Paddle Prairie Metis Settlement v. Ridsdale, 1998 ABCA 252

Date: 19980727
Docket: 9803-0115-AC

IN THE COURT OF APPEAL OF ALBERTA

REASONS FOR DECISION OF THE
HONOURABLE MADAM JUSTICE PICARD

BETWEEN:

PADDLE PRAIRIE METIS SETTLEMENT
and ARTHUR CHALIFOUX

Applicants

- and -

BERNICE RIDSDALE
and THE METIS SETTLEMENTS APPEAL TRIBUNAL

Respondents

APPEAL FROM THE
METIS SETTLEMENTS APPEAL TRIBUNAL

APPEAL NO. 9803-0115-AC

COUNSEL:

Ms. Karin E. Buss
for the Applicants

Mr. P.E. James Prentice, Q.C.
Ms. P. McCluskey
for the Respondent Metis
Settlements Appeal Tribunal

Bernice Ridsdale In person

REASONS FOR DECISION OF THE
HONOURABLE MADAM JUSTICE PICARD

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[1] The applicants seek leave to appeal a decision of the respondent Metis Settlement Appeal Tribunal. The grounds are that the Tribunal did not have jurisdiction and that it erred in law in finding that the applicant, Mr. Chalifoux, had transferred his right to compensation for surface rights to the respondent, Ms. Ridsdale.

[2] The relevant legislation, the *Metis Settlements Act,* S.A. 1990, c. M-143, is unique in Canada and provides a framework for the ownership and management of interests in land in the Metis settlement areas and for the resolution of disputes.

[3] In this case, the dispute between Mr. Chalifoux and Ms. Ridsdale was about whether, when he transferred his interest in certain lands, he had also transferred the right to compensation for the surface rights. The resolution of the dispute has been made more complicated by the fact that settlement officials and the Tribunal were working with new systems and new legislation, and the dealings of the parties began under the old regime but were completed under the new.

[4] After a number of years, during which he received payment (in various forms) from or on behalf of Ms. Ridsdale for the purchase of the interest he had in the land, Mr. Chalifoux on March 29 and 30, 1993 signed transfers to Ms. Ridsdale. He did not challenge those transfers at the Tribunal hearing although he did so on a technical basis before me. Following the transfers, in a meeting, the Paddle Prairie Metis Settlement Council dealt with Mr. Chalifoux's interest and the transfer. Eventually title went into the name of Ms. Ridsdale, but Mr. Chalifoux continued to receive the compensation for the surface rights. Eventually Ms. Ridsdale asked the Tribunal to investigate why she was not getting it. There was a hearing. The Tribunal found that Ms. Ridsdale had title to the land and that compensation for surface rights runs with the land unless an agreement is reached between the parties that states otherwise. It held that there was no evidence to show that Mr. Chalifoux was entitled to the compensation after the transfer and

that a statement he made in October 1993 that he wished to retain that right was not sufficient evidence to reverse the effect of the transfer. The Tribunal ordered that compensation from 1993 on be paid to Ms. Ridsdale, but that Mr. Chalifoux could keep the compensation he had already received. (In the result, the mineral leaseholder or operator paid double compensation for the years 1993-1996, a total of $6,737.52. Counsel for the Tribunal advised that the company took no position in this action and did not wish to participate.)

Standard of Review

[5] Pursuant to s. 204 of the *Act*, a decision of the Tribunal can be appealed to this Court on a question of law or a question of jurisdiction, but only after leave has been obtained. The parties agree that the standard of review on such a leave application is whether or not the applicant can establish a reasonably arguable point of law or jurisdiction which could reasonably affect the result. *Rendle* v. *Edmonton*, [1995] A.J. No. 1182 (Alta C.A.)

The Challenge to Jurisdiction

[6] The Tribunal based its decision on s. 121 of the *Act* which gives it jurisdiction to act where a mineral leaseholder or operator fails to pay. That is clearly not what happened in this case. The respondents concede that s.121 does not give the Tribunal jurisdiction to deal with this case.

[7] However, the respondents say that there are other sections of the *Act* which do give the Tribunal jurisdiction, the exercise of which would have led to the same outcome. Therefore they say that there is not a reasonably arguable point of law or jurisdiction which could reasonably affect the result from this failure to use the correct section of the *Act*. Further, they point to the policy and intention of the legislation, which is meant to place power in the hands of the Metis people to deal with land and disputes within the framework of an *Act* which contains many curative provisions. (ss. 190, 196, 199, 202)

[8] I shall deal with only one of the jurisdictional bases put forward by the respondents, who have acknowledged that there are difficulties with the utilization of the others. The respondents say the Tribunal could have made the decision it did under Article 8.2 of the *Land Policy*, which is part of the legislative framework governing Metis settlement land. Article 8.2 reads:

> Any question or dispute as to the ownership or extent of an interest in land in a settlement area may be referred to the Appeal Tribunal for an advance ruling or a decision.

[9] In a footnote to the Article there is reference to s.189(1)(b) of the *Act*, that says:

> The Appeal Tribunal must hear appeals and references and performan other functions given to it or required to be performed by it under the regulations, by-laws or General Council Policies.

[10] The applicants say the exercise of jurisdiction under Article 8.2 would not lead to the same result as was reached under s. 121 and therefore they have established that there is a reasonably arguable point of jurisdiction that could reasonably affect the result.

[11] I find I cannot agree with that submission. Article 8.2 is broad and requires the Tribunal to make determinations where there is a dispute of the very type that existed between Mr. Chalifoux and Ms. Ridsdale. If the Tribunal had assumed jurisdiction under Article 8.2 it could have dealt with the parties exactly as it did in the decision under review. As for the result: requiring the mineral lease holder or operator to pay twice; this seems no more inappropriate under an Article 8.2 hearing than under a s.121 hearing. The decision as it stands could be said to be a practical resolution of the dispute to which, for its own reasons, the mineral lease holder or operator acceded. In the result, I am not able to say that the result would have been substantially different had the Tribunal assumed jurisdiction under Article 8.2.

[12] In conclusion, I find that the applicants have not established a reasonably arguable point of jurisdiction which could reasonably affect the result.

The Challenge to the Tribunal's Decision on Entitlement

[13] The applicants say the Tribunal erred in law in determining that Mr. Chalifoux transferred his right to compensation for surface rights to Ms. Ridsdale. They do not disagree with the Tribunal's statement that "compensation payable for a well site runs with the land unless an agreement is reached between parties which states otherwise." Firstly, they challenge the decision, alleging that it was based on

an unreasonable inference of fact based on irrelevant considerations and, secondly, they say the Tribunal failed to properly interpret and apply the statute.

[14] Dealing with the first ground, they rely specifically on the statement filed by Mr. Chalifoux seven months after the transfer was registered wherein he said he meant to keep the right to compensation for surface rights. They also say that certain evidence about the terms of the arrangement between the parties was not before the Tribunal.

[15] The Tribunal said:

> Because there was no bill of sale for the land and the land transfer form did not place any restrictions on Bernice Ridsdale's interests in [the property] the Panel [of the Tribunal] has no evidence to show that Mr. Chalifoux is entitled to the compensation for the well site after he signed the transfer form.
>
> The only evidence available indicating that Mr. Chalifoux wished to retain the surface rights compensation is the form he signed on October 21, 1993. However, the Panel finds that Mr. Chalifoux had no right to claim any interest in [the property] on October 21, 1993 since he had already transferred the land to Bernice Ridsdale.

[16] There is no doubt that the nature of the contract between Mr. Chalifoux and Ms. Ridsdale was different in a number of ways: it started with a handshake; the consideration included a satellite dish, a truck, a camper, logs, bales, calves and cash; and family members of Ms. Ridsdale were involved. There was never any contract in writing setting out the terms. However, an examination of the written decision of the tribunal shows it heard from the parties and was made well aware of Mr. Chalifoux's position and of the nature of the arrangement made by the parties. It had ample evidence before it which supported its conclusion. The legislation was set up to allow this tribunal to deal with interests in land arising in a Metis settlement in whatever form they might arise . This Tribunal had the benefit of understanding the parties, practices, and community setting.

[17] The applicants have not established any error in the manner in which the Tribunal dealt with the evidence.

[18] Dealing with the second ground: did the Tribunal commit an error of law in interpreting and applying the relevant legislation?

[19] Simply put, the applicants' arguments are technical ones wherein they say that, because of a transition provision, Mr. Chalifoux could not transfer his interest to Ms. Ridsdale on March 29 and 30, 1993. This transition provision is found in s.15 of the *Land Interest Conversion Regulation* (Alta. Reg. 362/91) that states that no allocation (Mr. Chalifoux's type of interest) may be sold or dealt with except for the purpose of converting it. (There is a problem with this, inasmuch as Mr. Chalifoux does not want the land back and does not challenge the ruling that the surface rights go with the title unless specifically exempted. However, in view of my finding, it is not necessary to pursue this conundrum.)

[20] An examination of the record shows that at a Paddle Prairie Metis Settlement Council meeting of April 7, 1993 there was a motion converting Mr. Chalifoux's interest, called an "allocation" under the old legislation, into an "allotment", the description of the same interest under the new legislation. That application for conversion was made by Mr. Chalifoux. It was in compliance with s.15 and pursuant to s. 4(1) of the *Regulation*. The next motion of Council was to approve the land transfers signed by Mr. Chalifoux on March 29 and 30, 1993. This step was required by the conditions attached to an allotment. (Metis Settlements General Council Land Policy No. G.C.P. 90003, A. Gaz. 1992.I.2592, at 2617) A follow-up letter from the registration clerk of the Council indicates that all of the formalities of filing the conversion and title transfer were in progress. Eventually title was registered to Ms. Ridsdale.

[21] The respondents say that the proper procedure was followed under the legislation to effect a conversion of Mr. Chalifoux's interest and a transfer and registration of it in Ms. Ridsdale's name. They say that the Tribunal is entitled to rely on that registration and point to s. 26 of the *Metis Land Registry Regulation* (Alta. Reg. 361/91),that sets out the effect of registration, (subject to qualifications that do not apply here), to be that the registered owner of an interest is the owner of that interest. I agree with the respondents' submission. The Council properly followed the requirements of the legislation, which was a challenging task, given the nature of it and the need to deal with transition measures. The Tribunal made no error in accepting its actions and the registration of title to Ms. Ridsdale.

[22] In the result, the applicants have shown no basis upon which leave to appeal should be granted. The application is dismissed.

MOTION HEARD ON JULY 14, 1998
at EDMONTON, Alberta

JUDGMENT FILED at EDMONTON,
Alberta this day of July, 1998

Picard J.A.