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**C.E. AND V. HOLDINGS LIMITED**

**v.**

**CITY OF VANCOUVER**

Supreme Court of British Columbia (No. 6709/74)

Before: MR. JUSTICE H.E. HUTCHEON

Vancouver, January 31, 1975

J.G. Morgard for the Appellant
R.G. Jackson for the Respondent

**Reasons for Judgment**

The Assessment Appeal Board upheld the Assessor in his decision that the tourist or auto court owned and operated by the taxpayer at 2440 Kingsway in the City of Vancouver was not within the meaning of the words "used for residential purposes". These are the words of Section 37A (1) which section was added to the *Assessment Equalization Act* (R.S.B.C. 1960, C. 18) in 1973 and provides among other things that unless certain circumstances are present the assessed value of land or improvements shall not be increased in any year by more than ten per centum.

A preliminary point was taken by Mr. Jackson that the question before me is a question of mixed fact and law and that under Section 51 (2) of the Act the Court is limited to questions of law.

In the case *Re Canadian Pacific Railway Co. and City of Vancouver* (1964) 47 D.L.R. (2d) 157, it was held that whether golf courses fall within the description "any industry, commercial undertaking, public utility enterprise, or other operation" is a question of fact or at most of mixed law and fact but is not a question of law only.

The case of *Re Canadian Pacific Railway Co.* must be considered, however, in the light of the decision of the Supreme Court of Canada in *Bell* v. *Ontario Human Rights Commission* (1971) S.C.R. 756.

In the *Bell* case the question was whether a certain part of a building fell within the meaning of the phrase "self-contained dwelling unit". If it did, the board of enquiry had jurisdiction to determine whether or not there had been discrimination; if it did not, the board of enquiry had no power to deal with the alleged discrimination. The Ontario Court of Appeal had concluded that the proceedings for prohibition were premature because the decision on whether the flat was a self-contained dwelling unit depended on factual as well as constructional considerations.

In the Supreme Court of Canada the appeal was allowed by the majority on the basis that the case raised a question of law as to the meaning of the phrase "self-contained dwelling unit". As to the facts, Martland, J. said this at p. 774:

> "The facts involved in relation to whether or not the appellant's premises available for rent were within that phrase relate only to the structure of a building and do not involve choosing between the conflicting testimony of witnesses."

In the *Bell* case, if the premises were not within the phrase, then the board of enquiry had no jurisdiction to proceed. In the present case, if the tourist court is within the expression "used for residential purposes", then the Assessor is prohibited from setting the assessed value at an amount greater than ten per centum of the previous year. The facts relate only to the use of a tourist court and do not involve choosing between the conflicting testimony of witnesses. In my opinion, therefore, the question whether the tourist court is within the phrase "used for residential purposes" is a question of law.

In the stated case there appear these paragraphs:

> "3. The improvement on the lands consists of a number of small cottage-type detached units composed of 57 units with telephone and television and 36 housekeeping units which are completely furnished.
>
> The Appellant is licensed under City of Vancouver By-Law No. 4450, licence number 13,936 issued February 8, 1974. The said licence authorizes the Appellant to carry on business as a motel under the name '2400 Motel'.
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> 4. (not reproduced)
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> 5. The Assessment Appeal Board upheld the Assessment and the Board's reasons are filed herewith. The Board's reasons stated simply are as follows:
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> 'The Board when considering the evidence and testimony by the Appellant and Respondent is of the opinion that the Assessor acted correctly in classifying the Motel as a Commercial operation. The Board is not aware that a Motel anywhere in B.C. is classified as Residential, unless it is converted into apartment use. The Board is cognizant that the *Assessment Equalization Act* does not define "used for residential purposes"; however based on directives from the Assessment Commission in 1973, Motels are not included in used for Residential purposes. The Board does hereby dismiss the appeal of C.E. & V. Holdings Ltd.'
>
> 6. (not reproduced)

Wherefore the following question is humbly submitted to this Court for opinion.

> 1. Did the Board err in finding that the land or improvements of the Appellant were not used for residential purposes within the context of Section 37 A of the *Assessment Equalization Act*."

In Zoning and Development By-law No. 3575 of the City of Vancouver a tourist court is defined as follows:

> "'Tourist Court' shall mean a group of detached buildings comprising not less than 10 sleeping units or dwelling units or a combination of both occupied or equipped to be occupied as the temporary abode for tourists or transients:

The premises in question are described in the material both as a tourist court and an auto court but there is no dispute that they are of the nature of the description in By-law No. 3575, namely, a "temporary abode for tourists or transients". The tourist court, in other words, is no different from a hotel and the question then is whether a hotel which is intended to accommodate travellers is a place "used for residential purposes".

In my opinion it is not. The adjective "residential" conveys the sense of dwellings occupied, by one or more persons, for a period of some time. They are places occupied by residents and a resident, by definition, is not migratory. The dictionary sense of the word "resident" is one who abides in a place and that sense is contrary to the use made by its transient population of the property in question.

The answer to the question which I have been asked is that the Board did not err in finding that the land or improvements of the Appellant were not used for residential purposes within the context of Section 37A of the *Assessment Equalization Act*.

The legislation in question lacked any guidance to the meaning of "residential purposes" and the appellant was encouraged by this omission to obtain an opinion. There will be no costs of the application.