

# The following version is for informational purposes only

**KELFOR HOLDINGS LIMITED**

v.

**ASSESSMENT AREA OF PRINCE GEORGE (26)**

Supreme Court of British Columbia (A782415)

Before: MR. JUSTICE H.E. HUTCHEON

Vancouver, December 7, 1979

J.R. Lakes for the Appellant  
P.W. Klassen for the Respondent

## **Reasons for Judgment**

December 17, 1979

By way of a stated case, the taxpayer Kelfor Holdings Ltd. has challenged the decision of the Assessment Appeal Board on two points of law:

- "1. Was there valid evidence in law upon which the Board could find that the values on land and improvements as determined by the Court of Revision were correct?
2. Did the Board err by accepting the residual value referred to in Paragraph 6 as the land value?"

The property in question is a major shopping centre (Pine Centre Mall) in the City of Prince George. The assessor found the "actual value" of \$8,052,050 for land, \$14,848,000 for the buildings and \$959,000 for machinery for a total of \$23,859,050.

Kelfor Holdings appealed to the Court of Revision and, on the basis of the evidence before it, the Court of Revision reduced the assessment on the land to \$7,246,800 and confirmed the remainder of the assessment.

Kelfor Holdings appealed to the Assessment Appeal Board. The decision of that Board, after a review of the evidence placed before it, is to be found in the following paragraph:

"Upon the evidence the Board finds that the land and improvement values as approved by the Court of Revision are correct. The land value is confirmed at \$7,246,800; the improvement value is confirmed at \$14,848,000."

Mr. Lakes has submitted that to arrive at the figure of \$7,246,800 the Board must have used the evidence that was before the Court of Revision because the evidence of value of land before the Board was \$7,309,000 if the Board accepted the evidence, which it appears to have done, of the appraiser called by the Assessment Authority.

I agree with Mr. Klassen that such an approach to the decision of the Board is incorrect. The Board had before it an appeal by Kelfor Holdings which alleged that the value determined by the Court of Revision was too high. The answer that the Board gave to that issue was "no." It was not entitled to go beyond that point and determine that the actual value was higher than had been found by the Court of Revision. To do so would have been to decide an issue which was not the

subject matter of appeal namely, whether the value determined by the Court of Revision was too low.

Taylor, J. in a decision dated March 21, 1979 (*Trizec Equities Ltd.*, Vancouver Registry A790351) held that the Assessment Appeal Board would not be entitled to increase the assessment unless there had been a notice of appeal in which an increase was sought by the assessor.

Thus the work of the Assessment Appeal Board was at an end when it was satisfied that the values found by the Court of Revision were not too high. The word "correct" may not be the most apt one to express that conclusion but I take it to mean, in the context of the Stated Case and the decision of the Board, that the values found by the Court of Revision were correct in the sense that they were not too high.

The answer to question 1 is that there was valid evidence in law upon which the Board could find that the values on land and improvements as determined by the Court of Revision were correct.

Question 2: *"Did the Board err in accepting the residual value referred to in paragraph 6 as the land value?"*

Paragraph 6 reads as follows:

"6. Hugh Stanhope gave evidence and filed a Brief which is annexed as Schedule C. In Schedule C the income approach is used to calculate an effective gross income of \$2,316,986 which includes a sum of \$129,700 described as an estimated rental equivalent of tenants improvements from which the estimate of landlords expenses of \$208,529 is deducted to calculate the 'net income estimates' of \$2,108,457. This 'net income estimates' is then capitalized at 9 1/2 per cent to arrive at a figure of \$22,194,000 from which the improvements value of \$14,848,000 (which value was for the improvements including tenants improvements) is subtracted to establish a land residual value of \$7,346,000. Schedule C also establishes a value of \$14,848,000 for the building by an express reference to the cost approach using the Marshall & Swift Manual found on Page 10 of Schedule C. The land residual value is determined by subtracting the improvements value from the estimated market value set out on Page 15 of Schedule C."

The applicant could only succeed on this point if it could be shown that the income approach used by Mr. Stanhope resulted in a subjective value to this owner.

It was agreed by both experts who gave evidence that there were no sales of shopping centres of comparable size and quality upon which to base a value. Mr. Simpson, the expert called by Kelfor Holdings, used the original cost of land in 1973 factored up at 10 per cent per annum to arrive at a land value of \$3,800,000.

Mr. Lakes submitted that the approach by Mr. Simpson was the only valid approach because the residual value given to the land by subtracting the replacement value of the improvements from the estimated market value of the project on an income approach involved the opinions of Mr. Stanhope in estimating economic rents and operating expenses. As I understood him, Mr. Lakes said that the use of opinions in this way brought about a result which was a subjective value to this particular owner.

Since Mr. Stanhope used, not the actual rents or the actual operating expenses, but an estimate of economic rents and his estimate of proper operating expenses, I do not understand how it can be said that the resulting value is the subjective value to the particular owner. There may be an argument to be made if an appraiser had used, for example, actual operating expenses which, because of the particular efficiency of the owner were lower than normal. Then it could be said that the increase to the net income would be reflected in the residual value to land and thus produce a higher value to the land of that owner. But the opinions about economic rents and on

operating expenses no more lead to a subjective value to the owner than does the opinion that the proper rate to capitalize the yearly net income was 9 1/2 per cent.

The answer to the second question is that the Board did not err by accepting the residual value referred to in paragraph 6 of the amended stated case as the land value.

In the result question 1 is answered in the affirmative and question 2 in the negative.