

KING'S BENCH FOR SASKATCHEWAN

QBG-BF-00033-2021

Terence & Tracy Kashuba v Rural Municipality of Wilton 472

Terence and Tracy Kashuba
Gerald B. Heinrichs

self-represented
for the Rural Municipality of Wilton

FIAT - August 22, 2024 - WEMPE J.

[1] Terence and Tracy Kashuba [Kashubas] have brought an application seeking a temporary stay of tax enforcement proceedings taken by the Rural Municipality of Wilton [RM] against them.

[2] There is also an application by the RM to strike portions of the affidavit of Tracy Kashuba. The Kashubas in turn filed what they titled "Supplemental Memorandum of Fact and Law as per Affidavit of Jill Parton", which makes arguments relating to striking or disregarding portions of the affidavit of Jill Parton (filed on behalf of the RM). The parties agreed that they would argue the Kashubas' application for a temporary stay as well as the arguments related to the affidavits concurrently and receive a decision on all matters at once.

[3] The Kashubas' application for a stay of tax enforcement proceedings was brought in the context of QBG-BF-00033-2021 which has a somewhat lengthy history and relates to several other decisions out of this Court. On October 7, 2021 Justice Bardai made an order striking out a large portion of the Kashubas' claim on the basis that they failed to disclose a reasonable cause of action or were frivolous. With the claim remaining, he ordered a stay of the breach of contract claims, and a stay of the claims of misfeasance of public office to allow matters to proceed before the Appeal Board.

[4] There have been other court rulings which also relate to many of the same issues (i.e. water issues at the Hamlet of Lone Rock) including:

- (i) The Order of Justice Zuk, March 6, 2020 in QBG 228 of 2019;
- (ii) The Order of Justice Hildebrandt, January 11, 2021 in QBG 301 of 2018;
- (iii) The Order of Justice Meschishnick, August 3, 2022 in QBG 43 of 2022; and

- (iv) The case of *Kashuba v Wilton (Rural Municipality)*, 2022 SKCA 37 which denied leave to appeal Justice Bardai's decision.

[5] I have reviewed all these decisions to get the background of the issues before the Court.

[6] As stated by Justice Bardai, this dispute has a complicated procedural history, but the core issue concerns whether the RM has an obligation to provide residents of the Hamlet of Lone Rock, which includes the Kashubas, with water and sewer services. It appears that the RM has also undertaken tax proceedings against the Kashubas. The Saskatchewan Municipal Board [SMB] is currently adjudicating many of the issues related to the claim.

[7] Since the order of Justice Bardai, the Kashubas have not filed an amended claim to comply with the order. In argument the Kashubas indicated that they were waiting for a decision from the SMB and then would file an amended claim to comply with Justice Bardai's order.

[8] The Kashubas indicated in chambers that the matter before the SMB was currently on reserve, however, the Provincial Mediation Board [PMB] had provided a deadline of July 1, 2024 for payment of the taxes, therefore it was necessary for them to bring the application for a temporary stay to this Court. In their arguments in chambers the Kashubas used the term a stay pending an appeal and argued that the appeal was the matter currently on reserve by the SMB.

[9] The Kashubas have filed a number of documents including: the affidavit of Tracy Kashuba, a Memorandum of Fact and Law dated June 4, 2024, the Supplemental Memorandum of Fact and Law as per Affidavit of Jill Parton, a document titled Plaintiffs Summary Memorandum of Fact and Legislation for June 27, 2024 chambers. The Kashubas also filed a copy of the Document Book and all documents from the SMB matter (SMB File Number IMD-2021-0001) and take the position that the SMB materials can be transferred over to the King's Bench court file.

[10] Firstly, it is not proper nor permissible for the SMB file to be transferred to the King's Bench. That is a separate proceeding in another forum. The SMB is an administrative board which controls its own process.

[11] This is not an appeal of the SMB decision, as there is no decision yet and the Court has no jurisdiction to review that process. Any evidence to be considered by the Court on this application must be in affidavit form. I therefore will not read nor consider the Document Book and other documents filed from the SMB File Number IMD-2021-0001 in this decision.

[12] Regarding the affidavit of Tracy Kashuba, the RM argues that essentially every paragraph but the first and last paragraph should be struck on the basis that it is opinion and speculation. While I agree that some of the paragraphs contain arguments and opinions rather than facts, I am not prepared to strike the entirety of the affidavit. I will strike paragraph 5 as it is entirely speculation, argument and opinion. I will also strike paragraph 7 as it only contains opinion, speculation and hearsay. Paragraphs 5 and 7 of the affidavit of Tracy Kashuba are struck. All other paragraphs remain.

[13] The document "Supplemental Memorandum of Fact and Law as per Affidavit of Jill Parton" is also improper in many ways. Not only does it reference the Book of Documents and other documents from the SMB file but it appears to have cut and pasted portions of the SMB documents into the body. If there are documents from the SMB process which the Kashubas wish to rely on, they must be attached to an affidavit to become evidence before the Court. All paragraphs with the exception of paragraphs 25 to 30 will be struck as they contain or refer to documents from the SMB file which are not properly before the Court. Paragraphs 25 to 30 of the document will remain as they are legal arguments and case law. Annex 1 of the document is struck as it also contains documents from the SMB file which are not properly before the Court. All paragraphs which reference the SMB documents, or which have cut and pasted portions of them are struck.

[14] The "Plaintiffs Summary Memorandum of Fact and Legislation For June 27, 2024 Chambers" is also improper and I must strike significant portions for many of the same reasons as the Supplemental Memorandum. All paragraphs which reference or contain the documents or portions of documents from the SMB file are struck.

[15] In relation to the Kashubas' arguments that portions of the affidavit of Jill Parton are opinion, speculative and misleading, I find that there is nothing improper in the affidavit. As the Administrator of the RM, she is laying out the amounts owing for taxes and the process.

[16] Jill Parton's affidavit outlines the taxes owing by the Kashubas as \$733.41 on Lot 17, \$17,411.82 on Lot 18 and \$1,470.99 on Parcel A. The RM states that the Kashubas have paid no tax since October 2022. The RM has proceeded through the PMB. It appears that the PMB has made payment arrangements with the Kashubas for a payment plan of the tax arrears owing on the properties. There were two payment plans to commence July 1, 2024. The first was for \$825.00 monthly for a period of 24 months and the second was for \$150.00 monthly for a period of 12 months. The PMB also made an order prohibiting the RM from enforcing the tax arrears so long as the PMB payment resolution is complied with.

[17] The Kashubas argue that the taxes claimed by the RM are wrongful, that the utility bills are illegal, and that the bylaw is improper. These are all issues which are currently before the SMB.

[18] Both Justice Zuk and Justice Bardai held that allowing multiple proceedings for the same relief is an abuse of the court's process. At paragraph 69 of his decision Justice Bardai finds that there is presently a process before an Appeal Board (this is the SMB process where the decision is currently on reserve) and to allow similar allegations to proceed while that process is underway could lead to inconsistent results and therefore amounts to an abuse of the court's process. Justice Bardai stays the remaining parts of the claim pending the outcome of the Appeal Board process.

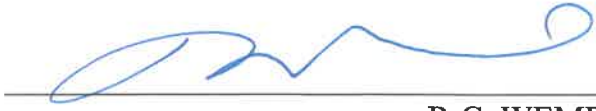
[19] The Kashubas in this application are mixing many of the processes and issues. They have attempted to file the entire SMB File. As stated by Justice Bardai previously to bring applications to this Court while decisions are pending from other administrative bodies, could lead to inconsistent results and is an abuse of this Court's process. Justice Bardai stayed the underlying claim pending the outcome of the Appeal Board/SMB. The Kashubas now ask this Court to intervene again before the Appeal Board/ SMB has rendered its decision and when the PMB has already issued a payment agreement which includes a stay of the RM's tax proceedings.

[20] Although the relief sought by the Kashubas in this application is different, I find that to intervene in the circumstance would amount to over-ruling Justice Bardai's decision. The Kashubas were told by Justice Bardai to go through the Appeal Board process first before coming back to this Court. That process is not complete yet as they are waiting for a decision from the SMB.

[21] Like Justice Bardai, I find that it is not appropriate for the Court to intervene in the proceedings before the SMB and the PMB before those processes are concluded. Once the SMB renders its decision, the Kashubas should file their amended claim as directed by Justice Bardai's decision.

[22] The RM is seeking an enhanced costs order in the amount of \$7,500 payable forthwith. I recognize that the Kashubas are self-represented, however, they have filed a large amount of material (much of it improper). This matter has become unnecessarily complicated. They have also attempted to raise numerous other issues in their materials including the validity of the bylaw and the utility bills. These are issues which are currently before the SMB and/or have been ruled on by other judges in other proceedings including both Justices Zuk and Hildebrandt.

[23] I order costs based on Column 3 in the amount of \$3,000 payable forthwith by the Kashubas to the RM. The RM has also asked the Court for an order prohibiting the Kashubas from filing any further court applications until the costs have been paid. I decline to make that order in the circumstances.



J.
R.C. WEMPE