

Reasons for Judgment of the Honourable Madam Justice Rowles:

[1] Mr. George Skea has applied under s. 9(6) of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77, for a review of an order dismissing his application to extend the time within which to file an appeal.

[2] The appeal Mr. Skea hopes to pursue concerns the enforcement of an alleged agreement to arbitrate a long-standing dispute between himself and the Sunshine Coast Regional District. The dispute had its genesis in the construction of a boat shed on Mr. Skea's property that violated the District's by-laws. The District had the boat shed removed and added the removal costs to Mr. Skea's property taxes.

[3] Mr. Skea subsequently brought a petition in the Supreme Court of British Columbia in which he applied for "a ruling confirming the appointment of Mr. Gordon Wilson MLA as arbitrator in this dispute". The petition was dismissed by Mr. Justice Chamberlist on 27 March 1998.

[4] Mr. Justice Chamberlist was not satisfied on the evidence before him that an agreement had been reached between the parties to arbitrate the dispute. He went on to hold that, regardless of whether an agreement had been reached between an

employee or officials of the District, the relief sought in Mr. Skea's petition could not be granted because the District had not ratified an agreement to arbitrate either by resolution or by-law. In that regard, the chambers judge said, in part:

[17] ... I would also have to dismiss the petition ... on the legal principle that, in order to bind the regional district, a bylaw or resolution would be necessary pursuant to sections 173(2) and 202(3) of the **Municipal Act**....

[18] In support of this proposition, the [Regional District] relied on the decision of **Amalgamated Recreation Engineers and Network Associates Ltd. v. Town of Sidney et al.** 7 M.P.L.R. 217.

[19] The ratio of that case simply is that ordinary rules of agency law do not apply to local government.

* * *

[20] ... section 173 of the current **Municipal Act** ... provides as follows:

(1) A municipality incorporated under this Act has all the rights and liabilities of a corporation with full power to acquire, hold and dispose of real and other property, subject to this Act, and to contract for materials and services.

(2) Except as otherwise provided in this or another Act, municipal powers must be exercised by the council.

[Emphasis added.]

[5] At the time his petition was heard, Mr. Skea was represented by counsel. On 24 April 1998, his counsel filed a

notice of application for leave to appeal the order of the chambers judge under Court of Appeal file number CA024540. No further steps have been taken in relation to that appeal but the fact that it was filed is relevant to the question of whether Mr. Skea had formed an intention to appeal within the time limited for bringing appeals.

[6] On 13 January 1999, Mr. Skea filed, under Court of Appeal number CA025466, a Notice of Appeal from Mr. Justice Chamberlist's order. As his Notice of Appeal was filed out of time, Mr. Skea had to apply for an extension of time. Some of the material Mr. Skea filed on his application to extend the time had not been before Mr. Justice Chamberlist when he heard Mr. Skea's petition.

[7] Mr. Justice Hall dismissed Mr. Skea's application for an extension of time, having concluded that an appeal of Mr. Justice Chamberlist's order had no hope of success.

[8] On the review application before us, Mr. Skea asks that Mr. Justice Hall's order be set aside and that an order extending the time be granted. He submits there is ample evidence to support his assertion that an agreement was reached between himself and an employee of the District to

resolve the dispute by binding arbitration, with Mr. Gordon Wilson as the arbitrator. While Mr. Skea readily concedes that the District did not pass a resolution or by-law that the dispute be determined by arbitration, he argues that it does not matter because the District was bound by the actions of its employee or officers who reached an agreement with him to arbitrate the dispute. To support his argument, Mr. Skea referred us to *Allen v. GH Trucking Ltd. et al*, [1986] B.C.J. No. 2700 (Q.L.) (B.C. Co. Ct.).

[9] In *Allen v. GH Trucking Ltd.*, the individual defendants were the principals of a trucking business which was under financial pressure. There were suggestions that the plaintiff, who went to work as the company's operations manager, might buy the company. While at the company, the plaintiff authorized work on some equipment and paid some outstanding accounts when the company was short on cash. After a parting of the ways, and considerable wrangling, the parties attended a meeting with their solicitors and thereafter correspondence passed between the solicitors. The plaintiff contended that an agreement had been made to settle all matters by consent or, if consent was not possible, by resort to binding arbitration. The defendants denied the existence of such an agreement and asserted that even if such an agreement were found to exist, it was achieved

by unconscionability. The plaintiff was successful in obtaining a declaration that the parties had entered into a written agreement to submit present or future differences between them to arbitration.

[10] With deference to Mr. Skea, I am of the view that **Allen v. GH Trucking** is not of assistance in the present context. Generally speaking, unless municipal employees are given special authority, either by by-law or resolution or directly by statute, to enter into contracts on a municipality's behalf, they cannot bind the municipality. The following general statement concerning the power of officers and agents to bind a municipal corporation may be found in Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed. (Scarborough, Ont.: Carswell, 1998) at §198.1, p. 1044:

Committees of council, boards, commissions, officers and agents of a municipality may be given special authority either by by-law or resolution or directly by statute to enter into contracts on its behalf. Any person dealing with officers of a municipality, in addition to enquiring whether the powers the corporation is purporting to exercise are *intra vires* the corporation, must also enquire whether the officers purporting to bind it by contract have been duly authorized to do so. In dealing with officers and agents of a municipality a person has no right to presume that they are acting within the scope of their authority but must ascertain the nature and extent thereof. Anyone assuming to bind the municipality by contract must possess express authority for his right to represent the municipality and a contract made without

authority is not binding unless the contract is subsequently ratified by the council.

[11] In the present case, the central question is not whether an agreement was reached between Mr. Skea and the District's building inspector that the dispute would be determined by binding arbitration, with Mr. Wilson as the arbitrator. Instead, the critical question is whether the agreement, assuming one was reached, was ratified by the District by resolution or by-law. As noted earlier, Mr. Skea concedes that there was no such resolution or by-law passed by the District.

[11] In view of the foregoing, I agree with Mr. Justice Hall that an appeal of Mr. Justice Chamberlist's order has no prospect of success and would affirm his order.

"THE HONOURABLE MADAM JUSTICE ROWLES"

I AGREE:

"THE HONOURABLE MADAM JUSTICE NEWBURY"

I AGREE:

"THE HONOURABLE MADAM JUSTICE HUDDART"