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SIMPSONS-SEARS LIMITED

v.

ASSESSMENT AREA OF SURREY/WHITE ROCK

Supreme Court of British Columbia (A792827)

Before: MR. JUSTICE V.L. DRYER

Vancouver, May 5, 8, 1980

J.R. Lakes for the Appellant
J. Savage for the Respondent

Reasons for Judgment June 16, 1980

This is an appeal by way of stated case pursuant to section 67 of the *Assessment Act* of British Columbia. The stated case poses four questions. Question 1 reads as follows:

> "(1) Did the Assessment Appeal Board err in law by confirming the assessment on the appellant's land at a higher 'actual value' than the similar land adjoining the appellant's land?"

The Assessment Appeal Board confirmed an assessment of the appellant's land which was based solely on the assessment of two other pieces of land applied to similar uses in the municipality where department stores were operated by Eatons and Woodwards. In my view there has been no determination of actual value. Comparison of other assessments may be significant on appeal once actual value has been determined, but that is not the situation here. The judgment of the Court of Appeal in the *City of Vancouver* v. *The Corporation of the Township of Richmond* (B.C. Assessment Authority Stated Cases, Case 14, p. 13) contains the following statement at p. 57:

> "...It is not disputed that those adjoining lands, having been assessed 'at their actual value,' offer some evidence of the 'actual value' of the lands in question and therefore were properly considered under the section as 'other circumstances affecting the value'."

The judgment of Scrutton, L.J. in *Ladies Hosiery and Underwear, Limited* v. *West Middlesex Assessment Committee*, [1932] 2 K.B. 679, contains the following passage at p. 690:

> " . . . Where the evidence as to the proper valuation of the particular hereditament is doubtful, evidence as to the assessment of the other hereditament may be of some weight, though as it will involve another investigation whether the assessment of the other hereditament is correct and whether the two hereditaments are comparable, it is of much less value than the direct evidence as to the hereditament whose assessment is in question. "

Those conditions were not satisfied here. We have nothing to show that the Eatons' and Woodwards' properties were assessed at their actual value or even by what process of reasoning those assessments were reached. Were they based on the assessment of the subject property? Were they made by the same assessor?

The question as posed is directed rather at the fact that the assessment on two adjacent pieces of land was (incorrectly said the Board) placed at a lower figure. The appellant asks why the assessor did not assess the subject property at the same rate as he did the adjoining lands rather than at the same rate as two pieces of property two miles away. At one point the assessor's testimony shows that he perhaps assessed the subject property first (at the same rate per square foot as the Eatons' and Woodwards' properties) and then deducted something to get the rate per square foot for the adjoining properties. If that is what he did there would be some reason for ignoring the assessment of the adjacent properties, but it is not completely clear that he did follow that course.

In any event, there having been no determination of actual value of the land comprised in the subject property or of the adjoining lands, the assessment of the land should not be allowed to stand and question 1 is, in that sense, answered "Yes".

Question 2 reads as follows:

> "(2) Did the Assessment Appeal Board err in law by disregarding the evidence of economic and functional obsolescence as a valid factor in determining the 'actual value' of the appellant's improvements?"

We are now concerned only with economic obsolescence. My reading of the two appraisers' reports filed at the hearing and the evidence given at the hearing convinces me that economic obsolescence was a major issue. It was a major factor on the appeal creating a difference between the value alleged by the appellant and that alleged by the respondent under the income approach. The Board accepted the value given on page 19 of the respondent's appraisal (which does not include reference to any properties in Surrey) and did not deal with the economic obsolescence alleged by the appellant to apply to properties in Surrey. It is not a matter of not giving reasons for rejecting the economic obsolescence argument. The Board did not even refer to it. I hold their failure to do so was error in law.

The answer to question 2 is "Yes".

Questions 3 and 4 read as follows:

> "(3) Did the Assessment Appeal Board err in law by accepting the Assessor' 'gross income' where there was no evidence before the Board to establish that either,
>
> (a) this did determine 'actual value' of the Appellant's improvements, and
>
> (b) that the said assessment bears a fair and just relation to the value at which similar land and improvements are assessed in Surrey?
>
> (4) Did the Assessment Appeal Board err in law by accepting the Assessor' submission of $4.40 as 'economic rent' on the Appellant's property where there is no evidence to establish that either:
>
> (a) any such rent does apply to the Appellant's land and improvements at all, and
>
> (b) that the resulting assessment of the Appellant's land and improvements bears fair and just relation to the value on which similar land and improvements are assessed in Surrey?"

I have difficulty understanding these two questions, since they seem to imply, and use as premises, facts which are not common ground and which I am unable to say have been proven. I understand them to apply to the subject property as a whole, i.e. land and improvements.

As I understand the arguments of counsel for the appellant he says that there was no evidence of actual value and that the assessor used as reference only properties outside the Municipality of Surrey and that consequently his assessment was arbitrary. I am not prepared to say that there was no evidence of actual value (i.e. of the property as a whole) though it may not have been satisfactory as one would wish. Nor am I prepared to hold that the assessment was arbitrary. Questions 3 and 4 are answered "No".

Parts of questions 3 and 4 may overlap questions 1 and 2. My ruling in respect of questions 3 and 4 in no way overrides or detracts from the ruling I have made in respect of questions 1 and 2.

This opinion is remitted to the Board.