued the permit would not bind the municipal unit to abide by the permit or license so issued. See Spiers vs. Toronto, 4 D.L.R. (2d) 330, where the Ontario High Court held that

> "no estoppel arises against a municipality out of the conduct or promises of an employee" ....."Thus neither the mistakes of the adjustment committee nor the instructions of the solicitor acting for the Township, to the applicant, to apply for a permit, are sufficient to estop the Township from taking advantage of the full effect of the By-Law".

It follows that where a statute or by-law imposes a positive duty it is not open to the Defendant to set up an estoppel to prevent the performance of it. It is obviously beyond the power of the Town to act in contravention of its own Zoning By-Law, or to authorize any other person to violate that Zoning By-Law. Any such authorization would be void and no estoppel

can arise against the Town therefrom.

This moves us to a consideration of issue number two, that is whether or not Stuart acted in compliance with the By-Law when he issued it. If he did, the permit so issued would be valid. If he did not, it would be invalid because no estoppel would arise and no power could be given to him to issue a permit which did not comply with the By-Law.

The consideration therefore is whether or not the structure brought on the land by the Defendant, Bebb, was one that was not excluded by the terms of the Lockeport Zoning By-Law, and came within the meaning of the words "mobile home" or "dwelling unit".

Evidence led by the Town as to the nature of the structure which Bebb brought on to the Chatee property was not in dispute with that of the Defendants in the matter of the dimensions of the unit and the general physical features of it. These features are described in the summary of the evidence already set forth.

Particular attention however is drawn to the following facts: The structure was heavily insulated, had a full bathroom, was sitting on creosoted blocks as a foundation with a skirting; was equipped with copper water pipes, an electrical hot water tank, electrical heaters, 220 volt electrical entrance and domestic size kitchen equipment. Perhaps

most important of all, it was not equipped with any sewer holding tank nor a water storage tank.

Evidence led by the Town, apart from the observations of Mr. Stuart who issued the permit, consisted of a letter from Pyramid Homes dated 4 November, 1981, produced as Exhibit # 3, which was in no way conclusive as to whether or not the Bebb structure was or was not a travel trailer or a mobile home. Neither in my view, was Exhibit # 4, the letter from Havill Brothers Mobile Homes Sales dated 25 September, 1981, addressed to the Town, conclusive as to whether or not the Bebb structure was a mobile home. These exhibits, having been admitted, deserve some consideration but in my view the weight given to them is rather limited. The authors of these letters were not subjected to examination and cross-examination in Court during the trial of the action and they must be considered as having limited probative value.

However the evidence of Aubrey Harding, to which I have already referred is, in my view, entitled to very considerable weight. There can be no question about his experience in dealing with both mobile homes and travel trailers. That was his one and only business enterprise. He was subjected to full cross-examination which did not produce any ambivalence in his opinion that the Bebb structure which he examined, transported, modified and dealt with, was properly described as a mobile home. His evidence to that extent is supported by the evidence of the Town's Development Officer, Mr. Stuart, who formed a similar

opinion when he issued the permit to Bebb in the first place. He later confirmed his own first opinion about the matter when he gave the second "green light" to Bebb.

There is ample evidence to support a finding that the Bebb structure was a "mobile home" within the meaning of the Town By-Law in question, and I so find. The Permit, (Exhibit # 14), issued to the Defendants was, therefore, a valid one, properly issued.

There now remains to be decided the third issue; having validly issued a permit to the Defendants, could the Town revoke that permit. There is a well-established rule that a permit, once validly issued, may only be revoked if there is express statutory authority to do so. See City of Toronto v. Wheeler (1912) 4 D.L.R. 352, per Middleton, J. at page 353:

> "With reference to legislation of this kind, it is, I think, a sound principle that the Legislature could not have contemplated an interference with vested rights, unless the language used clearly required some other construction to be given to the enactment."

Further on pages 353 and 354 he stated as follows:

> "It would be manifestly most unfair so to construe the statute as to leave the defendant in the position in which he would find himself if, on the faith of the municipal assent indicated by the building-permit, he had purchased the lands and entered into contracts for the erection of his building and was then enjoined from the completion of the work already entered into upon the ground."

In the situation here there was no express statutory authority conferred upon the Town or enshrined in its by-laws to permit the revocation of a validly issued permit. Accordingly, I hold that in this case the Town had no authority to revoke or invalidate the permit issued by the Development Officer to the Defendants. In the result I dismiss the application of the Plaintiff for an Order pursuant to the Planning Act, Chapter 16, Statutes of Nova Scotia, 1969 (Section 57) directing the removal of a tourist trailer owned by Trevor Bebb from the lands of Selwyn Chatee, which tourist trailer is in contravention of this Act and the zoning by-law enacted by the Town of Lockeport under this Act and an Order restraining the continuance or repetition of such contravention.

The Defendants shall have their costs of the action against the Plaintiff on a party and party basis. Failing an agreement as to the amount of costs, I will tax the same upon application.

PETER NICHOLSON, A LOCAL JUDGE OF
THE SUPREME COURT, TRIAL DIVISION

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