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VILLAGE RENTALS LIMITED

v.

CORPORATION OF THE DISTRICT OF SURREY

Supreme Court of British Columbia (NO. 1752/75)

Before: MR. JUSTICE S.M. TOY

Vancouver, December 5, 1975

T.G. Pearce for the Appellant
P.W. Klassen for the Respondent

Reasons for Judgment

This is an appeal by way of stated case pursuant to the provisions of the *Assessment Act*, Statutes of British Columbia 1974, c.6 as amended by Statutes of British Columbia 1974, c.105. The amending statute obviously was intended to "freeze" assessed values for subsequent years to the 1974 levels.

The stated case disclosed that the improvements forming the subject matter of this appeal were a new one-storey building completed in July of 1973. The assessed value for that year, namely 1973, was $24,060.00. For the following year, 1974, the assessed value was $28,910.00, and for 1975 the improvements were assessed at $62,930.00.

The main reason given by the assessor to the Assessment Appeal Board for the substantial increase from $28,910.00 to $62,930.00 was that, when the building was first assessed in 1973, he had miscalculated the area of the building at 3,500 square feet whereas the building, in fact, had an area of 7,000 square feet.
The appellant's position is that that portion of the 1975 assessment which has been added over and above $28,910.00 is not "new construction or new development" within section 24 (6) (b) (ii) of the *Assessment Act*, as amended.

For purposes of this appeal, I need quote only a portion of the amending statute which I do, namely, section 24 (6) (a) and (b):

> "(6) Notwithstanding subsection (1) or anything to the contrary in this Act,
>
> (a) except as provided in paragraphs (b), (c), and (d) and sections 25 and 27, land and improvements shall be assessed at the same value and on the same basis at which the land and improvements were assessed for the calendar year 1974;
>
> (b) where a change in the value of land and improvements occurs by reason of
>
> (i) a charge in the physical characteristics of the land or improvements, or both; or

(ii) new construction or new development thereto, thereon, or therein; or

(iii) a change in the zoning or reclassification of land and improvements.

that is not included in the assessment roll for the calendar year 1974, and land and improvements shall be assessed at the same value and on the same basis as if those changes in value had occurred and had been taken into account in the preparation of the assessment roll for the calendar year 1974. . ."

Counsel have referred me to a recent judgment of my brother Meredith J. dated the 17th of July 1975, *In the Matter of an Assessment Appeal by Bernhardt Bros. Holdings Ltd;*, Action No. 86/75, which was heard at New Westminster, B.C. and which decision, I believe, is as yet unreported.

In that case assessments made by the assessor for 1973 and 1974 failed to include any valuation for elevators and some of the suites in a large commercial building, although in fact prior to the assessment for the 1974 year those improvements had been completed. The 1974 assessment admittedly had been erroneously made by the assessor. Although the suites and elevators not included in the 1973 and 1974 assessments were completed before 1974, Mr. Justice Meredith held that they were "new" within the meaning of section 24 (6) (b) (ii) quoted above, and with that conclusion I am in substantial agreement.

The first question posed by the Board on this appeal is as follows:

"(a) Was the Board correct in law in holding that the alleged error in square footage could under the *Assessment Act*, 1974 be assessed and included in the 1975 Assessment as 'new construction or new development'."

In answering the question as I propose to do, I adopt with approval what was said by Mr. Justice Meredith at p. 4 of his reasons for judgment in the *Bernhardt Bros. Holdings Ltd.* case, where he said:

". . . Mr. Pearce contends that 'new construction' and 'new development' mean construction and development which have taken place since the roll for 1974 was prepared and that the subsection does not permit rectification of the apparent omission of the Assessor. I would be inclined to agree, even though the result would be that the taxpayer would enjoy fortuitous discrimination from its neighbours, if it were not that the words '. . . that is not included in the assessment roll for the calendar year 1974 . . .' appear. If 'new' were confined to events taking place after the preparation of the 1974 assessment roll, there would be no need to add the words quoted because the new construction or development could not have been included in the 1974 roll. In any event, I would think that had the legislature intended the interpretation for which Mr. Pearce contends, the section would have in appropriate language confined the changes to those occurring after the preparation of the 1974 roll."

It is my view that there is no real distinction between an error made by the assessor failing to assess existing elevators and suites that in fact existed in a completed state and omission to assess half the area of a building that in fact was in existence in a completed state. Accordingly, I would answer the question in the affirmative.

The second question posed by the Board is in the following words:

"(b) Was the Board correct at law in holding that under the *Assessment Act* a <u>totally</u> new Assessment could be made of the improvement in question including the square footage already assessed and the alleged square footage not included." (underlining mine)

The appellant before me conceded that of the $62,930.00 assessment for the 1975 year $3,002.00 were correctly attributable to "new construction," i.e. construction completed after the 1974 assessment.

The stated case in para. 7 reads as follows:

> "7.-The Assessor gave evidence that the Assessment of $62,930.00 for the year 1975 was a completely new assessment of the improvements based on the increased square footage from Three Thousand Five Hundred to Seven Thousand Square Feet and including new construction in the sum of $3,002.00." (underlining mine)

In my view, the assessor is not authorized to make a *completely* or a *totally* new assessment of the improvement. He is, for the year in question, confined to his 1974 assessment plus an assessment of the value of that which he failed or omitted to assess during 1974, namely, the omitted 3,500 square feet of the 7,000 square foot improvement. Had the 1975 assessment been based on a "change in the physical characteristics of the improvements "pursuant to section 24 (6) (b) (i), or to a change in the "zoning or land classification," pursuant to section 24 (6) (b) (iii), my answer to this question may have been different. There is, however, nothing in the stated case from which I can conclude that either the assessor, or the Assessment Appeal Board for that matter, acted on the assumption or made a finding that the change was due to anything other than new construction or new development, pursuant to section 24 (6) (b) (ii).

Accordingly, I answer question (b) in the negative. The matter should be remitted to the Assessment Appeal Board, and they should direct the assessor to make any necessary amendment to the assessment roll if the aggregate of the 1974 assessment, plus the assessment for the omitted 3,500 square feet, plus the agreed sum of $3,002.00 differs from the "totally new assessment" in the amount of $62,930.00 that was made for the 1975 assessment.

The third and final question is in the following words:

> "(c) Did the Board err in law in holding that the alleged error in square footage could be included in the 1975 Assessment as 'new construction or new development' under the *Assessment Act*, 1975."

This question, if it refers to the two statutes passed in 1974, I believe has already been answered. If I am in error in this respect, this question should be sent back to the Board for clarification and amendment.

Looking at matters in as favourable light as I can for the appellant, the success being divided, I will make no order for costs in favour of either party.