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## ASSESSMENT COMMISSIONER

v.

## JAMES R. HOUSTON

British Columbia Court of Appeal

Before: MR. JUSTICE J.K. TAGGART, MR. JUSTICE E.E. HINKSON, and MR. JUSTICE J.D. LAMBERT

April 29, 1980

R.B. Hutchison and J.K. Greenwood for the Appellant, the British Columbia Assessment Authority.  
B.I. Cohen for the Respondent, James R. Houston.

### Reasons for Judgment of Mr. Justice J. D. Lambert (Oral)

April 29, 1980

TAGGART, J.A.: I will ask my brother Lambert, to give the first judgment.

LAMBERT, J.A. (Oral): This is an appeal from the decision of Mr. Justice Fulton of the Supreme Court of British Columbia, on a Stated Case under section 67 of the *Assessment Act*.

The appeal raises an issue with respect to the assessment of strata lots in a single building, though in this case there are 3 single buildings. It also raises an issue with respect to the powers of the Assessment Appeal Board to direct a change in an assessment. The facts appear in the amended Stated Case. With some deletions largely relating to exhibits, they appear in this form in the Judgment of the Trial Judge:

"1. The respondent, James R. Houston, was the owner of 5.25 acres of zoned RM-2 in College Park, Port Moody, improved with a 150-suite frame garden apartment construction in 1970. The property is known municipally as 200-02-04 Westhill Place, Port Moody, British Columbia, and is legally described as Strata Lots 1-150 of District Lot 268, Group 1, New Westminster District, Strata Plan N.W. 185, together with unit entitlement in the common property of the strata plan, which land and improvements are hereinafter referred to as the 'property'.

2. For the year 1978, the Assessor determined the actual value of the lots of the subject property. . . and arrived at a total actual value for the 150 strata lots of \$4,719,000. An individual assessment notice showing the actual and assessed value of each individual lot was issued. . . .

3. The respondent appealed the Assessor's determination of actual value and assessed value to the Court of Revision which appeal was denied, and the Assessor's determination of actual and assessed values was sustained.

4. The respondent then appealed from the decision of the Court of Revision to the Assessment Appeal Board which appeal was heard at the City of Port Moody on the 23rd and 30th days of November, 1978.

5. The Assessment Appeal Board allowed the appeal of the Respondent and reduced the actual value of the property to \$2,700,000 for the reasons set out in their decision.

6. The property was first built as an apartment building. In order to finance the construction of the apartment building, the respondent obtained a low interest mortgage under the then provisions of section 16 of the *National Housing Act*. As the result of obtaining such mortgage, the Respondent entered into an agreement with the Central Mortgage and Housing Corporation, which agreement was an exhibit before the Board,  
. . .

7. The respondent entered into a form of mortgage, in favour of the Central Mortgage and Housing Corporation, which mortgage was an exhibit before the board, . . .

8. The property was stratified under the *Strata Titles Act*, chapter 46, S.B.C., 1966, in December of 1973. None of the strata titles has been sold as individual properties and up to the hearing of the appeal the property was being rented as apartments to tenants. No strata council has been elected for the strata corporation nor has a prospectus been issued as is required by the *Real Estate Act*, chapter 230, R.S.B.C. 1960.

9. In 1970 the City of Port Moody approved the construction of an apartment complex on the lands of the subject project and did in fact amend its zoning by-law accordingly, a copy of such zoning by-law, which was placed in evidence before the Board is annexed hereto and marked as "E". In 1973 the City of Port Moody approved the strata plan for the subject property, subject to the respondent entering into an agreement with the City of Port Moody. . . which agreement was put in evidence before the Board.

10. The Assessor arrived at the actual value of each individual strata lot by the market approach. To determine the value of each strata lot he obtained the sale price of strata lots in 5 complexes. Such sales being completed for the years 1976 and 1977. Having compiled this sales data he then determined a market price for each individual strata lot in the subject property.

11. The respondent presented evidence valuing the property both on the income approach and on the market approach. The respondent's appraiser arrived at a value of \$2,440,000 on the income approach as a rental project. The respondent's appraiser arrived at a value of \$2,700,000 on the market approach.

12. In determining the value of the property on the market approach the Respondent arrived at an initial market value similar to, though less than, that arrived at by the Assessor. However, in arriving at the value of \$2,700,000 the respondent's appraiser deducted from the initial market value of each individual unit the following marketing costs:

- (a) deferred maintenance;
- (b) capital improvements;
- (c) rental loss;
- (d) advertising;
- (e) municipal taxes during construction;
- (f) interim financing;
- (g) sales commissions;

(h) development profit.

. . . The appraisal was in evidence before the Board. The respondent's appraiser used many of the comparable properties used by the Assessor.

13. On October 3, 1978, the respondent, by bona fide sale, sold the property as an apartment, subject to the agreement and mortgage referred to in paragraphs 6 and 7 respectively, for \$2,700,000. The Board concluded that the evidence of an arm's length sale had 'an over-powering influence upon the Board' and the Board concluded from the evidence that the actual value of the property was \$2,700,000. The sale was not a sale of individual strata lots, but rather was a sale of all 150 strata lots.

14. After the Board found the actual value of the strata plan, being the entire complex, it left the apportionment of the overall value to each individual strata lot to the Assessor.

15. The Assessor testified as to the actual and assessed value of the strata lots in the strata title complexes which he had used as comparables, which actual and assessed values were put in evidence at the hearing, . . . four of the properties, namely comparables 2 to 5, are located in the City of Port Moody.

16. The properties referred to in paragraph 15 are stratified properties and are approximately comparable in their physical characteristics, but differ from the respondent's property in that the individual lots have been sold to individual owners and in fact the complexes are being operated by strata councils pursuant to the *Strata Titles Act*.

17. The decision of the Board has resulted in the individual strata lots of the subject property being assessed at substantially less than the individual strata lots of the comparable properties."

The Stated Case sets out 8 questions. Those questions cannot be understood without reference to the decision of the Board. That decision reads as follows:

"The appeal is against the decision of the 1978 Court of Revision.

The land consists of 5.25 acres zoned RM-2 in College Park, improved with a 150-suite frame garden apartment constructed in 1970, conforming with the requirements of a limited dividend low rental housing scheme financed by Central Mortgage and Housing Corporation. In 1973 the appellant strata titled the property designated Strata Plan N.W. 185. The property has continued to be operated as rental apartments. No units were sold. The 1978 actual value placed on the 150 strata units totals \$4,719,000. On October 3, 1978, the owner sold the property for \$2,700,000.

The appellant submitted Exhibit No. 2, being an appraisal by Mr. Burgess, wherein the property is valued as a strata at \$2,700,000 and as a rental project at \$2,440,000. The valuations were based upon the comparative and income methods respectively. A.G. Akester, an employee of the appellant, stated that the property was listed on the market for three months at \$2,995,000. Further, several tentative offers were discussed. The property sold for \$2,700,000 including appliances. The 'Vendor Appellant' was solvent, knowledgeable and experienced in matters of real estate at the time of sale. There is evidence that there was no significant change in the market between December 31, 1977 and October 3, 1978.

The respondent appraiser produced a brief marked Exhibit No. 5, wherein this property is compared, by the market data method to individual strata units selling in Port Moody and

Coquitlam. The appraiser attempted to demonstrate the similarity of subject to the comparables.

The Board has carefully considered and weighed all the evidence including legal arguments stated by counsel to have a bearing on the matter.

A bona fide sale has occurred between prudent, solvent, knowledgeable people. Why would the appellant sell for \$2,700,000 if he thought there was a possibility of selling for \$4,719,000. The evidence was that the appellant was in business to make a profit. The arm's length sale has an overpowering influence upon the Board, which considers this transaction to be the best evidence of actual value.

The Board orders that the total actual value of Strata Plan N.W. 185 be reduced from \$4,719,000 to \$2,700,000 and leaves the apportionment of values to the Assessor."

I now set out the eight questions, they are lettered from "a" to "h" inclusive.

- "(a) Did the Assessment Appeal Board err in law in primarily basing its finding of 'actual value' of the property for the year 1978 on the price the property sold for, as a strata lot complex, some months after the assessment roll closed for the year 1978?
- (b) Did the Assessment Appeal Board err in law in altering the 'actual value' and therefore the assessed value, of the property for the year 1978, when such alteration of actual value is based primarily on the sale referred to in paragraph (a), even though the assessed value thus determined might not bear a fair and just relation to the assessment of other like properties in the municipality?
- (c) Did the Assessment Appeal Board err in law in holding that the sale price referred to in paragraph (a) was the best test of 'actual value' within the meaning of the term 'actual value' in section 24 (1) of the *Assessment Act*?
- (d) Did the Assessment Appeal Board err in law in valuing the strata lot complex as one property rather than valuing each of the 150 strata lots, being 150 'parcels' of land, which make up the strata complex?
- (e) Did the Assessment Appeal Board err in law in accepting the sale referred to in paragraph (a), being a sale of the entire strata lot complex, as being the best evidence of actual value of each of the 150 strata lots which make up the strata complex?
- (f) In determining the actual value and therefore the assessed value of the strata lots in the manner in which it did, did the Assessment Appeal Board err in law in that it determined the actual value of the subject strata lots on the basis of value to the owner?
- (g) Did the Assessment Appeal Board err in law in failing to accept the evidence of the market value of similar individual strata lots as being the best evidence of the value of the individual strata lots of Strata Plan N.W. 185, the subject-matter of the appeal?
- (h) Did the Assessment Appeal Board err in law in failing to determine and find the 'actual value' and therefore the assessed value of each of the 150 strata lots as is required by the *Assessment Act* and section 33 of the *Strata Titles Act*."

Mr. Justice Fulton found the questions to be to some extent overlapping and in some cases he considered that they were not limited as the Act requires on questions of law. After considering the questions of law raised by the eight questions, Mr. Justice Fulton answered all the questions, "No". The questions specifically argued on this appeal can be stated in this way: First, was there an error in law in the method of valuation adopted by the Board, including the statement of a

single value for the whole building? Second, was there an error in law in the Board's treatment of the C.M.H.C. mortgage and the agreement between the owner and the City of Port Moody? Third, was there an error in law consisting of an unauthorized delegation in the order of the Board at the conclusion of its reasons where it left the apportionment of values to the Assessor? Those three questions are stated as questions of law, though it is somewhat tautological to say so in view of the manner in which they are expressed.

I am satisfied, however, that the three specific questions that were raised and argued here were raised in one way or another by questions (c), (d), (e), (f), (g), and (h) of the Stated Case, which are to some extent repetitive. Counsel for the appellant agreed that if the six questions contained statements of fact required in order to pose the question of law, then those statements of fact will not override the facts in the Stated Case itself, or in the decision of the Board. The questions lettered (a) and (b) in the Stated Case were not argued before us, and I would regard the appeal with respect to those two questions as abandoned.

Much of the argument on the first question turned on the interpretation of section 5 of the *Assessment Act*. That section reads:

"Where a building or other improvement extends over more than one parcel of land, those parcels, if contiguous, may be treated by the Assessor as one parcel and assessed accordingly."

Does that section apply to the strata lots? Does its application depend on whether there is only one owner of each parcel? Is its application entirely in the discretion of the Assessor? Must its discretion be exercised in accordance with legal principles? If so, what principles? Must the principles be consistently applied? Is section 5 in conflict with section 33 of the *Strata Titles Act*, which reads as follows:

"For the purposes of assessment and taxation, each strata lot, together with the share of the owner thereof in the common property, common facilities, and other taxable assets, shall be deemed to be a separate parcel of land and improvements."?

If so, is it appropriate to resolve that conflict by reference to section 72 of the *Assessment Act*, which reads as follows:

"Where there is a conflict between this Act and any other Act, the provisions of this Act prevail over the other Acts."?

These questions were all discussed in argument.

In my opinion, on this Stated Case and having regard to the decision of the Board, it is unnecessary to decide those questions. I therefore do not propose to do so. Those questions must await a decision of the Board and a Stated Case in which the answers to those questions are required.

I have referred to section 33 of the *Strata Titles Act*, which requires that each strata lot be treated as a separate parcel of land and improvements. The valuation must be made in accordance with section 24 (1) and (2) of the *Assessment Act*, which reads as follows:

"(1) The Assessor shall determine the actual value of land and improvements.

(2) In determining the actual value for the purposes of subsection (1), the Assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements

so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values."

The powers of the Board are set out in section 62 of the *Assessment Act*. Those include the power to determine whether land and improvements have been valued at too high an amount and the power to make an order accordingly. They also include all the powers of the Court of Revision. The powers of the Court of Revision are set out in section 37. They include in paragraph (c):

"To direct such amendments to be made in the assessment roll as may be necessary to give effect to its decision: . . ."

I refer now to the decision of the Board. It had evidence before it of an appraisal in which the strata lots were valued as individual units and then after making certain deductions reflecting the fact that these strata sales had not been completed a total value was reached. We do not know whether the Board accepted that all of the deductions were appropriate, but the appraisal arrived at a total value of \$2,700,000. It was significantly higher than the appraisal would have been if the building had been valued as a low rental apartment house. The building was sold in October, 1978, for \$2,700,000. The appraisal was made before the sale. The sale was bona fide and between prudent, solvent, knowledgeable people. It confirmed the appraisal. The Board said that that sale had an overpowering influence, but that does not mean that the Board forgot section 33 of the *Strata Titles Act*. The sale, after all, confirmed an appraisal based on a separate consideration of each individual lot. The order of the Board required the total value to be apportioned among the 150 lots. I have stated the first question argued was: was there an error in law in the method of valuation adopted by the Board, including the statement of the single value for the whole building? In my opinion, the answer is, "No".

The second question argued is: was there an error in law in the Board's treatment of the C.M.H.C. mortgage and the agreement between the owner and the City of Port Moody? There is nothing in the Stated Case or in the Board's decision to indicate that the C.M.H.C. mortgage or the City of Port Moody agreement had any influence at all on the Board's decision. In my opinion, the answer to the second question argued is, "No".

The third question argued is: was there an error in law consisting of an unauthorized delegation in the order of the Board at the conclusion of its reasons when it left the apportionment of values to the Assessor? The Assessor had arrived at a total value for the building and had apportioned it among each strata lot. The method of doing so was not attacked by the respondent, Mr. Houston, at the Court of Revision, or before the Assessment Appeal Board. In my opinion, the Board in leaving the apportionment of value to the Assessor, was not relinquishing its own jurisdiction, but was instead making a direction as to how the assessment roll should be amended to give effect to its decision. It had the power to do so. To the extent that it might be said that the point was in doubt from the words chosen by the Board to express its order, the presumption that what was done was done properly and in accordance with jurisdiction should apply. In my opinion, the answer to the third question argued, is "No".

I have answered the three questions argued. They are questions of law encompassed by, but not different from, sections (c) to (h) inclusive of the Stated Case. It is not necessary for me to relate those three questions specifically to the six questions in the Stated Case. The issues were presented differently to the trial judge and it is not necessary for me to consider the point made before him with respect to questions of fact, and questions of law.

I would dismiss the appeal.

TAGGART, J.A.: I agree.

HINKSON, J.A.: I agree.

TAGGART, J.A.: The appeal then is dismissed.