

CITATION: R. v. Martin Grove Properties Ltd., 2011 ONCA 711
DATE: 20111114
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COURT OF APPEAL FOR ONTARIO

Rosenberg, Sharpe and Juriansz JJ.A.

BETWEEN

Her Majesty The Queen Ex. Rel. The Regional Municipality of York

Appellant

and

Martin Grove Properties Ltd.

Respondent

Hans J. Saamen, for the appellant

Paul Pape and Emilio Bisceglia, for the respondent

Heard and endorsed: November 10, 2011

On appeal from the decision of Justice William Gorewich of the Ontario Court of Justice, dated December 13, 2010, upholding the decision of Her Worship L. DeBartolo, dated January 18, 2010.

APPEAL BOOK ENDORSEMENT

[1] The subject matter of the proceedings for the purpose of former s. 36(8) of the *Building Code Act* was the failure to comply with the order of March 31, 2008. That

omission took place at the earliest after May 15, 2008 when the respondent allegedly failed to comply with the terms of the order.

[2] The charge, which was laid on January 27, 2009, was laid within the one year limitation period. The fact that there were other orders issued related to the same underlying acts by the respondent may be relevant to an argument that the prosecution was an abuse of process. That, however, was not the issue before the trial court or the Provincial Offences Appeal Court. Those courts erroneously relied upon *R. v. Pickles*, [2004] O.J. No. 662, a decision of this court which concerned s. 36(1)(c) of the Act. This charge was laid under s. 36(1)(b). See *Bogdanow v. Scott Martin Properties Ltd.*, [1983] O.J. No. 72 (Ont. C.A.).

[3] Finally, the fact that the municipality had other remedies under s. 38 for failure to comply with orders to comply does not preclude resort to prosecution. This is clear from the words of s. 38 itself, which includes the phrase “despite the imposition of any penalty in respect of the non-compliance and in addition to any other rights he or she may have”. The s. 38 remedy is independent of prosecution under s. 36.

[4] Accordingly, the appeal is allowed, dismissal of the charge is set aside and a new trial ordered.