

CANADA / JUDGMENT

Maple Ridge (Re)

2020 BCSC 1473

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Supreme Court of British Columbia

DECIDED

9 September 2020

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2020 BCSC 1473 Maple Ridge (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Maple Ridge (Re),

2020 BCSC 1473

Date: 20200909

Docket: S201667

Registry: Victoria

Re: In the Matter of a Declaration Pertaining

to Tax Sale in the City of Maple Ridge

- and -

Docket: S201806

Registry: Victoria

Re: In the Matter of a Declaration Pertaining

to Tax Sale in the City of Maple Ridge

Before: The Honourable Madam Justice Tucker

(via telephone)

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner, appearing by teleconference:

J. Eastwood

No other appearances:

Place and Date of Hearing:

Victoria, B.C.

July 15, 2020

Place and Date of Judgment:

Victoria, B.C.

September 9, 2020

- [1] THE COURT: These are my oral reasons. I reserve the right to edit them for publication, including the insertion of references, statutory provisions, quotes, and headings. The outcome will not change.

I. Introduction

- [2] There are two petitions before me. They were joined for the purpose of this hearing. The petitions pertain to properties sold at two different municipal tax auctions conducted by the petitioner, the City of Maple Ridge ("City").
- [3] The issue in both petitions is whether the City can seek to have a tax sale of a property declared invalid due to failure to provide notice in compliance with s. 657(1) of the Local Government Act, R.S.B.C. 2015, c. 1 [LGA]. If the City can, then there are further issues as to whether the tax sales in question should be declared invalid and, if so, whether ancillary relief is also appropriate.
- [4] While not expressly identified as the basis for the application, I find the petitions are properly brought under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 on the basis that notice under s. 657 of the LGA involves the exercise of statutory power: 521006 B.C. Ltd. v. Pemberton (Village), 2019 BCSC 526 [Pemberton] at para. 101.
- [5] I note that the City is, in both cases before me, not only the municipality with conduct of the tax sale, but also the purchaser at the tax sale.

II. Statutory Framework - LGA

- [6] The LGA came into effect on January 1, 2016. The municipal tax sale provisions are found in Part 16, Division 7 (ss. 645-672).
- [7] The LGA is a consolidation of the former Local Government Act, R.S.B.C. 1996, c. 323 and its amendments. Consolidation did not involve any substantive changes to the tax sale provisions relevant to this application. Accordingly, cases decided with respect to the same provisions prior to consolidation continue to apply.

A. Tax Sale

- [8] Part 16 establishes the process for a municipality to sell a property for delinquent taxes. Delinquent taxes are taxes that remain unpaid on December 31 in the year following the year they were imposed.
- [9] Under s. 645, the municipal tax collector must conduct an annual tax sale, offering for sale by public auction each parcel of real property on which taxes are delinquent.
- [10] Section 647 requires advance notice of the time and place of the tax sale, and a description of any property in the sale, to be published in a newspaper.
- [11] Section 649 sets out a formula for determining the minimum price that can be accepted on a given property at the time of sale.
- [12] Section 650(2) declares the municipality the default purchaser if there are no bids that at least equal the minimum price.
- [13] Under s. 656, the municipal tax collector must promptly, following a sale, file a notice of tax sale in the Land Title Office.

B. Notice and Redemption Period

- [14] The LGA creates a redemption period and obliges the municipality to give written notice of the sale and the expiry date of the one year redemption period to the registered owner of a property sold at a tax sale: ss. 657(1) and 660(1)-(2).
- [15] The written notice must be sent no later than three months after sale, and be sent "either by serving the notice or by sending it by registered mail". However, a municipality can apply to the court for an order of substituted service:

Owners must be given notice of tax sale and redemption period

657 (1) Not later than 3 months after the sale of property at an annual tax sale, the collector must give written notice of the sale and of the day the redemption period ends, either by serving the notice or by sending it by registered mail, to persons registered in the land title office as

- (a) owner of the fee simple of the property, or
- (b) owner of a charge on the property.
- (2) On application, the Supreme Court may order that the notice under subsection (1) may be served by substituted service in accordance with the order.

...

[16] Under s. 663(1), if a property "is not redeemed as provided in this Act, at the end of the redemption period, the collector must forward a notice to that effect to the registrar of land titles". The form of notice provided under s. 663(1) is generally referred to a "certificate of non-redemption". Under s. 663(5), notice under s. 663(1) effects "a conveyance to the purchaser from the registered owner".

C. Actions to set aside tax sale or recover damages

[17] Section 665(1) of the LGA provides that where a property is sold at a tax sale, all rights held in it by the registered owner immediately cease to exist, subject to the three exceptions listed in subsections (a) through (c). Subsection (c) preserves the following right:

Effect of tax sale on rights of owners

665 (1)

(c) during the period allowed for redemption, an action may be brought under section 666 to have the tax sale set aside and declared invalid.

[18] Section 666, in turn, provides that the registered owner of a property sold in a tax sale may bring an action to have the sale set aside and declared invalid, but only on specified grounds. One of the grounds, s. 666(2)(c), reads as follows:

Action by owner to have tax sale set aside

666 (1)

(2) An action under subsection (1) may be brought on only one or more of the following grounds:

(c) the collector did not give to that person the notice required by section 657 ;

[19] Legal actions in the time period following expiration of the redemption period are addressed in s. 669(1), which provides:

Restrictions on legal actions in relation to tax sale

669 (1) After the end of the period allowed for redemption, no action may be brought to recover the property sold or to set aside its sale.

[Emphasis added.]

III. Facts

[20] The petition filed as S201806 ("First Petition") pertains to the property located at 13321-235A Street, Maple Ridge, British Columbia, and legally described as:

PID: 028-872-304

Lot 9, Section 28, Township 12

New Westminster District, Plan Number EPP12481

("First Property").

The registered owners of the First Property are Khay Siong Ang and Kiat Mui Heng.

[21] The petition filed as S201667 ("Second Petition") pertains to the property located at 73-11757 236 Street, Maple Ridge, British Columbia, and legally described as:

Strata Lot 73, Section 16, Township 12

New Westminster District, Strata Plan LMS1818

together with the interest in the common property in proportion to the unit entitlement of the strata lot.

("Second Property").

The registered owner of the Second Property is Adam Sang Pun Luk.

[22] Municipal taxes on the properties remained delinquent, and the First Property and the Second Property were put up for tax sale.

[23] The City purchased the First Property by default at the annual tax sale held on September 25, 2017 (making the expiration of the redemption period September 25, 2018).

[24] The City purchased the Second Property by default at the annual tax sale held on September 24, 2018 (making the expiration of the redemption period September 24, 2019).

[25] Despite multiple attempts, the City failed to deliver written notice in accordance with LGA, s. 657 to the registered owners of either the First or Second Property. Notices were sent by regular mail and left by hand at the houses on the properties. Service for purposes of s. 657 requires personal service: *McQuarrie Bros. Motors Ltd. v. Fusilli Grill Ltd.*, 2018 BCSC 769, at para. 83. Notices were sent by registered mail, but went uncollected. The City did not apply for an order for substituted service to deliver written notice for either property.

[26] Neither property was redeemed during its redemption period.

[27] The City also attempted to contact the registered owners of the two properties after the three month period provided under s. 657, as well as after the expiry of the redemption period. Other than a brief phone conversation with one of the owners of the First Property (in which the owner advised he was in Singapore and would contact the City upon his return, but then did not), the City was unable to contact the registered owners of the properties prior to service of the Petitions.

[28] Usually, if a property is not redeemed within the redemption period, the City forwards a certificate of non-redemption to the registrar of land titles under s. 663(1), resulting in a property transfer to the tax sale purchaser under s. 663(5). To date, the City has not forwarded a certificate of redemption for either the First or Second Property.

IV. The pemberton decision

- [29] The Pemberton decision was issued on April 9, 2019. The facts involved a registered owner's attempt to redeem a property sold at a tax sale. The owner attempted to pay on September 30, 2015. The written notice delivered under what was then s. 414 [now s. 657] gave September 30, 2015 as the expiry date of the redemption period. The written notice was incorrect. The actual expiry date was September 29, 2015. The Village of Pemberton (the "Village") took the position that there had been no redemption in accordance with the statute.
- [30] The owner filed a notice of civil claim seeking, among other things, declarations that any transfer of title to the tax sale purchaser would be invalid and that the tax sale itself was invalid. The Village argued the LGA was a complete code regarding tax sales and the owner's remedies were strictly limited to those expressly provided by the statute. The Village argued the intent of the legislation was to achieve certainty, finality and integrity of title with regard to tax sales, and thus the statute's remedial scheme was deliberately comprehensive.
- [31] Justice Horsman rejected the Village's argument that the then s. 424(1) [now s. 669(1)] ousted the court's jurisdiction to provide declaratory relief. She concluded the court retained the jurisdiction to declare a tax sale invalid (para. 92). She recognized the values of finality and certainty in the tax sale process, but observed that these would not be defeated by the existence of a discretionary power to issue declaratory relief in appropriate circumstances (para. 94).
- [32] Moving to whether relief was appropriate in the circumstances before her, Horsman J. noted that, given the importance of the owner interests at stake in a municipal tax sale, the courts have treated compliance with statutory notice requirements as a condition precedent to a valid transfer of the property (paras. 70, 122-127).
- [33] The strictness of the compliance required is illustrated in the discussion in the Pemberton decision:
- [123] Compliance with analogous notice provisions in expropriation legislation has been found to constitute a condition precedent to the exercise of the expropriation power. The law was summarized by the Supreme Court of Canada in *Costello v. City of Calgary*, [1983] 1 S.C.R. 14 at 21:

The courts have endeavoured to avoid interference with municipal enactments by an overly strict approach to their construction, but have generally insisted upon strict compliance with enabling legislation that authorizes municipalities to exercise extraordinary powers or pass by-laws concerning taxation, expropriation, or other interference with private rights.

- [124] The same observation was made by the Supreme Court of Canada in *Standard Trusts [Co. v. Municipality of Hiram]*, [1927] S.C.R. 50] of a failure to give statutory notice in a municipal tax sale context at pp. 55-56:

The appellant had an absolute right to the formal notice prescribed by the Act. Under no legitimate inference can it be held to have consented to dispense with such notice or to have waived it.

The courts are, as a general rule, anxious to uphold the validity of municipal proceedings, if the circumstances admit of such a result. But, in statutes for the enforcement of taxes and which lead to the forfeiture of rights in property, the steps prescribed are usually considered essential and more particularly must provisions requiring notices be held imperative. Their omission, as in this case, is fatal, in the absence of a statutory declaration to the contrary.

[34] Justice Horsman found the notice provided by the Village was materially non-compliant and that, as a result, the Village lacked the authority to file a certificate of non-redemption. The deficiency in the notice also vitiated the tax sale itself, as the statute did not contemplate a tax sale that could not be completed by valid transfer. She noted that there was no need to resolve the issue of whether a party could recover a property where there had been material non-compliance with procedural requirements, as the Village had not yet filed a certificate of non-redemption (para. 110).

V. Analysis & decision

- [35] Here, the City sent written notices to the registered owners of the First and Second Property in a number of ways that did not comply with s. 657. There is no evidence that any of these attempts resulted in receipt-in-fact.
- [36] As discussed in Pemberton, compliance with notice requirements is fundamentally important in a statutory scheme that separates private property from its owner. The fact that the LGA makes provision for substituted service orders emphasizes the importance of compliance with the methods of delivery specified in s. 657.
- [37] Evidence establishing receipt-in-fact notwithstanding non-compliant delivery might permit a court to make a declaration of substantial compliance with s. 657(1). However, the issue does not arise for determination here. There is no evidence of actual receipt of written notice in relation to the First or Second Property at any time prior to service of the Petitions.
- [38] In the circumstances, the failure to deliver the written notice in accordance with s. 657--that is by personal service, registered mail, or pursuant to a substituted service order--constitutes a failure to fulfill an essential procedural requirement that is a condition precedent to a lawful transfer of title under the LGA.
- [39] The City's arguments in support of the Petitions are framed from its perspective as the municipality that conducted the tax sales in question. In that capacity, the City is in a position where the next step under the LGA is to forward certificates of non-redemption for the properties. However, prior to the certificates being forwarded and post-Pemberton, the City suspected (correctly) that it lacked the authority to forward certificates for the First and Second Properties by reason of its material non-compliance of s. 657(1).

- [40] As the tax sale purchaser of both the First and Second properties, the City also has an interest in avoiding taking titles that are at least potentially open to challenge at the instance of the former registered owners: Pemberton, paras. 108-110.
- [41] As in Pemberton, there has been no transfer of title here yet, and the issue of whether the court can transfer title back to an owner where there has been procedural non-compliance does not arise.
- [42] I am satisfied that I should exercise my discretion in favour of the declaratory relief sought regarding the validity of any transfers of title flowing from the tax sale of the properties and of the tax sales themselves. In the circumstances, the declarations will redress existing concerns about finality and certainty in the tax sale process, rather than give rise to such concerns.
- [43] The City also seeks declarations that the unpaid taxes and interest from the dates of the tax sales form "a lien on the [respective] Property as if the tax sale has not taken place" and are "deemed to be delinquent taxes".
- [44] Section 667 of the LGA expressly empowers the court to reinstate taxes in limited circumstances where a sale is declared invalid during the redemption period:

Court may reinstate taxes if sale set aside

667 If the court declares that a tax sale is set aside or invalid for a reason referred to in section 666 (2) (d) or (e) [problems with imposition of tax or conduct of tax sale], the court may

- (a) provide that the amount of unpaid taxes on the real property at the date of sale, together with interest from that date, is a lien on the property as if the tax sale had not taken place, in which case that amount is deemed to be delinquent taxes,
- (b) provide for the immediate payment of those taxes, or
- (c) otherwise deal with those taxes according to the circumstances.

[45] The City has advanced no legal argument with regard to any source of jurisdiction that would give me the authority to make the declarations sought with regard to taxes in the circumstances before me. I decline to do so.

VI. disposition

[46] In conclusion, I am satisfied that the following relief should be granted under the Petitions.

[47] Under the First Petition, I:

- (a) declare that a transfer of the First Property further to the September 25, 2017 tax sale of the property cannot be lawfully and validly accomplished under s. 663 of the LGA;
- (b) declare that the September 25, 2017 tax sale of the First Property is invalid;

- (c) declare that the notice of the tax sale currently registered on the First Property is invalid; and
- (d) order the City to notify the registrar of land titles forthwith that the notice of tax sale registered on the First Property has been declared invalid by the court.

[48] Under the Second Petition, I:

- (a) declare that a transfer of the Second Property further to the September 24, 2018 tax sale of the property cannot be lawfully and validly accomplished under s. 663 of the LGA;
- (b) declare that the September 24, 2018 tax sale of the Second Property is invalid;
- (c) declare that the notice of tax sale currently registered on the Second Property is invalid; and
- (d) order the City to notify the registrar of land titles forthwith that the notice of tax sale registered on the Second Property has been declared invalid by the court.

[49] As indicated above, I decline to make a declaration regarding taxes owing under either Petition.

"Tucker J."

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Prepared on 28 October 2026 · Esheria