COURT OF APPEAL FOR ONTARIO

CITATION: Larabie Estate v. Moonbeam (Township), 2022 ONCA 904
DATE: 20221230
DOCKET: C70309

Doherty, Zarnett and Sossin JJ.A.

BETWEEN

Lynn Larabie as executrix of the Last Wills and Testaments of Irene Cecile Larabie and Armand Jean Larabie, deceased

Applicant (Appellant)

and

The Corporation of the Township of Moonbeam and Lakeside Campground Inc.

Respondents (Respondent)

Guy A. Wainwright and Jeremy A. Wainwright, for the appellant

Stephen G. Shoemaker, for the respondent

Heard: December 22, 2022

On appeal from the order of Justice Robin Y. Tremblay of the Superior Court of Justice, dated January 28, 2022.

REASONS FOR DECISION

[1] The appellant, Lynn Larabie, as executor of her late parents' estate, operates Remi Lake Holiday Bay, a trailer park/campground located in the respondent Township of Moonbeam (the "Township").

[2] On July 8, 2020, the Township's council adopted By-Law 14-20, which rezoned property owned by Lakeside Campground Inc. from "Rural" to "Recreation

Commercial" to recognize its existing use as a campground and permit its further expansion. Lakeside and the appellant's campground are adjacent.

[3] Section 34(12)(a) of the *Planning Act*, R.S.O. 1990, c. P.13, provides that before passing such a by-law, the municipal council shall ensure that (i) sufficient information and material is made available to the public and (ii) at least one public meeting is held as an opportunity to make representations in respect of the proposed by-law.

[4] Section 5(4) of O. Reg. 545/06 states that notice for this purpose shall be given (a) by personal service or ordinary mail to every owner of land within 120 meters of the subject land, and (b) by posting a notice on the property or in a place clearly visible and legible from a public highway or other place to which the public has access. Section 5(7) further requires a notice in a local newspaper that would give the public reasonable notice of the public meeting.

[5] The appellant states that she only found out about By-Law 14-20 when she received a notice by regular mail on July 24, 2020, entitled "Notice of Passing of a Zoning By-Law Amendment", which was dated July 10, 2020.

[6] The appellant objects to the by-law. She believed that she would be barred from appealing the by-law's passage to the Local Planning Appeal Tribunal because she did not object to it before it was passed. She brought an application in the Superior Court of Justice to quash the by-law, contending that the Township

did not give the required notice under the *Planning Act* and regulations, and failed to do so to such an extent that the by-law should be considered to have been enacted in bad faith.

[7] The Township contended that it mailed a “Notice of Public Meeting”, dated June 17, 2020, to nearby property owners, including the appellant. The Township presented no evidence that it provided notice in a local newspaper, on the subject property, or in a place visible to the public from the road.

[8] The application judge dismissed the appellant’s application. He held that the by-law was procedurally illegal, as the Township failed to adhere to the statutory notice provisions. However, he exercised his discretion not to quash the by-law pursuant to s. 273(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25.

[9] The application judge accepted the evidence of the appellant that she never received the notice of the public meeting, although he also accepted that the municipality sent the notice to her by regular mail. Nonetheless, as the Township did not follow the requirements with respect to notice, the by-law was illegal.

[10] Section 273(1) of the *Municipal Act* provides that any person can bring an application in the Superior Court of Justice to quash a by-law on the basis of illegality.

[11] The application judge concluded that he should not exercise his discretion to quash the by-law for three reasons. First, the attempt to provide notice to the

appellant by regular mail reduced the significance of the municipality's breach of the statutory notice process. Second, there was no evidence of bad faith in the municipality's lack of rigour in pursuing notice, adding, "While perhaps careless, that conduct cannot be qualified as high-handed or callous." Third, while he acknowledged the importance of the breach to the appellant, he found the consequences of the illegality more broadly were "negligible." He noted that the concerns the appellant wished to raise in relation to the by-law were in fact before council based on the concerns of others who participated in the public meeting.

[12] The appellant argues that the application judge erred in law by using the incorrect definition of bad faith, and therefore erred in holding that there was no evidence of bad faith on behalf of the municipality.

[13] The appellant relies on *Equity Waste Management of Canada v. Halton Hills (Town)* (1997), 35 O.R. (3d) 321 (C.A.), at p. 340, where this court stated that, "Bad faith by a municipality connotes a lack of candour, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest" (emphasis added). The appellant argues that had the application judge applied this interpretation, he would not have concluded there was no evidence of bad faith in this case.

[14] We disagree. The application judge properly instructed himself on the standard of bad faith within the s. 273 *Municipal Act* context, as discussed in

London (City) v. RSJ Holdings Inc., 2007 SCC 29, [2007] 2 S.C.R. 588, and *O'Mara v. Northern Bruce Peninsula (Municipality)*, 2013 ONSC 660, 7 M.P.L.R. (5th) 296. It was open to him to conclude that the facts underlying the procedural illegality did not meet the threshold of bad faith. The finding of procedural illegality is not akin to a finding that the Township had engaged in "arbitrary or unfair conduct" for purposes of a bad faith analysis. The application judge's conclusion was based on factual findings which are entitled to deference, including his finding that the Township attempted to provide notice to the appellant through regular mail.

[15] The appellant also argued that having found illegality, but not bad faith, the application judge nonetheless erred in not exercising his discretion to invalidate the by-law under s. 273. The appellant takes issue with the application judge's factual findings in relation to the provision of notice and to the conclusion that the impact of the absence of notice to the appellant was negligible.

[16] We reiterate that the authority of the court to invalidate a by-law under s. 273 is discretionary. In *RSJ Holdings*, at para. 39, the Supreme Court affirmed that a range of factors are relevant in the exercise of this discretion, including the nature of the by-law in question, the seriousness of the illegality committed, its consequences, delay, and mootness. Considering some of these factors, the application judge explained why it was not appropriate to quash the bylaw in the circumstances. This exercise of discretion is entitled to deference on appeal.

[17] We see no basis on which to interfere with the application judge's discretionary decision not to invalidate the by-law.

[18] For these reasons, we dismiss the appeal, with costs to the Township in the amount of $13,000, all-inclusive.

"Doherty J.A."
"B. Zarnett J.A."
"L. Sossin J.A."