SC 545 Pappas, Jacqueline and Theodore v AA23 and PAAB

Link to Property Assessment Appeal Board Decision

JACQUELINE PAPPAS and THEODORE PAPPAS
v.
ASSESSOR OF AREA 23 – KAMLOOPS and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S46828) Kamloops Registry

Before the HONOURABLE MR. JUSTICE GROVES
Date and Place of Hearing: July 6, 2012, Kamloops, B.C.

T. Pappas Appearing on his own behalf
M. Underhill for the Respondents

Section 65(5) of the* Assessment Act – *Jurisdiction

The Appellants own three parcels of property in the Clinton area which they consider to be farm property. The farm operation is designed essentially to propagate seeds for general agricultural purposes. The farm grows various crops and is involved with the sale of seeds from those crops. The Property Assessment Appeal Board ("PAAB") in its decision dated November 11, 2011 denied farm class, finding that the property was only 1.65 acres and needed to generate $10,000 worth of income, which had not been achieved. The Appellants appealed the decision of the PAAB to the Supreme Court.
HELD: Appeal Dismissed.

This court was unable to rule on the farm class issue because it found that the requirement under section 65(5) of the Assessment Act *with respect to the timelines for filing a stated case were not met. Bound by the principles of* Spruce Mills*, this court found that as the stated case was not brought within one month, this court did not have jurisdiction to hear the stated case.*

Reasons for Judgment (Oral) July 6, 2012

[1] **THE COURT:** Before the court today is a matter by way of stated case under the *Assessment Act*, R.S.B.C. 1996, c. 20. This is an appeal of a Property Assessment Appeal Board ("PAAB") decision, which decision is in the materials and is dated and signed by the panel chairman, Chris Hope, on the 22nd of November 2011.

[2] The factual background to this case, as I understand it, is the following.

[3] Mr. Pappas and his wife and brother own, collectively, three parcels of property in the Clinton area which they consider to be farm property. On this property, which appears to compose, in total, about 2.25 acres, Mr. Pappas, his wife, and brother have undertaken a farm operation designed essentially to propagate seeds, perhaps heritage seeds, for general agricultural purposes. It appears, from what Mr. Pappas has said at the hearing today, that he grows various crops and is involved with the sale of seeds from those crops.

[4] There is some significance to the size of Mr. Pappas's property, and I will call it Mr. Pappas's property, though parts of it are owned by him, his wife and his brother. There is some significance to the size issue in regards to the property because of what the requirements are for obtaining agricultural status for tax purposes under the relevant legislation. This is perhaps an oversimplification, but I will state it nonetheless. If a property is less than two acres in size and a request is made that it be determined to be farm status, there is a necessity under the regulations of showing that there is farm income generated in excess of $10,000. If the property is greater than two acres, there is only a requirement of showing that income for farm purposes is generated in the amount of $2,500. The reasons for that could involve a lengthy discussion, could involve all sorts of determinations as to why the legislature has promulgated regulations in that regard, but those are the regulations that the court has before it.

[5] The procedure when one disagrees with the decision of a PAAB is a review by the Supreme Court by way of a stated case, and the stated case provisions of the *Assessment Act* are complex. A stated case appears to be somewhat akin to a judicial review in the sense that the courts in a stated case are not entitled, by what the legislature has directed, to find new facts. Courts are not entitled to accept new evidence or consider new evidence, and in fact, the court is bound by the factual determinations made by the PAAB.

[6] It may very well be that if, on the face of the decision, there are clear factual errors made, i.e., they do not do math correctly or they find facts which are inconsistent within the reasons, the courts can step in and find different facts based on the entirety of the evidence, but it is generally not the case that the courts are allowed, under the legislative scheme for appeals of the PAAB, to find new facts.

[7] I have reviewed, both before court and after court, the decision of the 22nd of November 2011, and on the basis of that decision, the PAAB acknowledges that Mr. Pappas has stated that his farm income was $2,800 in the relevant year but the PAAB finds as a fact that that has not been proven. They also appear to acknowledge in their decision in paragraph 8 that there was evidence before them of $8,300 of seed production over and above the sales, but they do not, it appears, on balance, consider that because they essentially have found, leading up to that failure to consider, they have found that the agricultural land in question is only 1.65 acres and they have found that the $2,800 claimed is not sufficiently demonstrated to a level of evidence satisfied to accept it as a claim.

[8] Turning to the issue of the determination of 1.65 acres, it appears to me that the PAAB has fallen into error in this analysis in that they did not consider, as it appears, s. 4.2(1) of the regulations which allow for something greater than cultivated area of land to be considered land for agricultural purposes. This section of the regulation allows and directs the PAAB to consider riparian areas, buffers, and farm outbuildings, all of which Mr. Pappas at this hearing advocates are part of his agricultural operation.

[9] I, however, am not able to determine whether or not this issue was properly put before the Board as they have not commented on it at all in their reasons, and I am going to perhaps take the quantum leap and suggest, because of some things that Mr. Pappas told me in this hearing, that it was perhaps not articulated by him as well as it could be in this. It was Mr. Pappas's first attempt to deal with the PAAB.

[10] The bottom line of the reasons and analysis in the reasons is that the PAAB does not accept, because of lack of proof, in their view, the assertion that there was $2,800 in agricultural income, and they do not consider, because of this lack of proof of $2,800, the allegation of $8,300 in seed storage income, as I will call it, a provision which they are allowed and, in fact, perhaps directed to consider under s. 6(b)(i) of the regulations.

[11] Getting back to the problem which I have mentioned of proof, Mr. Pappas is concerned about the procedure at the appeal hearing because he wanted an opportunity to rebut evidence or to rebut the considerations, and he believes he was not given an opportunity to do so.

[12] Unfortunately, the legislative scheme appears to be that submissions are made by an appellant and then the Board rules. There does not appear to be a forum under the legislative scheme for someone faced with a concern of the Board to adjourn the matter and go back and obtain more information.

[13] Perhaps the reason for this is the fact that assessment appeals are a regular matter, and an opportunity to conduct an assessment appeal is an annual opportunity. Perhaps the legislature has determined, because this is an annual opportunity, if a party sees in a written reasons of the PAAB an area of concern, they can always go back next year and articulate the same argument and can, if fact, provide proof or, perhaps better put, can correct the errors made in the previous year. I do not know what was in the mind of the legislature when they set this up, but the fact that the appeal process is an annual appeal process is perhaps one of the reasons why time restrictions and what Mr. Pappas perceives, perhaps fairly, as lack of natural justice is what happens at these assessment appeals.

[14] Mr. Pappas is an articulate man who respectfully, and I underline that, respectfully, requested of the court that as an ordinary Canadian citizen representing himself and his family, as someone who is a loyal subject of Her Majesty, that Her Majesty's court grant him mercy. I have never had anyone before me put it that way, but Mr. Pappas raises a good point, that courts are available, generally speaking, as Her Majesty's courts, to interpret the law, to assess the law and, in certain circumstances, to provide mercy for those who come before the courts for alleged breaches of the law.

[15] That being said, courts are not only here to provide mercy on occasion to those who beseech the court for it, but courts are primarily required to interpret the laws and not make up laws as we go. We are required, as courts, to follow what Her Majesty's legislature has directed by way of Act and by way of regulation, and we are required to follow the law as interpreted by other judges.

[16] The legislature, in the scheme which they have created for tax assessment appeals, have made fairly restrictive time limits and fairly restrictive requirements. Persons must appeal their tax assessments within a short period of time. People must attend before assessment appeal boards in the event that they are unhappy with an assessor's decision within a reasonable time. Persons who appeal from the decision of a property assessment appeal board must do so under the guidelines of s. 65, which I will deal with in a moment. The legislature has seen fit in the *Assessment Act* to restrict the role of courts. The legislature has determined that courts cannot do what I will call a do-over or a re-hearing when the matter is appealed. Courts are bound by factual determinations made by the PAAB.

[17] Additionally, counsel for the assessor raises the issue of s. 65 and the jurisdictional issue. Section 65 sets out the time requirements for filing of appeals by way of stated case. Section 65(5) says:

> The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (4).

[18] The factual circumstances surrounding this, as attested to by Mr. Pappas at this hearing, are that he filed his stated case within the time limits required to file his stated case and, when attending at the registry, was given an opportunity for a first court date of April 4th and a subsequent court date in June. Neither of those two dates appear to be within the s. 65(4) requirement for 21 days of hearing.

[19] Additionally, it seems clear that Mr. Pappas was advised by Mr. Underhill in a letter dated February 16, 2012, of the requirement to set a notice of hearing through the Kamloops Registry within the 30 days. This does not appear to be done, and no fault is levelled at Mr. Pappas's feet for doing so. He is a self-represented person trying to do the best he can under difficult circumstances.

[20] Mr. Pappas has indicated that he was simply given those dates by the registry and not given any other option.

[21] I have reviewed the decision of *Gemex Developments Corp.* v. *Assessor of Area #12*, a decision of Madam Justice Kirkpatrick of this court dated 11 January 1993, and her interpretation of s. 65(5). That case, unfortunately for Mr. Pappas, is a case which interprets a section of the *Assessment Act* which I am bound to follow and provides guidance as to how I should interpret s. 65(5), and that guidance is also something I am bound to follow based on the principles of *Spruce Mills*, as it is a decision of this court, a fellow judge of this court. That means that as the stated case was not brought within one month, the court no longer has jurisdiction to hear the stated case, and I so find.

[22] That being said, I wish to say for the record that I believe Mr. Pappas's circumstances have considerable merit. Mr. Pappas now appears to have evidence of agricultural income which would no doubt be evidence sufficient to satisfy the assessor and the PAAB. He has evidence of tax returns and evidence of sales receipts which he has made available for the court, though I did not review them, and it appears to me that he has evidence of agricultural income of around $3,000. It also seems to me that he has evidence of seeds inventory well in excess of $10,000, and it also seems evident to me that Mr. Pappas has an argument, at least, to make that not only does he meet the $10,000 threshold but he does not, in fact, have to make that $10,000 threshold. It seems to me he has evidence now, now that he understands the process perhaps a little better, evidence that he could offer to show that in addition to the cultivated land that he has, which is 1.65 acres under cultivation, that there are a number of accessory pieces of land which are required by him for the purposes of his cultivated land, things such as riparian areas, things such as his home and outbuildings and the like, which would raise the threshold to the 2.25 acres or perhaps larger as he has also told me that he has purchased additional lands.

[23] The decision that I am asked by Mr. Pappas to make by way of the stated case application is in regards to the taxation year of 2010. Mr. Pappas says that he is reluctant to go through this procedure again, but that appears to be the remedy available to him, a remedy that is available to all citizens of British Columbia when they feel that a taxation authority has not properly considered their submissions.

[24] As I said, it is likely the case that one of the reasons the restrictions are so confining in terms of this process is the recognition by the legislature that a party has an opportunity to do this type of assessment on an annual basis by producing new evidence. Mr. Pappas's remedy, in my view, is to gather up his information about his sales and any receipts that he has, or any tax returns that he has available, to gather up an inventory and price out his inventory of seeds perhaps by way of even photographs or charts showing value of seeds and potential sale prices. His opportunity to receive Her Majesty's justice, as he seeks, is unfortunately a remedy to start the process again and go through a process of assessment of his property based on the new evidence that he is now able to garner.

[25] That is unsatisfactory to Mr. Pappas and his family, I know, because he feels worn down by the system and oppressed by having to go through a process which he is not familiar with. That, unfortunately, is the process we have in British Columbia. Governments need revenue, and they set up a process for land assessments. They set up an appeal process which is designed to be straightforward, and they set up an appeal of the appeal process to the courts, but they do so with strict statutory limits which unfortunately, in regards to s. 65(5), I found have not been met in this circumstance.

[26] I know, Mr. Pappas, this is not what you wanted to hear in coming to Her Majesty's courts, but I say to you, sir, that I think your case does have substantial merit and the fact is that the evidence that you now have, evidence which was not available to the PAAB, is evidence which in all likelihood would satisfy them for future purposes, and I urge you, sir, to not give up the fight and to take to them, as you are entitled for next year, or for this year if you filed an appeal, take to them your new evidence, and it is my sincere hope that justice will be achieved for you through that process.

[27] There is no order as to costs.