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NORDILE HOLDINGS LTD.

v.

COURTENAY-COMOX ASSESSMENT DISTRICT

Supreme Court of British Columbia (A761102)

Before: MR. JUSTICE H.P. LEGG

Vancouver, October 22, 1976

G.S. Levey for the Appellant
P. Klassen for the Respondent

Reasons for Judgment

This is an appeal to this Court from the decision of the Assessment Appeal Board dated June 3, 1975, by Nordile Holdings Ltd. (Nordile) against the 1975 assessment made by the assessor for the Courtenay-Comox Assessment District.

The appeal is brought by Nordile pursuant to s. 67(1) of the *Assessment Act*.

The parties to the appeal filed before me an agreed statement of facts which they agreed were in addition to the facts set forth in an amended notice of appeal dated September 8,1976.

The facts found in the agreed statement of facts and amended notice of appeal are as follows:

> (1) The appellant Nordile is the owner of certain residential apartment property consisting of six blocks, each containing a separate apartment building. The complex contains 42 residential suites. The property is situated in Port Alice.
>
> (2) The respondent assessor assessed each of the blocks of land and improvements at a value of $3,300.00 for the land and $33,075.00 for the improvements for the assessment year 1975. The appellant appealed this assessment to the Court of Revision which reduced this 1975 assessed value of improvements on each block to $25,000.00.
>
> (3) The 1975 decision of the Court of Revision was appealed to the Assessment Appeal Board which heard the appeal on June 21, 1975, and by a decision dated August 12, 1975, confirmed the decision of the Court of Revision.
>
> (4) That decision of the Assessment Appeal Board was appealed to this Court, pursuant to the provisions of s. 67 of the *Assessment Act* and on the hearing of that appeal on the 28th day of November, 1975, Mr. Justice Mackoff of this Court ordered that the decision of the Assessment Appeal Board be set aside on an error in law and that the Assessment Appeal Board rehear the appeal of the appellant from the decision of the Court of Revision dated February 24, 1975.

(5) The appeal of the appellant was reheard by the Assessment Appeal Board on April 15, 1976, in accordance with the order of Mr. Justice Mackoff. The Assessment Appeal Board held that the assessments of the land and improvements, the subject of this appeal, for 1975, should be fixed at the amounts at which they appeared in the 1975 assessment roll, before this was amended by the 1975 Court of Revision.

(6) The lands and premises are used by the appellant for the business of providing residential rental accommodation for valuable consideration. These premises are the only rental apartment developments in Port Alice.

(7) These premises are governed by the *Landlord and Tenant Act*, being S.B.C. 1974, Chapter 45.

(8) The lands and premises were affected by mud slides in the month of October, 1973, and in the month of November, 1975, when certain premises in the village of Port Alice suffered considerable damage as a result of such slides. These slides did not encroach on the lands and premises of the appellant, however.

(9) The assessed value of the lands and improvements for 1974 was the same as the assessed value for 1975; the calculation of the assessment for both these years was made on the same basis.

The grounds for appeal (other than grounds which were abandoned by the appellant during the course of the hearing before me) are as follows:

(1) The Assessment Appeal Board erred in law in finding that the 1975 assessment of the subject properties was frozen at the 1974 assessed values by virtue of s. 24(6) of the *Assessment Act*.

(2) The Assessment Appeal Board erred in law in holding that s. 24(6) (b) (iii) of the *Assessment Act* did not apply to the appellant and its properties.

(3) The Assessment Appeal Board erred in law in finding that the 1976 Court of Revision erred in law by reducing the subject assessments notwithstanding s. 24(6)(a) of the *Assessment Act*.

(4) The Assessment Appeal Board erred in law in failing to consider the effect of the *Landlord and Tenant Act*, S.B.C. 1974, Chapter 45, as amended, as affecting the "actual value" of the appellant's property.

(5) The Assessment Appeal Board erred in using the "cost approach" to assess the appellant property and erred in ignoring the "economic approach", considering the circumstances of the property and the statute law affecting it.

(6) The Assessment Appeal Board erred in law in finding that there was not sufficient evidence adduced to indicate that the assessor should have changed the basis and/or the assessment for any of the reasons set forth in s. 24 (6) (b) (i), (ii) or (iii) of the *Assessment Act*.

Dealing with each of these grounds in turn I find as follows:

Ground (1)

I do not find this to be an error of law of the Assessment Appeal Board. On the material before me the Board found that there was not sufficient evidence adduced to indicate that the assessor should have changed the basis for the assessment for any of the reasons set forth in s.24 (6) (b)

(i), (ii) or (iii) of the *Assessment Act*. The Board thus found facts on the evidence before it which entitled it to find that the 1975 assessment was frozen at the 1974 assessed values. In reaching this conclusion the Board correctly applied the decision of the Court of Appeal on an appeal by Village Rentals Ltd. against the 1975 assessment of the improvements made by the assessor for the Corporation of the District of Surrey, pronounced by McFarlane, J.A. on May 25,1976, (C.A. 760009, unreported).

Ground (2)

The second ground of appeal or question of law was urged before me very forcefully by counsel for the appellant who submitted that enactment of the *Landlord and Tenant Act* in 1974 amounted to a reclassification of the appellant's lands and improvements within the meaning of s. 24 (6) (b) (iii) of the *Assessment Act*. Counsel argued that by reason of this enactment a change of value of the appellant's property had occurred which required the assessor to change the assessment in 1975 from the 1974 level.

The difficulty which faces the appellant in taking this position is that there are no facts found by the Board and no facts in the agreed statement of facts or amended notice of appeal which afford the appellant a factual basis upon which to argue that the enactment of the *Landlord and Tenant Act* produced a change in the value of the appellant's land and improvements by reason of its enactment. Even if this was so, the appellant is faced with the further difficulty of establishing that the enactment of the *Landlord and Tenant Act* is a "reclassification of land and improvements" within the meaning of s. 24 (6) (b) (iii). In support of this branch of his argument, counsel for the appellant pointed to the provisions of Part IV of the *Landlord and Tenant Act* in support of his contention that sections 24 to 29G inclusive of that Act amounted to a reclassification of the appellant's lands and premises. I have given careful consideration to those sections of the *Landlord and Tenant Act* and cannot accept counsel's submission.

It appears to me that those sections deal with the control of rental rates and their increases and not with classification or reclassification of real property, owned by the appellant in this case. Therefore, on the facts that are before me on this appeal, I find that the Assessment Appeal Board did not err in law in holding that s. 24 (6) (b) (iii) did not apply to the appellant and its properties.

Ground (3)

During the course of his argument, counsel for the appellant made clear that this ground was ancillary to Ground 2. In view of my disposition of Ground 2 on this appeal, I find that the Assessment Appeal Board did not err in law in the manner alleged on this ground.

Ground (4)

This ground is similar to Ground 2. In the material before me there is no finding that the Assessment Appeal Board considered that the application of the *Landlord and Tenant Act* as amended in 1974 increased or decreased the value of the appellant's property. To the extent that this is a question of law, I find that I am speculating on whether in fact the Board did err in the manner alleged on this ground. I accordingly determine that there is no error in law of the Assessment Appeal Board in the manner put forward on this ground.

Ground (5)

It is .argued that the Assessment Appeal Board erred in using the "cost approach" to assess the appellant's property and erred in ignoring the "economic approach", considering the circumstances of the property and the statute law affecting it.

After giving careful consideration to counsel's argument and examining the material before me, I am convinced that this question is a question of the method of the assessment and is not a question of law. (See *Vancouver* v. *Township of Richmond* (1959), 17 D.L.R. (2d) 548, per Sheppard, J.A. at page 551, following *R.* v. *Penticton Sawmills Ltd.* (1954), 11 W.W.R. (N.S.) 351.)

Ground (6)

The final ground alleges that the Assessment Appeal Board erred in law in finding that there was not sufficient evidence adduced to indicate that the assessor should have changed the basis and/or the assessment for any of the reasons set forth in s. 24 (6) (b) (i), (ii) or (iii) of the *Assessment Act*. Clearly the question of the sufficiency of evidence is not a question of law and counsel for the appellant did not urge that this was the case. He relied, however, upon the decision in *Regina* v. *Soholoski*, [1974] 14 C.C.C. (2d) 517, and submitted that the Assessment Appeal Board had framed its reasons for judgment as a finding of fact when in reality the reasons indicated an error of law. He referred particularly to the reasons for judgment of the Assessment Appeal Board when it stated, ". . . Furthermore there was not sufficient evidence adduced to indicate that the Assessor should have changed the basis and/or the assessment for any of the reasons set forth in Section 24(6) (b) (i), (ii) or (iii)." I cannot accept this submission of counsel and accordingly hold that the ground put forward here is not a question of law. See *Vorsteher* v. *Kamloops Assessment District*, Vol. 2, British Columbia Stated Cases, case 72, page 353-354, per Verchere, J., Vancouver, May 18, 1971.

For all of the foregoing reasons, I dismiss the appeal with costs of the appeal payable by the appellant to the respondent.

I indicated to counsel at the conclusion of the hearing that I dismissed the appeal in order to comply with the time limited to me by the Order-in-Council which requires me to decide the appeal by October 31, 1976. I indicated at that time, however, that I would provide written reasons as promptly as possible.