

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Property Assessment
and Taxation Act*, R.S.N.W.T. 1988, c. P-10

BETWEEN:

**THE MUNICIPAL CORPORATION OF THE
CITY OF YELLOWKNIFE**

Applicant

- and -

CURRY CONSTRUCTION 1979 LTD.

Respondent

- and -

BETWEEN:

CV 06569

**THE MINISTER OF ECONOMIC DEVELOPMENT AND TOURISM and
THE NORTHWEST TERRITORIES BUSINESS CREDIT CORPORATION**

Plaintiffs

- and -

CURRY CONSTRUCTION (1979) LTD.

Defendant

Municipal Taxation - Whether a Rice Order sought to displace a Municipality's special tax lien is appropriate.

Heard at Yellowknife on July 15, August 22 and August 29, 1996.

Judgment filed: August 29, 1996

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE H.L. IRVING

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CV 04588 & CV 04589

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REASONS FOR JUDGMENT

1 The Respondent Curry Construction 1979 Ltd. ("Curry") is the registered owner of two parcels of land in the City of Yellowknife ("The City"), for which it is indebted to the City for taxes in the sum of \$442, 248.81 which have accrued since January 1, 1986. Judgment was granted to the City for the arrears on March 14th 1995,

following which the Sheriff attempted execution, but found nothing exigible and has therefore issued a Writ of *Nulla Bona* on the 23rd day of May 1996.

2 The City now seeks an Order for judicial sale of the parcels, including directions permitting it to tender on the sale, and for a deficiency judgment against Curry in the event that the sale proceeds are inadequate to pay out the City's claim.

3 Northwest Territories Business Credit Corporation ("B.C.C.") is an agent of the Government of the Northwest Territories and has been described as a lender of last resort for enterprises within the Northwest Territories. In 1991, to assist Ptarmigan Construction Ltd. (a related corporation to Curry) to obtain a loan in the sum of \$500,000 from B.C.C., Curry guaranteed repayment of the loan and provided a mortgage of two parcels of land in the City as collateral security for the indebtedness.

4 The Respondent Curry has not appeared or taken any part in the applications before me, and the dispute in these applications is between the City and the B.C.C.

5 The issues advanced by B.C.C. in opposing the City's application are as follows:

- (a) B.C.C. argues that the City had sat on its rights to collect the overdue taxes for too long, and should not now be permitted any order for sale to the detriment of B.C.C.

- (b) that the City defaulted in its duty of care to B.C.C. and others to pursue the collection of outstanding taxes promptly, and thus should be refused any order for sale.
- (c) That B.C.C. has now obtained Curry's consent to a draft "Rice" order permitting (1) B.C.C. to buy the two parcels from Curry for \$600,000, which sum should not be paid into Court, but simply credited against the balance owing by Ptarmigan/Curry to B.C.C., and (2) that the Registrar of Land Titles issue new titles to B.C.C. free and clear of all encumbrances. The City took the position that it would not object to such a Rice Order, so long as the purchase funds were paid into Court so that its tax arrears could be paid. B.C.C. refused to accept the Rice order on that basis.

6

I will now discuss these issues in detail.

- (1) Did the City "sit on its hands" and, if so, would this enable B.C.C. to resist the City's application for sale.

In a sense, this argument may be somewhat of a collateral attack on the Orders of de Weerd J. On April 13, 1993, de Weerd J. directed that the City have judgment for the tax arrears owing on the parcels. Later, on March 14th, 1995, de Weerd J. revisited his earlier *ex parte* judgment at the request of Curry and, following detailed argument, he confirmed his earlier Order of April 13, 1993.

Did the City "sit on its hands" in relation to the taxes owing by Curry? There is little information offered in the Court file about what steps were

taken by the City before 1992 to enforce collection. Certainly, since 1992, the evidence suggests that the City was diligent in its attempts at collection. An affidavit by one George Whissell, an officer of Curry, sworn on November 16, 1993, refers in para. 3 to efforts by its solicitor to settle the outstanding account.

Additionally, Robert Charpentier, an employee of the City, in his affidavit of August 9, 1966, points out that tax notices were mailed to Curry twice each year throughout the period in question. Also, that in October and November of 1992, Curry and the City were involved in settlement discussions about the tax arrears, although no settlement was reached. The affidavit (para. 5) also refers to a Certificate of Tax Arrears being forwarded to Curry by registered mail on December 14, 1992, for arrears owing to December 31, 1991.

However, altogether apart from the lack of evidence to support B.C.C.'s assertion that the City "sat on its hands" in the relevant period, I am not persuaded that this argument could justify any estoppel of the City's claim for its outstanding taxes. Accordingly, I find this argument without merit.

- (2) Did the City breach some duty owed to B.C.C. by failing to take prompt and vigorous steps to collect the taxes?

This argument seems to be a restatement of B.C.C.'s first argument that the City "sat on its hands". During argument, Counsel for B.C.C. seemed to suggest that B.C.C.'s failure to know of the outstanding taxes arrears when it made its loan to Ptarmigan in 1991 was the City's fault. Section 92 of

the *Property Assessment and Taxation Act*, R.S.N.W.T. 1988, c. P-10 ("PATA") obliges the City, upon request, to provide a Tax Certificate outlining taxes for specific properties, whether they are current or in arrears, etc. Surely a prudent lender would make tax inquiries from the City on property on which a mortgage is proposed. Indeed, B.C.C.'s counsel referred me to an action in this Court brought by B.C.C. against a firm of solicitors where B.C.C. has alleged (this is denied by the solicitors) that the solicitors, acting for B.C.C., improperly advanced the Curry mortgage funds despite tax arrears of \$105,767.41 owing in 1991.

There is inadequate factual background which would enable me to criticize the City's tax collection efforts. Beyond that, I do not know how such an argument would deprive the City from obtaining an order for sale of the lands in question, or indeed that the City owed B.C.C. any such duty as alleged.

- (3) The argument advanced most strongly by B.C.C. relies on certain provisions of PATA as follows:

PROPERTY ASSESSMENT AND TAXATION ACT

INTERPRETATION

1. In this Act,
"assessed owner" means the person in whose name assessed property is recorded pursuant to sections 19 to 23; (*propriétaire évalué*)

PART III

TAXATION

LIABILITY TO TAXATION

73. (1) Assessed property is liable to taxation in accordance with this Act unless it is exempt from taxation under subsection (2) or pursuant to section 74.

- (2) The following are exempt from taxation under this Act:
- (c) the Commissioner and assessed property held by the Commissioner;
 - (d) the Government of the Northwest Territories and assessed property held by the Government of the Northwest Territories;
 - (e) assessed property held by an agent for or on behalf of the Commissioner or the Government of the Northwest Territories

IMPOSITION OF TAX

81. (1) Subject to paragraph 87(b), property taxes shall be deemed to have been imposed on taxable property

- (a) on January 1 of the year in which they become payable; and
- (b) in respect of the whole of the calendar year.

(2) Except where forgiven under the *Charter Communities Act*, *Cities, Towns and Villages Act*, or *Hamlets Act*, property taxes payable in respect of taxable property are a debt owed by

- (a) the assessed owner shown on the assessment roll, final revision for the calendar year in which the property tax is payable; and
- (b) any person who subsequently becomes the assessed owner of the assessed property and who is liable to taxation under this Act.

82. (1) Subject to subsection (9), property taxes and supplementary property taxes constitute a continuing special lien on the estate or interest of a person

- (a) in any parcel, in respect of which the property taxes are due, and the improvements on it;
- (b) in any improvements, in respect of which the property taxes are payable, and the parcel on which the improvement is located;

(3) A special lien referred to in this section takes priority over every claim, privilege, lien or encumbrance of every other person, whether created before or after the date the special lien comes into existence, except a claim, privilege, lien or encumbrance of Her Majesty in right of Canada.

(4) A special lien referred to in this section is not lost by virtue of a sale, lease or other disposition of the taxable property, or by a seizure of it.

(5) The special lien referred to in subsection (1) comes into existence on the date that the notice of tax payable in respect of the taxable property is sent to the assessed owner pursuant to section 89.

(9) Notwithstanding any other provision of this Act, a special lien referred to in this section does not apply to

- (a) an assessed owner who is exempt from taxation pursuant to this Act; or
- (b) assessed property that is exempt from taxation pursuant to this or any other Act.

7 It is common ground that the City has a "special lien" under Section 82 (1) of PATA for the unpaid taxes for which it has judgment. But B.C.C. argues that because it has made a deal with Curry to buy the lands, that it becomes an "owner" in equity. Since B.C.C. is an agent of the Territorial Government, B.C.C. urges that its equitable ownership exempts the parcels from taxation under Section 73 (2)(e), and that the City's special lien created by Section 82 does not survive these dealings between B.C.C. and Curry if B.C.C. is the owner in equity (Section 82 (9)).

8 Whether B.C.C. could in the circumstances here, be called an "owner" in

equity, it is certainly not the "assessed owner" as defined in the Act, and the City's special lien remains effective.

9 B.C.C. argues that in any event, should it become the assessed owner of the Curry parcels, the City's special lien would then be extinguished, even in relation to the tax arrears owing since 1966, and for which the City recovered judgment in 1995. Those are of course not the circumstances now existing, but I suggest that a Court would be hesitant to give effect to such retroactive result unless PATA clearly demanded it.

10 Here B.C.C. seeks the Rice order for one reason only, and that is to displace and defeat the City's special lien for its outstanding taxes, so that B.C.C's. loss on its loan/mortgage to Curry/Ptarmigan would be reduced by \$442,000, the amount of the City's special tax lien. Such a Rice order would foist on to the City \$442,000 of B.C.C's. loss on the Curry/Ptarmigan transaction, an abusive result which should not be sanctioned.

11 It follows that I will not grant B.C.C. the Rice order on the terms it had sought. The City will be granted the order sought authorizing judicial sale of the two parcels, and would now invite counsel to suggest what other terms should be included in my order.

H.L. Irving
J.S.C.

Yellowknife, Northwest Territories
August 29, 1996

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