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WALLIS WALTER LEFEAUX

v.

CORPORATION OF THE DISTRICT OF WEST VANCOUVER

Supreme Court of British Columbia. (X584/62)

Before: MR. JUSTICE J.G.A. HUTCHESON

Vancouver, October 15, 1962

Rodney Young for the Appellant
H.J. Sedgwick for the Respondent

Case Stated by Assessment Appeal Board

1. The appellant, Wallis Walter Lefeaux, is the owner of Lot 5, Block A, Block 3, West Half of District Lot 554, in the Municipality of West Vancouver.
2. The said lands are occupied by the appellant's residence and have been so occupied by him and his family for about 50 years.
3. The said lands are located in an area zoned by the municipality for apartment purposes, and a number of large apartment houses are situate nearby the appellant's land.
4. The original assessment on the lands was \$46,125. This was reduced upon recommendation by the Assessor at the Court of Revision to \$32,225. The 1961 assessment of these lands was \$9,840.
5. The appellant, being dissatisfied with the decision of the Court of Revision, appealed to the Board, which heard the appeal on Tuesday, March 6, 1962. After reserving its decision the Board dismissed the appeal for reasons which are filed herewith.
6. The respondent, in determining the actual value of the land, gave principal consideration to the price such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner for apartment-site purposes, and did not assess the land at its value for residential use.
7. In determining the value of the land for assessment purposes, the Assessor did remove the market value of the improvements as reflected in the assessment in order to determine the basic land value.

Wherefore, at the request of the appellant, the following questions are humbly submitted for the opinion of this Honourable Court:-

"1. Was the actual value of the lands under appeal determined in accordance with the provisions of section 37 of the *Assessment Equalization Act*, R.S.B.C. 1960. and amending Acts?

"2. Was the assessment determined in accordance with the intention of the Legislature and the principles of natural justice?

"3. Is the assessment contrary to the provisions of section 46 (1) (a) of the *Assessment Equalization Act*, R.S.B.C. 1960, and amending Acts?"

Reasons for Judgment

This is an appeal by way of stated case from the decision dated April 30, 1962, of the Assessment Appeal Board appointed under the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, whereby the Board dismissed the appeal of Wallis Walter Lefeaux from the assessment of Lot 5 of Block A, Block 3, West Half of District Lot 554, in the Municipality of West Vancouver.

The stated case reads as follows:-

This case stated by the Assessment Appeal Board aforesaid humbly sheweth that the above-mentioned appeal was heard at the Municipal Hall, in the Municipality of West Vancouver, in the Province of British Columbia, on the 6th day of March, 1962, in the presence of Mr. Rodney Young. of counsel for the appellant, and Mr. H.J. Sedgwick, of counsel for the respondent.

The facts are as follows:-

- (1) The appellant, Wallis Walter Lefeaux, is the owner of Lot 5, Block A, Block 3, West Half of District Lot 554, in the Municipality of West Vancouver.
- (2) The said lands are occupied by the appellant's residence and have been so occupied by him and his family for about 50 years.
- (3) The said lands are located in an area zoned by the municipality for apartment purposes, and a number of large apartment houses are situate nearby the appellant's land.
- (4) The original assessment on the lands was \$46,125. This was reduced upon recommendation by the Assessor at the Court of Revision to \$32,225. The 1961 assessment of these lands was \$9,840.
- (5) The appellant, being dissatisfied with the decision of the Court of Revision, appealed to the Board, which heard the appeal on Tuesday, March 6, 1962. After reserving its decision the Board dismissed the appeal for reasons which are filed herewith.
- (6) The respondent, in determining the actual value of the land, gave principal consideration to the price such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner for apartment-site purposes, and did not assess the land at its value for residential use.
- (7) In determining the value of the land for assessment purposes, the Assessor did remove the market value of the improvements as reflected in the assessment in order to determine the basic land value.

Wherefore at the request of the appellant the following questions are humbly submitted for the opinion of this Honourable Court:

"1. Was the actual value of the lands under appeal determined in accordance with the provisions of section 37 of the *Assessment Equalization Act*, R.S.B.C. 1960, and amending Acts?

"2. Was the assessment determined in accordance with the intention of the Legislature and the principles of natural justice?

"3. Is the assessment contrary to the provisions of section 46 (1) (a) of the *Assessment Equalization Act*, R.S.B.C. 1960, and amending Acts?"

Dated at Vancouver, B.C., this 9th day of July, 1962.

Upon the hearing, counsel for the appellant did not press for an answer to the third question and abandoned it.

At the opening of the hearing before me, counsel for the respondent took the preliminary objection that the questions asked were too general and in effect merely ask for a review of the taxation. I reserved decision upon the preliminary objection and heard argument upon the appeal. In view of the decision I have come to, I do not find it necessary to decide the preliminary objection.

The opinion of the Court can be sought by way of stated case only upon a question of law. See section 51 (1) of the *Assessment Equalization Act*.

It is provided by section 37 (1) of the Act:

The Assessor shall determine the actual value of land and improvements. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on. the land and improvements so used shall be valued as the property of a going concern.

It is noted that the Assessor "shall determine the *actual value* of land and improvements." It was held in *Sun Life Assurance Co. of Canada v. The City of Montreal* (1950) S.C.R. 220 and I quote from the headnote:-

That the *actual value* which the assessors must find pursuant to the city charter is the exchangeable value or what the building will command in terms of money in the open market, tested by what a prudent purchaser would be willing to give for it.

I refer to the judgment of Rinfret, C.J., at page 229, of Taschereau at pages 240 and 241, and of Rand, J., at page 246. The effect of these judgments is, I think, accurately summarized in the headnote. See also the judgment of the Court of Appeal in this Province in *Bishop of Victoria v. City of Victoria* (1933) 4 D.L.R. 524.

In *Vancouver v. Township of Richmond* 17 D.L.R. 548 it was stated by Sheppard, J.A., delivering the judgment of the Court of Appeal of this Province at page 551:-

It is to be observed that s. 37 (1) in designating the items which may be considered uses language that is permissive and not mandatory, and it is therefore open to the assessor

or others concerned in fixing the value to consider one or all of those designated items, but it is not obligatory to do so.

As set out in paragraph 6 of the stated case, the Assessor, "in determining the actual value of the land, gave principal consideration to the price such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner for apartment-site purposes." This is one of the items which under section 37 (1) the Assessor may consider in determining the actual value. His decision to do so is not open to review as a question of law.

The lands as mentioned in paragraph 3 of the stated case "are located in an area zoned by the municipality for apartment purposes, and a number of large apartment houses are situate nearby the appellant's land."

The Assessor gave evidence before the Board as to how he arrived at his assessment of \$32,225, including evidence as to prices paid for property in the locality that he considered comparable. His evidence was in part as follows:-

MR. GARDNER: No, this assessment was made on the basis of its value considering the zoning, the size of the land and the highest and best use.

CHAIRMAN: Where did you get your value from?

MR. GARDNER: The value has been taken from the market as is applicable to the purchasing of property zoned as apartment use.

CHAIRMAN: Well, you have reference to sales of other apartment sites.

MR. GARDNER: Yes, I have reference to sales.

CHAIRMAN: What years were those from-'60 to what?

MR. GARDNER: '60 to '61.

I cannot find that the Assessor in making his assessment or the Board in confirming that assessment "misdirected themselves on the proper principles which should govern them in determining 'this actual value' or obviously reached their conclusion as to such value by adopting and following some wrong or improper principle." See *Dreifus v. Royds* 64 S.C.R. 346 as quoted by Sheppard, J.A., in *Vancouver v. Township of Richmond (supra)* at page 552.

The contention of the appellant is that the property is used by him as his residence and is valuable to him only as such and is not upon the market.

That actual value does not, for the purposes of municipal valuation, mean the value to the owner in its present use but rather its present proper and practical use. See *Sun Life Assurance Co. of Canada v. The City of Montreal (supra)* at page 240 and *Re Crown Zellerbach Canada Ltd.* 16 D.L.R. 144 at pages 151 and 152.

It was also submitted on behalf of the appellant that the property was being valued at its future potential value. In my opinion this contention is not sound. As I view the matter, the Assessor has come to a decision as to the best potential use of the property and valued it on the basis of the price that it can reasonably be expected a property having that potential would bring if offered for sale today. In other words, the present value of the future potential. I find no error in principle in so approaching the matter of assessment.

Doubtless the potential of the property and its resulting present value has been greatly enhanced by the area being zoned for apartment purposes. This may well have resulted in its becoming

economically unsound to continue its use as residential property. But this must often happen in growing communities where the residential property of yesterday has become the sought-after business or commercial property of today with the resulting increase in value and consequent burden of taxation.

The answer to Questions 1 and 2 is in the affirmative.