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Docket: 12/83 & 12/97
Citation: *Gander (Town Council) v. Gander Aerospace
Manufacturing Inc.*, 2015 NLCA 50

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

THE TOWN COUNCIL OF THE TOWN OF GANDER
APPELLANT/RESPONDENT
BY CROSS-APPEAL

AND:

GANDER AEROSPACE MANUFACTURING INC.
RESPONDENT/APPELLANT
BY CROSS-APPEAL

Coram: Green C.J.N.L., Welsh and Hoegg JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 200705T0056
2012 NLTD(G) 154

Appeal Heard: September 14, 2015
Judgment Rendered: October 29, 2015

Reasons for Judgment by Welsh J.A.
Concurred in by Green C.J.N.L. and Hoegg J.A.

Counsel for the Appellant/Respondent by Cross-Appeal: Gerald Ralph
Counsel for the Respondent/Appellant by Cross-Appeal: Peter D. Shea

Welsh J.A.:

[1] This appeal arises from a dispute in which Gander Aerospace Manufacturing Inc. was found liable to pay real property tax, but not water and sewage tax, to the Town of Gander. The Town appeals the decision on water and sewage tax, and the Company cross-appeals against its liability for the real property tax. If tax arrears are owing, the question of interest on the arrears is also under appeal.

BACKGROUND

[2] The Company carries on business on property it has leased from the Gander International Airport Authority. The property is located within the Town boundaries. The Airport Authority has control over the land pursuant to a lease in which the federal Crown transferred management, operation and maintenance of the Gander International Airport. The building used by the Company is owned by the Airport Authority and leased to the Company. The amount of tax assessed against the Company, being calculated for both taxes on the basis of a mill rate, depends on the assessed value of the property. The period in issue is September 1, 2002 to December 31, 2010.

[3] The trial judge concluded that the Company was liable for the real property tax on the basis that, in the circumstances, a tenant was liable for the tax and that the word “tenant” does not exclude a sub-tenant such as the Company. However, he determined that the Company was not liable to pay water and sewage tax because that tax could be imposed only on the owner of real property.

[4] With respect to interest payable on tax arrears resulting from the Company’s failure to pay the real property tax, the trial judge concluded that the Town council had not passed the necessary resolutions to authorize the collection of interest under the *Municipalities Act, 1999*, SNL 1999, c. M-24. However, he ordered interest, which would be calculated at a lower rate, to be paid pursuant to the *Judgment Interest Act*, RSNL 1990, c. J-2.

ISSUES

[5] The issues to be considered on the appeal and cross-appeal engage the Company’s liability for real property tax, water and sewage tax, and interest on the arrears, if any.

ANALYSIS

The Legislation

[6] Section 2(1) of the *Municipalities Act, 1999* does not define “occupier”, “owner” or “tenant”. The definition of “real property” provides:

(i) “real property” means

(i) land or an interest arising from land, and includes land under water,

(ii) land and buildings, structures, improvements, building service systems and storage facilities and fixtures erected or placed upon, in, over or under land or affixed to land,

(iii) a building that is erected on land under a lease, licence or permit, but does not include the land upon which the building is erected, and

(iv) a mobile home;

[7] Authority to impose a tax on real property is prescribed in section 112:

(1) A council may impose an annual tax, to be known as “the real property tax”, on the owners of real property within the municipality.

(2) For the purpose of establishing a real property tax, there may be imposed with respect to real property used for residential purposes one rate of tax and, with respect to commercial property, another rate of tax.

(3) Where there are 2 or more owners of the same real property within the municipality, the council may designate one of those owners to be the owner for the purpose of the imposition and collection of the real property tax.

(Emphasis added.)

[8] Authority to impose a water and sewage tax is prescribed in section 130:

A council of a municipality served by a water system, sewage system or a water and sewage system shall impose upon the owner of real property located inside or outside the municipality that is connected or is capable of being serviced by that system, a tax, to be known as the water and sewage tax.

(Emphasis added.)

[9] The question of liability for the payment of tax by an occupier or tenant is addressed only in respect of the real property tax:

115. Where real property is occupied and the owner is not known, the occupier is considered to be the owner for the purpose of the imposition and collection of the real property tax.

116. (1) Where real property is exempt from the real property tax, a tenant who pays valuable consideration to rent that real property shall pay a tax equivalent to the real property tax that would have been payable by the owner of the real property if that property were subject to that tax.

(2) Notwithstanding subsection (1), where the owner of real property pays to the council a grant-in-lieu of taxes, a tenant who pays valuable consideration to rent that real property is not liable for a real property tax that would have been payable by the owner if that property were subject to a real property tax.

(Emphasis added.)

[10] Section 118(a) of the *Act* provides that “real property belonging to Canada” is exempt from real property tax. In any event, section 125 of the *Constitution Act, 1867* provides an exemption from taxation for the Crown in right of Canada. This would include the water and sewage tax, although that tax is not mentioned in section 118. The Airport Authority does not fall within the scope of these exemptions and is liable to taxation (*Gander International Airport Authority Inc. v. Gander (Town)*, 2011 NLCA 65, 313 Nfld. & P.E.I.R. 125, at paragraphs 14 and 15.)

Principles of Law

[11] Principles to be applied in interpreting taxation legislation are discussed in *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715. LeBel J., for the Court, explained:

[21] In *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, this Court rejected the strict approach to the construction of taxation statutes and held that the modern approach applies to taxation statutes no less than it does to other statutes. That is, “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” (p. 578): see 65302 *British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. However, because of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned: *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601,

2005 SCC 54, at para. 11. Taxpayers are entitled to rely on the clear meaning of taxation provisions in structuring their affairs. Where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.

[22] On the other hand, where the words of a statute give rise to more than one reasonable interpretation, the ordinary meaning of words will play a lesser role, and greater recourse to the context and purpose of the Act may be necessary: *Canada Trustco*, at para. 10. Moreover, as McLachlin C.J. noted at para. 47, “[e]ven where the meaning of particular provisions may not appear to be ambiguous at first glance, statutory context and purpose may reveal or resolve latent ambiguities.” The Chief Justice went on to explain that in order to resolve explicit and latent ambiguities in taxation legislation, “the courts must undertake a unified textual, contextual and purposive approach to statutory interpretation”.

[23] The interpretive approach is thus informed by the level of precision and clarity with which a taxing provision is drafted. Where such a provision admits of no ambiguity in its meaning or in its application to the facts, it must simply be applied. Reference to the purpose of the provision “cannot be used to create an unexpressed exception to clear language”: see P.W. Hogg, J.E. Magee and J. Li, *Principles of Canadian Income Tax Law* (5th ed. 2005), at p. 569; *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622. Where, as in this case, a provision admits of more than one reasonable interpretation, greater emphasis must be placed on the context, scheme and purpose of the Act. Thus, legislative purpose may not be used to supplant clear statutory language, but to arrive at the most plausible interpretation of an ambiguous statutory provision.

[24] Although there is a residual presumption in favour of the taxpayer, it is residual only and applies in the exceptional case where application of the ordinary principles of interpretation does not resolve the issue: *Notre-Dame de Bon-Secours*, at p. 19. ...

(Emphasis added.)

Application of the Principles

Reference to “Owner”

[12] Assistance in interpreting the meaning of words in a statute may be gleaned from other related legislation. This principle is discussed in Sullivan, *Sullivan on the Construction of Statutes*, fifth edition (Markham, ON: LexisNexis, 2008), at page 412:

Statutes enacted by a legislature that deal with the same subject are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject. ...

The provisions of each are read in the context of the others and consideration is given to whether they are part of a single scheme. The presumptions of coherence and consistent expression apply as if the provisions of these statutes were part of a single Act. Definitions in one statute are taken to apply in the others and any purpose statements in the statutes are read together.

[13] As applied to this case, in considering the reference to “owner” in the *Municipalities Act, 1999*, it is helpful to compare the use of that word with language in other municipal taxation and related statutes. The *Municipalities Act, 1999* does not define occupier, owner or tenant. By way of contrast, in section 2(1)(h) of the *City of St. John’s Municipal Taxation Act*, SNL 2006, c. C-17.1, “occupier” is defined and applies generally throughout the Act:

“occupier” means the person in actual occupation of real property who is listed in the assessment roll of the city as the owner, lessee or tenant of that property;

[14] Section 20(1) of the *St. John’s Act* gives the City authority to impose a water tax on the owner or occupier:

The council shall have power by resolution to fix and impose upon the owner or occupier of real property within the city an annual tax to be known as “the water tax” in respect of water supplied to that real property.

[15] On the other hand, under section 3 of the *St. John’s Act*, the City has authority to impose a real property tax just on “owners”. However, sections 5 and 6 provide exceptions, applying to an occupier or tenant, similar to sections 115 and 116 of the *Municipalities Act, 1999*.

[16] The *Assessment Act, 2006*, SNL 2006, c. A-18.1, which, by virtue of section 2(s), applies to taxation under the *Municipalities Act, 1999*, includes the following definitions under section 2:

(d) “assessment roll” means the record, including an electronic record, of assessed real property values and related information compiled under this Act;

...

(x) “tenant” includes an occupant and the person in possession other than the owner.

[17] That Act provides for the preparation of an assessment roll. With respect to real property, section 12 states:

(1) Real property shall be assessed against an owner and against a commercial tenant, where there is one.

...

(3) Notwithstanding subsection (1), where real property is occupied and the owner is not known, the real property shall be assessed against the tenant.

[18] The inference to be drawn from the above, read together with the *Municipalities Act, 1999*, is that, where the municipality is authorized to impose a tax on a tenant or occupier of real property, the legislation clearly specifies that authority. I note in passing that, depending on the context, a tenant could be considered to be the “owner” of a particular interest in land. However, it is clear from the scheme of the *Municipalities Act, 1999* and related statutes that the legislation draws a distinction among “owner”, “occupier” and “tenant”, and that that language cannot be used interchangeably. It follows that authority to impose a tax only on an owner is limited to the owner with a meaning that does not include a tenant or occupier.

[19] The Town submits that this interpretation is not consistent with the governing definition of “real property”. That is, for purposes of taxation, the definition of “real property” encompasses any party having “an interest arising from land”, including an occupier or tenant. However, it is not “an interest in land” that defines against whom a tax may be levied. If that were the case, presumably the legislation would provide for the tax in that language. It has not done so. Rather, authority to levy the tax is restricted by reference to specified parties, whether owner, occupier or tenant. The definition of “real property” simply makes clear the types of property that constitute real property for purposes of the *Act*.

[20] In the result, in determining the Town’s authority to tax the Company, it is necessary to review the language of the relevant provisions, bearing in mind the references to “owner”, “tenant” and “occupier” and applying the principles set out in *Placer Dome*.

Real Property Tax

[21] Section 112(1) of the *Municipalities Act, 1999*, gives the Town authority to impose a real property tax “on the owners of real property”. Section 112(3) recognizes the situation where there may be two or more “owners of the same real property”, and gives authority for the Town to

designate and impose the tax on one of the owners. In this case, the federal Crown owns the land which is leased to the Airport Authority, and the Airport Authority owns the building which is leased to the Company. The Company is not an “owner” of either the land or the building. In the result, the Town would have authority to impose the real property tax on the Company only if it is an “occupier” under section 115 or a “tenant” under section 116.

[22] With respect to section 115, an occupier is liable for real property tax only if the owner is not known. In this case, the owner of the land, the federal Crown, and the owner of the building, the Airport Authority, are known. Accordingly, the Company cannot be said to be an occupier for the purposes of section 115.

[23] Section 116, which authorizes taxation of a tenant, applies only to property that is exempt from the real property tax. Subsection (1), which provides that a tenant is liable for the payment of an amount equivalent to the real property tax “payable by the owner”, is engaged if two criteria are satisfied: first, the “real property is exempt from the real property tax”, and, second, the tenant “pays valuable consideration to rent that real property”.

[24] For purposes of the analysis, it is necessary to separate the building from the land. This is a step the trial judge did not undertake. Separate taxation of the two is authorized by virtue of the definition of “real property” which, under clause (i) means land, and under clause (iii) means “a building erected on land under a lease” which “does not include the land”. In this case, the land, owned by the federal Crown, is exempt property.

[25] On the other hand, by virtue of the lease between the Company and the Airport Authority, the building is owned by the Airport Authority. Property owned by the Airport Authority is not exempt from real property tax (*Gander International Airport Authority Inc. v. Gander (Town)*, *supra*, at paragraphs 14 to 17). It follows that, since the building is not exempt property, section 116 is not engaged.

[26] Accordingly, since neither section 115 nor 116 operates in respect of the building, the authority to impose the tax is governed by section 112. Under that section, it is the “owner” of the building, the Airport Authority, that is liable for the real property tax. This analysis and result were not addressed by the trial judge since he did not separate the building from the land for purposes of the tax. This led to error by the judge insofar as he

concluded that the Company is liable for real property tax on the building it leases from the Airport Authority.

[27] The situation with the land is different. As noted above, the land is owned by the federal Crown making it exempt property. Section 116(1) specifies that “a tenant who pays valuable consideration to rent that real property” shall pay a tax equivalent to the tax that would be paid by the owner but for the exempt status of the property. The application of this provision would have been clear if the language had read, “a tenant who pays valuable consideration to the owner to rent that real property”, or if “tenant” had been defined to include a sub-tenant. In the result, an ambiguity arises where the tenant pays rent for the exempt property, but not to the owner. Applying the principles in *Placer Dome*, it is necessary, then, to consider the language of section 116(1) together with the context, scheme and purpose of the *Act*.

[28] It is clear from reading section 116 as a whole that the legislative intention was to provide for the payment of real property tax on exempt property which is leased unless the owner pays a grant-in-lieu of the tax. In determining whether “tenant” includes a sub-tenant, it is helpful to consider the practical effect of alternate interpretations in light of language used in other statutes. For example, in the *City of St. John’s Municipal Taxation Act*, section 6 provides for a similar exemption in slightly different language:

The tenant of real property that is not subject to the real property tax shall, where rent or other valuable consideration is paid by him or her in respect of that real property, pay the real property tax as if he or she were the owner of the real property and the real property were subject to that tax.

(Emphasis added.)

[29] Where “tenant” is not defined in the *St. John’s Act*, a purposive interpretation of the language, “in respect of that real property”, would include a sub-tenant. In a similar way, the language used in section 116 of the *Municipalities Act, 1999*, which refers to “valuable consideration to rent that real property”, does not preclude application to a sub-tenant. Considering the purpose and scheme of municipal real property taxation, a purposive interpretation of section 116 to permit inclusion of rent paid by a sub-tenant is warranted.

[30] It follows that, insofar as the land is assessed separately from the building, the Town has authority to impose the real property tax on the Company, based on the assessed value of the land.

Water and Sewage Tax

[31] Section 130 specifies that a municipality that is served by a water and sewage system “shall impose” a tax for that service on “the owner of real property” located within the municipality. There is no mention of application of the tax to an occupier or tenant as is the case with respect to taxation of real property to which sections 115 and 116 apply.

[32] Further by way of contrast, section 20(1) of the *City of St. John’s Municipal Taxation Act*, specifies authority to impose a water tax by reference to both the owner and the occupier:

The council shall have power by resolution to fix and impose upon the owner or occupier of real property within the city an annual tax to be known as “the water tax” in respect of water supplied to that real property.

(Emphasis added.)

Under that *Act*, “occupier” is defined in section 2(1)(h) to mean “the person in actual occupation of real property who is listed in the assessment roll of the city as the owner, lessee or tenant of that property”.

[33] Based on the language of section 130, I conclude that there is no ambiguity regarding the Town’s authority to impose a water and sewage tax against only the owner of the real property. In this case, the tax could be assessed against the Airport Authority in respect of the building which constitutes real property. The tax-exempt status of the federal Crown would preclude imposition of the tax against the land.

[34] In the result, the trial judge did not err in concluding that the Company is not liable to pay water and sewage tax.

Interest

[35] Given that the Town’s authority to impose a tax on the Company is limited to real property tax on the assessed value of the land, separate from the building, if arrears are owing, the question is whether interest is payable,

and, if so, whether it should be calculated under the *Municipalities Act, 1999* or the *Judgment Interest Act*.

[36] Section 107(1) of the *Municipalities Act, 1999*, provides authority for the municipality to collect interest on tax arrears at a rate determined by the municipality:

A council may charge *simple or compound* interest on taxes that are not paid on or before the date on which they become due, if, before making that charge, the council passes a resolution establishing *whether the interest shall be simple or compound*, the rate of interest to be charged and when that interest shall be applied.

(Italics added.)

The italicized language regarding simple or compound interest was added by amendment effective December 22, 2009.

[37] The trial judge properly concluded that the Town council was required to pass appropriate resolutions in order to rely on authority under the *Municipalities Act, 1999* to charge interest on tax arrears. The judge found that the Town had not satisfied this requirement. In assessing that decision, it is necessary to review the relevant documentation.

[38] The affidavit of Garry Brown, the town clerk, includes several exhibits which are copies of resolutions passed in respect of section 107(1) of the *Act*. The first of these is the document entitled “Town Council of the Town of Gander – Policies and Procedures” (the “Policy Manual”). Information regarding the Policy Manual is set out at the top of that document:

Policy Topic: Accounts Receivable Collections

Policy No. F002 Motion of Council – Effective Date: 07/10/91

Amendment Motion: 06-053

Amendment Date: 03/15/06

Amendment Motion: #08-042

Amendment Date: 02/20/08

Issued By: Finance Committee

[39] Regarding interest on arrears, the Policy Manual states:

Interest will be charged at a rate of bank prime plus 3% as at January 1st of the taxation year and shall be set by Motion of Council at its first meeting of that year. Property and Business Tax billings are due net 90 days and Miscellaneous billings are due net 60 days.

[40] The minutes of a regular council meeting, dated 10-July-91, indicate that the Policy Manual was adopted by resolution:

Moved by Councillor Tibbo and seconded by Councillor Saunders approval of the Collection Policy and Procedure.

Motion carried.

[41] In the minutes of another regular council meeting, dated 02-20-08, the Policy Manual as revised was adopted by resolution:

Administration, in conjunction with Department Heads, have revised the Town of Gander's Policy Manual.

Moved by Councillor Scott and seconded by Deputy Mayor Tucker that the Town of Gander Policy Manual be adopted.

The motion was carried unanimously.

[42] Resolutions regarding rates of interest are also attached as exhibits to Mr. Brown's affidavit. An example from January 14, 2004 states:

Council is required to establish the interest rate to be charged on overdue accounts for 2004. As outlined in the Town's current policy, the rate is set at the prime rate as of January 1st plus 3%.

Moved by Councillor Scott and seconded by Councillor Blundon that the Town of Gander's interest rate to be charged on overdue accounts, be set at 7.5% for 2004.

[43] In his affidavit, Garry Brown attests:

6. That the documents contained at Exhibits 19-25 of my Affidavit are true copies of the Minutes of Meetings of the Town Council of the Town of Gander approving interest rates on overdue accounts for 2003, 2004, 2005, 2006, 2008, 2009 and 2010. I have been unable to locate the Council Minutes for approving the interest rates for the 2002 taxation year and the 2007 taxation year, but to the

best of my knowledge, information and belief these interest rates were duly approved by Motion of Council and were validly enforced to enable the Town Council of the Town of Gander to charge interest rates on overdue accounts for balances in those respective years. The Motions for approving the interest rate for the years noted above are as follows: [motion numbers and interest rates].

[44] It is apparent from the minutes that the council understood that it was necessary to clearly specify the interest rate at the beginning of each year because a calculation on the basis of “prime plus 3%” was required. In 2010, that method of calculation was set aside and a rate of 12% was specified by resolution. Given the regularity of resolutions setting the interest rate for each year, together with Garry Brown’s affidavit, I would accept that appropriate resolutions were passed in 2002 and 2007, though the minutes of the relevant meetings could not be located. I note that the absence of the 2002 and 2007 resolutions was not dealt with by the trial judge, having concluded that the Town resolutions that were filed were inadequate to satisfy the section 107(1) requirements.

[45] Throughout the relevant years, the resolutions dealt with the interest rate to be charged. There is no reference in the resolutions to the date at which interest would begin to accrue. The answer is in the resolutions adopting the Policy Manual. The original Manual specified that “Property and Business Tax billings are due net 90 days and Miscellaneous billings are due net 60 days”. The council relied on the Manual seeing no need of a further resolution on the point.

[46] I am satisfied that the resolution adopting the Policy Manual is sufficient to satisfy the requirement of section 107(1) regarding “when interest shall be applied”, without the need of a new resolution making the same statement year after year. Any taxpayer wishing to ascertain when interest would begin to accrue would have access to the information necessary to make that determination. In the circumstances, the trial judge erred in concluding that the council was required to pass a resolution annually on the point.

[47] Finally, for the 2010 taxation year, the *Municipalities Act, 1999* was amended authorizing a council to impose either simple or compound interest. In the absence of a resolution specifying otherwise, it would be presumed that simple interest would apply. (See, for example, *Cabot v. Happy Valley-Goose Bay (Town)*, 2008 NLCA 72, 281 Nfld. & P.E.I.R. 259, at paragraph 19.)

[48] The Town's failure to specify simple interest for the 2010 taxation year did not vitiate the authority to collect interest on tax arrears for that year. To hold otherwise would be inconsistent with a purposive interpretation of section 107(1). The purpose of that provision is to ensure that a taxpayer has access to the information necessary to determine the extent of exposure to pay interest on tax arrears. Where there is a choice between simple and compound interest, unless compound interest is specified, the presumption on which the taxpayer is entitled to rely is that simple interest would be imposed.

[49] In the result, the trial judge erred when he determined that the Town had not complied with section 107(1) of the *Municipalities Act, 1999* for purposes of collecting interest on tax arrears for the relevant years.

SUMMARY

[50] In summary, with respect to real property tax, the trial judge erred by failing to deal separately with the land and the building. Pursuant to sections 112 and 116 of the *Municipalities Act, 1999*, the Company is liable for real property tax on the land. The Company is not liable for real property tax on the building.

[51] The trial judge did not err in concluding that the Company is not liable for the water and sewage tax.

[52] To the extent that there are tax arrears, the Company is liable to pay simple interest as authorized by section 107(1) of the *Act*.

[53] Accordingly, I would: (1) dismiss the Town's appeal as to the water and sewage tax; (2) allow the Town's appeal in respect of the payment of simple interest on arrears pursuant to the *Act*; (3) allow the Company's cross-appeal with respect to its liability to pay real property tax on the building; and (4) dismiss the Company's cross-appeal with respect to its liability to pay real property tax on the land.

[54] Given the mixed results on the appeal and cross-appeal, I would order the parties to bear their own costs in this Court.

B. G. Welsh J.A.

I Concur: _____

J. D. Green C.J.N.L.

I Concur: _____

L. R. Hoegg J.A.