Court of King's Bench of Alberta

Citation: Sunridge Mall Holdings Inc v Calgary (City), 2025 ABKB 289

Date: 20250509
Docket: 2401 02302
Registry: Calgary

Between:

Sunridge Mall Holdings Inc. as Represented by Avison Young Tax Services

Applicant

- and -

The City of Calgary and The Calgary Assessment Review Board

Respondents

Reasons for Decision
of the
Honourable Justice B.B. Johnston

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[1] The City of Calgary ("City") applies to summarily dismiss or strike the Originating Application for judicial review filed by Sunridge Mall Holdings Inc.("Sunridge"), as represented by Avison Young Tax Service ("Avison"). They rely on rules 7.3 and 3.68 of the *Alberta Rules of Court* and section 470 of the *Municipal Government Act*, RSA 2000, c M-26 ("*MGA*"). They argue Sunridge filed and served the Originating Application outside of the mandatory timelines under the *MGA*. They oppose the granting of a fiat or the backdating of the filing date.

[2] Sunridge opposes the application to summarily dismiss or strike. They argue the Originating Application was filed and served in time. They cross apply for a fiat or an order backdating the filing to the date the Originating Application was submitted to the court for filing.

[3] The Calgary Assessment Review Board ("CARB") took no position on the applications but provided the court with recent case law.

Background

[4] A complaint relating to a property assessment was filed in March 2023 by Avison on behalf of Sunridge, the owner of the property. A hearing occurred on October 2, 2023.

[5] The CARB issued a decision on December 14, 2023: CARB 177190M-2023 ("Decision").

[6] The Decision was emailed to Avison and mailed to Sunridge on December 14, 2023 .

[7] Sunridge sought judicial review of the Decision and sent the Originating Application for filing at the Court of Kings Bench on February 12, 2025. The email filing did not indicate there was an urgent limitation period.

[8] The Originating Application was stamped filed by the clerk of the court on February 15, 2024 ("Filed Date").

[9] An unfiled copy of the Originating Application was sent to the City on February 12, 2024 with a filed copy served on the Filed Date. The Originating Application was served on all of the parties required to be served under section 470(2) of the *MGA*.

[10] The City filed their application to summarily dismiss or strike the Originating Application on April 18, 2024.

[11] Sunridge and Avison filed their cross application for a fiat or backdating on May 9, 2024.

Municipal Government Act

[12] The *MGA* provides in part as follows:

> Notice of decision
>
> 469 The clerk must, within 7 days after an assessment review board renders a decision, send the board's written decision and reasons, including any dissenting reasons, to the persons notified of the hearing under section 462(1)(b) or (2)(b), as the case may be.
>
> Judicial review
>
> 470(1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.
>
> (2) Notice of an application for judicial review must be given to
>
> (a) the assessment review board that made the decision,
>
> (b) the complainant, other than an applicant for the judicial review,
>
> (c) an assessed person who is directly affected by the decision, other than the complainant,

(d) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.

Sending documents

608(1) Where this Act or a regulation or bylaw made under this Act requires a document to be sent to a person, the document may be sent by electronic means if

(a) the recipient has consented to receive documents from the sender by those electronic means and has provided an e mail address, website or other electronic address to the sender for that purpose, and

(b) it is possible to make a copy of the document from the electronic transmission.

(2) In the absence of evidence to the contrary, a document sent by electronic means in accordance with subsection (1) is presumed to have been received 7 days after it was sent unless the regulations under subsection (4) provide otherwise.

...

Issues

1) Was the Originating Application filed and served before the limitation period?
2) If not, should the Originating Application be dismissed or struck or should a fiat or backdating be directed?

Analysis

Was the Application Filed and Served Before the Limitation Period?

[13] The City argues that the deadline for filing and serving the Originating Application was February 12, 2024. Given it was not filed nor served until the Filing Date, Sunridge is out of time. They rely on sections 469 and 470(1) of the *MGA*.

[14] Sunridge disagrees. They argue that the Originating Application was filed and served prior to the expiry of the limitation date as the "date of decision" under section 470 of *MGA* means the date the Decision was sent and received. Pursuant to section 608 of the *MGA*, an electronic transmission is deemed received seven days after it was sent, absent evidence to the contrary. Therefore, they submit because the Decision was emailed to Avison, the date of the decision is December 21, 2023 and the limitation for filing and serving is February 19, 2024. For Sunridge, the date of the decision would be December 28, 2023 and the limitation period would be February 26, 2024. In either case, they assert that the Originating Application was filed and served in time.

[15] In order to determine the appropriate limitation period, an examination of the *MGA* is necessary.

[16] Section 469 of the *MGA* specifies that the clerk "must, within 7 days after an assessment review board renders a decision, send the board's written decision and reasons, including any dissenting reasons, to the persons notified of the hearing ...". The requirement to send the decision is clear and is not disputed by the parties.

[17] Section 470(1) of the *MGA* then sets out the time limit for filing and serving an application for judicial review of a decision of the CARB. Specifically "the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision."

[18] A plain reading of section 470 of the *MGA* makes clear that both filing and service within 60 days are required. This is also not disputed by the parties.

[19] The parties also agree the Originating Application was filed and served on the Filing Date.

[20] The main question therefore is what does "date of the decision" mean under section 470(1) of the *MGA*.

[21] The City asserts date of the decision means the date it was sent in accordance with section 469 of the *MGA* whereas Sunridge argues it means the date the decision was deemed received or actually received. Sunridge states that given there is no evidence of actual receipt, the presumptions in section 608 apply.

[22] The wording of section 470 of the *MGA* was amended in 2017. Although not determinative, it is helpful to look at the earlier iteration of section 470 of the *MGA* which provided that the limitation period did not begin to run until "after the persons notified of the hearing *receive* the decision...". The word *receive* is noticeably absent from the new wording of section 470.

[23] Therefore, decisions interpreting section 470 of the *MGA* prior to 2017 are of limited assistance.

[24] Although not taking a position on the application, the CARB points to the decision of ***Enterprise Properties v Flagstaff (County),*** 2020 ABQB 313 9 ("***Enterprise***") which considered the meaning of "complaint deadline" under section 284(4) of the *MGA*.

[25] Prior to 2018, section 309(1)(c) of the *MGA* stated the deadline for filing a complaint was "60 days after the assessment notice or amended assessment notice is *sent* to the assessed person". Because the term *sent* had been interpreted as *sent and received*, resort to section 23 of the *Interpretation Act* was required in the absence of proof of date of receipt. However, as part of the amendments to the *MGA*, section 284(4) now provides that "complaint deadline" means 60 days after the notice of assessment date.

[26] In considering the meaning of "complaint deadline," the court in ***Enterprise***, concluded that the language of section 284(4) of the *MGA* was clear and unambiguous. The court accepted the interpretation of the CARB that there was no reference to service and therefore complaint deadline meant 60 days after the notice of assessment date. In finding the decision of the CARB reasonable, Justice Kendell noted at para 39:

> In this regard, the Board found that: (a) the Assessment Date is June 8, 2018; (b) the language of s 284(4) (of the *MGA*) is *definitive*: "complaint deadline" means 60 days after the notice of assessment date; and (c) concluded that given the

> clarity and definitiveness of s 284(4) of the *MGA*, the Board does not need to use or resort to the provision of s 23(1)(b) of the *Interpretation Act* in determining the "complaint deadline" in this case. This interpretive exercise by the Board is both justifiable and reasonable. Of course, an administrative decision-maker does not need the aid of "presumptions" as an interpretive tool where the statutory enactment being interpreted is clear and unambiguous. Here, the Board found the relevant provisions of the *MGA* to be clear. Consequently, I agree with the Board that, in this case, the specification of 60 days after the notice of assessment date in both s 284(4) of the *MGA* as well as the Notice of Assessment is as clear as it can be.

[27] The City argues the decision of Justice Slawinsky in ***Special Areas Board v ATCO Power Canada Ltd***, 2018 ABQB 1035 ("***Atco***") is directly on point as the court specifically considered the meaning of "date of decision" under section 470 of the *MGA*. As will be discussed more fully below, in ***Atco***, the court concluded that "date of the decision" means the date notice of the decision is given under section 469: ***Atco*** at para 26.

[28] Sunridge, argues that the limitation period only runs from the date of the decision if there is no legislative requirement to give notice of a decision. Relying on the decisions of ***Al -Ghamdi v College and Association of Registered Nurses of Alberta***, 2020 ABCA 81("***Al-Ghamdi***") and ***Athabasca Chipewyan First Nation v Alberta (Minister of Energy),*** 2011 ABCA 29 ("***Athabasca Chipewyan***"), they argue that there is a requirement under section 469 of the *MGA* to give notice. Therefore, the limitation period runs from the date of notice which they argue includes the date notice was received. Because the record is silent on when the notice was received by Sunridge, they argue that the presumptions in section 608 of the *MGA* apply. Therefore, notice was deemed received on either December 21, 2023 in the case of the email notice or December 21, 2023 in the case of notice by mail. In either case the Originating Application would have been filed and served in time.

[29] In ***Athabasca Chipewyan***, the Court of Appeal considered the limitation period in the old rule 753.11. Rule 753.11 provided that "the application for judicial review shall be filed and served within six months *after the decision* or act to which it relates." The court emphasized that this rule has been strictly construed. They noted that the six-month limitation period runs from the date of the decision unless there is a clear and stated obligation to provide notice of a decision: ***Athabasca Chipewyan*** at para 27.

[30] The court in ***Atco*** considered both the ***Al Ghamdi*** and ***Athabasca Chipewyan*** decisions and concluded that "the clear and stated requirement in section 469 to provide notice of assessment review boards means that under s.470 the giving of notice is a relevant factor in the determination of the commencement of the limitation period": ***Atco*** at para 22. Therefore, the date of the decision means the date notice of the decision is given under section 469 of the *MGA*. I agree.

[31] Similar to the court in ***Atco***, I also reject the argument of Sunridge that the date notice of the decision is given must mean the date of effective receipt. Section 470 of the *MGA* was specifically amended to delete reference to date of receipt.

[32] Sunridge relies on the case of ***Edmonton (City) v Edmonton (City) Assessment Review Board***, 2012 ABQB 399 at para 56 for the proposition that *sent* under the *MGA* means *sent and received*. Given this decision was prior to 2017 and based on different language than the current

MGA, it is of little assistance. The court in ***Atco***, albeit under different provisions of the *MGA*, also rejected the notion that sent meant sent and received.

[33] Although the comments of Justice Slawinsky in ***Atco*** were *obiter*, I agree with her comments that actual receipt, awareness, or knowledge of the decision is irrelevant. Specifically she opined at para 28 as follows:

> ... had I found that the application was out of time, the case law in my view is persuasive that actual receipt, awareness or knowledge of the decision is irrelevant to the computation of the limitation period set out in s. 470 of the *MGA*. The giving of notice of the decision is "an event which clearly occurs, without the regard to the injured party's knowledge" as contemplated by the Supreme Court of Canada in *Peixeiro*, rendering the discoverability principle inapplicable

[34] I also conclude that the date of decision in section 470 of the *MGA* means the date notice of the decision is given under section 469.

[35] Section 469 of the *MGA* requires a decision to be sent within seven days after the decision was rendered. The Decision was sent on December 14, 2023. Therefore the deadline to file and serve the Originating Application was February 12, 2024. The Originating Application was not filed by the clerk of the court until February 15, 2024. It is out of time.

[36] Sunridge also argued that both the agent and Sunridge as owner were required to be notified of the Decision. They argue it was not sufficient to serve the agent by email based on section 462 of the *MGA* and therefore based on the deeming provisions in the *Interpretation Act* the date of receipt would have been December 28, 2023. Given I have determined the date of receipt is not determinative, I need not consider this argument.

Should the Originating Application be Dismissed or Struck or Should a Fiat or Order for Backdating be Directed?

[37] The City asks that the Originating Application be dismissed or struck because the application for judicial review was not filed and served on time.

[38] Sunridge asks that the court grant a fiat or alternatively that the court backdate the filing date to the date the Originating Application was sent to the court for filing.

[39] The City argues that the court has no discretion to extend the deadline for filing as the deadline is statutorily mandated. They raise the further concern that even if the court exercised its discretion to backdate the filing date, there is no way to backdate the service date. Section 470 of the *MGA* requires an application for judicial review to be both filed and served.

[40] Sunridge has not provided any authority to suggest that the court has the authority under the *MGA* to extend the limitation period. Limitation periods are strict and may not be extended in the absence of statutory authority: ***Kehewin Cree Nation v Mulvey***, 2013 ABCA 294 at para 10-11. I therefore am unable to extend the limitation period given the clear and express wording under section 470 of the *MGA*.

[41] Alternatively, Sunridge asks this court to back date the filing date to February 12, 2024 given this was the date the Originating Application was sent for filing. Although not determinative, I note that the Originating Application was not sent to the clerk of the court using the urgent filing process nor was the date of the deadline included in the email. The

Announcement from the Court and Justice Services: Filing Dates for Documents Filed via Email dated October 19, 2022 (Court Announcement) was in evidence.

[42] The Court Announcement provides that "after November 1, 2022 documents will be considered filed on the date processed and stamped by the King's Bench administration." Further "if your limitation period or court ordered statutory deadline is within 3 days or within the current lead time, whichever is longer, please indicate Urgent Limitation Period in the subject line..." and "please indicate the date of the deadline in the body of the email".

[43] In ***Tartal v Alberta (Human Rights Commission)***, 2023 ABKB 381 ("***Tartal***"), Justice Feth considered a similar issue albeit under rule 3.15 of the rules of court. In ***Tartal***, the applicant filed an originating application six months and two days after the date of the decision. Rule 3.15(3) required an originating application for judicial review to be filed and served within six months of the date of the decision. Similar to the facts before this court, the originating application was delivered to the court by email within the six-month time limit but the document was not filed until three days later. The unfiled version was provided to the commission within the six-month time period with the filed version served the same date the document was filed by the clerk. The respondent contended that the delay was a curable irregularity and she cross applied for an order directing the filing date be backdated to the date of receipt by the court.

[44] Justice Feth considered the Court Announcement and noted, as in this case, the lawyer's email did not contain the words "Urgent Limitation Period" in the subject line. He further considered rules 13.13-13.15. Justice Feth noted that in accordance with rule 13.15, a document is only filed when the Court clerk acknowledges on the document that the document is filed in the action. This endorsement "of an action number and a filing stamp on a commencement document starts the action or proceeding, authenticates the document and represents to the world that the action or proceeding exists and the technical rules are materially in compliance": ***Tartal*** at para 49.

[45] In considering the service requirement under rule 3.15(2), Justice Feth noted that the requirement was substantive in nature, not procedural and that:

> a courtesy copy of an originating application does not equate to service. An unfiled version of an Originating Application does not attest to an existing proceeding and leaves uncertainty about the scope of the claim, which might change before filing. Mere knowledge of an action does not constitute service: ***Tartal*** at para 54 citing ***Al-Ghamdi*** at para 7.

[46] I agree with Justice Feth. Even if the court were in a position to extend the filing date, the documents would not have been served in time as a courtesy copy of an originating application does not equate to service.

[47] Sunridge argues that the decisions of the Court of Appeal in ***Environmental Defence Canada Inc v Alberta***, 2025 ABCA 132 ("***Environmental Defence***") and ***Siciliano v Alberta (Director of SafeRoads)***, 2024 ABCA 62 ("***Siciliano***"), stand for the proposition that service of an unfiled copy is sufficient for the purposes of service under rule 3.15 notwithstanding a filed copy has not been served prior to the limitation deadline.

[48] I do not read ***Environmental Defence*** that way. As the Court of Appeal noted at paras 2 and 18, the only issue in the appeal was whether service upon the Crown and Minister was effective service upon Mr. Allan in his capacity as commissioner under the *Public Inquiries Act*.

[49] I also find ***Siciliano*** distinguishable and disagree that it is inconsistent with ***Tartal***. In ***Siciliano***, the chambers judge summarily dismissed a judicial review application for failure to serve the Director of SafeRoads within the 30-day time limit prescribed under section 24(2) of the *Provincial Administrative Penalties Act*, SA 2020, c P-30.8P ("*PAPA*"). In dismissing the appeal, the Court of Appeal noted there were no provisions in the *PAPA* that allowed for an extension of the 30-day time period for filing and service: ***Siciliano*** at paras 3 and 7. They further rejected the appellant's assertions that the court's inherent jurisdiction extended to relieving against a statutory prescription: ***Siciliano*** at para 8. I agree that the court referenced the fact that the appellant made no effort to serve an unstamped copy of the application within the 30-day period. In doing so, they referred to the court's published advice in effect in 2021 that stipulated that due to filing backlogs, unfiled copies should be served on the other side at the time documents were submitted for filing. I note that in the context of this case, the Court Announcement made clear a different process was in place effective November 1, 2022.

[50] This court has great sympathy for Sunridge. Nevertheless for the above reasons, I am unable to extend the time deadline for filing and serving the Originating Application.

[51] Compliance with section 470 of the *MGA* is mandatory and the 60-day period to both file and serve the Originating Application cannot be extended or varied. The Originating Application for judicial review is therefore struck given the time limit for filing and service was not satisfied.

Conclusion

[52] The City's application to strike is granted.

[53] Sunridge's cross application for a fiat or alternatively backdating of the Originating Application is dismissed.

[54] The parties may speak to costs within 30 days of this decision.

Heard on the 13th day of March, 2025.
Dated at the City of Calgary, Alberta this 9th day of May, 2025.

B.B. Johnston
J.C.K.B.A.

Appearances:

Gilbert J. Ludwig, K.C., and Jeffery Talbot
for Sunridge Mall Holdings Inc. as represented by Avison Young Tax Services

Nathan W. Irving
for the City of Calgary

Gwendolyn Stewart-Palmer, K.C.
for the Calgary Assessment Review Board