Date: 1998 04 16
Dockets: CV 04588 & CV 04589

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

BETWEEN:

THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE

Applicant

- and -

CURRY CONSTRUCTION 1979 LTD

Respondent

**REASONS FOR DECISION**

## ISSUE

[1] This dispute concerns what interest rate is payable on unpaid property taxes levied by the City of Yellowknife.

## FACTUAL BACKGROUND

[2] The City of Yellowknife (the City) has substantial claims against two parcels of land located in the City for outstanding property taxes since January 1, 1986.

[3] In Action No. 04589 relating to Lot 19, Block 512, Plan 1151 Yellowknife, the City sought a judgment in 1993 for the outstanding taxes for the period from January 1, 1986 to December 31, 1991 in respect of the outstanding taxes calculated up to December 31, 1991.

An ***ex parte*** order made on April 13, 1993, gave the City default judgment in the sum of $41, 934.80 for that period. That default judgment was set aside by order of this Court on November 22, 1993, and after some recalculation, a new judgment was granted on March 14, 1995 in the sum of $22,462.10. I understand from the material filed and from submissions of counsel, that this judgment, in respect of Lot 19, was for taxes and interest thereon calculated as at December 31, 1991, and that additional taxes and interest have accrued since December 31, 1991 which are not included in the judgment, but for which the City has a special lien pursuant to s. 82 of the ***Property Assessment and Taxation Act (P.A.T.A.)*** RSNWT 1988, Chapter P-10.

[4] In Action CV 04588, on April 13, 1993, the City obtained default judgment in respect of Lot 24, Block Sub-Division 1, Plan 515 in Yellowknife, in the sum of $105,767.41, calculated as of December 31, 1991, for taxes and interest owing on that property from January 1, 1986, up to December 31, 1991.

[5] The Respondent applied in 1995 in this Court to de Weerdt, J. to set aside the default judgment relating to Lot 24 taxes on the basis that the interest component of the property taxes was punitive and beyond the City's powers. In his Reasons for Judgment dated March 14, 1995, de Weerdt, J. rejected that complaint, but set aside the 1993 default judgment and then accepted the calculation of outstanding taxes from the affidavit material before him. Accordingly, judgment for property taxes and arrears on Lot 24, for the period January 1, 1986 to December 31, 1991, and calculated as of that date, was directed to be entered in the sum of $105,767.41. Again, as in the case of Lot 19, the judgment for Lot 24 does not include any property taxes or interest thereon accruing after December 31, 1991 for which the City has a special lien.

[6] Since April 1995, the taxpayer has had little, if any, involvement in the dispute, and has been informally replaced by its mortgagee, The Northwest Territories Business Credit Corporation (B.C.C.) the mortgagee of Lots 19 and 24.

[7] In 1996, B.C.C. applied for a Rice Order foreclosure on its mortgage which was refused. An appeal was taken to the Northwest Territories Court of Appeal and was

dismissed in 1997 and leave to appeal to the Supreme Court of Canada has been denied.

[8] In dismissing B.C.C.'s appeal, the Northwest Territories Court of Appeal granted leave to the City to sell Lots 19 and 24 to satisfy the outstanding tax arrears, but directed a thirty day delay to permit B.C.C., if it chose, to pay the outstanding tax arrears and thus

obtain title of the Lots. Thus this application has been brought by B.C.C. to determine what interest rates are applicable in calculating the outstanding tax arrears.

## POSITION OF THE PARTIES

[9] The City submits that s. 83 (c) of ***P.A.T.A. (supra)*** permits a municipality to make by-laws imposing interest on outstanding taxes, not to exceed 24 per cent per year. The City's by-laws impose an annual interest rate of 24 per cent (calculated at 1.8 per cent per month) on outstanding taxes.

[10] The City therefore submits that it is entitled to recover the interest stipulated in ***P.A.T.A. (supra)*** and by the by-law on all outstanding taxes including those reduced to judgment on March 14, 1995 until payment is received.

[11] B.C.C. submits:

a) that the interest which the City is entitled to collect after December 31, 1991, in respect of the taxes owing before then, cannot exceed the 5 per cent stipulated by s. 12 of the ***Interest Act***, Chapter 15, R.S.C. for the revised Statutes of Canada, R.S.C. 1985; alternatively

b) that the interest which the City is entitled to collect on the amounts owing at December 31, 1991, for which it obtained judgments on March 14, 1995, is limited to 5 per cent by s. 12 of the ***Interest Act*** from March 14, 1995 to December 31, 1995 and thereafter is limited to the "prime business rate" set out in ss. 55, 56, 56.1, 56.2 of the ***Judicature Act***, Chapter 5, Statutes of the Northwest Territory 1995.

## DECISION

[12] I can see no answer to the City's claim that it is entitled to recover the interest rate permitted by ***P.A.T.A.*** (s. 83(c)) and stipulated by its tax by-laws, certainly up to the time of the two judgments obtained on March 14, 1995. The real question is whether the two judgments obtained by the City on March 14th, 1995 continue to bear interest at the

earlier by-law rate, or instead, at the ***Interest Act*** rate of 5% (until December 31, 1995), and thereafter at the "prime business rate" prescribed in the ***Judicature Act*** (***supra***).

[13] The 1995 judgments do not include all of the outstanding taxes since the judgments only relate to those taxes and interest outstanding as at December 31, 1991. Therefore the taxes levied after 1991, together with all interest accruing after that date, bear interest at the by-law rate until payment. The question is whether B.C.C. is correct in its alternative submission that post-judgment interest from March 14, 1995 is limited to 5 per cent by s. 12 of the ***Interest Act*** until December 31, 1995 (ss. 11-14 of the ***Interest Act*** were repealed in their application to the Northwest Territories at that time) and thereafter limited to "the prime business rate" as defined by s. 56.1 of the ***Judicature*** *Act* 1995.

[14] B.C.C. relies on the decision of the Court of Appeal in ***Northwest Territories and Karl Mueller Construction v. Commissioner of the N.W.T.*** (1990) 73 D.L.R. (4th) 234, where a claim was advanced by a contractor against the government in relation to a contract to construct a water supply system. At issue was 11.3 per cent post-judgment interest rate awarded by the trial judge. On appeal, the court held that ss. 11 and 12 of the ***Interest Act*** applied limiting post-judgment interest to 5 per cent and the Court rejected the contractors submission that post-judgment interest limited to 5 per cent by the ***Interest Act*** offended the Charter of Rights. The City does not question the correctness of the ***Mueller*** decision, but argues that post-judgment interest on outstanding property taxes is outside the ambit of the ***Interest Act*** for the reasons quoted in ***Lynch v. Canada N.W.Land Co. et al***, (1891) S.C.R. 204 discussed below.

[15] ***P.A.T.A. (supra)*** provides:

> "Section 1: - 'property tax' means a tax payable under Part III and any interest payable on that 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) 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;

….

83. Subject to this Act, the council of a municipal taxing authority may make by-laws

(c) respecting the imposition of interest on amounts outstanding, but the rate of interest must not exceed 24% per year;

….

84. (1) Interest that becomes payable on property taxes or supplementary property taxes shall be considered to be part of the property tax or supplementary property tax payable in respect of taxable property.

….

97. For all purposes in a municipal taxation area,

(a) property taxes,
(b) local improvement charges,

(c) other taxes, levies, expenses or charges that may be recovered as a tax on property, property tax or arrears of property tax, and
(d) interest payable on any taxes, charges, levies or expenses,

shall be deemed to be municipal taxes."

[16] The leading case on the propriety of interest charges on outstanding municipal taxes is ***Lynch (supra)*** where the addition of a 10% penalty on unpaid taxes was at issue. Ritchie, C.J. stated at p. 210:

> "In the local legislature is vested the power to create municipal corporations and deal generally with municipal institutions, and to confer the right to impose or levy local rates, taxes and assessments upon the inhabitants and upon all property within the limits of the designated taxing district and to regulate the levying and collecting of such taxes in any manner it may deem most efficient. I care not by what name this 10 per cent may be called; it was to all intents and purposes, in the case before us, an additional tax as the words of the act appear to me most unquestionably to indicate:
>
> All taxes remaining due and unpaid on the 1st or 31st day of December (as the case may be) shall be payable at par until the 1st day of March following at which time a list of all the taxes then remaining unpaid and due shall be prepared by the treasurer or collector (as the case may be) and the sum of 10 per cent on the original amount shall be added on all taxes then remaining unpaid.
>
> What is this but an addition to the tax originally imposed? But we are asked to read this as not an additional tax but as interest for an indefinite period without the slightest indication of any such intention except the fact that 10 per cent is to be added to the tax, and thus producing the most unreasonable result that if the tax was paid the next day (say the 2nd day of March) the interest imposed would be 10 per cent for the forbearance of payment for one day, a proposition to my

mind too unreasonable to suppose the legislature ever could have contemplated such a consequence. But treating it as an increased assessment, imposed to stimulate the ratepayers to pay promptly, and if they do not then approximately to equalize the assessment rendered necessary by reason of the delinquency of the ratepayers, no such difficulty arises. It may be too large or it may be too small for the accomplishment of either of these purposes, but with this we have nothing to do. The legislature has vested in the municipality the power to impose taxes, and if they have acted within the power confided to them no court has a right to say that the amount imposed is too large or too small. But had it been specifically named as interest I am of opinion that it was an incident to the right of taxation vested in the municipal authority and, though more than the rate allowed by the Dominion statute in matters of contract, in no way in conflict with the authority secured to the Dominion Parliament over interest by the British North America Act, but must be read, consistently with that, as within the power given to the local legislature under its power to deal with municipal institutions.

….

But it is alleged, as I have said, that it conflicts with the subject of interest secured by section 91 to the Dominion Parliament. But as was said in *Parsons v. The Citizens Ins. Co.* (1) :—

> Sections 91 and 92 must be read together and the language of one interpreted, and where necessary modified, by that of the other.

And again :—

> The true nature and character of the legislation in the particular instance under discussion must always be determined in order to ascertain the class of subjects to which it really belongs.

In the present case the legislature was not dealing or professing to deal with the question of interest but was dealing exclusively with taxation under municipal institutions, and the extra tax which the court below has chosen to call interest the legislature has not so denominated, but which the legislature imposed, no doubt, as I said before, as a means of securing payment, and also of approximately equalizing the rate between defaulters and those paying promptly. How can this be

> considered in any other light than as incidental to the power to levy the assessment as authorized by law, the principal matter of this act being municipal taxation and not interest, and so prevent the defaulter from gaining an undue advantage over the ratepayer who pays promptly? And who more competent to apportion this than the local legislature, and who more incompetent to deal with this purely municipal matter than the Dominion Parliament charged with the affairs affecting the peace, order and good government of the Dominion?
>
> The British North America Act having given the power of legislation over direct taxation within the Provinces in order to the raising of a revenue for provincial purposes, and over municipal institutions in the Provinces, exclusively to the Provincial Legislatures why should those bodies be restricted or limited as to the manner or extent to which those powers should be exercised? Why should they not be allowed to provide for the contingency of a failure to pay the taxes on the days and times fixed, and to make provision in such an event for an additional rate or tax, so that those failing to pay should be placed as nearly as may be on a footing with those who have paid promptly, equality being the rule dictated by justice and inherent in the very idea of a tax."

[17] The reasoning in ***Lynch (supra)*** has been applied in an earlier judgment of this Court in this same dispute by de Weerdt, J. (1995) N.W.T.R., p. 16, who after referring to the ***Lynch (supra)*** case stated at p. 25:

> "On behalf of the majority (4:1) in that case, Ritchie, C.J.C. at p. 213:
>
> > In the present case the legislature was not dealing or professing to deal with the question of interest but was dealing exclusively with taxation under municipal institutions, and the extra tax which the court below has chosen to call interest the legislature has not so denominated, but which the legislature imposed, no doubt, as I said before, as a means of securing payment. . .
>
> No argument was advanced on behalf of the taxpayer in this case to the effect that s. 83(c) of the *Property Assessment and Taxation Act* is legislation in relation to interest within the exclusive legislative competence of the Parliament of Canada. That argument was rejected

> in *Lynch v. Canada North-West Land Co.* and nothing has been brought to my attention to bring the authority of that decision into question here. It is conceded, for that matter, on behalf of the taxpayer, that the interest imposed under the impugned by-laws is to be distinguished from a contractually stipulated interest rate agreed to between two negotiating parties each considering factors relevant to their own interests. That concession was in my view properly made since s. 83(c) provides for the municipal imposition of interest on property tax arrears, subject only to a cap of 24% per annum and the enactment of a by-law for that purpose.
>
> The taxpayer's contention that the interest rate was set so high, in order to generate income for the municipality, fails in my respectful view since it must be apparent that taxpayers who fall into arrears in payment of their property taxes should easily be able to borrow on the security of their property at a more reasonable interest rate than one as high as the taxpayer says was the situation in this case, thus making the imposition of such a high rate generally futile for purposes of income generation. That the imposition of a high rate proved futile, in this instance, in persuading the taxpayer to seek out a better rate and thus pay off the arrears, does not suffice to establish a general intention to create revenue for the municipality. The creation of eventual revenue, if and when the tax arrears are paid, is purely incidental."

[18] Richard, J. of this court, considered the propriety of post-judgment interest in excess of 5 per cent in the case of ***Town of Fort Smith v. Berton*** (1997) N.W.T.R. 69 at p. 74, where he stated in response to a submission that post-judgment interest in excess of 5 per cent offended the ***Interest Act:***

> "Submission (c), in my opinion, fails by virtue of the same reasoning. given by de Weerdt, J. in ***Curry (supra)***. The imposition of interest by the town's by-law is the imposition of a property tax. Thus any "interest charges" included in the 1995 judgment are not interest on the 1993 judgment amount, but rather represent the lawful imposition of property taxes in the years 1993 and 1994."

[19] Section 84 of ***P.A.T.A. (supra)***, provides that interest and property taxes "shall be considered to be part of the property tax". The definition of "property tax" in Section 12, and Section 97 are to the same effect. The interest rate permitted by ***P.A.T.A.*** (up to 24 per cent) is clearly intended to stimulate the recalcitrant ratepayers to pay promptly, and if they fail to do so, to equalize the burden between defaulters and those who do pay promptly. ***Lynch (supra)*** is authority that interest rate provisions in municipal property tax legislation, such as ***P.A.T.A.*** are not governed by the ***Interest Act (supra)***, and while ***Lynch*** was not a post-judgment interest case, I consider that its rationale governs all outstanding tax interest, whether before or after judgment.

[20] Sections 56.1 and 56.2 of the ***Judicature Act (supra)*** replace Section 12 of the ***Interest Act*** in the Northwest Territories after December 31, 1995, and provide

> 56.1(1) An unsatisfied judgment bears interest from the later of the day the judgment is pronounced and the day money is payable under the judgment, notwithstanding that the entry of the judgment has been postponed by an appeal or another proceeding.
>
> (2) The rate of interest payable under subsection (1) is calculated as follows:
>
> (a) for the first six months of a year, the rate of interest is the prime business rate as at January 1 of that year;
> (b) for the last six months of a year, the rate of interest is the prime business rate as at July 1 of that year.
>
> 56.2. Where a judge considers it to be just to do so in all the circumstances, he or she may, in respect of the whole or any part of the amount for which judgment is given,
>
> (a) disallow interest under section 56 or 56.1;
> (b) fix a rate of interest higher or lower than the prime business rate; or
> (c) fix a day other than the day determined under subsection 56(1) or 56.1(1) from which interest is to run.

[21] Clearly there is a conflict between these provisions and the ***P.A.T.A.*** provisions permitting recovery of interest up to 24% per annum on outstanding tax arrears; for its part, B.C.C. has urged that the ***Judicature Act*** is special legislation where it deals in Sections 56.1 and 56.2 with post-judgment interest. The City for its part urges that the ***P.A.T.A.*** provisions are unique and special provisions which should govern in issues, as here, dealing with interest chargeable in outstanding arrears of property taxes.

[22] The rationale in ***Lynch (supra)*** about considering the interest penalty as an increased tax assessment together with the various ***P.A.T.A.*** sections cited above which also provide that, compels one to give primacy to the ***P.A.T.A.*** provisions where they conflict with the ***Judicature Act***, notwithstanding that there are the intervening 1995 Judgments.

[23] Any other interpretation is, in my opinion, not consonant with the intent that the interest penalty is to effect prompt payment of property taxes, and to ensure that defaulting ratepayers do not secure an advantage over those who pay promptly. Accordingly the ***P.A.T.A.*** and City by-law provisions about interest payable on taxes in default are applicable post-judgment.

[24] I have understood counsel to suggest that there is still some disagreement about the proper calculation of the outstanding taxes. Accordingly, either counsel can apply further for resolution of these difficulties if they still exist.

Costs may be spoken to.

H.L. Irving
Deputy Judge

JUDGMENT DATED at YELLOWKNIFE, NT
this 16th day of APRIL 1998

Counsel for the Applicant: H.L. Potter

Counsel for the Respondent: D.G. McNiven

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

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