COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Goldmintz, 2012 ONCA 775
DATE: 20121114
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Cronk, Pepall and Tulloch JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Harvey Goldmintz and 1560719 Ontario Corporation, operated as Blue Mountain Chalets

Appellants

Vincenzo Rondinelli and Paul M. Cooper, for the appellants

Robert Maxwell, for the respondent

Heard: October 9, 2012

On appeal from the judgment of Justice Glenn D. Krelove of the Ontario Court of Justice, dated September 14, 2010, allowing an appeal from the judgment of Justice of the Peace Brian O. Norton, dated April 18, 2008.

ENDORSEMENT

[1] The appellants were each charged with two counts of trading in real estate as a broker without being so registered, in violation of s. 3(1)(a) of the *Real Estate and Business Brokers Act*, R.S.O. 1980, c. R.431. Section 50(1)(c) of the

Act provides that every person who knowingly contravenes the Act is guilty of an offence.

[2] At trial, the appellants conceded that they were not registered as brokers, but maintained that the prosecution had failed to establish that they possessed the requisite *mens rea* for the offence. Furthermore, they argued that s. 5(h) of the Act exempted them from the registration requirement.

[3] In his brief reasons for judgment, the justice of the peace concluded that the appellants were not exempt from the requirement to register as a broker under s. 5(h) of the Act. He then stated: “The trade in real estate was knowingly conducted by the defendants.” Later in his reasons, quoting without attribution from Dickson J.’s (as he then was) discussion of the differences between absolute liability, public welfare, and full *mens rea* offences at p. 1326 of *R. v. Sault Ste. Marie (City of)*, [1978] 2 S.C.R. 1299, the justice of the peace stated that “the principle that punishment should in general not be inflicted on those without fault applies.” He then proceeded to acquit the appellants of the charges. In doing so, he noted that the Real Estate Commission of Ontario was aware of the appellants’ practice but had not taken any action against them and that the matter was only before the court because of a change in policy by the Commission that had not been communicated to the industry. In his view, this rendered any conviction unfair.

[4] The Crown appealed the acquittals to the Ontario Court of Justice pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P.33. The appeal judge allowed the appeal on the basis that the acquittals were inconsistent with the factual and legal conclusions made by the justice of the peace. He set aside the acquittals and substituted convictions on all counts. In his reasons, the appeal judge did not address the ambiguity in the justice of the peace's reasoning on the issue of *mens rea*.

[5] The appellants now appeal to this court, seeking to set aside their convictions.

[6] They argue that neither the justice of the peace nor the appeal judge provided sufficient reasons to substantiate a finding that all elements of the offences had been met and that both sets of reasons foreclose meaningful appellate review. In particular, the appellants allege that the issue of *mens rea* was inadequately addressed, as was the appellants' ability to rely on the exemption from registration found in s. 5(h) of the Act.

[7] In our view, the appeal must be allowed.

[8] While we appreciate that the deficiency of a trial judge's reasons is not a stand-alone ground of appeal, in *R. v. Kendall* (2005), 75 O.R. (3d) 565 (C.A.), at para. 65, leave to appeal to S.C.C. refused, [2005] S.C.C.A. No. 387, this court

noted that deficient reasons or the absence of reasons may result in an error of law where:

(1) the path taken by the trial judge is not apparent;

(2) there are difficult issues of law which the trial judge has failed to explain or;

(3) there are conflicting theories for why the trial judge might have decided as he or she did, some of which would constitute reversible error.

[9] The reasons of the justice of the peace on the issue of *mens rea* were both brief and ambiguous. On the one hand, he found that the appellants acted “knowingly”, and thus had the necessary *mens rea* to complete the s. 50(1)(c) offence. On the other hand, he implied that the appellants were “without fault” and therefore ought to be acquitted. His reasons are confusing as to whether the appellants had the requisite mental state.

[10] Furthermore, the path taken by the justice of the peace to acquittal is not apparent and the theories for acquittal are conflicting. He may have acquitted the appellants because he concluded that they lacked the necessary *mens rea*. Alternatively, he may have committed reversible error by acquitting the appellants based on his perception of unfairness.

[11] For his part, in reversing the decision of the justice of the peace, the appeal judge failed to identify the ambiguity embedded in the reasons and simply accepted that the justice of the peace was justified in his determination that the appellants had acted knowingly and had wrongly acquitted them on the basis of perceived unfairness. In our view, both the reasons of the justice of the peace and those of the appeal judge are inadequate since they foreclose meaningful appellate review on the *mens rea* component of the offences. A review of the record does not assist in resolving the shortcomings in the reasons. In light of this conclusion, it is unnecessary to address the issue of the applicability of the s. 5(h) exemption to the appellants.

[12] Accordingly, the appeal is allowed, the convictions are set aside and a new trial is ordered.

"E.A. Cronk J.A."

"S.E. Pepall J.A."

"M. Tulloch J.A."